

CS SCJ 810/21

**M/S JAGRAN PRAKASHAN LIMITED. Vs. M/S PRAVDA MEDIA
FOUNDATION AND ORS.**

01.11.2021

Order

1. Vide this order I shall decide the application under Order 39 Rules 1 and 2 CPC, filed by the plaintiff seeking injunction against the defendants.
2. Before I delve into the contents of the application, it is pertinent to understand the factual background of the case. The facts as asserted by the plaintiff are as follows-
 - a) Plaintiff is India's leading media and communication group, with its main interests across newspapers, outdoor, internet, magazines.
 - b) Defendant no.1 is a registered legal entity established on 10.10.2017. Defendant no. 2 to 4 are the directors/ founders of the defendant no.1 company and are actively responsible for the day-to-day affairs of running and managing the same.
 - c) The defendants, published an article titled as "*Dainik Jagaran's misleading reports portray mass burials in Prayagaraj haven't risen due to COVID*" on 30th may 2021 at 5:16 am, on their online platform

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namely www.altnews.in.

- d) The article carries false, incorrect, disparaging and scandalous statements attributing knowledge and complicity on the part of the plaintiff with respect to mass burials in Prayagraj.
- e) The article published by the plaintiff qua the mass burials in Prayagraj nowhere contains incorrect facts or findings, as averred by the defendants, in their article. It has already been mentioned in the article that the report was based upon the ground inspection, enquiry from the locals conducted by the plaintiff's reporters. The article proposed to bring to the notice of the public that the mass burials at the Shringverpur ghat was a regular feature and not only due to COVID deaths. It was on the basis of these facts that the article had been published with no intention to sensationalize or refute the fact of covid deaths. As a news agency, the plaintiff has the right to publish the findings emanating from the ground reports.
- f) The defendants, claiming themselves to be fact-check agency, have no right to defame any agency or individual. Further, the fact mentioned by the defendant that the plaintiff received INR 100 crore advertisements during 2014-15 to 2018-19 from the government is not related to the concerned news article. Also, the defendant has referred to the Kathua gang rape of 8-year-old girl in 2018 and

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Hathras incident, stating that the plaintiff has published misleading reports in the past. This clearly shows that the intention of the defendant is only to malign the image and reputation of plaintiff among the general public.

- g) The defendants have intentionally and repeatedly published defamatory information intending to lower the reputation of the plaintiff, without making an attempt to verify the facts. The defamatory article was made with full knowledge to be untrue and defamatory.
- h) In the background of these facts as averred by the plaintiff, the plaintiff has prayed for a decree of mandatory injunction directing the defendants to remove the defamatory article along with related videos published on other social media sites and to publish an appropriate corrigendum in relation to the defamatory article on urgent basis and to publish an unconditional apology and a decree of permanent injunction restraining the defendants from publishing any defamatory content against the interests of the plaintiff.

3. In light of the facts mentioned above, the plaintiff, in the application under Order 39 Rule 1 & 2 CPC has prayed for temporary injunction

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seeking directions to the defendant to remove the defamatory article and to further restrain the defendants from publishing any sort of wrong and false information concerning the plaintiff on any of social media, till the disposal of the present suit.

4. Per contra, defendants no. 1 to 4, in their reply to the application have denied the allegations leveled against them and have prayed for dismissal of the application with heavy and exemplary costs. They have raised the following preliminary objections-

- a) Present suit deserves to be dismissed under the provisions of Order 7 Rule 11 CPC for lack of cause of action on the ground that the plaintiff has not alleged that the article published by the defendants contains any false information and it is the sine qua non in an action for defamation that the statement is false.
- b) The prayer of the plaintiff is in violation of 'freedom of press' guaranteed under Article 19 (1) (a) of the Constitution of India.
- c) The suit of the plaintiff is a SLAPP suit i.e 'strategic lawsuit against public participation'.
- d) There is no prima facie case, irreparable loss or balance of convenience in favour of the plaintiff.

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5. In Preliminary submissions and para-wise reply, the defendants averred as follows-
- a) The article published by the defendants was published after extensive research and review of existing media reports, independent ground investigation and on-record conversations with authorities and the article did not contain anything which was factually incorrect or share any opinion that was not founded upon factual background.
 - b) The article showed the correct analysis of the misreporting done by the plaintiff regarding Covid-19 related deaths and mass burials in the state of U.P.
6. Detailed arguments were addressed by both the parties.
7. Before advertng to the merits of the application, it is pertinent to mention the principles laid down by the Hon'ble Supreme Court w.r.t the order 39 Rule 1 and 2 CPC.
8. In the case of **Gujarat Bottling Co. Ltd. v. Coca Cola Co.** 1995 5 SCC 545, the Hon'ble Supreme Court, while discussing the factors to be considered by the Courts in exercise of the discretion under Order 39 Rule 1 & 2 CPC, has held that:

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“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion, the Court applies the following tests:

(i) Whether the plaintiff has a prima facie case;

(ii) Whether the balance of convenience is in favour of the plaintiff;

(iii) Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory is disallowed.”

9. Reverting to the application, it is clear that the application is based on the averment that the alleged article was defamatory and untrue. It is imperative to reproduce the relevant extract of the article which has been averred in the plaint to be defamatory. The extract is as follows-

“That Dainik Jagaran received government ads worth over Rs 100 crore in 2014-15 to 2018-19 period. As per IANS, Dainik Jagaran was the highest recipient of government ad revenues. More

recently in February 2021, News laundry reported how the Jagran group ran a disingenuous PR campaign for the UP government's farm policies and enriched itself in the process."

"The reports by Dainik Jagaran do not corroborate with the ground reality and in fact, are an attempt to normalize the recent deaths caused due to mismanagement and government apathy. It must be pointed out Vishvas news that comes under the digital wing of Jagran Prakashan Limited is a signatory to the International Fact-checking Network (IFCN). Bharat Gupta, CEO of Jagran Prakashan, is an IFCN Board member. The latest reports, unfortunately, only add to the list of misleading reports published by Jagran. In 2018, when an 8-year-old nomadic girl was brutally gang-raped and murdered in Kathua, the outlet claimed no rape had taken place. Last year, when a dalit woman was gangraped in Hathras, Jagran claimed that she was murdered by her brother and mother."

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10. Since the entire foundation of the application is based on the ground that the article is defamatory, it is crucial to discuss the law as to civil defamation. Ld. Counsel for the defendant, argued at length on this aspect and placed reliance on the following cases-

- a) Tata sons Ltd. v Greenpeace International &Anr, 2011 SCC Online Del 466
- b) Bennet Colemon& Co. Ltd. v. K. Sarat Chandra, 2015 SCC Online Hyd 822
- c) Subramanyam Swami v. Union of India &Ors, (2016) 7 SCC 221

11. Perusal of the above cited cases elucidates that the following are the essential requirements which need to be satisfied in a civil suit for defamation-

- a) The words or the act must be defamatory
- b) They must have reference to the plaintiff
- c) They must have been published maliciously
- d) There can be no offence of defamation unless the defamatory statement is published or communicated to a third party, that is to a party other than the person defamed.

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12. Further, following are the valid defences available to the defendant-

- a) Defence of justification of truth
- b) Defence of fair comment
- c) Defence of privilege
- d) Consent

13. Ld. Counsel for the plaintiff asserted that all the essentials of defamation have been met and the article published by the defendants is defamatory and with malicious intent.

14. Per contra, the defendants have claimed that neither all the essential elements of defamation are made, nor is the plaintiff entitled to any relief since the defence of justification of truth and the defence of fair comment are available to him. Ld. Counsel for the defendant, further relied upon the judgment of Tata Sons (supra), wherein it has been held that '*until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed*'.

15. At this stage, I find it utmost important to go back to the article and see if, there is even the slightest veracity in the claim of defendants that what they published is true and based on extensive research and ground reports. Some of the specific extracts from the impugned article that need

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to be emphasized are as follows-

- a) Alt News spoke with independent photojournalist Prabhat Kumar Verma. He has been reporting from Prayagraj since 2009. ‘like many journalist, I was reporting about mass burials and dead bodies floating on Ganga. Based on my past experience and spot reporting during the pandemic, I can confidently state that the number of burials in April-May 2021 was the most I’ve seen, not just at Shringverpur ghat but other ghats as well,’ he said.
- b) Alt news performed a keyword search on twitter (1,2) and Google (1,2) restricting the results between March 2018 to December 2018 and found that no national media outlet had reported about mass burials on the banks of Ganga during the said time period. But in 2021, multiple media outlets and the Ministry of Jal Shakti reported about the extraordinary number of burials during the said time period.
- c) On May 16, the Ministry of Jal Shakti said in a statement, “the country is facing an extraordinary situation where in a number of Covid-19 cases and consequential deaths have been on the rise in many States and UT’s in the recent past. Dumping of dead bodies/partially burnt or decomposed corpses in the river Ganga

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and its tributaries have recently been reported. This is most undesirable and alarming.” No such statement was released in 2018, the year that witnessed similar mass burials as per Jagran.

d) On May 24, 50 year old priest Jairam told India Today that burial of dead bodies in the sand along the banks of river Ganga is an old custom, but the rise in the number of burials is certainly a sign of COVID-19 pandemic.

16. The above-mentioned extracts from the article are only a few of the extracts highlighted by the Ld. Counsel for the defendant to show that he has a valid defence of truth and fair comment. Further perusal of the article shows that interviews of priests were taken at the Shringverpur Ghat and Phaphamau bridge to further confirm the contents of the article.

17. All of this shows that the defendants have raised a probable defence, which may or may not be proved at trial. However, a prima facie view of the article shows that the defendants have based the contents of the article on various interviews and research. Whether they finally succeed in proving their defence or not is a matter of trial and cannot be determined at this stage. In such a case, where the defence of truth taken by the defendants may stand a chance to succeed at trial, there is no reason for the Court to intervene at such an initial stage and stifle the ever-widening

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contours of free speech, as developed by the Higher Courts. Freedom of speech becomes all the more significant when the subject matter is a matter of larger public concern. In the instant case as well, the impugned article talks about the mass burials in the state of U.P during the horrific second wave of the pandemic Covid-19, which of course, is a concern of and for the masses in India.

18. In support of my observations in the preceding paragraph, I place reliance on the judgment of the Hon'ble Delhi High Court, **Tata Sons** (supra), where the court has observed that "*The English common law precedent on awarding interim injunctions in cases of defamation is set out by the case of Bonnard (supra). In Bonnard it was decided that an interim injunction should not be awarded unless a defence of justification by the defendant was certain to fail at trial level. The Court's observations, widely applied in subsequent judgments are as follows: "...[T]he subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary,*

often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions... In the particular case before us, indeed, the libellous character of the publication is beyond dispute, but the effect of it upon the Defendant can be finally disposed of only by a jury, IA No.9089/2010 in CS(OS) No.1407/2010 and we cannot feel sure that the defence of justification is one which, on the facts which may be before them, the jury may find to be wholly unfounded; nor can we tell what may be the damages recoverable."

Again, in Fraser v. Evans, [1969] 1 QB 349 Lord Denning MR stated the law as follows:

*"The court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since **Bonnard v. Perryman**. The reason sometimes given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a judge. But a better reason is the importance in the public interest that the truth*

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should out. ... There is no wrong done if it is true, or if [the alleged libel] is fair comment on a matter of public interest. The court will not prejudice the issue by granting an injunction in advance of publication..." Subsequently, in *Crest Homes Ltd. v. Ascott*, [1980] FSR 396 the Trial Judge granted an interlocutory injunction against the defendant who said that he would justify his assertions. Allowing the appeal and discharging the injunction, the Court (CA) held:

"(1) There was no reason to depart from the general rule that an interlocutory injunction will not be granted against a defendant in a libel action if he intends to plead justification unless the plaintiff can prove that the statement is untrue; (2) The plaintiff had not shown that the defendant's statement was untrue...the line of authority is long and weighty that interlocutory injunctions in these cases will not be granted unless the plaintiff shows that the defence of justification will not succeed..."

In Herbage v. Pressdram Ltd., [1984] 1 WLR 1160 Griffiths LJ restated the effect of the rule and then said (at p 1162H):

"These principles have evolved because of the value the court has placed on freedom of speech and I think also on the freedom of the press, when balancing it against the reputation of a single individual who, if wrong, can be compensated in damages."

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19. The court went on to hold that ***“From the above reasoning it follows that the Court will invariably not grant an interim injunction to restrain the publication of defamatory material as it would be unreasonable to fetter the freedom of speech before the full trial takes place, where each of the parties can argue in detail with the help of additional evidence. Similarly in this matter, it is incumbent IA No.9089/2010 in CS(OS) No.1407/2010 upon this Court to decide whether it would be reasonable to fetter the reasonable criticism, comment, and parody directed at the plaintiff, which to a large extent is protected by the Constitutional guarantee to free speech, to all the citizens of India. This point of view was also strengthened by a recent challenge to the old common law rule of Bonnard in the case of Greene v. Associated Newspapers Limited, 2005 (1) All.ER. 30, where it was decided that if it is a known fact that the true validity of the defamation claims will only be tested at trial level then it would only be appropriate for the Court not to award an interim injunction to the plaintiffs as it would otherwise put an unreasonable burden on the concept of free speech.”***

20. Finally, before parting with the judgment, the Hon’ble Delhi High Court clarified that ***“In conclusion the Court notes that the rule in Bonnard is as applicable in regulating grant of injunctions in claims against defamation, as it was when the judgment was rendered more than a***

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century ago. This is because the Courts, the world over, have set a great value to free speech and its salutary catalyzing effect on public debate and discussion on issues that concern people at large.”

21. The judgment mentioned above clarifies that interim injunctions should not be granted by the Courts, when the defendant seeks to justify his statements on the ground of truth or fair comment and unless his defence was certain to fail at trial. In the instant case, I am of the considered opinion that there is no certainty that defendants defence would fail at trial and there is an equal chance that the defendants may succeed in proving the same. In such circumstances, the plaintiff has failed to establish a prima facie case in his favour, since a reasonable and probable defence has been raised by the defendants, which needs determination at trial.
22. In view of the discussion above, the instant application under Order 39 Rule 1 & 2 CPC stand dismissed.
23. Nothing in this order shall be construed as a comment on the merits of the case.

(Chitranshi Arora)
Civil Judge-02, SE, Saket Court,
01.11.2021

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