

(1994) 12 MAD CK 0042
In the Madras High Court
Case No : O.S.A. No. 208 of 1991

The Employees' Federation and Others	APPELLANT
Vs	
TVS and Sons Ltd. and Another	RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Cinematograph Act, 1952 — Section 2
COMPANIES ACT, 1956 — Section 397
Constitution of India, 1950 — Article 104, 105, 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 198
Penal Code, 1860 (IPC) — Section 409, 499, 500

Citation : (1996) 87 CompCas 37

Hon'ble Judges : S.M. Ali Mohammed, J;Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—TVS Employees" Federation, Bombay, represented by its president and four others, who are defendants in a suit for permanent injunction, have preferred the instant appeal under clause 15 of the Letters Patent of this Court against the order of temporary injunction pending suit by a learned single Judge in O. A. No. 45 of 1991.

2. The plaintiff-first respondent herein is a public limited company incorporated under the Indian Companies Act having its head office at 7-B, Veli Street, Madurai, and having its branches in Madras and all over Kerala, Tamil Nadu, Karnataka and Goa. It consists of three divisions, viz., Sundaram Motors, Madras Auto Service and TVS, Madurai. Madras Auto Service is engaged in the business of dealing in spare parts and other accessories for motor vehicles. Sundaram Motors and T. V. Sundaram Iyengar and Sons Limited, i.e., the other two divisions, are also engaged in the business of rendering sales, service and repairs to automobiles of various descriptions, primarily with reference to the motor vehicles, which are governed by exclusive franchise given to them by manufacturers, viz., the Premier Automobiles Ltd., Bombay, Mahindra and Mahindra Limited, Bombay, Mahindra Nissan Limited, Hyderabad, and Ashok

Leyland Ltd., Madras, are some such manufacturers who have given to Sundaram Motors and T. V. Sundaram Iyengar and Sons franchise, and their activities are extended to substantial parts of Southern India in 17 centres, having units in Tamil Nadu, Karnataka, Kerala, Pondicherry and Andhra Pradesh. The fifth defendant-appellant, Thangappan, it is alleged, claiming that he was the president of the TVS Employees' Federation (the first defendant-appellant) purported to prepare a video cassette stated to be depicting the struggle of TVS workers, according to the plaintiff-respondent, with the "malicious intention of maligning the reputation of the plaintiff-respondent's units with ulterior motive with no justification whatsoever". The penalty-respondent has alleged, "apparently with a view to instigate the loyal workers of the plaintiff-company and its units have not only prepared the film and video cassettes maligning the reputation of the plaintiff, but has purported to pass it on to defendants Nos. 2 and 3 for exhibiting in Madras theatres, defendants Nos. 2 and 3, being Sundaram Motors Employees' Union, Madras, represented by its president and Sundaram Industries Employees Union, represented by its president. The only submission to support why the press plaintiff-respondent has inferred that the video cassette has been prepared solely with a view to maligning the reputation of the plaintiffs units throughout India is stated in the plaint in these words "The plaintiff understands and believes the same to be true that the film and video cassettes make a false version about the plaintiffs management dealing with the workers. They are wrong since they have introduced in the video cassettes to make it appear as if the workers are struggling in the plaintiffs companies. It is made as a documentary film. The plaintiff understands that the film is made by way of video clippings. As far as the petitioners-workers are concerned there is no grievance whatsoever, as already stated. Assuming the workers have any grievance, they have legal remedies under the various labour enactments under the Industrial Disputes Act, 1947, etc. In fact, the workers can always agitate rights, if any, through the recognised union. Since the workers are given all facilities and very good scale of pay, etc., the workers never showed any displeasure or had no occasion to make demands, and the relationship of the plaintiff and all other workers are absolutely cordial, and there was no occasion for workers to have any grievance against the plaintiff. Therefore, any film prepared by the defendants depicting as if the workers of the plaintiff are put to harassment and they are struggling are all false. In any event, neither by himself nor through defendants Nos. 1 to 4 can seek to depict any alleged grievance through video film. There is no law under which the defendants can seek to depict the grievances, if any, through the "video". The plaintiff-respondent also filed an application supported by an affidavit alleging therein that it had come to know that the fifth defendant-appellant styling himself as the president of the first defendant-appellant had press prepared certain film and video cassettes said to be depicting the alleged struggle of TVS workers and is making attempts to exhibit the same in the theatres and through video clubs. The fifth defendant under the name of the first defendant is seeking to instigate loyal workers of the plaintiff-company and its other units and has prepared the film and video

cassette maligning the reputation of the plaintiff and that it had come to know from the press where it was published that such video cassettes were sought to be exhibited depict company ... In the publication, the film is stated to have been produced by Cadre of Media Resource and Action (CAMERA) of Bombay, tracing the history of TVS workers struggle since 1948. The Court entertained the said application and issued an order of ad interim injunction in the application on January 11, 1991. The respondents-appellants appeared in the application and gave their version of the matter by a counter-affidavit. They alleged that defendants Nos. 2 to 4, who represented the majority of the employees of the plaintiff-respondent in its different divisions and units had formed a federation (first defendant), that the management of the plaintiff-respondent had created a trade union and almost made it compulsory for the workmen to join the management-controlled union and always succeeded in ushering in it its nominees as office-bearers by some sort of elections. Since the workmen's grievances were not attended to and the management almost exploited the workmen through the union controlled by it, the workers who found that the management was not fairly treating them joined the unions represented by defendants Nos. 2, 3 and 4, i.e., the appellants, who finally joined together to form a federation, i.e., the first defendant. They (the appellants) described in some detail how and why the workmen felt aggrieved and how the plaintiff denied to the workmen their due and victimised them by taking recourse to disciplinary powers, power to transfer, discriminating them in the matter of payment of wages, and extending the monetary benefits including the loans and ex-gratia payments to its puppet workmen and that the victimised workmen led by, the first appellant-federation organised the struggle on their behalf at Madras and raised demands, inter alia, for the appointment of a commission of inquiry to go into the unfair labour practices in the TVS group of companies, including the plaintiff-respondent and other matters." The defendants-appellants alleged as follows :

"The workmen started a struggle near Panagal Park on May 1, 1990, with a continuous fast and more than workers were admitted in the hospital on the verge of death. 203 workers were arrested for "Sathyagraha" and were detained in Central prison till the Government was directed to release the workmen by this honourable Court in a writ petition of habeas corpus filed by us. 203 workers suffered detention in the Central prison for 2 months to secure access to Justice and were prevented by the Government by the corporate might and influence of the TVS group.

I submit that the struggle of the TVS workers was sought to be portrayed by a documentary video by a non-profit organisation with the acronym "CAMERA" for which the respondent-union had no objection. The video cassette is meant for private circulation for trade union leaders and journalists and for persons interested in labour and human rights activities. The said portrayal of the struggle is a basic right guaranteed under article 19(1)(a) of the Constitution of India to the members of the respondent trade union and this respondent. The

injunction sought for is an infringement of this basic right. The entire video film is an educative documentary for trade unions and others and meant for private viewing only and without any collection whatsoever for the viewing. It is not meant for screening in theatres and video clubs.

The respondents deny the allegations of the plaintiff that the film maligns the reputation of the company and in any event the documentary video portrays the truth and does not in any way defame and harm the reputation of the firm."

3. In the course of the hearing of the application, the parties produced some documents and the Court felt it necessary to have the impugned video cassette screened in the chambers. After seeing the video film which ran to about 45 minutes, the Court observed :

"After a careful watch and examination of the various features and scenes which appeared therein, I am inclined to observe that the major part of the film contains objectionable materials which should not normally be allowed. There appears to be no harm in the labour leaders such as Mr. K. T. K. Thangamani, Mr. Kuchelar, late Mr. Chinthan and Mr. Prakash advocates, appearing now and then in the course of the film and making some short speeches provided they are of educative value to the workers and their criticism is fair. But the objectionable part is persons who are not the workmen of the applicant-company and who have been dismissed from service for various actions taken by the applicant-management are allowed to act before the camera. They want to exhibit generally that the TVS group of companies ill-treat and harass the workers. In a scene, an old woman, who had been made to act as such, is shown as lying down and crying for help as if she is seriously ill as if she fell down due to harassment by the TVS group of companies. Some persons were made to act as workers are shown to be fasting and it is not made clear why they fast. Some workers are shown to lie down as if they are suffering. A dismissal order in relation to worker is exhibited. But the reason for dismissal is not stated. It is open to the applicant-company to take disciplinary action against the worker, if he is guilty of misconduct. If the dismissal of the worker is wrongful, he is entitled to approach the hierarchy of Tribunals created under the Industrial Disputes Act. It is worse to see that a stranger, who is asked to act as if he is sitting before the worker who has asked to bend as a substitute for table for the purpose of writing. The said actor comments that employment could be sought in the applicant company, if one had influence. One person acting as a manager, uses the telephone often and says something as if the officers of the TVS companies are indulging in harassment to the workers. Some instances in which workers were dismissed from service after disciplinary proceedings and after exhaustion of the legal remedies under the statute are also shown here as unjust action on the part of the applicant-management.

4. After referring to some of the provisions of the Cinematograph Act (Act 36 of 1952), and the judgment of the Supreme Court in *S. Rangarajan Vs. P. Jagjevan Ram and Others*, , the learned judge has held that in the circumstances, it

cannot be., Contended on behalf of the respondents (appellants herein) that their right under article 19(1)(a) of the Constitution of India had been infringed by the grant of an order of injunction.

The reference to the news item in the application for ad interim injunction is attributable to a publication dated December 15, 1990, of the report of the special correspondent in the Economic Times, Bombay edition, stating that there was a new twist to the TVS workers agitation. With peaceful demonstrations, satyagrahas And marches taking them nowhere in their struggle against the TVS group, the workers have come out with a novel method to espouse their cause. A documentary film, depicting, the struggle of the TVS workers and determination of their families towards their goal of achieving their trade union rights, had been put together to disseminate information. The fifth defendant gives the reasons for making this film, viz., "media coverage of long drawn battle of the workers has generally been lukewarm". The report mentioned that there was a special screening of the film at Bombay and that it was going to be screened in other parts of the country to create public awareness as well as sympathy for the cause of the workers. As to the contents of the cassette, the news item stated :

"The 45-minute film produced by the Cadre of Media Resources and Action (CAMERA) of Bombay, traces the history of the TVS workers" struggle since 1948. The struggle, however, gained momentum since 1987, when various Central trade unions like CITU, AITUC other unions and the civil liberty movements extended their support to the TVS workers."

The said news item was also published in the Bangalore edition of the said newspaper.

The right of life and personal liberty which are guaranteed as fundamental freedom in the Constitution of India, have always been cherished and practised by all Indians. In the relentless struggle for independence, the people of India sacrificed their lives and suffered incarcerations, but never compromised with the British crown on the freedom of speech and expression. Independent India has constituted itself as a democratic republic with the preamble to secure to all its citizens justice, social, economic and political liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. The liberty of thought, expression, belief and faith are enshrined as fundamental rights and put in Part III of the Constitution, including the freedom of speech and expression to all citizens of India in article 19(1)(a) thereof. The role, which the High Courts and the Supreme Court, more particularly the Supreme Court have played in safeguarding the freedom of its citizens, are already legion. Yet, time and again the Courts are invited to delve into issues, where the freedom of speech and expression are allegedly abused or sought to be restricted by executive orders and legislations. To pick up a few of such milestone judgments of the Courts, we have in our mind the Constitution Bench judgment of the Supreme Court in the case of Bennett Coleman and Co.

and Others Vs. Union of India (UOI) and Others, . Wherein the Court has clarified that a company as such may not be said to have the fundamental right of freedom of speech and expression, which is exclusive for a citizen, but the shareholders enjoyed this right as citizens. This right, which shareholders enjoyed as citizens of India, was not lost whenever they associated themselves to form a company. In the majority judgment by A. N. Ray, J., as he then was, William Blackstone is quoted to have said in his commentaries at page 129 of AIR 1973 SC .

"Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous illegal, he must take the consequences of his own temerity."

And said

"The faith in the popular Government rests on the old dictum "let the people have the truth and the freedom to discuss it and all will go well Steel will yield products of steel. Newsprint will manifest whatever is thought of by man. The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct."

Mathew. J. in his separate judgment in the said case has extracted a piece from an earlier judgment of the Supreme Court in the case of Express Newspaper. P. Ltd. v. Union, of India, 19611 LLJ 339 which we feel persuaded to extract (at page 137 of AIR 1973 SC.

"It is trite to observe that the fundamental right to the freedom of speech and expression enshrined in article 19(1)(a) of our Constitution is based on these provisions in Amendment I of the Constitution of the United States of America"

Mathew, J., has quoted the observations of Alexander Hamilton from the Federalist papers as follows at page 137 of AIR 1973 SC :

"On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two ... I contend that whatever has been said about it ... amounts to nothing. What signifies a declaration that "the liberty of the press shall be inviolably preserved"? What is the liberty of the press ? Who can give it any definition which would not leave the utmost latitude for evasion" I hold it to be impracticable"

He has quoted various authorities particularly on the freedom of speech or of the press and Lincoln on liberty (at page 138 of AIR 1973 SC) :

"The world has never had a good definition of it."

and given his opinion in these words (at page 143 of AIR 1973 SC)

"The constitutional guarantee of the freedom of speech is not much for the

benefit of the press as it is for the benefit of the people. The freedom of speech includes within its compass the right of all citizens to read and be informed,"

and added to his view a quotation from judgment of the U.S. Supreme Court in *Time v. Hill*. 1968 385 US 74 (at page 143 of AIR 1973 SC) :

"The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people".

This judgment of the Supreme Court points out at page 148 of AIR 1973 SC

"The freedom of speech protects two kinds of interest. There is an individual interest, the need of men to express their opinion on matters vital to them and a social interest in the attainment of truth so that the country may not only accept the wisest course but carry it out in the wisest way."

Referring to the observations *Bennett Coleman and Co. Ltd. v. Union of India*. (supra) S. Malgaokar In re AIR 1978 SC 727. Beg, C.J. has said on liberty in these words (p 729) :

"John Stuart Mill, in his essay on "Liberty", pointed out the need for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what may be called the "dialectical" process of a struggle with wrong ones which expose errors. Milton, in his "Areopagitica" (1644) said : Though all the winds of doctrine were let loose to play upon the earth so Truth be in the field. We do injuriously be licensing and death your right to say it. Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis creeps over a Society which denies it in however subtle a form, due freedom of thought and expression to its members".

5. The Indian Constitution does not use the "freedom of the press" in Article 19(1)(a), expression but, it is obviously included in Article 19(1)(a). The extent of the right has however, been more often examined in the cases of publication of matters which allegedly offended some one's public image. When a speech or expression would offend the right of another, we shall take up soon. No individual however. can take the liberty of speaking something, which is injurious to public interest. In *G. Kasturi v. N. Murali*. 1992 74 Comp Cas 661. This Court considered the question whether by not permitting a news item to be published concerning the Bofors issue, the Managing Director-cum-Editor of the publisher company acted against public interest and one of us speaking for the Court has stated in the said judgment as follows (at page 729) :

"... Prohibiting to misdoubt her strength. Let her and Falsehood grapple; whoever knew Truth put to the worse, in a free and open encounter ? Who knows" not that Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious, those are the shifts and defences that error makes against her power ..."

6. Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be zealously guarded. Voltaire expressed a democrat's faith when he told an adversary in arguments, I do not agree with a word you say, but, I will defend to the death your right to say it (at page 685 of 74 Comp Cas) :

"There has, however, been an attempt to introduce as an act against public interest, the decision of the Managing Director (Editor) to withhold publication of the second instalment of news on the Bofors issue. Section 397(1) talks of a complaint that the affairs of the company "are being conducted in a manner prejudicial to public interest". The words "are being conducted" must mean several acts in continuity and not one isolated act. The expression "interest" in this context also must receive a meaning different from the interests of a reader of a news item, who as a member of the public, may have one or the other opinion. Public interest cannot be allowed to be confused with public opinion. John Burke in Stroud's Judicial Dictionary of Words and Phrases (volume 3, third edition, at page 2381) has elucidated that the expression "a matter of public or general interest" does not mean that which is interesting as gratifying curiosity or a love of information or amusement, but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are, affected .."

In the said judgment, the Bench reversed a judgment of a learned single Judge for the reason that a decision regarding whether the publication of a news item would be in public interest or not, cannot in any manner be said to affect public interest. Whether the interest of the public is in prejudice or not will be found only after publication but not before.

7. Speaking generally, whether a Court could forestall a publication of words, etc., or any expression which is so cherished has always been a difficult proposition, as a common law action in a Court of law against words known as actionable per quod, i.e., words not actionable per se upon their face. But, only in consequence of extrinsic facts showing circumstances under which they were said or the damages resulting to slandered party therefrom is ordinarily permitted only on allegation and proof of special damages. Actionable per se, i.e., where words spoken in themselves are libelous or slanderous, words which law presumes must actually, proximately and necessarily cause damage to another, words which make imputation of crime, loathsome disease, unchastity, affecting business, trade, profession, office or calling are taken as libel or slander and come under the action for tort. Libel is understood in its most general sense as a method of defamation expressed by print, writing pictures or signs and any publication by any such method that is injurious to the reputation of another. A false and unprivileged publication in writing of defamatory material, a maliciously written or printed publication, which tends to blacken a person's reputation or to expose to public hatred, contempt or ridicule or to injure his business or

profession, accusing in writing and printing against the character of a person, which affects his reputation in that it tends to hold him up to ridicule, contempt, shame, disgrace, or obloquy, or to degrade in the estimation of the community or to induce an evil opinion of him in the minds of right thinking persons or to make him an object to reproach or to diminish his respectability or abridge his comforts to change his position in society for the worse or to dishonour or discredit him in the estimation of the public or his friends and acquaintances, or to deprive him of friendly intercourse in society, or cause him to be shunned or avoided, or where it is charged that he has violated his public duty as a Public Officer, said almost in any language which upon its face has a natural tendency to injure a man's reputation either generally or with respect to his occupation is libel. Libellous per se : A publication is libellous per se when the words are of such a character that an action may be brought upon them without the necessity of showing any special damage, the imputation being such that the law will presume that any one so slandered must have suffered damage. To render words "Libellous per se", the words must be of such character that a presumption of law will arise therefrom that the plaintiff has been degraded in the estimation of his friends or of the public or has suffered some other loss either in his property, character, reputation, or business or in his domestic or social relations. When a publication is libellous per se", that is, defamatory on its face, it is actionable per se, libellous per quod, however, are such expressions that their injurious character or effect is required, to be established by allegation and proof. They are those expressions which are not actionable upon their face, but which become so by reason of the peculiar situation or occasion upon which the words are written or spoken. Publications which are susceptible of two reasonable interpretations, one of which is defamatory and the other is not or publications which are not obviously defamatory, but which become so when considered in connection with innuendo, colloquium, and explanatory circumstances fall in this class. The law dictionaries and law lexicons thus clearly indicate that libellous per se is actionable per se. Words themselves will speak of the injury which they cause to someone and if a legal injury is unavoidable, the Court must presume in favour of the action. The expressions which are libellous per quod, however, always require specific pleading and proof of how they have caused any legal injury to someone. We have to keep in mind in the instant case that the plaintiff respondent has not brought the present action for pre-emptive injunction upon any right of his under any specific law or a statute having been violated. The action which he has chosen is one in support of a person's right, which of course is an important aspect of right to life under Article 21 of the Constitution of India. Such actions lie at common law without the aid of any statute. There is nothing to show that the defendants were/are under any contractual obligation or that they have gone against any consensus ad item. It is thus an action ex delicto, i.e., an action in or arising out of a tort. In such a case, ordinarily action for damages is permitted and damages are awarded on the Court's satisfaction in accordance with law whether the defamatory publication is libellous per se and the defendant has no plea in defence or whether it is libellous per quod and the

plaintiff has been able to prove it to be defamatory in the sense that it has caused injury to him which the Court recognises as a legal injury due to acts ex delicto of the defendant. Injunction is always an exception. The Court has power to restrain by injunction the publication of libellous or slanderous materials, but exercises such power only when it is satisfied that there is a reasonable apprehension that the defendant unless so restrained will continue to publish or repeat the publication of the defamatory matter of which complaint is made. In the book on Libel and Slander by Carter Buck, 1992, 4th edition, page 178, the following is found :

"The law relating to the grant of interim (or interlocutory) injunction in defamation action is significantly different from that relating to injunctions in general. Although the House of Lords gave authoritative consideration to the circumstances in which interlocutory injunctions should be granted in the case of *American Cyanamid Co. v. Ethicon Ltd.*, the Court of Appeal has repeatedly asserted subsequently that this decision has no application to actions for defamation and malicious falsehood. The jurisdiction of the Court to grant interim injunction in action for defamation is exercised with the greatest caution and only in clearest possible cases. The reason for this is that no injunction can be granted unless the words or matter complained of are libellous ..".

Two other rules are indicated in this book. They are :

"(1) An interim injunction will not be granted unless the Court is satisfied that if the publication were to be continued it would result in immediate and irreparable injury, nor will it be granted if the plaintiff can be fully compensated in damages.

(2) The Court must be satisfied that the words are untrue and that there is no defence available. It will not grant an injunction if the defendant swears an affidavit that he proposes to plead justification, unless it is satisfied that he will not be able to establish such a plea."

Carter Buck says and we shall presently see the authorities are almost unanimous that the Court is always most reluctant to grant" injunction unless it is fully satisfied about the imminency of the injury and the injury being irreparable. In such cases, generally, an application for an interlocutory injunction is entertained after an initial publication of the alleged defamatory material in order to prevent its repetition. The Courts ordinarily do not grant an injunction to restrain a threatened publication, known as quia time injunction, except in gross cases of publications, which are injurious to public interest, and, if at all, it grants injunction to prohibit any publication, it does so when the plaintiff is able to prove precisely what the threatened publication is going to contain and how it is going to cause irreparable injury. It is so because it is difficult to perceive the precise knowledge of the contents of the publication unless the publication itself is made and the contents are accordingly known. It is indeed in very rare cases that exception can be made and a threatened or contemplated publication stopped.

8. Before we take notice of the law laid down by the Supreme Court of India and other authorities on the subject, which delineate the parameters of the Court's role. We may take notice of the provisions of the Cinematograph Act, 1952, as amended from time to time. This Act has a definition of cinematograph u/s 2(c) thereof to include any apparatus for the representation of moving pictures or series of pictures and a definition of films which is sufficient to include a video, a television and a VCR. A video is an appliance, which is capable of use for transmission of signs, signals, images and sounds and, therefore, falls within the ambit of the term "telegraph", and is an apparatus for the representation of moving pictures or series of pictures. A television likewise is an appliance capable of use for reception of signs, signals, writings, images and sounds and falls within the definition of telegraph and an apparatus for the representation of moving pictures or series of pictures. A VCR is obviously for playing pre-recorded copies of movies on the television screen. It is certainly used as an apparatus for the representation of the moving pictures or series of pictures and comes within the definition of cinematograph. The Act has introduced a requirement of certification of films for public exhibition and prescribed penalties for contravention of the requirements of the provisions thereof as well as seizure of a film in respect of which, no certificate has been granted, but it is exhibited or a film certified for restricted public exhibition when exhibited otherwise. This Act has provided for regulation of exhibition by means of a cinematograph and provided that no person can exhibit a film by means of cinematograph elsewhere than in a place licensed under the Act or otherwise than in compliance with the conditions and the restrictions imposed under the licence. Section 5-B of the Act which is introduced by the Cinematograph (Amendment) Act, 1981, says

"Principles for guidance in certifying films. -

(1) A film shall not be certified for public exhibition, if in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence.

(1-A) In particular and without prejudice to the generality of the provisions of sub-section (1), a film shall not be certified as a film fit for exhibition outside India, if, in the opinion of the authority competent to grant the certificate, the film or any part of it presents or is likely to present an erroneous, distorted or misleading image of the social, cultural or political institutions of India or any part thereof.

(2) Subject to the provisions contained in sub-section (1) or sub-section (1-A) the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition."

9. Since the cassette with the appellants is a film as defined under the Cinematograph Act and is fit to be exhibited only by the apparatus called "VCR", its exhibition shall attract the provisions of the Cinematograph Act. In its judgment in the case of *S. Rangarajan v. P. Jagjivan Ram*, (supra) the Supreme Court has considered the scope of judicial review and indicated the standard to be applied in judging a film by the Censor Board or the Court, to restrict the freedom of speech and expression under Article 19(1)(a) of the Constitution of India. The case was concerned with the exhibition of a Tamil film called *Ore Oru Gramathile*. The story of the film and the facts of the case are available in detail in the judgment of the Supreme Court. The second revising committee under the Cinematograph Act by the majority opinion granted "U" certificate for the exhibition of the film. That was challenged before the High Court by way of writ petitions. The writ petitions were dismissed by a single judge. The Division Bench upon an appeal allowed the writ petitions and revoked the certificate. The Division Bench largely depended upon the minority view of the second revising committee and also the opinion of the Examining Committee. The producer of the film and the Government of India by obtaining leave, appealed to the Supreme Court. The film in the meanwhile (before the judgment of the Supreme Court) was given national award by the Directorate of Film Festival of the Government of India. After referring to the decisions of the American Supreme Court and accepting the view that expression by means of a motion picture is within the freedom of speech and expression, including that of the press as under the first amendment to the U.S. Constitution (the first amendment being "Congress shall make no law ... abridge the freedom of speech or of the press" and observing that this amendment is absolute in terms and it contains no exception for the exercise of the rights, the Supreme Court pointed out (at p. 582) :

"The framework of our Constitution differs from the First Amendment to the U.S. Constitution. Article 19(1)(a) of our Constitution guarantees to all citizens the right to freedom of speech and expression. The freedom of expression means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom of communication and the right to propagate or publish opinion. The communication of ideas could be made through any medium, newspaper, magazine or movie. But this right is subject to reasonable restrictions on grounds set out under Article 19(2) of the Constitution. The reasonable limitations can be put in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The framers deemed it essential to permit imposition of reasonable restrictions in the larger interests of the community and country. "They intended to strike a proper balance between the liberty guaranteed and the social interests specified under Article 19(2)."

The Supreme Court has then observed (at page 582) :

"The movie doubtless enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movie and the other modes of communication. "The movie cannot function in a free market place like the newspaper, magazine or advertisement. "The movie motivates thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The focussing of an intense light on a screen with the dramatizing of facts and opinion makes the ideas more effective. The combination of act and speech, sight and sound in the semi darkness of the theatre with elimination of all distracting ideas will have an impact in the minds of spectators. In some cases, it will have a complete and immediate influence on, and appeal for everyone who sees it. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It is said "as an instrument of education it has unusual power to impart information, to influence specific attitudes towards objects of social value, to affect emotions either in gross or in microscopic proportions, to affect health in a minor degree through sleep disturbance, and to affect profoundly the patterns of conduct of children." (See Reader in Public Opinion and Communication, second edition, by Bernard Berelson and Morris Janowitz, page 390). "The authors of this book have demonstrated (at pages 391 to 401), by scientific tests the potential of the motion pictures in formation of opinion by spectators and also on their attitudes. These tests have also shown that the effect of motion pictures is cumulative. It is proved that even though one movie relating to a social issue may not significantly affect the attitude of an individual or group, continual exposure to films of a similar character will produce a change. It can, therefore, be that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instill or cultivate violent or good behavior. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market place just as do the newspapers or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary."

The fact that the film as produced by the appellants for a public exhibition as movie in a cinema house although it may be intended for a select audience, in particular for the workers of TVS companies, is enough to invite censorship. It is not only desirable but also necessary as the film is a potential instrument which can disturb peace and arouse violence. If it is within the limits and not in any manner in conflict with the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or is not in contempt of Court, or causes defamation or incites offence it should get a censor's certificate. If, however, its contents are such that they cause disturbance and work against the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or lead to contempt of Court, cause defamation or

incitement to an offence, the censor should refuse certificate or restrict exhibition or put such curbs as it would find desirable. The Cinematograph Act provides the mechanism for scrutiny for maintaining the required balance between the liberty guaranteed under Article 19(1)(a) and the social interests specified under Article 19(2) of the Constitution. In *S. Rangarajan v. P. Jagjivan Ram* (supra) the Supreme Court has taken notice of the various provisions of the Cinematograph Act and noted that Article 19(2) has been practically read into section 5-B(1) of the said Act. Section 5-C confers the right of appeal to the Tribunal against refusal of certificate. Section 6 gives to the Central Government the revisional power to call for the records in relation to any proceeding at any stage where it is not made the subject-matter of appeal to the Appellate Tribunal. u/s 8 of the Act (the Central Government has power to make rules) and power to provide guidelines u/s 5-B(2) for the Censor Board (guidelines have been provided), (1) relating to the objects of the film; and (2) requiring the Board to ensure that (i) anti-social activities such as violence are not glorified or justified (ii) the modus operandi of Criminal or other visuals or words likely to incite the commission of any offence are not depicted; (iii) pointless or avoidable scenes of violence, cruelty and horror are not shown; (iv) human sensibilities are not offended by vulgarity, obscenity and depravity (v) the sovereignty and integrity of India are not called in question; (vi) the security of the State is not jeopardised or endangered; (viii) friendly relations with foreign States are not strained and (ix) public order is not endangered, and to ensure that the film is judged in its entirety from the point of view of its overall impact; and is examined in the light of contemporary standards of the country and the people to whom the film relates. The objectives of film censorship are thus well pronounced. The medium of film must remain responsible and sensitive to the values and standards of society; (b) artistic expression and creative freedom are not unduly curbed; and (c) films must work for the social change, as envisioned under the Constitution of India. The Supreme Court has in this judgment reiterated the observations as to pre-censorship and the extent of the legitimate restraint on the freedom of speech and expression in its earlier judgments in *K.A. Abbas Vs. The Union of India (UOI) and Another*, ; *Ramesh Dalal Vs. Union of India (UOI) and Others*, , and *Raj Kapoor Vs. Laxman*, , and quoted such passages which are relevant and are as follows (at page 585 of 1989 2 SCC) :

"The task of the censor is extremely delicate ... The standards that we set out for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good ... The requirements of art and literature includes within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said a Frenchman sees a workman's legs in everything, it cannot be helped. In our

scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth (see *K. A. Abba, v. Union of India*, (supra))

That the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. This, in our opinion, is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of an ordinary reasonable man or as they say in English law, "the man on the top of a Clapham omnibus." (See *Ramesh v. Union of India*), (supra).

The ultimate censorious power over the censors belongs to the people and by indifference, laxity or abatement pictures which pollute public morals are liberally certificated; the legislation meant by Parliament to protect people's good morals, may be sabotaged by statutory enemies within." (See *Raj Kapoor v. Laxman* (supra))

10. The censor in the instant case has exercised its functions and we are informed, granted to the appellants V/U certificate. The plaintiff-respondent, however, had already moved this Court in the suit and the exhibition of the film has remained in abeyance for the reason of the injunction granted by the trial Court. The grant of certificate by the censor, however, does not preclude the Court's jurisdiction. The Court, after all has to take notice of the grievance of the plaintiff-respondent and see whether he has been defamed or will the exhibition/publication defame him and whether it has caused or is likely to cause irreparable injury to it. It is not necessary in the instant case to examine whether the defendants-appellants as associations or trade unions have the freedom of speech and expression and the said freedom is protected under Article 19(1)(a) of the Constitution or not. As individuals and citizens of India, workers and others who have taken interest in the matter concerning the management and labour relationship in the divisions and units of the plaintiff-respondent-company are entitled to the constitutional guarantee under Article 19(1)(a) subject to the restrictions under Article 19(2) of the Constitution and merely because they have joined together and formed an association the guarantee is not lost to them. We are supported in our view by the judgment of the Supreme Court in the case of *Bennett Coleman and Co. Ltd. v. Union of India*, (supra). The plaintiff-respondent is a company. Its complaint is that it is likely to be defamed by the publication/exhibition of the particular video film produced by the defendants-appellants. A judgment of the Court of Appeal in the case of *South Hetton Coal Co. Ltd. v. North-Eastern News Association Ltd.*, 1891 94 All ER 548, has answered the question whether the action lies by the plaintiffs who are a corporation. In the words of Lord Esher M.R. :

"The law of libel is the same as regards all manner of parties, and that the question is always the same, namely, whether the jury are of opinion jury that the matter published would, with regard to the conduct of the plaintiff, lead

persons of ordinary sense to look upon the plaintiff with hatred, contempt, or ridicule. That is always the question, whether the plaintiff is an individual, a firm or a corporation. The application of that law is different, according to the different kinds of plaintiffs. There are some kinds of the plaintiffs about whom things may be written which may lead ordinary people to entertain feelings of hatred, contempt, or ridicule, but there are other kinds of the plaintiffs as to whom those same things could not lead people to entertain such feelings. For instance, if a man said that the manners of the plaintiff were grossly contrary to all proper sense of decency, that might lead ordinary people to entertain feelings of hatred, contempt, or ridicule towards him if the same thing was said to the manners of a firm, or of a corporation, a firm or corporation cannot have manners, and in such a case, although the law is the same, the necessary conditions are wanting and the matter published is not a libel, because it could not lead to feelings of hatred, contempt, or ridicule towards a firm or corporation.

There are, however, things which may be said as to the conduct of the plaintiff, where the plaintiff is a firm or corporation, which may be libellous. For instance, if you say of a man engaged in business that he conducts his business like a foolish man, that is a libel upon him in his business, that is, upon him in respect of his conduct in his business. With respect to such a man, if you only say that his goods are bad, it is for the jury to consider whether this was so said as to imply that his conduct in his business was bad. For instance, if the plaintiff is a wine merchant, and you say that there is a bad vintage, and the wine of that vintage is bad with him and with all merchants, that is no reflection upon the plaintiff in his business. But is only a reflection upon the goods, and is not a libel upon the plaintiff. If such a statement as that is made maliciously, and does injure the plaintiff, it only gives rise to an action upon the case, and not to an action for libel. If you say of a wine merchant that he has been selecting bad wine, that is a reflection upon him in his business, and may be a libel upon him in his business that the statement reflected upon the goods only, there is no libel; but, if they find otherwise, there is a libel.

Then, with regard to a firm or a corporation, no exhaustive account can be given of the kinds of statement which are libellous, or are not libellous. The rule of law, however, is the same as in the case of an individual. If a firm or a corporation carries on a business, they may carry it on in such a way as to lead a person to say that they carried it on in a bad way. Such a statement would be libel on the business, and the law is the same as in the case of an individual. That statement, if true, would lead an ordinary person to say that they managed their business in so inefficient a way as to lead people to entertain feelings of, contempt or ridicule towards them. It follows, therefore, that the law is the same in all respects in the case of a corporation and of an individual."

Lord Esher M.R. agreed with the Lord Chief Justice that a fair comment upon a matter of public interest is not a libel at all, but if it is so exaggerated and florid a description that it could be called unfair, then it may be libellous. The House of

Lords in *Derbyshire County Council v. Times Newspapers Ltd.*, 1993 1 ALL ER 1011, has reiterated this principle but has pronounced that (headnote) :

"Under common law a local authority did not have the right to maintain an action for damages for defamation as it would be contrary to the public interest for the organs of Government, whether central or local, to have that right. Not only was there no public interest favouring the right of Government organs to sue for libel but it was of the highest public importance that a governmental body should be open to uninhibited public criticism, and a right to sue for defamation would place an undesirable fetter on freedom of speech."

11. The observations from the judgment in *South Hetton Coal Co. Ltd. v. North-Eastern News Association Ltd.* (supra) have been quoted by Lord Keith of Kinkel in his main judgment that with regard to a firm or company it is impossible to lay down an exhaustive rule as what would be a libel on them. But, the same rule is applicable to a statement made with regard to them. Quoting from other judgments, including one from the judgment in the case of *Bognor Regis UDC v. Champion*, 1972 2 ALL ER 61 (QB), he has commented (at page 1017 of 1993 1 ALL ER) :

"It is to be observed that Browne, J., did not give any consideration to the question whether a local authority, or any other body exercising governmental functions, might not be in a special position as regards the right to take proceedings for defamation. The authorities cited above clearly establish that a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it. *South Hetton Coal Co. Ltd. v. North-Eastern News Association Ltd.*, (supra) would appear to be an instance of the latter kind, and not, as suggested by Browne, J., an authority for the view that a trading corporation can sue for something that does not affect it adversely in the way of its business. The trade union cases are understandable upon the view that defamatory matter may adversely affect the union's ability to keep its members or attract new ones or to maintain a convincing attitude towards employers. Likewise, in the case of a charitable organisation the effect may be to discourage subscribers or otherwise impair its ability to carry on its charitable objects. Similar considerations can no doubt be advanced in connection with the position of a local authority. Defamatory statements might make it more difficult to borrow or to attract suitable staff and thus affect adversely the efficient carrying out of its functions.

There are, however, features of a local authority which may be regarded as distinguishing it from other types of corporation, whether trading or non-trading. The most important of these features is that it is a governmental body. Further, it is a democratically elected body, the electoral process now-a-days being conducted almost exclusively on party political lines. It is of the highest public

importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech."

and held as above that a plaintiff-local authority cannot bring an action for damages for defamation as it would be contrary to the public interest. Since the plaintiff-respondent is a trading company and it has something to say about its business and its relationship with its employees, it can sue if there are imputations which defame it for damages. It can do so notwithstanding the certificate for exhibition of the film granted to the appellants or the producers of the film by the censor board. The main question before us, however, is, can it maintain a suit for permanent injunction ? If it can maintain a suit can it do so without any publication of the contents of the film and without the contents being before the Court for scrutiny as they were before the Censor Board. It is significant also to bear always in mind that to the right regarding freedom of speech and expression under Article 19(1)(a) of the Constitution, defamation or incitement to an offence is kept in the group of exceptions along with the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality and contempt of Court and it is envisaged that the preservation of this right shall not affect the operation of any existing law or prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of the said right. Defamation has been recognised as a criminal offence and given a statutory definition u/s 499 of the Indian Penal Code, 1860, in these words :

"whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. - An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person, in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

Explanation 2 above thus states :

It may amount to defamation to impute anything to a company or an association or collection of if the imputation would harm the persons reputation of the company or the association or collection of persons and is intended to be harmful ...

Exceptions to the definition show :

(1) It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

(2) It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

(3) Expressing in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct and no further is not defamation.

(4) Publication of a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings is not defamation.

(5) Expression of opinion in good faith respecting the merits of any case civil or criminal which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further is not defamation.

(6) Expressing in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further is not defamation.

(7) Censure passed in good faith by lawful authority over another either conferred by law or arising out of a lawful contract made with that another is not defamation.

(8) Any accusation preferred in good faith against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation is not defamation.

(9) Imputation made in good faith by person for protection of his or other's interests on the character of another provided that the imputation is made in good faith for the protection of the interests of the person making it, or of any other person or for the public good is not defamation.

(10) Putting to a caution in good faith one person against another provided that such caution is intended for the good of the person to whom it is conveyed or by

some person in whom that person is interested or for the-public good is not defamation.

Thus, making or publishing any imputation concerning any person or a company or an association or collection of persons intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, company or association or collection of persons may constitute defamation unless it is an imputation of truth which public good requires to be made or published or is in respect of public conduct of public servants or conduct of any reports of proceedings of Courts, or expression of opinion on the merits of a case decided in Court or opinion as to conduct of witnesses and others concerned with the case or expression of opinion as to merits of public performance or respecting the character of the author so far as his a character as appeared in such performance or censure passed in good faith by persons having lawful authority over another or accusation preferred in good faith to authorised persons or in good faith by a person for protection of his or other's interest or caution intended for the good of the persons to whom conveyed or for public good and may attract prosecution in a criminal Court. In common law for civil action defamation includes both libel and slander and is comparable to an action in tort and thus for relief of damages either special or general. It is pointed out in Halsbury's Laws of England, third edition, volume 24, page 5, Para 6

"A class of persons cannot be defamed as a class, nor can an individual be defamed by a general reference to the class to which he belongs."

In Libel and Slander, fourth edition, by Gatley, at page 115, it is stated :

"Where the words complained of reflect on a body or class of persons generally such as lawyers, clergymen, publicans or the like, no particular member or body of persons can maintain an action.

In Odger's Libel and Slander, 6th edition, at page 123, it is stated :

"The defamatory words must refer to some ascertained or ascertainable person and that person must be the plaintiff So if the words reflect impartially on either A or B or on someone of a certain member of class, and there is nothing to show which one was meant, no one can sue."

Referring to these authorities and dealing generally with defamation u/s 499 of the Indian Penal Code, 1860 and examining as to who may be a person aggrieved to maintain a complaint for the alleged defamation in respect of an ashram, an incorporated body a learned single judge of the Calcutta High Court in the case of Dhirendra Nath Sen and Another Vs. Rajat Kanti Bhadra, , has pointed out the classical definition of the term "defamation" given by Mr. Justice Cave in the case of Scott v. Sampson, 1882 8 QBD 491, as a "false statement of a man to his discredit" and in Sim v. Stretch, 1936 52 TLR 669, by Lord Atkin, "would the words tend to lower the complainant in the estimation of the right thinking members of the society generally."

And observed as follows (at page 221) :

"The concept of defamation is indeed a mixed concept partly subjective and partly objective and the institution of the proceedings must be against the background of Section 198 of the Code of Criminal Procedure. Upon ultimate analysis, however, whether the impugned publication is defamatory or not is a question of fact and the same must abide a full-fledged trial."

For the Indian Penal Code, 1860, thus, imputation by words either spoken or intended to be read or by visible representation is not an offence until it is proved to discredit a person in the eyes of others and the imputation is not covered by any of the exceptions. Civil action for damages is possible but only in cases where the Court is satisfied about the ill-effect of the imputations. Preventive injunction can be granted in a very exceptional case.

12. What has been brought under Article 19(1)(a) of the Constitution as a right to freedom of speech and expression is restricted besides other matters as stated in Article 19(2) of the Constitution by the existing law of defamation or incitement to an offence as in the Indian Penal Code, 1860, as well as under the common law which protects any person from any injury to his reputation. If any imputation concerning any person including a company or association or collection of persons which is a legal entity in itself is made or published intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, company or association or collection of persons and the maker or doer has no reason to think that he was publishing a truth which public good required to be made or published it may constitute defamation. If a false imputation is made and published and it is libellous per se, i.e., if the imputation on the face of it is false and injurious to the reputation of the persons about whom it has been made or published or libellous per quod or actionable per quod, i.e., if the allegations are proved as imputations damaging to the reputation of the aggrieved person a suit can be maintained by him for damages and in exceptional cases for injunction. A firm or company, we have already noticed is subjected to the same test as any other person but it is required to show that defamatory matters have caused or have a tendency to damage it in the way of its business or are likely to affect its reputation as an employer and thus affect the interest of the public. We have at least two judgments of the Supreme Court of India which need special mention before we proceed further. In the case of *Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others*, , the Supreme Court has considered the case of the petitioner-company which had with a view to set up what was claimed to be the largest petrochemical complex in the private sector for the manufacture of critically scarce raw material, issued 12.5 per cent. secured convertible debentures which, it was assured, was of global and national importance. The public issue was due to open on August 22, 1988, and was scheduled to be closed on August 31, 1988. Certain writ petitions and a suit were filed in some High Courts and Court challenging the grant of consent or sanction

for the issue of the debentures. In some of these proceedings orders of injunction were obtained. The petitioner-company moved an application for transfer of these proceedings under Article 189-A of the Constitution before the Supreme Court. It was contended before the Supreme Court that there was no ground for the High Court to grant injunction or stay of the issue. The Supreme Court by its order dated August 19, 1988, vacated all orders of injunction and directed that the issue be proceeded with "without let or hindrance" notwithstanding any proceedings instituted or that may be instituted in or before any Court or Tribunal or other authority. On August 25, 1988, the respondent-newspaper published an article in which it claimed that the Controller of Capital Issues had not acted properly and legally in granting the sanction to the issue for various reasons stated therein and that the issue was not a prudent or reliable venture. The petitioner then moved an application before the Supreme Court contending that by the article the respondents had commented on a matter which was subjudice and that the article was intended to undermine the effect of the interim order passed by the Court and the ultimate decision of the Court and unless restrained by the Court the respondents would continue to publish such articles. The Supreme Court directed that cognizance of contempt would only be considered after the necessary sanction from the Attorney-General was obtained but issued an order of injunction restraining all the respondents from publishing any article, comment, report or editorial in any of the issues of the Indian Express or their related publications questioning the legality or validity of any of the consents, approvals or permissions to the said issue of debentures. After referring to and recognising that it was trite knowledge that the fundamental right to the freedom of speech and expression enshrined in our Constitution was based on the provisions in the first amendment to the constitution of the United States of America, the Supreme Court noticed a few American authorities and English decisions and observed as follows at page 597 of 66 Comp Cas :

"Mr. Baig emphasised that there is an inherent jurisdiction to restrain by injunction any publication that interferes with a fair trial or a pending case or with the administration of justice in general. He further urged that trial of a newspaper in a subjudice matter is wrong. Publication is permissible provided it does not amount to pre-judgment or prejudice of a matter in Court. Liberty or freedom of the press must subserve the due administration of Justice. He submitted that there is need to continue the injunction because contribution to the debentures could be withdrawn as the final allotment has not yet been made.

On the other hand, Mr. Divan submitted that there is no jury trial involved here and no likelihood of the trial being prejudiced because trial is by professionally trained judges. The public have a right to know about this issue of debentures which is a matter of public concern. It affects the public interest, and so the public have a right to know and the newspapers have an obligation to inform.

We must see whether there is a present and imminent danger calling for the continuance of the injunction. It is difficult to lay down a fixed standard to judge

as to how clear, remote or imminent the danger is. The order passed on August 19, 1988, as reiterated on August 25, 1988, stated that there must be no legal impediment in the issue of the debentures or in the progress of the debentures, taking into account the overall balance of convenience and having due regard to the sums of money involved and the progress already made. It is necessary to reiterate that the continuance of this injunction would amount to interference with the freedom of the press in the form of preventive injunction and it must, therefore, be based on reasonable grounds for the sole purpose of keeping the administration of justice unimpaired. In the words of Mr. Justice Brandeis of the American Supreme Court concurring in *Charlotte Anita Whitney v. People of the State of California*, 71 L. Edn. 1095, there must be reasonable ground to believe that the danger apprehended is real and imminent. This test we accept on the basis of balance of convenience. This Court has not yet found or laid down any formula or test to determine how the balance of convenience in a situation of this type, or how the real and imminent danger should be judged in case of prevention by injunction of the publication of an article in a pending matter. In the context of the facts of this case we must judge whether there is such an imminent danger which calls for continuance of the injunction. Incidentally, it may be mentioned that the so-called informed press may misrepresent the Court proceedings. We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. The right to know is a basic right which citizens of a free country aspire to in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.

The question of contempt must be judged in a particular situation. The process of the due course of administration of justice must remain unimpaired. Public interest demands that there should be no interference with the judicial process and the effect of the judicial decision should not be pre-empted or circumvented by Public agitation or publications. It has to be remembered that even in the turbulent times through which the developing countries are passing, contempt of Court means interference with the due administration of justice.

In the peculiar facts of this case, now that the subscription to the debentures has closed and, indeed, the debentures have been over subscribed, we are inclined to think that there is no such imminent danger of the subscription being withdrawn before the allotment and so as to make the issue vulnerable by any publication of article. On a balance of convenience, we are of the opinion that continuance of the injunction is no longer necessary.

In this peculiar situation, our task has been difficult and complex. The task of a modern judge, as has been said, is increasingly becoming complex. Furthermore, the lot of a democratic judge is heavier and thus nobler. We cannot escape the burden of individual responsibilities in a particular situation in view of the

peculiar facts and circumstances of the case. There is no escape in the absolute. Having regard, however, to the different aspects of law and the ratio of the several decisions, by which though we are not bound, except the decisions of this Court referred to hereinbefore, about which we have mentioned, there is no decision dealing with this particular problem, we are of the opinion that as the issue is not going to affect the general public or public life nor any injury is involved, it would be proper and legal, on an appraisal of the balance of convenience between the risk which will be caused by the publication of the article and the damage to the fundamental right of freedom of knowledge of the people concerned and the obligation of the press to keep the people informed, that the injunction should not continue any further."

13. In *R. Rajagopal (alias) R. R. Gopal v. State of Tamil Nadu*, JT 1994 6 514, the Supreme Court has considered the case of a newspaper and printer and publisher, who had started publishing the autobiography of a condemned prisoner. According to the petitioner of the said case, the prisoner had handed over a number of pages of the autobiography to his wife with the knowledge and approval of the jail authorities for being delivered to his advocate and requested his advocate to get the same published. Following the desire of the prisoner, they started publishing the autobiography. According to the petitioner, the prison officials used third degree methods and forced the prisoner to write letters addressed to the Inspector-General of Prisons that his life story should not be published in the magazine. Certain correspondences were sent between the petitioner and the prison authorities in this connection. Ultimately, the Inspector-General of Prisons wrote a letter to the petitioner stating that it was false to say that the prisoner had written any autobiography that he had handed over the pages of the book to his wife with the knowledge and approval of the prison authorities that he had authorised the advocate to ensure the publication of the book and, that the petitioner was publishing the serial in his magazine which was not really authored by the prisoner but was written by some one else in his name. The Inspector-General of Prisons requested the petitioner to stop publishing the said serial. The petitioner moved this Court, but, the office of the High Court raised certain objections to the maintainability and a learned single Judge of this Court dismissed it eventually as not maintainable. But, against the order by the learned single Judge in the writ petition the petitioner moved the Supreme Court. The Supreme Court posed the following questions (at page 520) :

"(1) whether a citizen of this country can prevent another person from writing his life-story or biography ? Does such unauthorised writing infringe the citizen's right to privacy ? Whether the freedom of press is guaranteed by Article 19(1)(a) entitles the press to publish such unauthorised account of a citizen's life and activities and if so to what extent and in what circumstances ? What are the remedies open to a citizen of this country in case of infringement of his right to privacy and further in case such writing amounts to defamation ?

(2) (a) whether the Government can maintain an action for its defamation ?

(b) whether the Government has any legal authority to impose prior restraint on the press to prevent publication of material defamatory of its officials ? and

(c) whether the public officials, who apprehend that they or their colleagues may be defamed, can impose a prior restraint upon the press to prevent such publication ?

(d) whether the prison officials can prevent the publication of the life-story of a prisoner on the ground that the prisoner being incarcerated and thus not being in a position to adopt legal remedies to protect his rights, they are entitled to act on his behalf ?"

Speaking on questions Nos. 1 and 2, the Supreme Court has traced the origin of the right to privacy as an independent and distinctive concept in the field of tort law and pointed out p. 520 :

"This right has two aspects which are but two faces of the same coin : (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy; and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising or non-advertising-purposes or for that matter, his life-story is written-whether laudatory or otherwise-and published without his consent as explained hereinafter"

The Supreme Court has, thereafter, stated as follows at page 527 :

"The question is how far the principles emerging from the United States and English decisions are relevant under our constitutional system. So far as freedom of the press is concerned, it flows from the freedom of speech and expression guaranteed by Article 19(1)(a). But the said right is subject to reasonable restrictions placed thereon by an existing law or a law made after the commencement of the Constitution in the interests of or in relation to the several matters set out therein. Decency and defamation are two of the grounds mentioned in clause (2). The law of torts providing for damages for invasion of the right to privacy and defamation and Section 499/500 of the Indian Penal Code, are the existing laws saved under clause (2). But what is called for today-in the present times-is a proper balancing of the freedom of the press and the said laws consistent with the democratic way of life ordained by the Constitution. Over the last few decades, the press and electronic media have emerged as major factors in our nation's life. They still expanding-and in the process becoming more inquisitive. Our system of Government demands-as do the systems of Government of the United States of America and the United Kingdom - constant vigilance over exercise of governmental power by the press and the media among others. It is essential for a good Government. At the same time, we must remember that our society may not share the degree of public awareness obtaining in the United Kingdom or the United States. The sweep of

the first amendment to the United States Constitution and the freedom of speech and expression under our Constitution is not identical though similar in their major premises. All this may call for some modification of the principles emerging from the English and United States decisions in their application to our legal system. The broad principles set out hereinafter are evolved keeping in mind the above considerations. But before we set out those principles, a few more aspects need to be dealt with."

The Supreme Court has, thereafter, noticed that there was no law empowering the State Government or its officials to impose any prohibitions upon the publications of the alleged autobiography of the prisoner and held that they could not impose any prior restraint and held further that no prison rule permitted that prison officials could take upon themselves the responsibility of representing the prisoner's grievance and observed at p. 529 :

"Moreover, the occasion for any such action arises only after the publication and not before"

And summarised the law as follows at page 529 :

"We may now summarise the broad principles flowing from the above discussion : (1) the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matter without his consent whether truthful or matters with otherwise and whether laudatory or critical. If he does so he would be violating the right to privacy of the person concerned and would be liable in an action for damages. The position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the press and media among others. We are, however, of the opinion that in the interests of decency (Article 19(2)) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incidents being publicised in the press/media.

(3) There is yet another exception to the rule in (1) above-indeed, this is not an exception but an independent rule. In the case of public officials it is obvious, the right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and

statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts, it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that the judiciary, which is protected by the power to punish for contempt of Court and Parliament and the Legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising Governmental power are concerned, they can not maintain a suit for damages for defaming them.

(5) Rules 8 and 4 do not, however mean that the Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

We may hasten to add that the principles above mentioned are only the broad principles. They are neither exhaustive nor all-comprehending, indeed no such enunciation is possible or advisable. As rightly pointed out by Mathew. J., this right has to go through a case by case development. The concept dealt with herein are still in the process of evolution.

In all this discussion, we may clarify, we have not gone into the impact of Article 19(1)(a) read with clause (2) thereof on Sections 409 and 500 of the Indian Penal Code. That may have to await a proper case."

14. It is difficult to imagine and clearly define for the purpose of defence in a libel action how publication of the truth concerning any person is understood for the purposes of determining whether the imputation constitutes defamation or not. The Supreme Court in the case of Harbhajan Singh Vs. State of Punjab, , considered the case of a person who was convicted u/s 500 of the Indian Penal Code for allegedly publishing in the press a statement against the son of a Chief Minister. The complainant had alleged that the defamatory statements were absolutely untrue and by publishing them the appellant had rendered himself liable to be punished u/s 500 of the Indian Penal Code. On the law, the Supreme Court has stated as follows at page 102 :

"The first exception to Section 499 is available to an accused person if it is shown by him that the impugned statement was true and had been made public for the

public good."

The alleged defamatory statements were that the Chief Minister's son was a leader of smugglers, who was also responsible for a number of crimes being committed in Punjab and because he happened to be the Chief Minister's son, cases against him were always shelved up. The Supreme Court in this judgment has, however, pointed out that it is no defamation to make an imputation on the character of another provided that the imputation is made in good faith for the protection of the prestige of the person making it or of any other person or for the public good. Quoting the ninth exception to the definition u/s 499 of the Indian Penal Code, the Supreme Court has pointed out that "the proof of truth which is one of the ingredients of the first exception is not an ingredient of the ninth exception, what the ninth exception requires an accused person to prove is that he made the statement in good faith. We will presently consider what this requirement means. But at this stage, it is enough to point out that the proof of truth of the impugned statement is not an element of the ninth exception as it is of the first and yet, in dealing with the appellant's case under the ninth exception the learned under in several places, has emphasised the fact that the evidence led by the accused did not prove the truth of the allegations which he made in his impugned statement". The Supreme Court has pointed out at page 103 : "In dealing with the claim of the appellant under the ninth exception, it was not necessary, and indeed it was immaterial, to consider whether the appellant had strictly proved the truth of the allegations made by him." and further pointed out at page 108 : "In considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to enquire whether he acted with due care and attention. There is no doubt that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the ninth exception. Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith. But it must be remembered that good faith does not require logical infallibility. As was held by the Calcutta High Court in the matter of the petition of Shibo Prosad Pandah, ILR1879 Cal 124, in dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance, true, but whether he was informed and had good reason after due care and attention to believe that such allegations were true."

Quoting with approval a passage from the judgment of the Bombay High Court in the case of Emperor v. Abdul Wadood Ahmed, ILR 1907 31 Bom 293, to the effect at page 103 :

""Good faith" requires not indeed logical infallibility, but due care and attention.

But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question.

15. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time, it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment."

The Court has observed at page 103 :

"Thus, it would be clear that in deciding whether an accused person acted in good faith under the ninth exception, it is not possible to lay down any rigid rule, or test. It would be a question to be considered on the facts and circumstances of each case - what is the nature of the imputation made; under what circumstances did it come to be made; what is the status of the person who makes the imputation, was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true ? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the ninth exception. Unfortunately, the learned Judge has rejected the plea of the appellant that he acted in good faith, at least partly because he was persuaded to take the view that the evidence led by him did not tend to show that the allegations contained in his impugned statement were true. This naturally has, to some extent, vitiated the validity of his finding."

16. In the case of libel as a civil action it is pertinent that imputation of truth concerning any person including a company, or an association or collection of persons, if it be for the public good that the imputation should be made or published, would not constitute defamation, like in a criminal Court. Whether or not it is for the public good is a question of fact.

17. What is true for the person concerning whom the imputation is made will be known to him and to others, who are involved with him. It shall] reach to any other person only when it is revealed by the person concerned or others who are involved with him. One may believe an information by the conduct of a person, if the person enjoys a good reputation and whose words are generally believed. If some one believes and uses information that he got from any such person, that is, the person whose words or information are generally believed and made or published imputation, he may have the plea that he has acted innocently and thus in good faith. He, however, will be required to show at least that he has done so as he believed that the allegations were true. He, of course, will be

required to show that he had exercised due care and attention and he had good reasons to believe that it was necessary to make the imputation either for the protection of the interests of the person making it or to any other person or for the public good. The Court, however, will first see the nature of the imputation and under what circumstances they have been made or published. The Court will also see whether the person who has made the imputation has any malice in his mind when he had made such imputation and before making the imputation he had made necessary enquiries and before accepting any story by another, he acted with due care and caution and was satisfied that the imputation was true. As pointed out above, no exhaustive rule can be laid down to prove the truth of the imputation. Imputation of truth as a defence in a libel action must not be overemphasized and when it is for the public good or good of another, it should not be suppressed.

18. We have taken a bird's eye view of the area where the freedom of speech and expression may collide with some other person's freedom of life, in the sense that there should not be malice in imputations that constitute defamation and for wrong reasons anybody's reputation should not be tarnished. There should be some justifiable cause before imputations, which discredit someone are made or published. No one should use the freedom of speech and expression as a weapon to cause injury to another but tread with care and attention, before making the imputations. If it is for public good and one must accept that any person charged with a public duty has to show that he has acted in public interest; imputations made or published even though damaging to his reputation may not be called defamation for which any legal action is permitted. The Court, however, is expected to intervene in cases where the freedom of speech and expression is used by someone to cause harm to the reputation of another person and to make him suffer on account of the imputation of some act or conduct for which he is not responsible. If the allegations are per se untrue, the maker of the allegation has obviously caused harm by making such allegations. In such a case, the person banned is not required to show that any special damage has been caused to him and that he should be compensated for such damage. If harm has been caused, the Court must find a way to compensate, the Court may, before the harm is caused, prevent making or publishing such false imputations.

19. A person, who does something for wrong reasons, obviously acts with malice. Even if he does, not act with malice, he is required to show that he has not acted negligently or with lethargy and that he has exercised due care and attention. Truth, as we have seen earlier, in such a situation, is a defence in itself and even if it is not shown to be true, but it is shown in defence that there were good reasons to believe the substance of the imputation, the Court may refuse to intervene.

It is necessary to keep all postulates of the freedom of speech and expression in mind in dealing with a civil claim for damage or injunction for making or

publishing imputations which cause defamation to a person including a company or association of persons. Such cases, where imputations are directed against the conduct and behaviour of someone, individual, company or association of persons are different, however, from cases where comment or criticism is made of something done or said and thus is already known to others. Something which may be found to be in the realm of fiction, is yet another proposition, because so long as it is limited to expressions of views which identify no one, it is not possible to see any imputations.

20. The first category of cases may not pose serious problems. The imputation is untrue and someone's reputation has been impaired and thus he has suffered a legal injury may give the cause for action. In such a case freedom of speech and expression is never in peril. The person charged for making the imputation in such a case may be asked not to make or publish defamatory imputations. It is important to note that freedom of speech and expression is available to the person, who is subjected to the imputation and like the person making or publishing the imputation he has also the right to make or publish his views. It is finally these, who hear, see or read, who decide, who of the two is right. It is here that balancing between the rights of two individuals or two sections of people becomes important. Both have also their right of privacy and protection against any attack upon their creditworthiness. A balanced approach with full play to the freedom of speech and expression and care for the right of individuals and association of persons, including companies against any slander or libel, has to be made. Courts have invariably wandered in this regard and tried to recognise the limitations of the two conflicting rights. We too have wandered with the help of the authorities in the wilderness where many voices are heard. Criticisms, the view is unanimous, should be fair and without malice. It should be honest and without animus. Yet, harsh and even crossing the borders of libel criticisms of matters of public interest and for public good, should not be scotched. Harm to someone or a group of people's credit should not be allowed to deny disclosures of, truth or a matter, which is believed to be true. Any fact concerning whomsoever, if it is for public good cannot be branded as unfair or dishonest.

21. We are tempted to refer to the judgment in the case of Purushottam Vijay Vs. The State, by a Division Bench of the Madhya Pradesh High Court, which substantially supports the view which we have taken, and extracted the off-quoted passages from Halsbury's Laws of England, third edition, volume 24, pages 70 to 74 wherein the English case law has been summarised thus :

"The defence of fair comment requires that the material fact or facts on which the comment or criticism is based should be truly stated and be a matter of public interest, and that the comment or criticism on the fact or facts should be fair, within the wide limits which the law allows ... A statement of fact, though reflecting on another, may be justified, ... the comment must not misstate facts, because a comment cannot be fair which is built upon facts not truly stated, and

if a defendant cannot show that his criticism contains no, or no material misstatements of fact he will fail in his defence of fair comment. A material misstatement of any of the facts on which comment is made negatives the possibility of the comment being fair."

The Madhya Pradesh High Court has said at page 209

"In principle, our law on the subject is the same. On the other hand, the statement of facts need only be substantially correct and need not be microscopically or photographically true nor can the plaintiff in a civil suit or the prosecutor in a criminal case, fasten himself on to an inaccuracy in the detail, unless that detail itself is such as to make substantial difference to the case. As stated in *Surajmal B. Mehta Vs. B.G. Horniman*, :

"While a journalist is bound to comment on public questions with care, reason and judgment, he is not necessarily deprived of his privilege merely because there are slight unimportant deviations from absolute accuracy of statement, where those deviations do not affect the general fairness of the comment. The articles must be considered rather in their entirety than by separate insistence on isolated passages, and the Court must decide what impression would be produced on the mind of an unprejudiced reader, who, knowing nothing of the matter beforehand, read the article straight through."

Courts, in fact, have gone to the extent of saying that even an exaggeration will not by itself disentitle the accused or the defendant from this defence. In *Murlidhar v. Narayandas* AIR 1914 Sind 85, it was observed :

"Mere exaggeration, or even gross exaggeration does not make a comment unfair. Where in a newspaper report the main aspersion of the accused against the complainant is true, the fact that there is some exaggeration or departure from strict truth does not deprive the accused of the protection provided in exception 3 to Section 499 of the Indian Penal Code."

22. It is necessary, however, in the present case to go a far. In AIR 1942 117 (Nagpur) quoted by the learned Sessions Judge in Para 23 of his judgment, we have the basic element of this defence set out under three headings. Reserving for the moment out of consideration the opinions and comments by the editor, we note that the factual allegations against the minister (and the Government) are all true. He, as well as Gopal Sahay, belonged to the Gwalior State. They were previous acquaintances. Gopal Sahay had been given two extensions and effective promotions during this minister's time. No doubt, orders are passed on his advice to the cabinet, but the proposal always originated from the minister-in-charge and is usually accepted as a matter of course. It is also true that the same minister while being in charge of the Education Department, refused to give an extension to Mr. Ghosh, Principal of the Holkar College, with the results that have been truly described in the article.

Any, observations, in our view, in this judgment, which we find relevant even

today are at page 212 :

"If the person is any private individual and the incident does not in any real manner touch the public at large, then, of course, the criticism even, if otherwise, based on facts, and justified, would not be in a public interest

Every citizen (and the editor of a newspaper is a citizen and nothing more, nor less) is entitled to know at an rate, whether the appointment is being made really in the best interest of the public, or whether there is something ulterior. Certainly, he should not be hasty or unfair and should not mislead himself by false stories. But once, the facts show that there is no ascertainable reason justifying the particular appointment except regionalism, he would be failing in his duty to himself and his fellow-citizens if he does not come out with his criticism.

It is certainly in public interest that anything shaky or unjust or improper in the conduct of a minister in making appointments should be brought to the notice of the country at large. It is, in fact, criticism without which any democratic system is doomed to failure, and ministers inevitably suffer absolute corruption by their unscrutinised exercise of power. Whether the conduct of any particular individual should be publicly criticised and such criticism would be in public interest, would naturally vary with the circumstances of each case."

23. We, however, feel and we think it proper to record that comment is a statement of opinion : it is the inference which the writer or speaker draws from facts, and so comment must appear as comment it must not be so mixed up with statements of fact that the reader or listener is unable to distinguish between report of fact and comment. In Carter Buck on Libel and Slander, fourth edition, 1992, this has been clarified :

"It must not be so mixed up with statements of fact that the reader or listener is unable to distinguish between report of facts and comment."

24. The law in England, in this behalf is summarized in the said book in these words :

"For the defence of fair comment to succeed it must be proved that the subject-matter of the comment is a matter of legitimate public interest that the facts upon which the comment is based are true and that the comment is fair in the sense that it is relevant to the facts."

The general rule in this behalf in England as pointed out by this author is "that a plea of fair comment cannot succeed unless the defendants prove that the expression of opinion was based upon true facts. This is an absolute requirement which will not be satisfied by showing that the defendants genuinely believed the facts to be true but was mistaken or misinformed. If the facts upon which the comment purports to be based do not exist, the comment cannot be fair. There are two qualifications to the general rule. In the first place where the facts commented upon are contained in a privileged document, such as a

Parliamentary paper or a report of judicial proceedings., the defendant's comment upon the facts set out in such reports is entitled to protection as fair comment even though the facts contained in the privileged document or referred to in the judicial proceedings turn out to be untrue. Secondly, a plea of fair comment will not fail because of some unimportant inaccuracy in the facts relied on. A plea of fair comment has sometimes failed because some particular fact, on which the comment has been partially based, has subsequently proved impossible to substantiate. It is, of course, just that this should be so if the fact is an important one and the comment without proof of that fact would be unfair. But where the fact is not really a very material one, and the comment upon the remaining facts proved is fair in relation to those facts alone, it is hardly just that the defence should fail."

It is not necessary in our view to go any further except to record that a plea of fair comment in England has almost been accepted as equivalent to bona fide, and used in conjunction with, temperate and honest, since the question whether the criticism was "fair comment" is a question of fact, the English Courts left/leave it to the jury for answer. In *Merivale v. Carson*, 1887 20 QBD 275. Lord Esher M.R. dealt with an action in respect of an alleged libel contained in a criticism by the defendant upon the play written by the plaintiffs and observed that the first question to be left to the juries was, what is the meaning of the alleged libel and said at page 279 :

"The jury must look at the criticism, and say what in their opinion an reasonable man would understand by it. I am not prepared to say that in coming to their conclusion the would not also have to look at the work criticised. That, however, is not very material for us to consider now. The proper question was put to the jury in the present case."

He said thereafter at page 279 :

"What is the next question to be put to the jury ?

Are they to be told that the criticism of a play is a privileged occasion, within the, well-settled meaning of the word "privilege," and that their verdict must go for the defendant, unless the plaintiff can prove malice in fact, that is, that the writer of the article was actuated by an indirect or malicious motive ? I thank it is clear that, that is not the law and that it was so decided in *Campbell v. Spottiswoode*, 3B &S 769 which has never been overruled. All the Judges, both before and ever since that case, have acted upon the view there expressed, that a criticism upon a written published work is not a privileged occasion".

25. Blackburn, J., in his judgment : A privileged occasion is one on which the privileged person is entitled to do something which no one who is not within the privilege is entitled to do on that occasion. A person in such a position may say or write about another person things which no other person in the kingdom can be allowed to say, or write. But, in the case of a criticism upon a published work, every person in the kingdom is entitled to do, and is forbidden to do exactly the

same things, and, therefore, the occasion is not privileged. Therefore, the second question to be put to the jury is, whether the alleged liable is or is not a liable. The from in which that question should be put is. I think, best expressed by Crompton. J., in *Campbell v. Spottiswoode*, 3 B & S 778. He says :

"Nothing is more important than that fair and full latitude of discussion should be allowed to writers upon an public matter, whether it be the conduct of public men, or the proceedings in Courts of Justice, or in Parliament, or the publication of a scheme, or a literary work. But it is always to be left to a jury to say whether the publication has gone beyond the limits of a fair comment on the subject-matter discussed. A writer is not entitled to overstep those limits, and impute base and sordid motives which are not warranted by the facts, and I cannot for a moment think, because he has a bona fide belief that he is publishing what is true, that is any answer to an action for libel". He says that upon the answer to the question there stated it depends whether the article upon which the action is brought is or is not a libel. The question is not whether the article is privileged, but whether it is a libel. What is the meaning of a "fair comment" ? I think the meaning is this : is the article in the opinion of the jury beyond that which any fair man, however prejudiced or however strong his opinion may be, would say, of the work in question ? Every latitude must be given to opinion and to prejudice, and then an ordinary set of men with ordinary judgment must say whether any fair man would have made such a comment on the work. It is very easy to say what would be clearly beyond that limit; if for instance, the writer attacked the private character of the author. But it is much more difficult to say what is within the limit. That must depend upon the circumstances of the particular case. I think the right question was really left by Field., J. to the jury in the present case. No doubt you can find in the course of his summing-up some phrases which, if taken alone, may seem to limit too much the question put to the jury. But, when you look at the summing-up as a whole. I think it comes in substance to the final question which was put by the judge to the jury : "If it is no more than fair, honest independent, bold, even exaggerated, criticism, then your verdict will be for the defendants". He gives a very wide limit, and, I think, rightly. Mere exaggeration, or even gross exaggeration would not make the comment unfair. However wrong the opinion expressed may be in point of truth, or however prejudiced the writer, it may still be within the prescribed limit. The question which the jury must consider is this- would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said of the work which is criticised" If it goes beyond that, then you must find for the plaintiff; if you are not satisfied that it does, then it falls within the allowed limit, and there is no libel at all. I cannot doubt that the jury were justified in coming to the conclusion to which they did come, when once they had made up their minds as to the meaning of the words used in the article, viz., that the plaintiffs had written an obscene play, and no fair man could have said that. There was, therefore, a complete misdescription of the plaintiffs' work, and the inevitable conclusion was

that an imputation was cast upon the characters of the authors. Even if I had thought that the right direction had not been given to the jury, I should have declined to grant a new trial, for the same verdict must inevitably have been found if the jury had been rightly directed.

Another point which has been discussed is this. It is said that if in some other case the alleged libel would not be beyond the limits of fair criticism, and it could be shown that the defendant was not really criticising the work, but was writing with an indirect and dishonest intention to injure the plaintiffs, still the motive would not make the criticism a libel. I am inclined to think that it would, and for this reason, that the comment would not then really be a criticism of the work. The mind of the writer would not be that of a critic, but he would be actuated by an intention to injure the author."

26. This wisdom of the last decade of the nineteenth century that a criticism, which is written with all indirect and dishonest intention to injure a person, will not be a criticism of the work at all, mere motive alone would not make it a libel, but if the mind is motivated with an intention to injure the author, it may be so, otherwise, the critic must enjoy full freedom to express himself, and expression of opinion, which is prejudiced, obstinate, exaggerated or even grossly exaggerated shall not constitute libel, has stood the test of time.

27. In *Telnikoff v. Matusevitch* 1990 All ER 865, the Court of Appeal has stated in some detail the tests to be applied for fair comment and to malice. Lloyd, L.J., who has delivered the main judgment of the case and with whom the other two Lord Justices have agreed, divided, "fair comment" into introduction, fair comment-objective test, fair comment-subjective test and fair comment-conclusion, and recorded the conclusion as follows at page 878 of 3 All ER :

"My conclusion is that the law is correctly stated in *Duncan and Neill on Defamation*, second edition, 1983, para 12.02 as follows :

"(a) the comment must be on a matter of public interest (b) the comment must be based on fact; (c) the comment, though it can consist of or include inferences of fact, must be recognisable as comment; (d) the comment must satisfy the following objective test; could any fair minded man honestly express that opinion on the proved facts ? (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice."

On "malice" the learned judge has said at page 879 :

"If a piece of evidence is equally consistent with malice and the absence of malice, it cannot as a matter of law provide evidence on which the jury could find malice. The Judge would be bound so to direct the jury. If there are no pieces of evidence which are more consistent with malice than the absence of malice, there is no evidence of malice to go to the jury."

And on "Malice - the facts", he has reiterated the views of Lord Esher M.R. and

concluded at page 880 :

"If the defendant always regarded the plaintiff as a decent human being, how, it was asked, could he truthfully have held the view that the plaintiff was a racist ? I am unimpressed by this argument. The letter of March, 1987, was written in a praiseworthy attempt to resolve the dispute between the parties. The defendant was holding out an olive branch, or twig at least. The sentence I have quoted is not evidence on which the jury could hold that the defendant did not believe in the truth of his comment. Two things stand out. First, the defendant believed passionately in the evil of antisemitism. Second, he and the plaintiff were total strangers. In those circumstances, no reasonable jury could have held that the defendant's dominant motive was to injure the plaintiff, rather than express his own honest, if misguided views.""

A person, however, who writes a book of fiction, no doubt creates characters and such surroundings, in which they live and he does so by deriving inspiration from the events of the past and present and imagines good or bad about the characters he creates. Sometimes he creates make-believe characters of his imagination and perceptions. There has, however, always been an area, where some real events are taken for comments but are amalgamated with imagination by the author on many, occasions, such works of art remain in the confines of criticism and in the field of literature are given the name of satire. The authors do so by words as well as by sketches and other form of visuals. A cartoonist so does more often and his works are received even by those, who are chosen victims of satire without objections. It is not difficult to see any morning a newspaper with the caricature of a leader of a political party, men and women, drawn in such a way, that a bent nose shown in the sketch (caricature) may well be a well shaped one and that may pleasantly convey that the cartoonist has not approved of sonic deed of that person. In such cases indeed, no one can afford to be extra sensitive and no one can find any element of slander or libel and so long as there is no malice and what is said or done is not motivated by any intention to cause injury, to another person, no libel or slander can be attributed.

We have seen thus that no one can take shelter under his right of freedom of speech and expression and defame another but defamation must receive only such meaning in law, which is confined to protecting one's rights to live with dignity, in the sense, that he or she is not denigrated or put to shame on the basis of false allegations as to his or her conduct. It is the mental suffering of the person defamed, which is relevant and actual harm is not necessary. Imputation is defamatory per se, or otherwise, if it lowers the person subjected to the defamatory imputation in the estimation of others. A person's own opinion about himself is not his reputation. It is the opinion of others about him. The good name one bears or the esteem in which one is held in society i.e. one's reputation. A reputation, which has been preserved, however, at the cost of the public good and by concealing the truth, is not protected under any common law or the right to live with dignity under Article 21 of the Constitution. Disclosure of

facts about such a person, the imputation which can be proved to be true or substantially true and comments upon such person's conduct fall outside of libel. In such a case, the main object of the disclosure is not to harm the reputation of any person, but to inform the public at large and other persons concerned, about something, which they ought to know. Truth alone is, however, not the only defence. It is enough that before making an imputation, all the precautions are taken and due care and attention is given to know the facts. Even if later the facts are found to be untrue, but the imputations are made in good faith and there is no lack of bona fides on the part of the maker of the imputation, he cannot be charged with defamation. Criticism of a work of art or a published work, is definitely not a thing, which shall invite the action for libel. Only imputations made with malice, which touch the performer's or writer's self more and the performance or the work less, can fall in the net of libel.

28. As regards the works of fiction, also, the law is not different. Ordinarily, no living or existing person, including an association of persons, can find any imputation in a work of fiction. Some times even fictional characters appear to resemble a person in real life. That, however, can hardly justify a charge of libel. Unless there is a deliberate imputation by suggestive words or gestures to put someone to ridicule and shame, it is difficult to see defamation in a fiction. It cannot be said before the imputations are made or published that they carry ingredients of libel or slander. Ordinarily, no Court will entertain a plea for injunction unless the imputations form part of the pleadings and it is shown to it that the imputations are false and they discredit the plaintiff in the eye of the public at large, or such persons, who see in him no such demerit. The Court will regard the freedom of speech and expression and the good sense of the maker or publisher of the imputation until it is satisfied that there is a present and imminent danger to the respectability and likelihood of an irreparable injury, to the plaintiffs dignity and reputation and that grant of injunction shall in no way affect the public interest. The Court is not expected to grant a preventive or pre-emptive injunction, unless it is satisfied that no public interest will suffer, if injunction is granted. The rule of balance of convenience in this behalf automatically brings into consideration by the Court the right of the public to know all that is in their interest and the right of the individual of his freedom of speech and expression. It will indeed be a serious impairment of the freedom of speech and expression, if a restraint order is issued without the plaintiff showing to the Court that the alleged imputation is per se libellous and there is no prima facie defence upon which the defendant can justify the alleged imputation. The rule, which the Courts are required to apply, in this behalf in our view, is that the plaintiff must show that the alleged imputation would cause irreparable injury to his public reputation and not otherwise. In the case of persons, who represent public institutions, such as the Government and local and other authorities within the territory of India and agencies and instrumentalities of the Government of India and the States and authorities and persons, who perform public duties, no libel is committed by imputations made or published about their conduct in the

performance of their public duties. Any such person may have a cause if individually he is defamed, but not in the capacity of a public figure or servant. Institutions, such as the Government companies and societies including cooperative societies, will stand along with such authorities, if they are the instrumentalities or agencies of the State or bodies or institutions which discharge public functions of a Governmental character. Companies or association of persons or collection of persons, who do not fall in the category of the instrumentalities or agencies of the State and do not discharge any public functions of a Governmental character, may have a cause for action in the nature of tort and sue for damages, when on account of defamatory imputations their business is affected or they are described in such a way that they lose their regard before their employees and others. The rule of law in their case also is not different except that there can be very few occasions, when such institutions are subjected to defamatory imputations.

With fair glimpse of the law on the subject, when we see the facts of the instant case, the only allegation in the plaint is that the respondents/appellants have prepared a video cassette said to depict the alleged struggles of the TVS workers. The plaintiff/respondent has qualified this statement by the words "with the malicious intention of maligning the reputation of the plaintiff-units with ulterior motives with no justification whatsoever. What really the imputation is, is not disclosed in the plaint. A reading of the pleadings discloses that according to the plaintiff, it has always dealt fairly with its employees and they have no grievance against it. Why, if they have any grievance, they cannot take recourse to the Industrial Disputes Act and agitate their rights through the recognised unions, why should they go to agitate their cause through the defendants/appellants, who do not represent the workers of the TVS group of companies and who have a recognised union of their own, i.e., the sixth defendant. No one can question why the plaintiff respondent has formed such an opinion about itself that it has always been fair and good to the workers and that workers if at all have any grievance, why they should not represent to the management through the recognised union. There is nothing in the plaint to show that others have the same opinion about the plaintiff and that it has enjoyed such a reputation, which, if discarded, will cause injury to it. In the application for injunction, however, the plaintiff has brought information that a cassette has been screened in a theatre before a select audience in Bombay, that a news item had appeared that the respondents have produced a video cassette and that the same has been screened in Bombay and it has traced the history of TVS workers' struggle since 1948. The news item has been shown to us and its contents are noted above. There is no indication in the said news item of any particular imputation, which can be said described as defamatory by the plaintiff. The plaintiff, however, has succeeded in the trial Court in getting the cassette called in evidence and the trial Court has noted its contents. Learned counsel for the appellants has also exhibited the cassette before us in chambers. Its contents appear to have three parts or sections : (1) speeches and statements of some alleged workers of the

TVS group of companies and some union and political leaders; (2) statements, which contain specific references to the alleged victimisation by the management of a number of workers and (3) a drama staged by a group of persons showing that workers of the TVS group of companies are not granted their due benefits and are discriminated if they are not willing to toe the line of the management and are denied even the necessary medical facilities by the management.

29. In view of the law, which must prevail and the administered by all Courts irrespective of the status and position of a party and irrespective of the method adopted by the party, the least which we can say is that everything has got perverted in the trial Court and law has been the casualty. The judgment of the Supreme Court in the case of *S. Rangarajan v. Jaggivan Ram*, (supra) has stated in no uncertain terms that one of the basic values of a free society to which we are wedded under the Constitution is that there must be freedom not only for the thought that we cherish, but also for the thought that we hate.

30. The Court's commitment to freedom of speech and expression demands that it cannot suppress this freedom unless there are pressing and strong reasons of public interest to do so. There should be at least proximate and direct effect of the speech and expression upon the business and/or other interest of the plaintiff and if not at least intrinsic effect upon the public interest. The freedom of speech and expression cannot be interfered with, for, the plaintiff/respondent has chosen to complain that something, which the defendants/respondents have chosen to make and publish is defamatory and has not shown how it is defamed or is likely to be defamed. There is nothing to show that the imputations as are shown in the film by the appellants are untrue and that the defendants/appellants have not acted in good faith and/or they have prepared the cassette and intended to exhibit the same to the workers and the public with a view only to harm the reputation of the plaintiff "respondent. Nothing about the injury is stated in the pleadings and obviously the trial Court has not adverted to the nature and extent of the injury that the plaintiff/respondent would suffer, if injunction is not granted. The trial Court has not taken the precautions, which it ought to have taken and decided the plaintiff/respondent's demand for preventive injunction in an action for libel, without properly addressing the principles of law. The Court shall be reluctant than willing as all principles of law indicate in accepting the elements of defamation in the alleged imputations. The plaintiff/respondent has not shown why this Court should accept its case that the appellants have harmed or intended to harm its reputation. The case has not been addressed at all to bring home how the plaintiff/respondent is showing that there is a pressing and imminent danger to its reputation and if injunction is not granted, it is likely to suffer irreparable injury. It is necessary in our opinion to bear in mind that in all cases of contract of, work, even private companies/societies have no longer the privilege of the olden days to hire and fire. It is to the credit of our democratic republic that we have successfully evolved a system of, on the one hand, reducing the strength of the strong arms of the management, which are invariably used to suppress the aspirations of the employees and, on the other

hand to prevent any organised labour from coercing the management. Both are required to behave within the well known confines of the rules that envisage adherence to work schedule and cooperation in all matters. The employees, however, are free to demand and assert their rights as to what they must legitimately, get from the management. No management can suffer any, injury to its good name merely because there are some, who have for their own reasons, formed opinions of their own. As John Stuart Mill, has said in his essay on "Liberty", the need for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what may be called the "dialectical" process of a struggle with wrong ones which express errors, Milton, in his "Areopagitica" (1644) has said, "Though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously be licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple whoever knew truth put to the worse, in a free and open encounter ? ... Who knows not that truth wrong next to the almighty," she needs no policies, no stratagems, no licensings to make her victorious, those are the shifts and defences that error against her power should be adopted as the rule and not the opposite."

31. In the course of arguments, when the contents of the video cassette have been shuffled and analysed, the only portion where any attempt is required to see whether there are defamatory imputations in the drama or the fiction part and it seems that after seeing the video cassette, the trial Court also got impressed with the case of the plaintiff/respondent only as respects certain suggestive dialogues and scenes in the drama. There is no denying the fact that the drama almost fully and clearly points to unfair labour practice of the management of the plaintiff/respondent company. There are certain misdemeanors of the officials of the plaintiff respondent depicted in the drama, which even otherwise, if true, are inhuman. Even then, one may be required to pause before calling the drama portion of the video cassette libellous to examine in accordance with the well known principles of grant of preventive injunction against making and publishing the impugned cinematograph film, which has been, we are informed, cleared by, the censors and certified for exhibition. The Court has jurisdiction, but as we have already noticed, the same has to be exercised sparingly and only when preventing the exhibition of the film is absolutely, necessary. The rule of balance of convenience on the facts of the instant case is in favour of the publication/exhibition of the film and against the prevention, as the plaintiff/respondent has not made out an exceptional case for injunction. We are not required however, to go deep into this aspect, although the law on the subject, we have already, noticed, because Mr. Prakash, learned counsel appearing for the appellants has offered that the appellants shall ensure that all such references, including dialogues if any in the drama portion of the video film shall be removed and re-enacted in a way that any character of the drama or the drama as a whole is not identifiable with any particular character in the service of the plaintiff/respondent, or, the plaintiff/respondent itself. If that is

done, nothing will remain in the drama for the plaintiff/respondent for a suit, in any case, a suit for injunction without any consequential relief has to fail once temporary/preventive injunction is refused. In view of the findings above, the appeal is allowed, the impugned judgment is set aside. The defendants-appellants are directed, however, to follow the undertaking and carry out the corrections before any further exhibition of the video film. We record our appreciation of the assistance at the Bar by learned counsel for the parties, who have, irrespective of the side they have represented, brought before us all aspects of the matter and not hesitated in bringing to the notice of the Court even the slightest material they have thought helpful to one or the other party. There will be no reward in our view even by way of costs to either part to learned counsel for the successful party in the instant appeal than the appreciation we record, which has kept us beholden and so we part with the instant judgment.