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

\+ CS(COMM) 187/2021, I.A. 10551/2021 & I.A. 14436/2021

KRISHNA KISHORE SINGH ..... Plaintiff

Through: Mr.Varun Singh, Mr.Akshay Dev, Mr.Ytharth Kumar, Ms. Alankriti Diwedi, Ms. Parul Sharma, Mr. Atif, Mr. Himanshu Yadav, Ms.Kajal Gupta and Ms.Smriti Wadhwa, Advs.

versus

SARLA A SARAOGI & ORS. ..... Defendants

Through: Mr. Chander M. Lall, Sr. Adv. with Mr. Bhushan M. Oza and Mr. Anand Mishra, Advs. for D-1&2
Mr. C.M. Lall, Sr. Adv. with Mr. Vedanta Vurma, Mr. Akhil Kumar and Ms. Ananya, Advs. for D-3
Mr. Vibhor Kush, Adv. for D-4

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

% 11.07.2023

I.A. 10551/2021 (*under Order XXXIX Rules 1 and 2 of the CPC*)

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Facts

1. The plaintiff is the father of Sushant Singh Rajput ("SSR", hereinafter), an actor who debuted in Bollywood in 2009 and met an untimely end on 14 June 2020. The circumstances in which SSR breathed his last remain murky, and the dust is still to settle.

2. In or around 19 March 2021, the plaintiff instituted the present suit by way of a *quia timet* action. The suit was predicated on information stated to have been received by the plaintiff to the effect that Defendants 1 and 2 were in the process of producing, and Defendant 3 in the process of directing, a movie based on the life of SSR, without taking the permission of any of his legal representatives, including the plaintiff. The plaintiff contended that SSR did not leave, behind him, any Class I heir and that the plaintiff was the sole surviving legal heir in Category I of the Class 2 legal heirs of SSR. The suit sought a decree of permanent injunction, restraining the defendants and all others from using SSR's name, caricature or

lifestyle in any projects or films without the prior permission of the plaintiff, alleging that any such effort would infringe the personality rights of SSR and also cause deception in the minds of the public, which would amount to passing off. Additionally, costs and damages were also sought.

3. Along with the suit, the plaintiff filed IA 5697/2021, seeking an interlocutory injunction against the defendants using SSR's name, caricature, lifestyle or likeness in any films or other ventures, pending disposal of the suit.

4. IA 5697/2021 was dismissed by a coordinate bench of Sanjeev Narula, J., *vide* judgment dated 10 June 2021. Para 43 of the said judgment, which is of relevance, reads thus:

> "43. On the aspect of irreparable loss, we may note that the suit is not premised as a tortious action for defamation. It is founded on the basis of breach of celebrity/publicity rights inhering to the Plaintiff. It is thus opined that if an interim order is granted, it would be difficult to compensate the Defendants in the event Plaintiff ultimately does not succeed in the suit. Whereas, the Plaintiff can always re-apply at a later juncture for injunction, if there is a change in circumstances after the release of the said film, and has an adequate remedy of being compensated by award of damages, if the Plaintiff proves in trial that the celebrity/publicity rights were inheritable and inured to him exclusively. To ensure that, the Defendants are directed to render complete and true accounts of the revenue earned from the films by way of sale/licensing of all rights relating to the films."

5. Aggrieved by the aforesaid judgment, the plaintiff appealed to the Division Bench of this Court by way of FAO (OS) (COMM) 88/2021, which was disposed of, by the Division Bench, *vide* the following order dated 26 July 2021:

"1. Mr. Vikas Singh, learned senior counsel, who appears on behalf of the appellant, on instructions, says that the statement made on behalf of respondent no. 3, on 23.06.2021, that the subject film, i.e. "*Nyay:* The Justice" [hereafter referred to as the "subject film"] has been released, is not correct.

1.1. Mr. Singh says that the subsequent order, i.e., order dated 25.06.2021 would show that an impression was given, to the predecessor bench, that the duration of the film was 2 hours and 23 minutes, as appearing on http://lapalaporiginal.com/ [hereafter referred to as the "subject OTT platform"].

1.2. It is Mr. Singh's submission that if one were to visit the subject OTT platform, it would be revealed that, with "gaps", the duration of the subject film stands increased to 2 hours 41 minutes. Therefore, in sum, it is Mr. Singh's submission that the subject film has not been released, for public viewing, as was sought to be portrayed, by respondent no. 3, in particular, as noticed hereinabove, on account of gaps.

2. On the other hand, Mr. Chander M. Lall, learned senior counsel, who appears on behalf of respondent no. 3, says that the content of the subject film has not changed, from the date it was released, on the subject OTT platform, i.e., 11.06.2021.

2.1. It is Mr. Lall's submission that although, at the given point of time, gaps were incorporated, whereby, the duration of the subject film, stood increased to 2 hours 41 minutes, the content has not changed.

2.2. It is also Mr. Lall's submission, that the duration of the subject film, as recorded in the order dated 25.06.2021, i.e. 2 hours and 23 minutes, is, in fact, a typographical error. The duration of the subject film, according to Mr. Lall, was 2 hours 32 minutes, even at that juncture, which, with the gaps, stood increased to 2 hours 41 minutes.

3. We are informed that gaps were inserted, at a particular juncture, to merge advertisements, with the contents of the subject film. Mr. Lall also informs us that some advertisements were, indeed, incorporated.

4. At this stage, Mr. Singh points out that first 9 minutes of the subject film, as appearing on the subject OTT platform, are blank.

5. We may also point out that Mr. Lall has taken instructions, in the matter, and he says that, presently, the gaps have been

removed; and the duration of the subject film is, now, 2 bours 41 minutes, with advertisements included in between.

6. Given this position, both the counsel submit, that the best course forward would be to remit the matter to the leamed Single Judge, where the parties can, then, press their respective claims.

7. Given the aforesaid submissions, made on behalf of Mr. Singh and Mr. Lall, counsel for the parties say, that the appeal and the pending applications can be disposed of accordingly. It is ordered accordingly.

8. The appeal is, thus, disposed of with liberty to the appellant, to press his claims, in terms of paragraph 43 of the impugned judgment dated 10.06.2021. The contentions of the appellant will be examined, by the learned Single Judge, in the context of the subject film, which is, presently, available on the subject OTT platform.

9. In case, respondent no. 3 were to make changes in the subject film, as available today, on the subject OTT platform, information, in that behalf will be given to the appellant. The appellant will, then, have liberty to move the learned Single Judge, if so advised.

10. Needless to add, since we have not examined the matter on merits, and given the fact that, the stage, at which the impugned decision was rendered, the subject film had not been released, all the parties will at liberty to advance their respective stands, before the leamed Single, in view of the changed circumstances.

11. Resultantly, pending applications shall also stand disposed of."

6. A plain reading of the aforesaid order dated 26 July 2021 reveals that, by the time the Division Bench came to pass the said order, something in the nature of a completed film, titled "Nyay : The Justice", produced by Defendants 1 and 2, directed by Defendant 3 and outlined by Defendant 4, was in existence and could be viewed on the OTT Platform http://lapalaporiginal.com/ (hereinafter referred to as "the Lapalap platform"). The Division Bench, therefore, granted liberty, to the plaintiff, to press his claims, in terms of para 43 of the

judgment dated 10 June 2021 *supra* of the learned Single Judge. At the same time, the Division Bench also clarified that it had not examined the matter on merits and reserved liberty with the parties to advance their respective stands before the Single Judge, while pressing their claims in the light of the film as released.

7. As such, the *lis*, in the present application, is between the plaintiff on the one hand and Defendants 1 to 4 on the other. For the sake of convenience, Defendants 1 to 4 would be referred to, hereinafter, collectively, as "the defendants".

8. The scope and ambit of the order dated 26 July 2021 passed by the Division Bench, *vis-à-vis* the judgment dated 10 June 2021 *supra* of the learned Single Judge, forms part of the controversy before me which I would address by and by.

9. In view of the release of the film on the Lapalap platform, the plaintiff moved IA 13982/2021 under Order VI Rule 17 of the CPC, seeking to amend the plaint as earlier instituted. The said IA was allowed by this Court by order dated 30 May 2022. The prayer clause in the amended plaint read thus:

> "That in view of the above stated facts and circumstances, it is respectfully prayed that this Hon'ble Court may be pleased to:-
>
> > (i) Pass an order and decree of permanent injunction restraining the Defendants by themselves, their directors, principal officers, successors-in-business, assigns, servants, agents, distributors, advertiser or anyone claiming through them from in any manner using plaintiff son's name/caricature/lifestyle or likeness in their forthcoming project/films in any manner whatsoever amounting to infringement of Copyright;

(ii) Pass an order and decree of permanent injunction restraining the Defendants by themselves, their directors, principal officers , successors-in-business, assigns, servants, agents, distributors, advertiser or anyone claiming through them from in any manner using plaintiff son's name/caricature/lifestyle or likeness in their forthcoming project/films in any manner whatsoever amounting to infiltration of personality rights by such unauthorized use;

(iii) Pass an order and decree of permanent injunction restraining the Defendants by themselves, their directors, principal officers, successors-in-business, assigns, servants, agents, distributors, advertiser or anyone claiming through them from in any manner using plaintiff son's name/caricature/lifestyle or likeness in their forthcoming project/films in any manner whatsoever amounting so as to misrepresent and to cause deception in minds of public leading to passing off;

(iv) Pass an order and decree of permanent injunction restraining the Defendants by themselves, their directors, principal officers, successors-in-business, assigns, servants, agents, distributors, advertiser or anyone claiming through them from in any manner using plaintiff son's name/caricature/lifestyle or likeness in their forthcoming project/films in any manner whatsoever violation right to fair trial of Plaintiff under Article 21 of Indian Constitution;

(v) Pass an order and decree of mandatory injunction to remove all references /press release /videos /posters / advertisement /content /publicity material containing the plaintiff son's name /image /caricature /lifestyle /likeness from all websites, television channel, newspapers, social media and or other modes of advertisements and promotion in any other mode of electronic or print media in respect of forthcoming ventures misappropriating personality of plaintiff's son;

(vi) Pass an order and decree of permanent and mandatory injunction restraining Defendant No. 9 from using the name of the late actor Sh. Sushant Singh, name / image /caricature/lifestyle/likeness for any association of person, academy, institution, in any form for any purpose without consent of Plaintiff and direct them to remove all references/press release / videos /posters/ advertisement /content/ publicity material from all websites, television channel, newspapers, social media and or other modes of

advertisements and promotion in any other mode of electronic or print media;

(vii) *Pass an order directing the Defendant No. 1 & 2 to take down the movie; Nyay the Justice, from the LAPALAP original platform;*

(viii) *Pass an order directing the Defendants No. 1 & 2 from showcasing the movie Nyay: The Justice, on any other platform or movie theatres;*

(ix) *Pass an order for awarding of exemplary and punitive damages for flagrant violation of the Plaintiff's rights;*

(x) Pass an order of awarding the damages of Rs. 2, 00,02,200/- for loss of reputation, mental trauma and harassment to Plaintiff and his family at hands of Defendants;

(xi) An order for costs in the present proceedings in favour of Plaintiffs; and

(xii) Pass any such other and further orders in favour of the appellant as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

10. Along with the amended plaint, a fresh IA 10551/2021 was instituted under Order XXXIX Rules 1 and 2 of the CPC, seeking interlocutory injunction against continued streaming of the film by the defendants. I am called upon to decide the said application, in terms of para 8 of the order dated 26 July 2021 of the Division Bench in FAO (OS) (COMM) 88/2021.

11. I have heard learned Counsel for the parties at length on IA 10551/2021. Mr. Varun Singh argued on behalf of the plaintiff and Mr. Chander M. Lall, learned Senior Counsel argued on behalf of the defendants.

12. I may note, here, that there was some confusion regarding the exact nature of the film which was being streamed on the Lapalap platform and in respect of which the plaintiff was seeking an injunction. Mr. Varun Singh also sought to submit that, despite a proscription to that effect contained in the order dated 26 July 2021 of the Division Bench, the defendants had carried out changes in the film even after the passing of the said order. That eventuality, however, stands recognized, and addressed, in para 9 of the order dated 26 July 2021 of the Division Bench. In the said paragraph, the Division Bench has observed that, in the event Defendant 3 were to make changes in the film, as it existed on that date, i.e. on 26 July 2021, information in that regard would be given to the plaintiff who would, then, have liberty to move the Single Judge, i.e. this Bench.

13. As things stand today, learned Counsel for both sides are *ad idem* that there is one existing final print of the film which runs into 2 hours 30 minutes 33 seconds. A copy of the film has been provided to the Court on a pen drive. It is this print that has formed subject matter of argument before me. Mr. Varun Singh seeks an injunction against streaming of the said print – or any other film showcasing the life of SSR – on the Lapalap platform or elsewhere, whereas Mr. Lall contends that, by streaming the film, his clients have not infracted any right of the plaintiff, as would entitle the plaintiff to seek an injunction from this Court.

14. Extent to which the judgment dated 10 June 2021 of the learned Single Judge in IA 5697/2021 is required to be taken into account

14.1 I may now advert to the aspect to which I had eluded earlier, viz, whether the judgment dated 10 June 2021, of Narula, J., is required to be borne in mind while deciding the present application IA 10551/2021 and, more particularly, whether the findings returned in the said judgment dated 10 June 2021 would be binding on me and were not open to revisitation.

14.2 Mr. Chander Lall, learned Senior Counsel for Defendant 3, has no doubt about the legal position in this regard. Indeed, he rose while the submissions of Mr. Varun Singh, learned Counsel for the plaintiff were midstream, submitting, with some chagrin (even while retaining his characteristic *savoir faire*), that Mr. Singh was arguing issues which had been laid to rest by the judgment of Narula, J., and were no longer open to reconsideration. To bring home his point, Mr. Lall emphasizes para 8 of the order dated 26 July 2021 of the Division Bench, which allowed the plaintiff to press his claims *in terms of para 43* of the judgment dated 10 June 2021 of Narula, J. The findings of Narula, J., in the judgment dated 10 June 2021, which precede para 43 of the said judgment, therefore, according to him, cannot be now reagitated or re-examined by this Bench. This Bench has to limit its cogitative excursions to para 43 of the judgment dated 10 June 2021, and cannot travel outside the peripheries thereof.

14.3 Mr. Lall, in fact, specifically contended that all that this Bench was required to do, as per the order dated 26 July 2021 of the Division Bench, was to examine whether the release of the film – which was

the only change in circumstance since the time of passing of the order dated 10 June 2021 of Narula, J. – could be said to have entitled the plaintiff to an injunction, which Narula, J. had refused. He submits that the answer to this question has, quite obviously, to be in the negative. Mr. Lall's contention is that, in the amended plaint, the plaintiff has not advanced any submission which could change the factual or legal position which obtained on 10 June 2021, when Narula, J. rendered his judgment and that, therefore, the plaintiff would not be treated as entitled to any injunction against streaming of the film. Mr. Lall has, in this context, specifically drawn attention to the observation, in para 43 of the judgment dated 10 June 2021 of Narula, J., to the effect that, if there was any change in circumstance after release of the film, the plaintiff had an adequate remedy of being compensated by award of damages, provided he proved, in trial, that celebrity/publicity rights were inheritable and exclusively enured to him. The Division Bench having lent its imprimatur to para 43 of the judgment of Narula, J., Mr. Lall's contention is that the issue had now necessarily to be relegated to trial. A plain reading of para 43 of the decision of Narula, J., in terms whereof, alone, the plaintiff had been permitted, by the Division Bench, to approach this Court, he submits, reveals that the only right that survived in the plaintiff, consequent to release of the film, was a right to claim damages and that the said right was dependent on the plaintiff establishing, *during trial*, firstly, that celebrity/publicity rights were heritable and, secondly, that these rights exclusively enured to him. There is, therefore, according to Mr. Lall, no question of any injunctive relief being granted to the plaintiff at this stage.

14.4 There are various reasons why I find it difficult to accept this submission of Mr. Lall.

14.5 In the first place, para 43 of the judgment dated 10 June 2021 of Narula, J. does not restrict the right of the plaintiff, consequent to release of the film, to damages. It specifically states that, in the event of a change of circumstance after release of the film, *the plaintiff could re-apply for injunction*. That is precisely what the plaintiff has done by way of IA 10551/2021. In terms of para 43, therefore, this Bench has necessarily to examine and decide the said application on its own merits.

14.6 Secondly, the judgment of Narula, J. was rendered at a time when no film was in existence. Narula, J. was examining the matter as a *quia timet* action. The considerations which apply to a *quia timet* action are fundamentally different from those which apply to a prayer for injunction made after the allegedly tortious act is committed. It would be fundamentally erroneous, therefore, for this Bench to proceed on the basis of findings and observations returned by Narula, J., while examining the *quia timet* injunction application of the plaintiff when the film had not yet been released.

14.7 Thirdly, the order dated 26 July 2021, of the Division Bench, specifically states, in para 10, that the Division Bench had not examined the matter on merits. It goes without saying that, without examining the merits of the appeal before it, the Division Bench could

not have either approved or disapproved the judgment dated 10 June 2021 of Narula, J. A reading of para 10 of the order of the Division Bench, in fact, conveys the clear impression that the Division Bench was of the view that, with the release of the film, the goalpost had changed. It is obviously for this reason that the Division Bench, advisedly, did not deem it necessary to advert to the merits of an interlocutory order passed at the time when the film had not yet been released, its contents were unknown, and the entire discussion was still in *quia timet* territory. This position stands underscored in view of the specific reservation of liberty, in para 10 of the order of the Division Bench, with all parties *to advance their respective stands – with no proscriptive, or even cautionary, caveat* – before the learned Single Judge, i.e. before this Bench. Without having examined the merits of the appeal before it, the Division Bench could, quite obviously, not have bound this Bench by the observations and findings of Narula, J., which were subject matter of challenge before it.

14.8 There are, even otherwise, fundamental differences between the grievance of the plaintiff in the original plaint and in the amended plaint. The original plaint was predicated on a mere apprehension, with no film having been released till then. Quite obviously, therefore, no claim of defamation could have been raised by the plaintiff. The opening observations in para 43 of the judgment of Narula, J., to the effect that the suit was not predicated as a suit alleging tortious defamation, on which Mr. Lall placed emphasis, therefore, merely, state a truism. Indeed, as the film had not yet been

released till the date of passing of the judgment by Narula, J., no question of any allegation of defamation, based on the film, could have existed.

14.9 As against this, the amendments to the plaint, which have been effected after the film had been released, specifically alleged that the film is based on unverified and unauthenticated news reports, many of which were defamatory to SSR, without verifying either their truth or their authenticity. As such, specific allegations of damage to the reputation of SSR have been incorporated in the amended plaint. It has also been alleged that several parts of the film are salacious and promiscuous and portray SSR in a negative light. These allegations are in addition, and *de hors*, the contention that no one could have publicised the life of SSR, or made any film based on his life, without obtaining prior permission of the plaintiff.

14.10 I am, therefore, of the considered opinion that, in examining IA 10551/2021, this Bench cannot regard itself as bound by the observations and findings of Narula, J., but would have to proceed on the basis that it has before it, a *tabula rasa*.

Rival Contentions

15. Opening submissions of Mr Varun Singh

15.1 Mr. Varun Singh, learned Counsel for the plaintiff, submits that, over a period of time, celebrity rights have emerged as a distinct

category of intellectual property right. Celebrity rights, he submits, are rights which enure in favour of one by virtue of her, or his, being a celebrity. A celebrity, therefore, according to him, enjoys a distinct bundle of personality rights, privacy rights and publicity rights. As a celebrity, he submits that the personality of SSR could not have been misappropriated for the unjust enrichment of others.

15.2 Mr. Varun Singh submits that the film has been made on the basis of defamatory statements and news articles, which alleged that SSR was subject to various vices such as drug addiction, etc, without any verification and without obtaining any report from any official agency to the said effect. Additionally, the firm alleges that SSR was mentally unwell, that he was anxious and depressed and that he died by committing suicide. In so doing, he submits that the defendants have violated the right to privacy of both of SSR and the plaintiff, which inhere in them by virtue of Article 21 of the Constitution. Mr. Singh submits that it is not permissible for anyone to publish anything about SSR, laudatory or critical, without the plaintiff's consent. The impugned film, he submits, is no less than a direct retelling of SSR's life. He has drawn attention to various documents, placed by him on record, which underscore this position. A news item dated 19 February 2021, on the virtual platform "Bollywood Hungama News Network" reports the statement of Zuber K Khan, who essays the role of SSR in the impugned movie, to the effect that the film focuses on the lives of Rhea Chakraborty and SSR and the chemistry between them, and was aimed at securing justice not only for SSR but also for Rhea Chakraborty. An item on the "News 18 Movies" platform,

published on 7 March 2021, reports the following statement of Ashok Saraogi, the husband of Defendant 1, who has produced the impugned movie: "Since I was involved in this case, I was representing one of the person (SSR's ex-manager Shruti Modi) in this matter definitely I know the internal things, I know how the investigation is being done – so I had to take the lead and I asked my wife to produce this… Fans will get the idea of what really happened or what could have happened. Not only fans, investigative agencies will also get some clue and fans should be happy that on the basis of that clue the investigative agency should be in a position to proceed further. So it is like pushing the investigative agencies to move further on the basis of the hints given by us."

15.3 As a celebrity, Mr. Singh submits that the plaintiff has a right to command and control over his name, his image and his likeness. Any misuse of the plaintiff's name, or image, or his caricaturing would result in infringement of the personality rights vested in the plaintiff. It would also amount to passing off. Mr. Singh submits that the plaintiff is the lawful successor to the said rights which earlier vested in SSR. He submits that the events which led to the death of SSR, and post his death, were events which were very personal to the plaintiff, his family and his friends etc and that streaming/broadcasting of the said events without the consent of the plaintiff was completely impermissible. Mr Singh further submits that he seeks an injunction in order to protect possible irreparable injury to the plaintiff, his son and his family's reputation, damage to the plaintiff's family and defamation and politicization of the event of death of SSR. He

submits that the impugned movie compromises both the right to privacy of the plaintiff as well as the right to free trial of SSR.

15.4 Mr. Singh submits that the events which led up to the sudden end of SSR, as well as the events which followed his demise, are deeply personal not only to SSR, but also to the plaintiff, as well as the family and friends of SSR. Streaming or broadcasting of the said events, even if in the form of a movie, he submits, would be completely illegal. Besides, Mr. Singh submits that the investigation into the circumstances which led to the death of SSR, in which the CBI is also involved, are still in progress, and the release of movies such as the impugned film are likely to prejudice fair trial in the case. He submits that a right to fair trial inheres in every citizen by Article 21 of the Constitution of India. The plaintiff is, therefore, seeking an injunction against continued broadcasting of the impugned film in order to prevent possible irreparable injury to the plaintiff, his son SSR and the reputation of their family, damage to the family name and defamation, and politicisation of SSR's death and the circumstances in which it occurred. Mr. Singh submits that the Counsel for SSR had announced, in public, that no film was to be made on SSR's life, without the plaintiff's consent. Nonetheless, no consent from the plaintiff had been obtained before releasing the impugned movie. The impugned movie, therefore, compromises both the right to privacy of SSR and the plaintiff, as well as the right to fair trial of the circumstances which led to the death of SSR.

15.5 The right to publicity, as well as celebrity rights, submits Mr.

Singh, are heritable. He relies, in this context, on the judgment of a learned Single Judge of this Court in ***ICC Development (International) Ltd v. Arvee Enterprises***[1].

15.6 Mr. Singh submits that the impugned movie is no more than a facsimile of the events before and the surrounding the death of SSR, as covered by an authentic and verified news, circulated in the public domain. He takes exception to the defendants having exploited such news for commercial gain without, in the first instance, even taking the trouble to verify the authenticity or truth of the news. The disclaimer accompanying the film, he submits, is obviously untrue. The defendants are, therefore, causing confusion and deception in the trade and in the public mind, which tantamounts to passing off. Moreover, submits Mr. Singh, the impugned movie is immoral and promiscuous in nature, and is bound to defame and slander the name and reputation of SSR and create gross and irreparable damage to the goodwill and reputation earned by him worldwide. Continued streaming of the movie, he submits, would result in continuous diminishing and deterioration of the reputation and goodwill of SSR. He submits that there is a qualitative distinction between news reporting of incident and making of a commercial movie encashing on the reputation of someone like SSR.

15.7 Expanding on the principle of personality rights, Mr. Singh submits that personality rights protect the individual's interest in his image, voice or likeness. Personality rights enable celebrities object

[1] **2003 SCC OnLine Del 2**

to commercial use of their image or likeness without their consent. He relies, in this context, on the judgments of

(i) a learned Single Judge of this Court in ***Titan Industries Ltd v. Ramkumar Jewellers***[2],

(ii) a learned Single Judge of the High Court of Madras in ***Shivaji Rao Gaikwad v. Varsha Productions***[3],

(iii) a learned Single Judge of the High Court of Gujarat in ***Kirtibhai Raval v. Raghuram Jaisukhram Chandwani***[4],

(iv) the Supreme Court of Georgia in ***Martin Luther King Jr Centre For Social Change v. American Heritage Products***[5].

15.8 The celebrity rights which vest in individual by virtue of his being entitled to be regarded as a celebrity, submits Mr. Singh, continue to exist, posthumously, in his legal representatives, after his death. Commercial exploitation of the persona of such a celebrity without the express permission of the legal representatives would, therefore, amount to infraction of the celebrity rights of the personality, which is impermissible in law. It is for this purpose, submits Mr. Singh, that his client has not limited his prayer, in the plaint or in the interlocutory injunction application, to an injunction against the defendants from exploiting the image and persona of SSR, but for an injunction against such exploitation by the world at large.

15.9 Mr. Singh fairly submitted that, after the judgment of the

[2] **2012 SCC OnLine Del 2382**
[3] **2015 SCC OnLine Mad 158**
[4] **2010 SCC OnLine Guj 13952**
[5] **296 S.E. 2d 697**

Supreme Court in ***Justice K.S. Puttaswamy v. U.O.I.***[6], while the right to privacy no longer exists as an independent right, the right to publicity continues to do so. The right to publicity, he submits, has various incidents and aspects, beyond the right to privacy. Even Narula, J., points out Mr. Singh, acknowledged that publicity rights existed but felt that the matter required a deeper probe.

16. Submissions by Mr. Lall, in reply

16.1 Mr. Lall, at the outset, reiterated his submission that the scope of the present proceedings was only to examine whether, consequent on release of the impugned movie, any such change in circumstance had taken place as would justify the plaintiff to the injunction sought by him. He submits that the amended plaint filed by the plaintiff does not refer to any such change. The submissions of Mr. Singh, he submits, do not refer to any content in the film which would persuade this Court to change the view initially adopted by Narula, J.

16.2 ***Puttaswamy***[6], submits Mr. Lall, confirms that both the right of privacy and the right to publicity are birthed in Article 21 of the Constitution. If, therefore, the right to privacy does not survive a person's death, neither, he submits, would the right to publicity. Assuming, *arguendo*, therefore, that a right to publicity inhered in SSR during his lifetime, that right expired with him, and does not survive for agitation or espousing by the plaintiff.

16.3 Mr. Lall further submits that no right to privacy or publicity can

[6] **(2017) 10 SCC 1**

be said to be violated if, as in the present case, the impugned movie is based on facts which are in the public domain. He submits that the plaintiff has admitted that the impugned movie is based on media articles, which were available to the public. The right to privacy, he submits, can obviously never extent to publicly known facts. He places reliance, for this purpose, on the judgment of the High Court of Telangana in ***Ramgopal Varma v. Perumalla Amrutha***[7]. Having not objected to the publications available in the public domain, on the basis of which the impugned movie was made, Mr. Lall submits that the plaintiff cannot complain that the impugned movie violates his right to privacy, or the right of SSR to privacy. He relies, for this purpose, on the judgment of this Court in ***Khushwant Singh v. Maneka Gandhi***[8] and the judgment of the High Court of Madras in ***Deepa Jayakumar v. A.L. Vijay***[9]. At the highest, he submits that the issue of whether the impugned movie is based on publicly known facts would be a triable issue, and no definitive conclusion, even prima facie, could be taken without a trial. Mr. Lall further submits that the plaintiff cannot claim absolute rights over SSR, his persona, and everything that has to do with him. He further submits that there is nothing, in the impugned movie, which could be said to be defamatory either of SSR or of the plaintiff.

16.4 The right to privacy and the right to publicity, submits Mr. Lall, are mirror images of one another. The right to privacy extinguishes with the man, as held in ***Puttaswamy***[6]. Even if it were to be assumed that the defendants had commercially exploited the persona of SSR,

[7] **MANU/TL/0352/2020**
[8] **AIR 2002 Del 58 : 2001 SCC OnLine Del 1030**

the plaintiff would, thereby, be entitled, at the highest, to damages, and no more. The making of a film on SSR, he submits, is not, *prima facie*, violative of the publicity rights of SSR. Mr. Lall submits that it is permissible for anybody to make a movie on events which have actually occurred.

16.5 Mr. Lall disputes, on facts, the submission of Mr. Singh that the impugned movie is a biopic of SSR. He submits that the movie does not make any reference, at any point, to the name, image or photograph of SSR, or to his caricature. He submits that the movie draws inspiration from true events which were widely reported in the media and constitute part of public record. No legitimate objection, he submits, can be taken to a movie being made on the basis of publicly known facts. He relies, for this purpose, on the judgment of the Supreme Court in ***R. Rajagopal v. State of Tamil Nadu***[10] .

16.6 In any event, he submits, the disclaimer which prominently figures at the start of the film should assuage the plaintiff's apprehensions that the impugned film is intended to be a biopic of SSR. He relies, for this purpose, on

(i) the order passed by a Division Bench of this Court in ***Sahara One Media v. Sampat Lal***[11],

(ii) the judgment of a coordinate Single Bench of this Court in ***Dr. Reddy's Laboratories Ltd v. Eros International Media Ltd***[12] ,

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[9] **AIR 2021 Mad 167**
[10] **(1994) 6 SCC 632**
[11] **MANU/DE/4370/2014**
[12] **(2021) 87 PTC 20**

(iii) ***Deepa Jayakumar***[9],

(iv) ***Ramgopal Varma***[7], and

(v) the judgment of a learned Single Judge of the High Court of Andhra Pradesh in ***Vadlapatla Naga Vara Prasad v. Chairperson, CBFC***[13].

16.7 Mr. Lall submits that, where the movie is made on the basis of articles circulating in the media and, therefore, on information available in the public domain, the law does not require the movie maker to obtain prior consent from the plaintiff**.** Nor, he submits, does the law required the moviemaker to undertake an enquiry or investigation into the truth of the material contained in the articles on the basis of which the movie is made. The right to make the movie on the basis of publicly available information, he submits, is part of the sanctified right to free speech which inheres in every citizen by Article 19(1)(a) of the Constitution of India. He relies, for this purpose, on ***Deepa Jayakumar***[9], as well as the judgments of this Court in

(i) ***D.M. Entertainment Pvt. Ltd. v. Baby Gift House***[14],

(ii) ***Dr. Reddy's Laboratories***[12], and

(iii) ***Dabur India Ltd v. Emami Ltd***[15].

16.8 The only restraint on the right to free speech, enshrined in Article 19(1)(a) of the Constitution of India, submits Mr. Lall, is Article 19(2). So long as the impugned movie does not transgress Article 19(2), Mr. Lall submits that the right to make it, conferred by

[13] **AIR 2012 AP 78**
[14] **2010 SCC OnLine Del 4790**
[15] **2019 SCC OnLine Del 9022**

Article 19(1)(a), is absolute. Article 19(1)(a) does not require the moviemaker to verify the truth of the material shown in the movie, especially where the material has been derived from sources available in the public domain. The plaintiff has not, submits Mr. Lall, either made out a case of infraction, by the impugned movie, of Article 19(2) of the Constitution of India, or pleaded any such case. In such circumstances, no injunction against telecast of the movie can be granted, as grant of any such injunction would violate the defendants' rights under Article 19(1)(a).

16.9 *De hors* and without prejudice to these submissions, Mr. Lall submits that the plaintiff is incompetent to maintain the suit, as the right to privacy, the right to publicity and the right to protection against defamation are all personal rights, which do not survive the person concerned, and are not heritable. One person cannot, therefore, canvass the rights of another person to privacy or publicity. Nor can one person file a suit alleging that another person has been defamed.

16.10 Thus, submits Mr. Lall, no case can be said to have been made out by the plaintiff as would entitle him to an injunction against streaming of the impugned movie.

17. Submissions of Mr. Varun Singh in rejoinder

17.1 Mr. Varun Singh, in rejoinder, answers, first, the submission of Mr. Lall, that matters available in the public domain may be made subject of a movie without the moviemaker having to verify the truth

of the concerned facts, by submitting that there is a distinction between "public record" and "public domain". He submits that the Supreme Court, in ***R. Rajagopal***[10], has protected publications, which published material forming part of prior public record, from the taint of defamation, or of infraction of another's personality rights. He has placed reliance on the judgment of a learned Single Judge of this Court in ***Phoolan Devi v. Shekhar Kapoor***[16] which, he submits, has analysed and discussed ***R. Rajagopal***[10]. He clarifies, in conclusion, that he is predicating his case on the publicity rights of SSR.

Analysis

18. Is the impugned movie actually a re-enactment of SSR's life and history – Value of disclaimer

18.1 I have seen the impugned movie. Having done so, there remains no doubt whatsoever, in my mind, that the impugned movie is an overt re-enactment of SSR's life and times, concentrating largely on the circumstances leading to his death and the investigation that followed.

18.2 First, the movie, in conspectus.

18.2.1 Mahendra Singh, an upcoming actor, is dead. Questions of why, when, and how he died, are left unanswered. Keshav Singh, the helpless father of Mahendra Singh, is shown living with his daughters

[16] **(1995) 15 PTC 46**

and interacting with the media, who are raising questions about the death of Mahendra Singh.

18.2.2 The story then moves into flashback mode. Mahendra Singh is shown giving auditions and, thereafter, shooting for his serial *Pavitra Bandhan*. The next scene shows Mahendra Singh parting ways with his co-star in *Pavitra Bandhan*, as he wishes to move ahead in life. He says that he would now be acting in movies. Mahendra Singh's co-star states that she knows Mahendra Singh in and out, having shared a live-in relationship with him.

18.2.3 Mahendra Singh's movie "Cricket" is, next, shown as a box office hit.

18.2.4 The movie returns to the present, again showing Keshav Singh bemoaning the loss of his son.

18.2.5 The Mumbai police, who are investigating into the matter, calls the housekeeper, cook and accountant of Mahendra Singh for investigation. All three deny any knowledge of the incident or of any involvement with the death of Mahendra Singh. They are beaten by the police authorities while in custody.

18.2.6 Keshav Singh is next seen filing FIR with the Bihar police as, owing to his old age, he cannot file the FIR in Mumbai. He tells the Bihar police officer that Mahendra Singh could not have committed suicide and that there is more to the story than it appears. Mahendra

Singh, he states, was a strong-willed person, who was not suffering from depression of any kind. His bank account, which had plenty of money, seems to have been misplaced, resulting in his suspecting murder rather than suicide. Keshav Singh further states that he suspected the involvement of Urvashi, Mahendra Singh's girlfriend, in the death of Mahendra Singh. Urvashi, he alleges, did not allow either Keshav Singh, or his daughter, to talk to Mahendra Singh.

18.2.7 The Mumbai police calls Urvashi for questioning. Urvashi states that her relationship with Mahendra Singh was no less than a marriage; however, she found herself unable to cope with the depression that Mahendra Singh was going through. The Mumbai police opines that, if she was loyal to Mahendra Singh, she should have been with him at such times, instead of leaving him alone. Urvashi responds that Mahendra Singh was killed by himself, and not by her.

18.2.8 The Bihar police makes a statement that the Mumbai police authorities did not coordinate with them as a team. Keshav Singh had earlier messaged the Mumbai police, who did not take any action.

18.2.9 The media, in the meanwhile, sought to know, from the Police why, despite 40 days having passed since the date of Mahendra Singh's demise, no FIR had been registered and no arrests had been made.

18.2.10 Mahendra Singh's case is, thereafter, transferred from the

Mumbai police to the CBI under the directions of the Home Ministry for investigation.

18.2.11 The CBI visits Urvashi, and takes her, and her brother for questioning. The CBI questions Urvashi as to why she left Mahendra Singh, despite having been in a relationship with him for so long. The CBI officer asks Urvashi whether Mahendra Singh was emotionally, physically or financially unsound, or was just a "time pass" for Urvashi.

18.2.12 The movie once again goes into flashback mode. Urvashi is shown speaking to Sana, then Mahendra Singh's girlfriend. Sana leaves Mahendra Singh to fulfil her mother's dreams. The movie shows Urvashi and Mahendra Singh getting closer to each other.

18.2.13 Mahendra Singh's movie *Lafange* becomes a box office hit, and he celebrates its success with Urvashi. Urvashi and Mahendra Singh, thereafter, decide to enter into a live-in relationship.

18.2.14 The film returns to the present. The CBI officer questions Keshav Singh, who tells him that Urvashi had made Mahendra Singh avoid his calls. He tells the officer that Mahendra Singh, as a growing superstar, was posing a threat to several established stars in the industry.

18.2.15 The movie returns to the questioning of Urvashi by the CBI officer. The CBI officer throws water all over her face, warning

her that, if she did not answer the questions put to her properly, a tsunami would follow.

18.2.16 The movie then progresses to the proceedings in Court. The lawyer accuses Urvashi of being a bad influence on Mahendra Singh and of having drugged Mahendra Singh with *ganja*, heroin, and the like. Urvashi denies the allegations. She tells the Court that she was serious about Mahendra Singh's health and cared for him. However, Mahendra Singh never used to listen to her or do as she advised, as he was a man who acted as per his own whims. As such, she was never able to control Mahendra Singh. The lawyer asks Urvashi why, if she was so in love with Mahendra Singh, they did not get married. Urvashi responds that their relationship was as good as an actual marriage.

18.2.17 Once again, flashback mode. Urvashi and Mahendra Singh are shown living together. Mahendra Singh has an ultra modern telescope, through which he shows Urvashi the moon.

18.2.18 Returning to the present, the CBI officer calls a movie director Sachin Kumar for questioning. The director refers to Urvashi as his "baby", at which the CBI officer lashes out at him.

18.2.19 Urvashi is then called by the CBI officer, who slaps her for having lied about not having met Mahendra Singh on the 13th , a day before Mahendra Singh died.

18.2.20 The Enforcement Directorate (ED) is now shown having entered the picture. The ED calls the housekeeper, cook and

accountant of Mahendra Singh for questioning. They are asked about the expenses of Mahendra Singh, how the money was spent, and how they were paid. The ED then calls the Chartered Accountant of Mahendra Singh to provide all accounts and transactions in which he entered.

18.2.21 The ED then summons Urvashi for questioning. The ED officer calls Urvashi an opportunist, and alleges that she was in a relationship with Mahendra Singh just for financial security. Urvashi denies the allegations and tells the officer that she loved Mahendra Singh and that, if they did not get married, it was Mahendra Singh's fault. She repeats, more than once, that Mahendra Singh had committed suicide, and that she had nothing to do with it.

18.2.22 In Court, the accountant deposes that Urvashi wanted Mahendra Singh to act as per her instructions and to control his life, to the extent that she wanted her staff to always be around Mahendra Singh.

18.2.23 Flashback mode once again, showing Mahendra Singh and his four sisters celebrating *raksha bandhan*.

18.2.24 Returning to the present, Mahendra Singh's sisters are questioned by the ED. They tell the ED that Urvashi was a villain in the life of their brother and that she was responsible for money being missing from Mahendra Singh's account.

18.2.25 The ED officer puts it to the housekeeper, accountant and cook of Mahendra Singh that, during investigations, they have come to know, from drug peddlers, that the housekeeper, accountant and cook used to procure drugs and supply them to Urvashi. The accountant admits that she gave money to them, using which they used to procure drugs which were supplied to her and, in turn, given by her to Mahendra Singh.

18.2.26 The ED summons the drug peddlers, who admit that they had supplied drugs to Urvashi directly in the past and that, during the lockdown following the COVID-19 pandemic, Urvashi's brother used to visit them and obtain drugs from them.

18.2.27 The Narcotics Control Bureau (NCB) now enters the picture. The NCB arrests Urvashi's brother for peddling drugs. When questioned by the NCB, Urvashi's brother denies involvement in the death of Mahendra Singh. He states that Mahendra Singh was in the habit of consuming drugs even prior to Urvashi, or himself procuring drugs. Rather, submits Urvashi's brother, their attempt was to stop Mahendra Singh from taking drugs, but that, as an addict, Mahendra Singh used to obtain the drugs for himself.

18.2.28 The NCB then summons Urvashi and tells her that her brother has admitted the fact that she used to drug Mahendra Singh. Urvashi gets arrested.

18.2.29 Once again, in flashback mode, Urvashi is shown breaking up with Mahendra Singh and leaving his house.

18.2.30 The climax of the movie shows what happened on the day Mahendra Singh died. He is shown taking juice and going to rest in his room. The room is then found locked. The accountant calls a locksmith to break the lock. Mahendra Singh is found dead in his room.

18.2.31 Thus ends *Nyaya*.

18.3 It has to be stated, here, with some regret, that the stand, adopted by the defendants, of the impugned movie being a generalised version of struggling actors in the Bollywood industry, and having merely taken inspiration from news items, is *ex facie* misleading. The story of the film is practically a day by day story of the life of SSR, as was made known through articles in the press and in magazines. Hardly any independent inventive input has gone into the movie.

18.4 Though, even as such, it is clear that the impugned movie is no less than a retelling of SSR's life and times, leading up to this tragic death, the following specific markers, identifying particular events in SSR's life which stand replicated, as such, in the movie, are apparent when one compares the movie, and its various scenes, with news articles, which have been placed on record by the plaintiff with the written submissions dated 6 January 2022:

(i) Mahendra Singh's Chartered Accountant is investigated by the ED.

(ii) Mahendra Singh's cook is called into question by the

CBI.

(iii) The statement of the locksmith is recorded, in which he states that he was asked to break the lock of Mahendra Singh's room for which he was paid ₹ 2000, but was not allowed to enter the room.

(iv) Mahendra Singh has four sisters, who lived with his father Keshav Singh in Patna.

(v) Keshav Singh states that he suspected the involvement of Urvashi in the death of Mahendra Singh as well as in the removal of money from Mahendra Singh's account.

(vi) Keshav Singh registers an FIR in Patna, with the Bihar police, on the ground of health issues and inability to travel to Mumbai to prosecute the case.

(vii) The case is transferred to the CBI.

(viii) Mahendra Singh is shown surrounded by nepotism, drug dealing and rivalry.

(ix) Mahendra Singh owns an extremely advanced telescope.

(x) Urvashi is found having contacts with drug dealers.

(xi) The NCB interrogates Urvashi's brother arrests him, in the probe into drugs.

(xii) Urvashi was detained in custody by the NCB.

(xiii) The live-in relationship of Urvashi and Mahendra Singh ends just before his demise.

(xiv) Mahendra Singh's sister visits him, after Urvashi has left him, but before he dies.

(xv) Prior to his death, Mahendra Singh consumed fruit juice and locked himself in his room.

(xvi) A locksmith was called to break open the lock.

(xvii) Urvashi deposed, to the Police authorities, that Mahendra Singh was depressed/unsound.

To put it plainly, the coincidences are one too many. Seen in the backdrop of the entire film, *vis-à-vis* the story of SSR's life, as it emerges from media reports, it is clear that Mahendra Singh, Urvashi and Keshav Singh are merely aliases for SSR, Rhea Chakraborty and SSR's father.

18.5 That the impugned film is a faithful retelling of SSR's life story, and the circumstances surrounding his untimely demise is, therefore, according to me, plain**.** Mr. Lall's submission to the contrary, therefore, has necessarily to be rejected.

18.6 But, submits Mr. Lall, the film contains, at the very introduction, a prominent disclaimer, disclaiming any connection or relationship between what is shown in the film and real-life, or

between any character in the movie and any flesh and blood person. That, he submits, should suffice to negate any plea, by the plaintiff, of the impugned movie being a retelling of SSR's life and death. The question is – does it?

18.7 Disclaimers may be genuine, or cosmetic. While viewing the disclaimer, and its value and worth, the Court has to examine the matter with an approach somewhat different from the lay, and possibly uninterested, viewer. To my mind, it is obvious that a disclaimer which, when seen in the backdrop of the movie itself, is plainly untrue, is worth tinsel. It is, rather, an unscrupulous attempt at pulling wool over the eyes, not only of the viewing public, but also of any other authority – such as this Court in the present case – before whom an occasion to compare the movie with true life, comes up for consideration.

18.8 Mr. Lall has cited, in his favour, the judgments of this Court in ***Sahara One Media***[11] and ***Dr. Reddy's Laboratories***[12], the High Court of Madras in ***Deepa Jayakumar***[9], the High Court of Karnataka in ***Vadlapatla Naga Vara Prasad***[13] and the High Court of Telangana in ***Ramgopal Varma***[7]. None of these decisions, however, can operate to sustain the disclaimer, inserted in the impugned movie, as disabusing the impression, cast on a plain viewing of the movie vis-à-vis the life of SSR, of one being a mere celluloid rehash of the other.

18.9 ***Dr. Reddy's Laboratories***[12] merely notes the fact that the defendants, in that case, assured the Court that the movie in question

contained a disclaimer that the characters in the movie were fictitious and that any resemblance, between the characters and real persons was coincidental. Besides the fact that the order is purely interlocutory in nature, expressing a mere *prima facie* view and is, therefore, inherently lacking in precedential value, especially as enunciating any principle of law, it is seen that, in para 18 of the decision, prior to the reference to the disclaimer, this Court returned clear and categorical findings that there was, in fact, no similarity between what was shown in the movie forming subject matter of consideration and real-life events. The reference to the disclaimer is, therefore, almost as an aside. ***Sahara One Media***[11] is a single line order by the Division Bench which, while staying the decision of a learned Single Judge which restrained the release of the film forming subject matter of consideration in that case, subjected the stay "to the condition that the appellant can only show the film by giving a clear disclaimer that it has nothing whatsoever to do with the life and works of respondent No. 1 and her organisation". The direction was, therefore, essentially cautionary in nature, and no proposition of law can be said to emanate therefrom. Similarly, in ***Deepa Jayakumar***[9], the Court has merely noted the fact of insertion of a disclaimer in the film concerned, as a relevant factor. ***Ramgopal Varma***[7] merely directs the respondents, in the penultimate para 52 of the decision, "to publish a disclaimer that 'Movie is a work of fiction and any resemblance to real life events is purely coincidental and unintended'." ***Vadlapata Naga Vara Prasad***[13] merely records, in para 18 of the report, the submission of Respondents 4 to 8 in that case that the film in question carried a specific disclaimer to the effect that it was a work of fiction and that

all characters in the film were fictitious, with any resemblance to real life persons being purely coincidental.

18.10 None of these decisions, therefore, postulates, as a principle of law, that the insertion of a disclaimer, disclaiming relationship between the events and characters depicted in the film and real persons would suffice to negate the possibility of any such connection or relationship existing. It goes without saying that the question of whether there exists, or does not exist, any relationship between characters and events depicted in the film and real-life persons has to be decided by a comparison of the film with knowledge of real-life events, and not by reference to any misleading disclaimer which may be inserted in the film. Else, law would be lending its imprimatur to fraud, and no less.

18.11 The disclaimer, inserted in the impugned movie cannot, therefore, in my considered opinion, detract from the reality that the movie is, in fact, a celluloid retelling of the life and death of SSR. The submission, to the contrary, of Mr. Lall, therefore, stands rejected.

19. Rights of privacy, publicity and personality

19.1 Which brings us to the main issue, which is whether the impugned movie violates any enforceable right of the plaintiff and, if it does, whether the plaintiff is entitled to any relief on that score, or any case is made out for injuncting further streaming of the movie.

19.2 While the plaint asserts rights of privacy, publicity and personality/celebrity, Mr. Varun Singh, very fairly, accepted that, in view of the law enunciated in ***Puttaswamy***[6], the right to privacy could not be said to survive SSR. He, therefore, clarified that he was predicating his case on the right to publicity and the celebrity rights which vest in SSR.

19.3 The extent to which Mr. Varun Singh's submissions merit acceptance may easily be gleaned by walking through the judgments cited by learned Counsel which, I may note, more or less encapsulate the legal position with respect to the issues in controversy.

19.4 ***R. Rajagopal***[10]

19.4.1 ***R. Rajagopal***[10] is really the only decision, of the Supreme Court, which is instructive on the issues that arise in the present matter. In that case, the questions which arose for consideration were delineated, by the Supreme Court, in the opening para of the judgment, as "a question concerning the freedom of press *vis-à-vis* the right to privacy of the citizens of this country" as also "the question as to the parameters of the right of the press to criticise and comment on the acts and conduct of public officials". The case related to Auto Shankar, a notorious criminal, who was on death row, having been convicted for having committed as many as six murders. At the time when the judgment was delivered by the Supreme Court, the mercy petition of Auto Shankar was pending before the President of India. During his incarceration, Auto Shankar penned his autobiography, and requested his advocate to ensure that it was published in the magazine

Nakkheeran, of R. Rajagopal ("Rajagopal", hereinafter), the appellant before the Supreme Court. Rajagopal was agreeable to publishing the autobiography. The autobiography, however, allegedly exposed the close nexus between Auto Shankar and several IAS, IPS and other officers, some of whom he also accused of complicity in the crimes committed by him. It also contained photographs and video clippings showing the presence of such officers at the residence of Auto Shankar. The announcement, by Rajagopal, of the impending release of Auto Shankar's autobiography, allegedly, threw several highly placed persons, including prison and police officials into a panic, as they feared exposure of their links with the condemned prisoner. Rajagopal's petition alleged that the prison and police officials subjected Auto Shankar to third-degree measures and coerced him into addressing a communication to the Inspector General (IG) of Prisons, requesting that his life story be not published in Rajagopal's magazine. The IG Prisons addressed a corresponding letter, dated 15 June 1994, to Rajagopal, requesting Rajagopal to stop publishing the autobiography of Auto Shankar. This letter was called, by Rajagopal, into question before court. Rajagopal expressed an apprehension, in his petition, that the Police officials were likely to threaten his life if he proceeded to publish the autobiography of Auto Shankar. Rajagopal, therefore, asserted the right guaranteed to him by Article 19(1)(a) of the Constitution of India.

19.4.2 The Supreme Court, before whom the matter ultimately reached, clarified, at the outset, that, as it could not sit as an appellate authority on facts, it was proceeding on the assumption that Auto

Shankar had neither written his autobiography nor authorised Rajagopal to publish the autobiography in his magazine. The Supreme Court went on, thereafter, to frame various issues as arising for consideration, of which Issue (1), which alone is relevant, read thus:

> "(1) Whether a citizen of this country can prevent another person from writing his life story autobiography? Does such unauthorised writing infringe the citizen's right to privacy? Whether the freedom of press 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 rights to privacy and further in case such writing amounts to defamation?"

19.4.3 The Supreme Court went on to address this issue in the very next paragraph of its judgment, which is of stellar significance, and deserves, to the extent relevant, to be reproduced:

> "9. The right to privacy as an independent and distinctive concept originated in the field of Tort law, *under which a new cause of action for damages* resulting from unlawful invasion of privacy was recognised. 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.*"
>
> (Emphasis supplied)

Needless to say, the dispute before this Court in the present case concerns itself with aspect (1) of the right to privacy, as identified by the Supreme Court in the afore extracted passage. It is important to note that the usage, of a person's name or likeness, without his

consent, for any purpose, or the writing of his life story and its publication without his consent has been held, by the Supreme Court, to be one aspect of the right to privacy of the individual. [I may note, here itself, that this passage was examined, in some detail, by a Division Bench of this Court, speaking through Sanjay Kishan Kaul, J. (as his Lordship then was) in ***Khushwant Singh***[8], and that the manner in which the Division Bench interpreted this passage is of considerable importance in the light of the issues that have been raised by learned Counsel.]

19.4.4 The Supreme Court went on to explain the contours of the right to privacy which, it held, "must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child-rearing". The rationale for such protection being necessary was also thus explained, borrowing a passage from the Stanford Law Review:

> "There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such 'harm' is not constitutionally protectible by the State. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures."

19.4.5 The Supreme Court went on, thereafter, to examine the position in law, as it exists in UK and the US. Mr. Lall placed reliance on some of the observations and findings contained in the overseas decisions cited and reproduced by the Supreme Court, but, in my

opinion, it would not be appropriate to refer to the said decisions in view of the caveat that came to be inserted by the Supreme Court in the immediately succeeding paras 21 of the report, to which I would presently allude. Before that, however, the following enunciation of the law, in para 18 of the decision, is important:

> "18. The principle of the said decision has been held applicable to "public figures" as well. This is for the reason that public figures like public officials often play an influential role in ordering society. It has been held that as a class the public figures have, as the public officials have, access to mass media communication both to influence the policy and to counter-criticism of their views and activities. On this basis, it has been held that the citizen has a legitimate and substantial interest in the conduct of such persons and that the freedom of press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events."

Thus, the Supreme Court has equated "public figures" with "public officials", in connection with the discussion undertaken by it.

19.4.6 Having distilled the legal position as it existed abroad, the Supreme Court, in para 21 of the report, posed, to itself, the query of "how far the principles emerging from the United States and English decisions are relevant under our constitutional system". The right to freedom of speech, in our constitutional system, it was noticed, was contained in Article 19(1)(a), which was subjected only to Article 19(2). The Supreme Court went on to observe, significantly, that "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".

19.4.7 Of considerable significance, particularly in the present case, is

para 24 of the decision in ***R. Rajagopal***[7], which categorically holds thus:

> "24. *It is not stated in the counter-affidavit that Auto Shankar had requested or authorised the prison officials or the Inspector General of Prisons, as the case may be, to adopt appropriate proceedings to protect his right to privacy. If so, the respondents cannot take upon themselves the obligation of protecting his right to privacy.* No prison rule is brought to our notice which empowers the prison officials to do so."
>
> (Emphasis supplied)

If the prison officials, in the absence of any specific authorisation from Auto Shankar, could not have sought to protect his right to privacy, could, the question arises, the present petitioner seek to protect the purported right to privacy of SSR, absent any specific authorisation, by SSR, in that regard? *Prima facie*, the answer would appear to be in the negative. However, Mr. Varun Singh predicates the right of his client to maintain the present suit on the premise that the right of publicity, vested in SSR, was heritable in nature, and stood devolved, in that capacity, on the plaintiff. That aspect would be examined presently.

19.4.8 The judgment concludes with a summarisation of the broad principles flowing from the discussion preceding it, of which the following principles may be said to be of relevance to the case at hand:

> "(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."

Thus, the Supreme Court held that, while the proscription against publication of matters concerning the right to privacy of an individual, without his consent, was otherwise absolute, the proscription would not apply where the publication was based upon public records, including court records. This, it was held, was because, once the

matter became part of public record, it would no longer be protected by the right to privacy. Additionally, the Supreme Court held that, in the case of public officials – which, in view of para 18 of the decision, reproduced *supra*, would apply *mutatis mutandis* to public figures as well – the right to privacy, or any remedy flowing from the said right, would not be available except where the publication was made with reckless disregard for truth. It was further clarified that, in such a case, it would be sufficient for the defendant – significantly, *the member of the press or media* (thereby equating press reports with media coverages) – to prove that he had acted after a reasonable verification of the facts. It was not necessary, in such circumstances, for the publisher of the impugned content to establish that what he had written was true. This principle, obviously, would not apply where the publication was actuated by malice or animosity.

19.4.9 Based on these principles, the Supreme Court upheld the right of Rajagopal to publish the autobiography of Auto Shankar.

19.5 *Khushwant Singh*[8]

19.5.1 Khushwant Singh – who needs no introduction – was writing his memoirs titled, in characteristic tongue-in-cheek fashion, "Truth, Love and a Little Malice". A chapter, in the book, titled "Gandhis and Anands", formed subject matter of the controversy before this Court. Maneka Gandhi – who, too, needs no introduction – took exception to the contents of the said Chapter in the eminent Sardarji's book as containing material which, besides being untrue, was derogatory to

the Gandhi family, which included her. Specific allusion to damaging sentences and paras from the book was invited and, on a plain reading, it is obvious that the said paras and sentences were in fact derogatory in nature. A learned Single Judge of this Court restrained Khushwant Singh from publishing the book. Aggrieved thereby, Khushwant Singh appealed to the Division Bench, resulting in the judgment under discussion.

19.5.2 Paras 59 to 63 and 65 to 75 of the judgment are relevant, and have to be reproduced:

> "59. It would be appropriate to first consider the portions which have been extracted by the respondent in her plaint as derogatory and defamatory. It is not seriously disputed before us on behalf of learned counsel for the respondent that as mentioned in the chart, other than the three passages complained of, the others had already been commented upon and published in previous magazines and books. We have considered the submissions of learned counsel for the respondent that the language for expressing the subject matter gives a different connotation than what was published earlier. We are unable to agree with the said submission advanced on behalf of counsel for the respondent. The words may not be exact but the concept and meaning sought to be conveyed are more or less same, if a comparison is made of the passages complained of and the publications in India Today of April 15, 1982, April 30, 1982, Pupul Jaykar's and Ved Mehta's book. In so far other three passages are concerned the author has owned up to the statements on the basis of either the information which he has or as his own views and comments. The question thus to be considered is the effect of such prior publications on the claim made by the respondent in respect of these publications. There is force in the submission of the learned counsel for the appellants that not only was there wide publicity about these aspects in view of the same relating to the then first family of the nation but the respondent possibly drew strength from the media to put forth her point of view against what she claimed was the injustice meted out to her by her late mother-in-law. Thus the controversy in question which is being commented upon did not really remain in the four walls of the house but drew wide publicity and comments even to the extent of poll surveys being carried out in respect of the

controversy in question. No grievance was made at that stage of time. It is not a case of prevention of repeated defamatory statements as is sought to be made out by learned counsel for the respondent. The reliance placed by learned counsel for the respondent on the judgment of the Madhya Pradesh High Court in ***Harishankar v. Kailash Narayan***[17] (supra) and of the Andhra Pradesh High Court in ***K. V. Ramaniah v. Special Public Prosecutor***[18](supra) is thus misplaced. The controversy in question related to the disputes between the respondent and her late mother-in-law, the then Prima Minister Mrs. Indira Gandhi. The respondent did not make grievance about the reporting of their disputes in the press. The nature of controversy was more or less the same as is now sought to be published by appellant No. 1 in his autobiography and thus the respondent cannot make a grievance of the same matter now being published so as to seek prevention of the publication itself. The silence of the respondent and her not making a grievance against the prior publication prima facie amounts to her acquiescene or at least lack of grievances in respect of publication of the material. Needless to add that the remedy of damages against the appellant is still not precluded in so far the respondent is concerned.

60. The right to publish and the freedom of press, as enshrined in Art. 19(1)(a) of the Constitution of India is sacrosanct. This right cannot be violated by an individual or the State. The only parameters of restriction are provided in Art. 19(2) of the Constitution of India. The total matter of the book is yet to be published, including the chapter in question. The interim order granted by the learned single Judge is a pre-publication injunction. The contents of subject matter had been reported before and the author stands by the same. In view of this we are of the considered view that the respondent cannot make a grievance so as to prevent the publication itself when the remedy is available to her by way of damages. We are not examining the statements attributed to appellant No. 1 on the touchstone of defamation. It would not be appropriate to do so for us at this stage but what we do observe is that the statements are not of such a nature as to grant injunction even from publication of the material when the appellants are willing to face the consequences in a trial in case the same are held to be defematory and the pleas of the appellants of truth are analysed by the trial Court.

61. It is no doubt true that the reporting of the matter in controversy in the prior publication does not make them public documents as held by the learned single Judge of this Court in

[17] **AIR 1982 MP 47**
[18] **AIR 1961 AP 190**

Phoolan Devi's[16] case (supra). However, the question is not of the documents being public documents but the subject matter being in the ambit of public domain in terms of there being prior reporting of the matter in controversy and the comments on the same. It may be useful at this stage to consider the judgment in Phoolan Devi's case (supra) rendered by learned single Judge of this Court. On a careful reading of the judgment it is apparent that the matter in question was peculiar as it related to the rights being claimed to show a woman being raped and gang-raped if the concerned woman was alive and did not want this to be made public. It was in those circumstances that the order was passed though we may add that subsequently on an apparent settlement the same was made public and the plaintiff therein was compensated in terms of the mutual settlement. In fact the learned single Judge specifically dealt with this aspect and observed that the display and the graphic details of being paraded nude, raped and gang raped does not only hurt the feelings, mutilate the soul, denigrate the person but reduce the victim to a situation of emotional abandonment.

62. An important aspect to be examined is the claim of right of privacy advanced by the learned counsel for the respondent to seek the preventive injunction. This aspect was exhaustively dealt with in the case of Auto Shankar reported as ***R. Rajagopal's***[10] case (supra). The Supreme Court while considering these aspects clearly opined that there were two aspects of the right of privacy. The first aspect was the general law of privacy which afforded tortuous action for damages from unlawful invasion of privacy. In the present case we are not concerned with the same as the suit for damages is yet to be tried. The second aspect, as per the Supreme Court, was the Constitutional recognition given to the right of privacy which protects personal privacy against unlawful governmental action. This also is not the situation in the present case as we are concerned with the inter se rights of the two citizens and not a governmental action. It was in the context of the first aspect that the Supreme Court had given the illustration of the life story written. Whether laudatory or otherwise and published without the consent of the person concerned. The learned counsel for the respondent Mr. Raj Panjwani, sought to draw strength from this aspect i.e. the lack of consent of the respondent to publish her life story in the autobiography written by appellant No. 1. However, this will give rise to tortuous action for damages as per the Supreme Court since this is the aspect which is concerned with the first aspect dealt with by the Supreme Court in respect of the invasion of privacy.

63. The Supreme Court while considering the right of privacy in the aforesaid judgment was clearly of the view that the freedom

of press extended to engaging any inhibited debate about the involvement of public figures in public issues and comments. There is force in the contention of Mr. Sundaram, learned counsel for the appellant, that a close and microscopic examination of the private lives of public men is a natural consequence of holding of public offices. What is good for a private citizen who does not come within the public gaze may not be true of a person holding public office. We have seen various examples of rights of public men being closely scrutinised by the press not only in our country but all over the world including of the President of the United States of America. What a person holding public office does within the four walls of his house does not totally remain a private matter. It may however, be added that the scrutiny of public figures by media should not also reach a stage where it amounts to harassment to the public figures and their family members. They must be permitted to live and lead their life in peace. But the public gaze cannot be avoided which is necessary corollary of their holding public offices.

****

65. This aspect of right of privacy analysed in view of the conclusions of the Supreme Court as set forth in R. Rajagopal's case (supra) fully support the argument advanced by the learned counsel for the appellant. Thus the observations strongly relied upon by Mr. Panjwani, learned counsel for the respondent, on the first point summarised by the Supreme Court cannot be read out of the context. As explained hereinabove the concept of consent, while dealing with the private lives of the persons was made in respect of the claim for damages. Not only this the Supreme Court further went on to observe that the position would be different if a person voluntarily thrusts himself into a controversy or voluntarily invites or raises a controversy. Suffice it to say that the respondent in fact at the relevant time drew strength or at least kept quite when the controversy was reported in the press. Issue of public record is not material in the present case because the controversy does not relate to the fact whether prior reporting of a matter becomes public records, which in law it does not, but that wide publicity and reporting having already been given to the matter in issue at the relevant stage of time. The task, though difficult it may be, for persons holding public office, cannot be summed up but to say that such persons have to show greater tolerance for comments and criticisms. One cannot but once again rely on the observations of Cockburn C.J. in “Seymour v. Butterworth” cited with approval in Kartar Singh's case (supra) to the effect that the persons holding public offices must not be thin skinned in reference to the comments made on them and even where they know that the observations are undeserved and unjust they must bear with them

and submit to be misunderstood for a time. At times public figures have to ignore vulgar criticism and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same.

66. Be that as it may the respondent has already chosen to claim damages and her claim is yet to be adjudicated upon. She will have remedy if the statements are held to be vulgar and defamatory of her and if the appellants fail to establish the defence of truth.

67. We are unable to accept the contention advanced on behalf of the respondent by Mr. Raj Panjwari that if the statements relate to private lives of persons, nothing more is to be said and the material must be injuncted from being published unless it is with the consent of the person whom the subject matter relates to. Such pre-censorship cannot be countenanced in the scheme of our constitutional framework. There is also some force in the submission of the learned counsel for the appellant that the prior publication having occurred much prior to the suit being filed, the principle denying the relief for interlocutory injunction where the plaintiff has been dilatory in making the application, as observed in the Indian Express Newspaper's case (supra) would also apply to the present case.

68. As stated above, one aspect is very material a categorical assertion of the author to stand by his statement and claim to substantiate the same. In such a situation interlocutory injunction restraining publication should not be granted and we are in agreement with and duly approve the views of the learned single Judge of this Court in Sardar Charanjeet Singh's case (supra).

69. People have a right to hold a particular view and express freely on the matter of public interest. There is no doubt that even what may be the private lives of public figures become matters of public interest. This is the reason that when the controversy had erupted there was such wide publicity to the same including in the two editions of India Today. As observed in Silkin v. Beaverbrook Newspapers Ltd. (supra), the test to be applied in respect of public life is that the crank, the enthusiast, may say what he honestly thinks just as much as the reasonable man or woman who sits on a jury.

70. It is interesting to note that in Fraser's case (supra) while considering the proposed publication of Sunday Times, Lord Denning had noted that the Sunday Times had been frank enough to admit that the article would be defamatory of the plaintiff yet Sunday Times claimed that the defence would be that the facts are

true. In the present case the first plea is that the statement is not defamatory apart from the fact that it has been published and commented upon in the past. The second plea is that the appellants will prove the truth of the said statements. Lord Denning had observed that the courts will not restrain the publication of an article even where they are defamatory once the defendants expressed its intention to justify it or make a fair comment on the matter of public interest.

71. There is no doubt that there are two competing interests to be balanced as submitted by the learned counsel for the respondent, that of the author to write and publish and the right of an individual against invasion of privacy and the threat of defamation. However, the balancing of these rights would be considered at the stage of the claim of damages for defamation rather than a preventive action for injuncting of against the publication itself.

72. There is also considerable force in submission of Mr. Sundaram, learned senior counsel for the appellant, that what is sought to be really protected against the invasio on the right of privacy is the action of Government and governmental authorities. It is, thus, this right which is protected under Art. 19(1)(a) of the Constitution of India. We are also, therefore, unable to appreciate the relevance of Art. 51-A of the Constitution of India as was sought to be advanced by Mr. Panjwani, learned counsel for the respondent.

73. We are unable to accept the submission of learned counsel for the respondent that by very nature an autobiography must relate to the person concerned directly. An autobiography deals not only with the individual by whom it is written but about the people whom he claims to have interacted with. This is a matter between the author and the people who want to read him. Fetters cannot be put on to what an author should or should not write. It is the judgment of the author.

74. There have to be great dangers to the community if valuable rights of freedom of speech and expression enshrined under Art. 19(1)(a) of the Constitution of India are to be curtailed. In the observations by the Supreme Court in R. Rangarajan's case (supra), Benjamin Franklin was quoted where he observed “men differ in opinion, both sides ought equally to have the advantage of being heard by the public.”

75. Writings and comments by authors, publishers cannot be restricted to public interest as defined to include what is good for the public. It must be used in the connotation of what is of interest to the public as submitted by the learned counsel for the appellant.

> For the purposes of publication if it is to the interest to the public, it would suffice. The very fact that so much has been written about the controversy in question and the relationship between the respondent and her late mother-in-law Smt. Indira Gandhi shows the interest which the public had in the happenings though it related to matters of private relationship between the two individuals. The wide publicity in the two editions of India Today and the incorporation of the controversies in the books by Ved Mehta and Pupul Jaykar are testimony to the same. It is difficult to segregate the private life of the public figures from their public life. It is the burden of holding a public office."

19.5.3 Several important principles emerge from the aforesaid passages which, figuring as they do in the judgment of a Division Bench of this Court, would have much greater precedential value, on me, than decisions of other Courts, Indian or foreign. These may be enumerated as under:

(i) To the extent the impugned content was based on prior published material, available in the press and in magazines, which, at that time, the plaintiff had not chosen to impugn or challenge, the plaintiff was estopped from seeking an injunction against publication of the chapter in the defendant's book which was based on such publicly available material.

(ii) This would not, however, operate as a restraint on the defendant suing the plaintiff for damages, on the same cause.

(iii) The right to publish, vested by Article 19(1)(a), was sacrosanct, and subject only to Article 19(2) of the Constitution of India. Where remedy was available, with the plaintiff, in the

form of seeking damages, the plaintiff could not seek to prevent the publication of the article itself.

(iv) While it was true that the reporting of the matter in controversy in prior publications did not make them public documents, the question was not about the documents being public documents, but about their subject matter having been available in the public domain, by prior reporting thereof.

(v) The judgment of this Court in ***Phoolan Devi***[16] – on which Mr. Varun Singh also relied – was clearly distinguishable and was, in a manner of speaking, *sui generis*, as it dealt with graphic details of the petitioner, in that case, being paraded nude, raped and gang raped, which not only hurt her feelings, but also mutilated her soul and reduced her to a situation of emotional abandonment.

(vi) ***R. Rajagopal***[10], in para 9, identified two aspects of the right to privacy. The second aspect, which protected the right to privacy against unlawful governmental action, was not of relevance to the facts before the Court, and is not of relevance to the case at hand, either. Insofar as the first aspect, which dealt with the general law of privacy, affording tortuous action for damages from unlawful invasion of privacy, was concerned, while it was true that writing of the life story of a person, whether laudatory or otherwise, and its publication without his consent, invaded the person's right to privacy, the remedy lay,

not in any injunction against the publication itself, but in a tortuous action for damages. This aspect was again re-emphasise in para 71 of the report, which, while recognising the existence of two competing interests, which could also include the interest of protection against defamation, held that "balancing of these rights would be considered at the stage of the claim of damages for defamation rather than a preventive action for injuncting against the publication itself".

(vii) Prior reporting of the matter did not, *ipso facto*, rendered the subject matter of public record. That, however, was not relevant, as the pivotal consideration was the wide publicity and reporting having been given to the matter in issue at the relevant time. "Public figures", it was held, "To know about the criticism and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same".

(viii) The fact that the plaintiff had already chosen to claim damages, and the claim was yet to be adjudicated, was also considered to be a relevant factor which militate against the grant of an injunction against the publication itself. It was held that the plaintiff would "have remedy if the statements are held to be vulgar and defamatory of her and if the appellants failed to establish the defence of truth". (Be it noted, the reference to the "defence of truth" was only in the context of defamation, and, in the context of publicity rights, the Supreme Court had

already clarified, in ***R. Rajagopal***[10], that, so long as the publication in question was predicated on information in the public domain, the publisher was not required to verify the truth of the contents of the publication, provided reasonable efforts had been made by him and he was not acting "in reckless disregard of the truth".)

19.5.4 Holding, in conclusion, that "writing and comments by authors, publishers cannot be restricted to public interest", the Division Bench upheld the right of Khushwant Singh to publish his memoirs.

19.6 *Titan Industries*[2]

19.6.1 In this case, the plaintiff Titan Industries Ltd ("Titan", hereinafter) entered into a contract with Mr. Amitabh Bachchan and Mrs. Jaya Bachchan – who, too, need no introduction – to endorse its diamond jewelry collection. An agreement dated 17 March 2011, titled "Agreement For Services" was executed between Mr. Amitabh Bachchan and Titan, whereunder Amitabh Bachchan assigned, in favour of Titan, all his intellectual property rights in relation to the services to be rendered by him to Titan, in connection with the endorsement of Titan's jewellery range. The defendant Ramkumar Jewellers ("RJ", hereinafter) put up hoardings, advertising their jewelry, prominently featuring Amitabh and Jaya Bachchan. Titan sued RJ, contending that, in view of its contract with Amitabh and Jaya Bachchan, RJ could not have used their likenesses or figures in its advertisement. Titan asserted copyright, held by it in the personae

of Amitabh and Jaya Bachchan, by virtue of the Agreement For Services executed between them.

19.6.2 This Court, referring to the decision in ***Haelan Laboratories v. Topps Chewing Gum***[19] , noted the existence of publicity rights, vested in individuals, and the following definition of a publicity right, as contained in the said decision:

> "A man has the right in the publicity value of his photograph, i.e., the right to grant the exclusive privilege of publishing his picture, and that such a plant may validly be made 'in gross', i.e., without an accompanying transfer of a business or of anything else."

This Court went on, thereafter, to note that celebrity rights, which were publicity rights uniquely enuring in favour of celebrities, were also a distinct facet of rights. It cited, with approval, the following statement of the law, as it figured in ***Ali v. Playgirl***[20]:

> "A distinctive aspect of the common law right of publicity is that it recognises the commercial value of the picture or representation of a prominent person of the former and protects his proprietary interest in the profitability of his public reputation or persona."

Importantly, therefore, publicity rights were recognised as protecting *the proprietary interest of the personality concerned*. The Court went on, thereafter, to identify the "basic elements comprising the liability for infringement of the rights of publicity", thus:

> "**Validity:** *The plaintiff owns an enforceable right* in the identity or persona of a human being.
>
> **Identifiability:** The celebrity must be identifiable from defendant's unauthorised use."

[19] **202 F 2d 866**
[20] **447 F Supp 723**

Ownership, by the plaintiff, of the publicity right that he seeks to assert is, therefore, the sine qua non for a valid claim.

19.6.3 In the case before it, noted this Court, there was a valid assignment, by Amitabh Bachchan, of his intellectual property rights, in favour of Titan. It was thus that Titan was possessed of the locus to maintain the suit.

19.6.4 This Court proceeded, therefore, to decree the suit in favour of Titan, injuncting RJ from infringing Titan's copyright in its advertisement.

19.7 *ICC Development*[1]

Though Mr. Varun Singh cited the decision of a learned Single Judge of this Court in ***ICC Development***[1], the said decision is really not of much help, as it merely holds that publicity rights have to vest in a human being, and cannot vest in a Corporation.

19.8 *Deepa Jayakumar*[9]

19.8.1 The plaintiff Deepa Jayakumar ("Deepa" hereinafter) claimed to be the niece of Dr. J. Jayalalitha, the former Chief Minister of Tamil Nadu. As one A.L. Vijay ("ALV" hereinafter) and his compatriot announced that they were producing a film on the biography of Dr. Jayalalitha to be titled "Thalaivi" in Tamil, and the third respondent before the Division Bench of the High Court – whose

name is not forthcoming in the judgment – was planning to produce a web series on the life story of Dr. Jayalalitha, without the consent of Deepa or her relatives, Deepa instituted a suit against ALV, his friend and Respondent 3 for an injunction against the release of the movie and the web series on the life of Dr. Jayalalitha. Deepa contended that any such movie or web series was likely to compromise the right to privacy both of Dr. Jayalalitha and of her own family, which could not be allowed without her consent. Interlocutory injunction, as sought by Deepa, was declined by the learned Single Judge, against which Deepa approached the Division Bench. Before the Division Bench, Deepa contended that, as a Class 1 legal heir of Dr. Jayalalitha, she was entitled to institute the suit to safeguard the posthumous right of privacy, as well as the dignity and legacy of Dr. Jayalalitha.

19.8.2 The Division Bench framed as arising, for consideration, the following question, in para 30 of the judgment:

> "Whether the posthumous right of the former Chief Minister of Tamil Nadu is inheritable by the appellant to restrain the respondents from releasing the web series or film?"

As such, the decision of the Division Bench of the High Court of Madras in ***Deepa Jayakumar***[9] squarely addressed the issue of heritability of privacy rights.

19.8.3 The High Court held, following its earlier decision in ***MD, Makkal Tholai Thodarpu Kuzhumam Ltd. v. V. Muthulakshmi***[21], that the right to privacy of an individual was not heritable, after his death, by his legal heirs. Reliance was also placed on the following

[21] **(2007) 6 Mad LJ 1152**

passage from the judgment of the Supreme Court in ***Melepurath Sankunni Ezhuthassan v. Thekittil Gopalankutty Nair***[22]:

> "5. *Under the common law, the general rule was that death of either party extinguished any cause of action in tort by one against the other*. This was expressed by the maxim *acto personalis moritur cum persona (a personal action dies with the person).* However, by the Law Reform (Miscellaneous Provisions) Act, 1934, all causes of action vested in a person survive for the benefit of his estate except causes of action for defamation or section which abate on the death of such person. As the Law Reform (Miscellaneous Provisions) Act, 1970, abolished the right of action for seduction of a spouse or a child from January 1, 1971, the only cause of action which would abate in England on the death of a person suing would be now a cause of action for defamation.
>
> 6. So far as this country is concerned, which causes of action survive and which abate is laid down in Section 306 of the Indian Succession Act, 1925……..
>
> Section 306 speaks of an action and not of an appeal. Reading of Section 306 along with Rules 1 and 11 of Order XXII of the Code of Civil Procedure, 1908, it is, however, clear that a cause of action for defamation does not survive the death of the appellant."
>
> (Emphasis supplied)

19.8.4 Following these decisions, the High Court of Madras held, in para 38 of its decision, thus:

> "On an analysis of the aforesaid judgment(s), it is clear that *a privacy or reputation earned by a person during his or her life time, extinguishes with his or her death. After the death of a person, the reputation earned cannot be inherited like a movable or immovable property by his or her legal heirs. Such personality right, reputation or privacy enjoyed by a person during his life time comes to an end after his or her life time. Therefore, we are of the opinion that "posthumous right" is not an "alienable right*" and the appellant/plaintiff is not entitled for an injunction on the ground that the "posthumous right" of her aunt is sought to be sullied by the respondents/defendants by reason of the release of the film titled as "Thalaivi"."
>
> (Emphasis supplied)

[22] **(1986) 1 SCC 118**

19.8.5 The Division Bench of the High Court of Madras also found Deepa not to be entitled to any interlocutory injunction against release of the web series by Respondent 3, for the following reasons:

> "Hence, we are of the view that even if the appellant is in any manner aggrieved by the portrayal of the former Chief Minister or her family members in the Web series, the only remedy now open to the appellant is to seek appropriate legal remedy for damages. When the web series was already released in the OTT platform and it was also viewed by scores of people, an injunction against the telecast of web series cannot be granted. The learned Single Judge has also given liberty to appellant/plaintiff to re-apply at a later juncture, if there is a change in the circumstances, on the basis of the first series of episodes of the web-series. The learned Single Judge is therefore right in refusing to grant an interim injunction, as claimed by the appellant. We do not find any infirmity in such an order of the learned Single Judge."

19.8.6 The High Court further went on to hold that Article 19(1)(a) of the Constitution did not require the maker of a film to take prior consent from the person on whose life the film was being made, before making it.

19.8.7 Thus, the decision of the High Court of Madras in ***Deepa Jayakumar***[9] confirms, firstly, that the reputation of a person, as well as personality rights, as well as the right to privacy which emerge as its sequelae, are not heritable, and stand extinguished with the extinguishing of the person concerned; secondly, that the remedy with the plaintiff aggrieved by any publication of the life story of another person was only to claim damages; thirdly, when the movie, or the web series, already stood released and had been viewed by thousands of persons, injunction against further telecast could not be granted and, fourthly, that the maker of such movie or web series was not

required to take prior consent from the person on the basis of whose life and events the movie or web series was being made.

20. The Takeaway

The principles emanating for the above decisions may cumulatively be noted as under:

(i) If a person's name or likeness is used, without his consent, for any purpose, or his life story is written or published without his consent, the person's right to privacy is violated.

(ii) In such an event, the remedy with the person is to sue for damages, and not to seek injunction of the offending publication. This position would continue to apply even if the offending publication was defamatory in nature.

(iii) This right to privacy cannot be canvassed by one person, on behalf of another, without due authorization.

(iv) If the publication is based on public records, including Court records, however, there is no invasion of the right to privacy.

(v) No action for damages on the ground of violation of the right to privacy can be maintained by public officials, or public figures, even if the publication is untrue, unless it is made with reckless disregard for truth. All that the person publishing the

publication, be it a member of the press or the media, has to show is that he had reasonably verified the facts.

(vi) This defence would not, however, be available if the article, or publication, is actuated by malice or personal animosity.

(vii) Where the article, or publication, or movie, is based on prior published material, available in the public domain, which the plaintiff had not chosen at that time to impugn or challenge, no injunction could be sought by the plaintiff against the subsequent publication or movie, which was merely based thereon. That the prior publications, in which the information figured, were not public documents *stricto sensu*, made no difference. What was relevant was that the information was available in, and taken from, the public domain.

(viii) The plaintiff's right to sue for damages would, nonetheless, continue to subsist even in such a case.

(ix) The right to publish, or disseminate information, even in the form of a movie, was guaranteed by Article 19(1)(a) of the Constitution of India. So long as the publication did not infract Article 19(2), the right was absolute.

(x) The publisher of the allegedly offending information was not required to take permission of the representatives of the

person about whom the publication was being made, before making it. Nor was he required to verify the truth of the contents thereof, provided it was earlier available in the public domain.

(xi) The fact that the plaintiff had also sought damages, and that the suit was awaiting trial, was also a factor which militated against injuncting, *ad interim*, dissemination of the allegedly offending publication, or telecast of the movie.

(xii) Publicity rights recognized the commercial value of the image or the persona of a person, and protected his proprietary interest in the profitability of his public reputation.

(xiii) Proprietorial interest in the image and persona of the person concerned, leading to an enforceable right in the identity of such persona was the *sine qua non* to maintain a claim predicated on personality rights.

(xiv) Reputation, personality, and privacy and personality rights that emanate therefrom, are not heritable.

21. Applying the law to the facts

21.1 Applying the above principles to the facts before the Court, it is clear that no case can be said to have been made out for grant of interlocutory relief as sought by the plaintiff. The reliefs sought in the

plaint are entirely with respect to SSR. The rights that the prayers in the suit seek to protect and the rights of privacy, publicity and personality which vested in SSR. No relief, qua any right which vests in the plaintiff, finds place in the plaint.

21.2 The rights ventilated in the plaint – i.e., the right to privacy, the right to publicity and the personality rights which vested in SSR, are not heritable. They died with the death of SSR. The said rights, therefore, did not survive for espousal by the plaintiff.

21.3 The information contained, and shown, in the impugned film, is entirely derived from items which featured in the media and, therefore, constitute publicly available information. In making a film on the basis thereof, it could not, therefore, be said that the defendants had violated any right of SSR, much less of the plaintiff, especially as the said information had not been questioned or challenged when it appeared in the media, either by SSR or by the plaintiff. Nor were the defendants required to obtain the consent of the plaintiff before making the movie.

21.4 That apart, even assuming, *arguendo*, that the impugned film does infract the publicity rights of SSR, or defames him, the infracted right is personal to SSR, and cannot be said to have been inherited by the plaintiff. Besides, the remedy with the plaintiff, if any, would not be to seek an interdiction against further transmission or telecast of the film, but to claim damages, which already stand claimed.

21.5 All right infractions, that the plaintiff alleges in the plaint, are not his, but SSR's. SSR is no more. The rights themselves are not heritable. The plaintiff does not seek to contend that SSR ever authorized the plaintiff to canvass his rights on his behalf. Besides, the impugned movie, being based on information in the public domain, which, at the time of its original dissemination, was never challenged or questioned, cannot be sought to be injuncted at this distance of time, especially when it has already been released on the Lapalap platform a while ago and must have been seen, by now, by thousands. The movie cannot be said to be infracting Article 19(2) of the Constitution of India. Injuncting further dissemination of the movie would, therefore, infract the defendants' rights under Article 19(1)(a).

22. A few remaining points

22.1 Celebrity rights

22.1.1 Mr. Varun Singh also sought to peg his case on "celebrity rights". "Celebrity rights" are only an *avatar* of personality rights, peculiar to "celebrities". In view of my finding, hereinabove, that the personality rights, if any, which vested in SSR did not devolve, consequent on his death, on the plaintiff and that they had, even otherwise, not been infracted, no separate claim for injunction, on the ground of violation of SSR's "celebrity rights" can be said to subsist.

22.1.2 That said, the concept of "celebrity rights", as a distinct compendium of rights available only to celebrities is, legally, I must confess, completely unacceptable to me. I have not come across any judicial authority, having binding precedential value on me, which lends judicial recognition to "celebrity rights". It does not appear permissible, in our constitutional scheme, which guarantees equality to individuals, and in which equality is a cherished preambular goal, to countenance an "extra" bundle of rights which would be available for enjoyment only to celebrities. The law cannot allow itself to be a vehicle to promote celebrity culture. Rights which emanate from one's personality, and persona, would be available to one and all, and not only to celebrities. Rights which enure because of the special personal achievements of individuals are, of course, to be sedulously protected, and deserve recognition. That is altogether different from conferring, on an individual, additional rights *merely because he, or she, is a "celebrity"*. Celebrities, oftentimes, spring into being overnight, and vanish from the public eye just as quickly. Who can forget Rubina Ali and Azharuddin Ismail, the child actors who played the young lead performers in the celebrated 'Slumdog Millionaire' who, after an evening of glory, were found to have returned to the Mumbai slums, enmeshed in a spate of controversies? To fasten a legal right on something as fleeting as celebrity status, to my mind, appears an oxymoron.

22.1.3 Mr Varun Singh has referred to decisions of other High Courts which recognize the concept of "celebrity rights". With

greatest respect, I must confess my inability to agree with the said view.

22.1.4 That said, "celebrity rights", even as canvassed by Mr Varun Singh, are merely a sub-species of personality rights. As I have already held that the plaintiff cannot seek to injunct the telecast of the impugned film on the ground of violation of SSR's personality rights, nothing further needs to be said on this score.

22.2 Right to free trial

The contention of Mr. Singh that permitting telecasting of the film would prejudice the right to fair, free and dispassionate trial of the circumstances surrounding SSR's death, has merely to be stated to merit rejection. Our legal system is, fortunately, not so fickle as to justify any apprehension that the dispensers of justice, who constitute its ethos and backbone, would decide on the basis of the facts depicted in the impugned movie. I need say no more.

22.3 Passing off

I also fail to understand, *prima facie*, how the tort of passing off can be said to have been committed by the defendants by making and telecasting the impugned film. Passing off is a tort wherein the tortfeasor passes off his goods as those of another. The very essence of passing off is, therefore, deception, in portraying the unreal as the real. In the present case, the allegation of the plaintiff is the reverse; that the impugned movie, while actually depicting SSR's life, seeks to

make it appear that it is not doing so; in other words, in portraying real facts behind a façade of artificiality and fiction. If anything, therefore, the tort that the plaintiff alleges the defendants to have committed is passing off in reverse.

Conclusion

23. For each and all the above reasons, I am of the opinion that no case can be said to exist, to grant the prayers made by the plaintiff in IA 10551/2021.

24. The IA is, therefore, dismissed.

25. Needless to say, the right of the plaintiff to maintain and prosecute the suit, insofar as it claims damages from the defendants, would stand preserved. This Court expresses no view on the merits thereof.

C. HARI SHANKAR, J

JULY 11, 2023
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