

\$~26

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 370/2022, I.A. 9722/2022**

HANUMAN BENIWAL AND ORS. Plaintiffs

Through: Mr.Gunjan Kumar, Ms.Sumitra
Choudhary and Ms.Renu Bajpai,
Advocates.

versus

VINAY MISHRA AND ORS. Defendants

Through: Counsel (appearance not given).

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **13.06.2022**

I.A. 9723/2022

The above application has been filed on behalf of the plaintiffs under Section 151 C.P.C. for exemption of filing of Court fees.

Learned counsel for the plaintiffs submits that he shall be depositing the Court fee within a period of 10 days from today.

In view of the above, application accordingly stands disposed of.

I.A. 9724/2022

The above application has been filed on behalf of the plaintiffs under Section 151 C.P.C. for exemption from filing typed/translated copies of Dim/Handwritten/Illegible documents, with proper margin.

Allowed, subject to just exceptions.

Application accordingly stands disposed of.

I.A. 9725/2022

The above application has been filed on behalf of the plaintiffs under Section 80 of C.P.C. for exempting the plaintiffs from serving the

Government parties in advance and for permission to serve as directed by the court.

Learned counsel for the plaintiffs submits that relief is primarily against defendant Nos.1 to 3.

Considering the facts and circumstances and the urgency prayed by the learned counsel for the plaintiffs, service of notice under Section 80 CPC is exempted.

Application is accordingly disposed of.

CS(OS) 370/2022 & I.A. No. 9722/2022 (under Order XXXIX Rules 1 & 2 CPC)

This is a suit for perpetual and mandatory injunction, consequential relief for damages and defamation.

Let the plaint be registered as Suit. Issue summons to the defendants on necessary steps being taken by the plaintiffs by all permissible modes.

The summons shall indicate that the written statement(s) to the suit and reply(ies) to the application(s) be filed by the defendants within thirty days from the date of receipt of the summons. The defendants shall also file the affidavit of admission/denial of the document filed by the plaintiff, failing which the written statement(s) shall not be taken on record.

The plaintiffs are at liberty to file replication(s) to the written statement(s) and rejoinder(s) to the reply(ies) filed by the defendant(s) before the next date of hearing following the filing of the written statement(s)/reply(ies). The replication(s) shall be accompanied by the affidavit of admission/denial in respect of the documents filed by the defendant(s), failing which the replication(s) shall not be taken on record.

If any of the parties wish to seek inspection of any documents, the

same shall be sought and given within the timelines.

List before the Joint Registrar on 18.07.2022 for completion of service and pleadings.

I.A. No. 9722/2022 (under Order XXXIX Rules 1 & 2 CPC)

1. The plaintiffs have preferred a suit for perpetual and mandatory injunction, consequential relief for damages and defamation. The plaintiff No. 1 (Mr. Hanuman Beniwal) is a serving Member of Parliament in the 17th Lok Sabha from Nagaur and is founding member and National Convenor of the Rashtriya Loktantrik Party (RLP). The plaintiff No. 2 is the Member of Legislative Assembly from Bhopalgarh and the Party's State President while plaintiffs No. 3 and 4 are also the Member of Legislative Assembly from Khinsvar and Merta respectively.

2. The defendant No. 1 is the Member of Legislative Assembly (MLA) from Dwarka, Delhi and Election In-Charge for the State of Rajasthan for defendant No.2/Aam Admi Party.

3. As per the case of the plaintiffs, since Rajya Sabha elections were scheduled on 10.06.2022, the RLP along with its office bearers i.e., the plaintiffs took the decision to vote in favour of an independent candidate Mr. Subhash Chandra on 06.06.2022 at 08:54 PM. The plaintiff No. 1, who is also the National Convener of the Rashtriya Loktantrik Party posted a tweet on his twitter page which reads as under:

"The three MLAs of @RLPINDIAorg will not vote for the BJP and Congress candidate in the upcoming Rajya Sabha elections and respecting the dignity of democracy, will vote in support of the independent candidate Mr. @.:subhashchandra"

4. Thereupon defendant No. 1 quoting the same tweet started a

malicious campaign against the plaintiffs and their party with an intent to prejudice, damage and cause loss of name, reputation and credibility of the plaintiffs. Further, defendant No.1 deliberately morphed and used fictitious images and without any justification made defamatory statements against the plaintiffs.

5. The series of tweets as posted by defendant No. 1 w.e.f. 06.06.2022 onwards with the URLs may be briefly reproduced:

- 1. *"The following Tweet was posted by the Defendant No. 1 on 6th June at 10:40 PM*

"@hanumanbeniwall Sir, the people of entire Rajasthan have come to know about your reality. You are with BJP. Subhash Chandra ji is a candidate with BJP support. So how much was the deal? Tell me some details. I have heard that you do not even go to your area for free."

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1533858900570562566

- 2. *In furtherance on 06th June 2022 at 10:53 PM, the Defendant No. 1 again tweeted the following :*

"When the farmer brothers were sitting on the Delhi border against the black agricultural law, those farmers were being called terrorists, anti-nationals on a channel. Today the owner of the same channel @hanumanbeniwal ji's party has announced to vote in the Rajya Sabha elections. Our Jat brothers will never forget this. They have been deceived."

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1533862092129722370

- 3. *On 6th June 2022 at 11:09 PM, Defendant No.1 again tweeted the following:*

"I have heard that the president of a party in Rajasthan has taken Rs 40 crore to three MLAs of his party to get the owner of a news channel to cast the votes of his three MLAs in the Rajya Sabha. How long will this purchase trade last? The peasant society has been put to shame. This is very sad. "

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1533866192313520132

- 4. On 6th June 2022 at 11:47 PM, Defendant No.1 again tweeted the following:

"3 MLA= 30 Crore

10 crore own expenses

A total of 40 crore rupees was lifted in a jolt by a party by selling its total 3 MLAs in the Rajya Sabha elections.

Didn't even think about what would be passing on the farmer brothers?

In 40 crores, 2-4 lakhs will be given to their IT cell people, who will sing praises throughout the day, everything else is missing. "

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1533875810846662656

- 5. 7th June, 2022 At 10:17 AM, Defendant No.1 tweeted the following:

"One Hanuman gave up everything for the sake of Lord Rama. Another, Hanuman sold the vote of the people of Lord Rama like Rajasthan for 40 crores. Hey Ram, Kaliyug Kaliyug."

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1534034283500752897

- 6. On 7th June, 2022 Defendant No.1 had called the people close to the plaintiffs to enquire, he again at 11:19 AM, tweeted the following:

"I have heard that two out of 3 MLAs say that they took 40 crores, what did I get? I will vote only where I feel like. Revolt among legislators. "

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1534049853990244353

- 7. On 7th June 2022 at 11:49 AM the Defendant morphed 2 images of cash notes, which were taken from an old picture on the Republic page and put it along with the following tweet:

"So much money by selling 3 MLAs. Imagine if the people of Rajasthan had given 30 by mistake, they would have sold the entire Rajasthan today. Shem shem No one had even thought that he would give support to those who call farmers terrorists."

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1534057421693284352

- 8. On 7th June at 12:06 AM, Defendant No.1 again tweeted the following:

"4000000000 today a party president earned this much by selling his 3 MLAs for Rajya Sabha elections."

Tweet link:
https://twitter.com/vinaymishra_aap/status/1533880485109125120
- 9. On 7th June 2022, At 12:27 AM, Defendant No.1 tweeted the following:

*"You give me blood, I will give you freedom. Netaji Subhash Cliandra Bose (Freedom Fighter) You vote for me, I will sell your vote f or 40 crores.
Netaji Beniwal, (Rajya Sabha seat seller)."*

Tweet Link:
https://twitter.com/vinaymishra_aap/status/1533885823308820480
- 10. 7th June, 2022 At 12:35 AM, Defendant No.1 tweeted the following:

"Wouldn 't vote better than this, or put up your candidate for Rajya Sabha @hanumanbeniwal ji you. What was the need to vote for such people who called the farmers terrorists, anti-nationals in the whole peasant movement. What would the families of the 700 martyred farmers be thinking today? Has cheated on them. "

Tweet Link:
https://twitter.com/vinaymishra_aap/status/1533887741854818304
- 11. On 7th June 2022 At 01:08 AM, Defendant No.1 tweeted an old poster of the Plaintiff No.1, Tagging his personal page and calling him "Chowkidaar" with which the following wordings were attached:

"After all, today @hanumanbeniwal ji has fulfilled the duty of being a watchman. By the way, I know one thing that Jat society has neither become a watchman of anyone nor will it be. The point of Hanuman Beniwalji is different, he will merge his party with BJP one day. "

Tweet Link:
https://twitter.com/vinaymishra_aap/status/1533898583635767297
- 12. After the registration of the FIR against Defendant No.1, the news of the same was made public, to which the Defendant No.1 on 8th June 2022 at 10:11 PM tweeted the following:

"With what money will this case be fought? Will the MLA be sold again for the 40 crore he got by selling that MLA or for this? B team of BJP please tell the people of Rajasthan clearly."

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1534576475436789760

- 13. On 8th June 2022 At 11:46 PM, Defendant No.1 again tweeted the following:

"Salute to the BTP MLAs who have decided not to participate in the voting of Rajya Sabha elections, respecting their conscience and public vote. He could have sold it if he wanted. The rest some people even sell their MLAs for 40 crores and then threaten to do the case. "

Tweet Link:

https://twitter.com/vinaymishra_aap/status/1534600191877058561 ”

6. It is further the case of the plaintiffs that defendants No. 1 and 2 got a news circulated in Dainik Bhaskar and various other prints in social media, ABP Live, Live Hindustan, Times of India on various dates who published news piece related to the said tweets and allegations which are *ex-facie* false, concocted, slanderous, scandalous and derogatory. The defendant No. 1 also made defamatory statements on social media including Facebook, Twitter and in print media and the link of news coverage was widely shared by the official page of the defendant No.1.

7. Learned counsel for the plaintiffs submits that allegations made by defendant No.1 are without any foundation and published false, fake, malicious posts on social media tarnishing the image and reputation of the plaintiffs with an intent to injure and spoil the reputation of the plaintiffs and cause hatred amongst the people of Rajasthan by tweets. It is also submitted that tweets have further caused loss of reputation and credibility to the plaintiffs and their party and morphed/forged images have been used

without any justification as a support to defamatory statements. The fictitious claims are stated to be misleading on the face of record without any supporting evidence. The tweets are also stated to be clearly leveling allegations of corruption and having an impact to hurt the religious sentiments as well as provoking the caste sentiments. It is claimed that the plaintiffs earned the respect and reputation over years of hard work amongst the public which has been adversely impacted and has led to loss of credibility and trust of voters and supporters of the plaintiffs and their party. The tweets are stated to have been made by defendant Nos. 1 & 2 with a motive to manipulate or stall Rajya Sabha elections which were to be held on 10th June, 2022.

In the aforesaid background, the interim relief is pressed for, as the defamatory remarks have a huge impact on the plaintiffs' political standing and the circulation is being made in a motivated manner. Reliance is also placed upon *Dr. Mukul M Sangma v. P.A. Sangma & Ors.*, CS(OS) 3109/2014 decided on 13.10.2014 and *Nirmaljit Singh Narula v. Yashwant Singh*, (2012) 132 DRJ 370.

8. I have heard learned counsel for the plaintiffs at considerable length and perused the material placed on record.

At the outset, it may be noticed that Article 19 of the Constitution of India guarantees freedom of speech and expression to every citizen including the press which is referred as the fourth estate. The constitutional guarantee of freedom of speech and expression is both for the benefit of the press as well as of the public. It is generally believed that any attempt to stifle or suffocate this right is a death knell of democracy.

However, each citizen has a right to express his sentiments except to the extent permitted under Article 19(2) of the Constitution of India. It is manifest under Article 19(2) of the Constitution of India that the rights conferred by Article 19(1)(a) are subject to reasonable restrictions in the interest of the public or decency or morality or in relation to defamation or incitement of an offence. This freedom needs to be exercised with circumspection and care and cannot be permitted to violate the rights of other citizens and to jeopardize their public interest. More so, in case of political functionaries, who spend their lifetime for building their image in the public, the same cannot be permitted to be tumbled by baseless, defamatory statements by any political entity/individual for petty gains.

Further, it cannot be ignored that with the advent of internet, the impact of the views formulated and disseminated on electronic media has a considerable impact on the viewers and followers and mould the public opinion on vital issues of political and national importance.

9. It is also well settled that reputation is an integral part of the dignity of each individual. As such, there is a need for balance between the freedom of speech and expression vis-à-vis the right to reputation. The defamation *per se* is also an offence and has been dealt in Sections 499 & 500 of IPC. Thus, the freedom of speech and expression under Article 19 of the Constitution of India cannot be extended to intentional hurt to any other person's reputation, though imputation of truth which public good requires to be made or published, is considered as a valid defence against defamation.

10. It has been well recognized that in case of libel and slander, interim injunction may be granted in case (i) the statement is unarguably

defamatory; (ii) there are no grounds for concluding that the statement may be true; (iii) there is no other defence which might succeed; and (iv) there is evidence of an intention to repeat or publish the defamatory statement.

11. It may also be relevant at this stage to refer to the judgment of the Supreme Court in ***R Rajagopal & Another v. State of TN & Others*, (1994) 6 SCC 632**, which lays down the broad principles while considering defamation on publication *vis-à-vis* the freedom of speech and expression and may be beneficially quoted:-

“26. 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 matters without his consent — whether truthful or 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. 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 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 incident being publicised in 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, 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 judiciary, which is protected by the power to punish for contempt of court and Parliament and 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 cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that 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.”

12. Coming back to the facts of the case, on the face of record, the tweets in question referred at serial No.1,3,4,5,6,7,8,9,12&13 in para 5, *prima facie* appear to be libellous statement made by defendant No. 1 and are *per se* defamatory. The same appear to be reckless in the absence of any supporting material reflected in the aforesaid tweets and are completely in disregard of the right to reputation of the plaintiffs guaranteed under Article 21 of the Constitution of India. I am of the considered opinion that if the same are permitted to continue on record, it is likely to further blemish/blot the reputation and goodwill of the plaintiffs and may cause a misimpression in the trust of the voters/supporters of the party or common citizens of the country in the absence of any cogent evidence. It cannot be ruled out that

the tweets may have been actuated by malice with an attempt to impact the Rajya Sabha elections which were scheduled for 10th June, 2022 and to cause loss of reputation to the plaintiffs, which may have been built by sheer dedication and hard work over a long period of time.

13. I am further of the opinion that defendant Nos. 1 & 2 cannot be permitted to further inflict injury on the reputation of the plaintiffs by virtue of re-tweeting similar tweets which appear to be calculated to injure the reputation of the plaintiffs by exposing them to an adverse opinion or ridicule in the eyes of the public. It cannot be ignored that unfounded allegations in print or electronic media can be damaging forever, if there is no opportunity to vindicate one's reputation. The voting strategy of an individual or of a political party or their nominees is purely based upon the ideology and policy of the political party or an individual, and alleging that the same had been sold off, without any foundational basis, deeply causes an irreparable harm, loss and damage to the reputation of the individual/party concerned and clearly encroaches the right of privacy.

Having established the *prima facie* case, the balance of convenience also lies in favour of the plaintiffs and against the defendants. In case the *ex-parte* interim relief is not granted, at this stage, the plaintiffs are likely to further lose their credibility in public life.

14. In view of above, defendant Nos. 1 & 2 are restrained and injuncted from re-publishing, releasing, transmitting, distributing or publishing, circulating through print or electronic media any defamatory statements in relation to the tweets dated 6th, 7th, 8th & 9th June, 2022 as referred to in para 5 above till further orders. The defendant Nos. 1&2 are also restrained from

posting any further defamatory or scandalous or factually incorrect tweet on Twitter account or electronic/print media against the plaintiffs specifically in relation to tweets referred to above without any clear and cogent evidence. Further, defendant No.3 is directed to immediately mask, block or suspend the impugned tweets as per URLs indicated below:-

*“https://twitter.com/vinaymishra_aap/status/1533858900570562566
https://twitter.com/vinaymishra_aap/status/1533862092129722370
https://twitter.com/vinaymishra_aap/status/1533866192313520132
https://twitter.com/vinaymishra_aap/status/1533875810846662656
https://twitter.com/vinaymishra_aap/status/1534034283500752897
https://twitter.com/vinaymishra_aap/status/1534049853990244353
https://twitter.com/vinaymishra_aap/status/1534057421693284352
https://twitter.com/vinaymishra_aap/status/1533880485109125120
https://twitter.com/vinaymishra_aap/status/1533885823308820480
https://twitter.com/vinaymishra_aap/status/1533887741854818304
https://twitter.com/vinaymishra_aap/status/1533898583635767297
https://twitter.com/vinaymishra_aap/status/1534576475436789760
https://twitter.com/vinaymishra_aap/status/1534600191877058561”*

15. Compliance of Order XXXIX Rule 3 of CPC be made within three days from the receipt of the copy of this order. Copy of order be also given *dasti* under the signatures of Court Master. A copy of this order be also forwarded to Twitter forthwith to ensure compliance within three days of receipt of the order. The Twitter/defendant No.3 is also directed to file a

compliance report before the next date of hearing.

16. The observations made herein are *prima facie* for the consideration of interim relief under Order XXXIX Rules 1 & 2 C.P.C by the plaintiff.

17. List before the Roster Bench on 18.08.2022.

ANOOP KUMAR MENDIRATTA, J.

JUNE 13, 2022/R