

IN THE SUPREME COURT OF INDIA

EXTRAORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CIVIL) NO. 15711 OF 2021

SHRI BABUJI RAWJI SHAH

... Petitioner(s)

VERSUS

S. HUSSAIN ZAIDI & ORS.

... Respondent(s)

O R D E R

This special leave petition is against the judgment and order dated 30th July 2021, passed by a Single Bench of the High Court of Judicature at Bombay, rejecting an application being Interim Application (ST) No. 9764 of 2021 filed by the petitioner in First Appeal No. 9761/2021, seeking inter-alia an interim injunction restraining the respondents from releasing the film "Gangubai Kathiawadi", based on the book "Mafia Queens of Mumbai".

2. The petitioner who claims to be an adopted son of the protagonist of the film "Gangubai Kathiawadi", filed a suit in the City Civil Court of Mumbai seeking, *inter alia*, permanent injunction restraining the Respondent Nos. 1 and 2 from printing, publishing, advertising, selling, alienating, assigning and/or creating any third party rights or holding any press meets to

promote the novel "Mafia Queens of Mumbai" and/or otherwise writing any other stories on the life of the petitioner's mother.

3. The petitioner also sought a permanent injunction restraining the respondent Nos. 3 and 4 from producing, selling, assigning any rights to any entity, company, firm, cinema halls, multiplexes, social media or any other platforms or giving any press statement in public or on electronic media of the trailer/promo and/or film of the movie "Gangubai Kathiawadi". Interim relief was sought inter alia restraining the concerned respondents from releasing the movie "Gangubai Kathiawadi".

4. Some of the respondents filed applications under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint being Notice of Motion Nos. 186-187 of 2021, which were allowed by the City Civil and Sessions Court, Mumbai and the plaint was rejected.

5. Being aggrieved, the petitioner filed First Appeal No. 9761/2021 in the Bombay High Court and also filed Interim Application being ST No. 9764 of 2021 seeking interim relief, which has been rejected by the order impugned. The appeal is pending before the Bombay High Court.

6. From the plaint, a copy whereof is included in the Paper Book, and in particular Paragraph 24 thereof, it appears that one of the respondents had, in response to a communication from the petitioner, questioned the status of the petitioner as the adopted son of Gangubai and called upon him to establish the same with

proof. However, the plaint does not disclose any particulars of the petitioner's alleged adoption, not to speak of any documents or materials except the photocopy of a Ration Card. As noted by the City Civil and Sessions Court, Mumbai and the High Court, there are no materials at all to establish that the petitioner is the adopted son of Gangubai. A photocopy of a Ration Card unsupported by any other material does not even prima-facie establish the case of the petitioner of being the adopted son of Gangubai, who had died way back in the year 1980.

7. In paragraph 3 of the plaint, the petitioner has stated that he is the son of Gangubai. In paragraph 11 he has stated that his mother had, since his adoption, given him all the love and affection of a mother, even though Gangubai was not his biological mother, she never made the petitioner feel that she was not his biological mother. According to the petitioner, the movie as also the book are defamatory in nature.

8. It is not in dispute that the film "Gangubai Kathiawadi" has already been given the requisite certificate by the Central Board of Film Certification (CBFC) under the Cinematograph Act, 1952.

9. Section 5-B of the Cinematograph Act, 1952 lays down the principles for certifying films. The section provides that 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, *inter alia*, decency, or morality, or involves defamation. Section 6 of the said Act enables the Central

Government to call for the records of any proceedings in relation to any film which is pending certification or has been certified. Rule 32 of the Cinematograph(Certification) Rules, 1983 provides that where any complaint is received by the CBFC in respect of a film which has been certified, such complaint shall be forwarded to the Central Government and the Central Government may, if it considers it necessary, direct the Chairman to re-examine the film in such manner and with such assistance as may be specified in the direction. The petitioner has apparently made no complaint to the CBFC.

10. It is true that an injunction action can be initiated even after a certificate is issued under the Cinematograph Act. The Court may examine the film and judge whether its public display, breaches the norms of decency or contravenes the law. A film which is defamatory or indecent or breaches copyright cannot be allowed to be exhibited only because a certificate has been issued. The examples are of course illustrative.

11. At the same time, it has to be kept in mind that the guidelines for certification of films, as contained in Section 5(a) read with Section 5(B) of the Cinematograph Act, 1952 though not mandatory, have been carefully formulated. They require the CBFC to be responsive to the values and standards of society and also take note of social changes. The CBFC is required to ensure that sensibilities are not offended by obscenity, vulgarity, defamation or denigration of any group of persons.

12. A book or a film that illustrates the consequences of a social evil must necessarily show that social evil, as observed by a three Judge Bench of this court speaking through *Bharucha, J.* in *Bobby Art International & Ors. vs. Om Pal Singh Hoon & Ors.* reported in (1996) 4 SCC 1. The guidelines must be interpreted in that light. A film that carries a message and depicts social circumstances of a group of underprivileged women is not impermissible.

13. The fact that the film has been certified by CBFC, which comprises of a body of experts *prima facie* shows compliance with the requirements of the guidelines. In the introduction of the book "Mafia Queens of Mumbai" on which the film "Gangubai Kathiawadi" is based, the author says :-

"As a writer and journalist, it was a seminal moment for me. I was intrigued. I began compiling data and began taking a special interest in crimes where women figured prominently. It might come handy if I wrote a book, I told myself.

And after having written about all kinds of criminals over the years, I can say with firm conviction that when it comes to gender dynamics, it is much easier to be a Dawood Ibrahim than a Jenabai Daaruwali. If you sift through the gangs of Chhotas (Rajan and Shakeel), you will find clones galore, but you will rarely come across a Sapna Didi, a woman who dared to stand up against Dawood and was given a dastardly death by the don's acolytes. Of the twenty-two stab wounds inflicted on her, four were specifically targeted at her private parts, a grisly message of warning to other women not to dally with the mafia

This book is an attempt to understand the complex minds and the psyche of women criminals. It is in no way meant to glorify them. On the other hand, these women were not blank slates written upon by dangerous male mafia members. There is no simplistic cause-effect way of looking at their lives. There is no doubt that for these women, crime was not only a way of transcending their poverty and limitations but also a life-saving concept. By focusing on these women, I am not trying to essentialise the nature of female criminals. They are fascinating women because they pushed the boundaries of our dominant moral codes.

Compiling the extraordinary and powerful tales of thirteen women from the world of crime and the underworld was overwhelmingly

challenging and arduous, especially because a number of them flourished at a time when crimes by women were barely documented or acknowledged. These include the stories of bootlegger Jenabai Daaruwali and brothel madam Gangubai Kathiawadi.

As journalists the first lesson we learnt was not to sit on judgment but raise questions. In the stories that you will read, we have desisted from being judgmental and have stuck to facts. We have relied heavily on court documents, police records, cop historians, reliable journalists and published news stories in major national dailies.

In the absence of these, we have interviewed relatives, neighbours, retired policemen, veteran journalists and other independent witnesses. We ensured that any account which seemed controversial was corroborated by two separate parties. Those accounts which seemed contradictory to each other were ignored."

14. In *Nachiketa Walhekar vs. Central Board of Film Certification*

reported in (2018) 1 SCC 778, this Court held :

"5. Be it noted, a film or a drama or a novel or a book is a creation of art. An artist has his own freedom to express himself in a manner which is not prohibited in law and such prohibitions are not read by implication to crucify the rights of the expressive mind. The human history records that there are many authors who express their thoughts according to the choice of their words, phrases, expressions and also create characters who may look absolutely different than an ordinary man would conceive of. A thought provoking film should never mean that it has to be didactic or in any way puritanical. It can be expressive and provoking the conscious or the sub-conscious thoughts of the viewer. If there has to be any limitation, that has to be as per the prescription in law. "

15. For an actionable tort, there has to be a wrongful act, and damage or loss or inconvenience or annoyance caused to another, by reason of the wrongful act. Annoyance or inconvenience or loss alone does not give right to a legal action. The question of what constitutes nuisance is a question which the Court has to determine. The Court has first to ascertain what is the legal duty of which there has been breach. The right to an injunction depends on the legal right and this must be determined before any relief can be granted by the Court.

16. Nowhere in the plaint or in the special leave petition filed in this Court has the petitioner adverted to any provision of law which prevents an author from writing a biographical book/story or prohibits the making of any biographical film.

17. Mr. C. Aryama Sundaram, Mr. Mukul Rohatgi, Mr. Siddharth Dave and Mr. Dhruv Mehta, learned senior Counsel appearing on behalf of the respondents, have emphatically argued that the concerned respondents have incurred phenomenal expenses in producing the film "Gangubai Kathiawadi", which is scheduled to be released tomorrow i.e. 25.02.2022. This Court should not restrain the release of the film at the last moment. The balance of convenience is against an interim order at the last moment, restraining the respondents from releasing the film which has already been distributed to the exhibitors. The learned counsel for the respondents have asserted that the book and the film based on the book eulogise the protagonist "Gangubai". She has not been defamed. They argued that the respondents cannot be denied their fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. It is true as argued by Mr. Rakesh Singh, learned counsel appearing on behalf of the petitioner that the fundamental right to freedom of speech and expression is subject to restrictions. There is no fundamental right to defame, which the concerned respondents have done in their book and in the film based on the book.

18. Defamation has been defined in Section 499 of the Indian Penal Code. As per the definition of 'defamation' in Section 499 of the Indian Penal Code, whoever, by words either spoken or read, 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 to defame that person. As per 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 harmful to the feelings of his family or other near relatives. Explanation 4 clarifies that 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. There are, also exceptions to defamation. It is not defamation to impute anything which is true, concerning any persons or if the imputation has been made or published for the public good. Whether or not it is for the public good is a question of fact, that has to be determined by the Court.

19. Mr. Mukul Rohatgi and Mr. C. Aryama Sundaram, have placed reliance on Section 306 of the Indian Succession Act to argue that the right to sue for defamation does not survive after the death of the party defamed. Section 306 of the Indian Succession Act which speaks of the rights of administrators and executors of the estate of the deceased, does not bar family members and near relatives covered by Section 499 of the Indian Penal Code from seeking

injunction. The judgment of this Court in Melepurath Sankunni Ezhuthassan vs. Thekittil Geopalankutty Nair reported in (1986) 1 SCC 118, cited by Mr. C. Aryama Sundaram was rendered in the context of survival of the right to sue for damages for defamation. A right in tort may arise when any imputation concerning a deceased person harms the reputation of that person, if living or is intended to be hurtful to the feelings of his family members or other near relatives.

20. The argument sought to be advanced that the petitioner could not have claimed the relief of injunction without first seeking a declaration of his status as adopted son of Gangubai, cannot be sustained. Of course the petitioner would be required to establish that he is a family member.

21. It is well settled that for interim relief, the court has to consider the *prima facie* case made out by the applicant for interim relief, both on the question of *locus standi* to sue, if questioned and on the merits of the prayer for interim relief. The Court also has to consider the balance of convenience.

22. For maintaining an action in tort of defamation, the applicant for interim relief would have to satisfy the Court, that (i) the applicant was a member of the family or a near relative of the person defamed; (ii) what was stated about the deceased family member/relatives was untrue; and (iii) what was stated would lower the character and reputation of the deceased. Mere hurting of sensibility is not defamation, if the person said to be defamed is

not lowered in character or credit in the eyes of others.

23. The book was admittedly published in the year 2011. It is stated that the decision to make the film "Gangubai Kathiawadi" was taken in the year 2018 and the film was duly publicised. The film is due to be released tomorrow, i.e., 25.02.2022. The question is whether an ad interim order should be passed at this stage.

24. As observed above, there are no materials disclosed or even pleadings to show, even *prima facie*, that the petitioner was a family member or a near relative of Gangubai.

25. The contention of the petitioner is that the story of *Gangubai* sought to be depicted is untrue, is vague and devoid of material particulars. In any case, whether the story is true or incorrect would have to be decided by the Court upon examination of the evidence. The film certificate issued by the CBFC *prima facie* shows that the film is not defamatory. *Prima facie*, it appears that the movie is an artistic expression within the parameters of law.

26. In the circumstances, interim relief was rightly refused to the petitioner. The appeal of the petitioner is pending in the High Court. It is open to the petitioner to agitate all issues in the pending appeal. Any observations made in the impugned order at the interlocutory stage will not affect the decision in the appeal. The impugned order does not call for interference of this court.

27. The special leave petition is, accordingly dismissed.

28. Pending applications, if any, stand disposed of accordingly.

....., J.
(INDIRA BANERJEE)

....., J.
(J.K. MAHESHWARI)

New Delhi;
February 24, 2022.

ITEM NO.7

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 15711/2021

(Arising out of impugned final judgment and order dated 30-07-2021 in IA(ST) No. 9764/2021 passed by the High Court of Judicature at Bombay)

SHRI BABUJI RAWJI SHAH

Petitioner(s)

VERSUS

S. HUSSAIN ZAIDI & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.126890/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 24-02-2022 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. Rakesh Singh, Adv.
Mr. Arun K. Sinha, AOR
Mr. Narendra Dubey, Adv.
Ms. Anjali Rajput, Adv.
Mr. Amogh Agrawal, Adv.
Mr. Sumit Sinha, Adv.

For Respondent(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. C. Aryama Sundaram, Sr. Adv.
Mr. Siddhartha Dave, Sr. Adv.
Mr. Dhruv Mehta, Sr. Adv.
Ms. Liz Mathew, AOR
Mr. Abhishek Malhotra, Adv.
Ms. Naomi Chandra, Adv.
Ms. Sanya Dua, Adv.
Mr. Navneet R., Adv.
Ms. Sonali Jain, Adv.
Ms. Vasudha Jain, Adv.
Ms. Saumya Gupta, Adv.
Mr. Nikhil Rohatgi, Adv.
Mr. M. Thangathurai, Adv.
Ms. Vidhi Thaker, Adv.
Mr. Aditya Vaibhav Singh, Adv.
Ms. Aarushi Singh, Adv.
Mr. Rajesh Kumar, Adv.
Mr. Parag Kanohar, Adv.
Mr. Zafar Inayat, Adv.
Ms. Rohini Musa, Adv.

Mr. Abhishek K. Gupta, Adv.
Mr. Samir Malik, Adv.
Mr. Parag Khandhar, Adv.
Ms. Rohini Musa, Adv.
Mr. Zafar Inayat, Adv.
Mr. Abhishek Gupta, Adv.

Mr. Pravin Anand, Adv.
Mr. Dhruv Anand, Adv.
Mr. Ameet Naik, Adv.
Ms. Madhu Gadodia, Adv.
Mr. Vikas Singh Jangra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

The special leave petition is dismissed in terms of the signed
order.

Pending applications, if any, shall stand disposed of.

(MANISH ISSRANI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(SIGNED ORDER IS PLACED ON THE FILE)