

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 6TH DAY OF MAY 2022 / 16TH VAISAKHA, 1944

WA NO. 566 OF 2022

ORDER IN WP(Cr1.) 346/2022

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APPELLANT/RESPONDENT NO. 6:

INDO-ASIAN NEWS CHANNEL PVT. LTD.
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
MR.M.V.NIKESH KUMAR, REPORTER STUDIO COMPLEX,
HMT COLONY, KALAMASSERY, ERNAKULAM-683 503.

BY ADVS. SRI.KALEESWARAM RAJ
C.P.UDAYABHANU
THULASI K. RAJ
SHILPA SOMAN

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 5:

- 1 T.N.SURAJ, AGED 52 YEARS, S/O LATE THANKAPPAN
NAIR, APARTMENT NO.9E, TOWER 1, DD PLATINUM,
KATHRIKKADAVU, ERNAKULAM -682 017.
- 2 STATE OF KERALA, REPRESENTED BY THE SECRETARY
TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT OF
OKERALA, THIRUVANANTHAPURAM-695 001.
- 3 THE STATE POLICE CHIEF, POLICE HEADQUARTERS,
THIRUVANANTHAPURAM-695 010.
- 4 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
CRIME BRANCH, POLICE HEADQUARTERS,
THIRUVANANTHAPURAM-695 010.

5 THE SUPERINTENDENT OF POLICE,
CRIME BRANCH, ERNAKULAM-683 104

6 THE INVESTIGATING OFFICER IN CRIME NO.297/2017
OF NEDUMBASSERY POLICE STATION, HAVING OFFICE
AT POLICE CLUB, ALUVA-683 101.

BY SR.ADV.SRI.GEORGE POONTHOTTAM
SRI.NAVANEETH KRISHNAN
BY SR. GOVT. PLEADER SRI.BIJOY CHANDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06.05.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Devan Ramachandran, J.

We exordially record our full cognizance that the challenge of the appellant is against an interim order of a learned Single Judgment of this Court; and, therefore, that we require to be greatly circumspect.

2. Through the impugned interim order, the learned Judge has issued a direction against the appellant '*not to publish/broadcast/telecast any item concerning or relating to the petitioner herein while reporting about Crime No.6/2022 of Crime Branch Police Station and S.C.No.118/2018 of Additional Special Sessions Court (SPE/CBI) III, Ernakulam except the order of the Court for a period of three weeks from today*'.

3. The appellant contends that this amounts to a complete ban and operates as a violation of the well recognised principles of the freedom of the Press, to report and publish the truth.

4. We have heard Sri.Kaleeswaram Raj, learned counsel for the appellant; Sri.George Poonthottam, learned Senior Counsel, assisted by Sri.Navaneeth Krishnan, learned counsel appearing for the first

respondent and the learned Senior Government Pleader, Sri.Bijoy Chandran appearing for respondents 2 to 6.

5. We have deeply contemplated upon the various submissions made at the Bar and have examined the materials available on record and make it limpid that our intent is not, in any manner, to speak on the merits of the contentions impelled in the writ petition, but solely on the limited issue as to the parameters which are to be kept in mind when a News Media reports on an ongoing Criminal Trial or investigation.

6. Our path in this regard is certainly illuminated by the holdings of the Hon'ble Supreme Court in **Sahara India Real Estate Corporation Limited and Others v. Securities and Exchange Board of India and Another** ((2012) 10 SCC 603), wherein, the Hon'ble Court has unambiguously declared that orders postponing reporting of certain phases of Criminal Trial (including identity of the victim or the witness or the complainant) can be applied for a short duration and solely in cases of "real and substantial risk of prejudice" to the proper administration of justice or to the fairness of Trial.

7. It is hence perspicuous that there cannot be a continuous or ever lasting interdiction against broadcast, but only for the

postponement of the same, so that the requirements of Fair Trial is maintained and ensured.

8. The various High Courts and the Hon'ble Supreme Court have repeatedly been engaged *qua* the contours of the tenuous balance between reporting of facts relating to a crime and the unexpendable requirements to be maintained for a Fair Trial; but there can be little doubt that the Press have a duty to inform the public truthfully about the crimes and the facts relating to investigation, arrest and such other. This has been so stated by this Court in **Kannan v. State of Kerala** (1984 KLT 412), in which a learned Judge assessed the dialectics of the two interests and went on to hold that publicity to trial is no doubt one of the means of ensuring Fair Trial for, if publicity is present, the Judge would be careful in acting free from bias, prejudice or illegality. After saying so, the learned Judge, in his inimitable style, cautioned that over publicity of crime cases may prejudice the trial, including inducing hostility among members of the public and thereby consciously or unconsciously building up pressure on the court.

9. In the background and perspective of the afore, it may not be necessary for us to speak verbosely or to expatiate the applicable

forensic concepts, because we are certain that the requirements of a Fair Trial and investigation need to be maintained sacrosanct, while protecting the right of the Press to report truthfully and faithfully.

10. The press certainly cannot be allowed to run amok and will have to be imposed with reasonable restrictions, so as to make sure that every trial and investigation is conducted fairly, openly and above board.

11. Viewed from the afore angle, when we examine the impugned direction issued by the learned Single Judge, it has injuncted the appellant from publishing/broadcasting/telecasting '**any item**' concerning or relating to the writ petitioner/first respondent, while reporting Crime No.6/2022 of Crime Branch Police Station and S.C.No. 118/2018 of Additional Special Sessions Court (SPE/CBI) III, Ernakulam. As far as the trial of the aforementioned Sessions Case is concerned, it is admitted by the learned counsel for the appellant that the learned Sessions Judge has already issued Exhibits P5 to P7 orders and affirms that his client will fully conform to the same, while making any news broadcast or telecast.

12. However, with respect to Crime No.6/2022, investigation is stated to be still going on and the acme question is to what extent can the appellant be allowed to report on the same.

13. It is the well accepted thumbrule that the Press shall not indulge in sensationalism; or in speculating upon the guilt or otherwise of any accused or other individual; or to create an opinion about the comportment or character of a person involved in the Trial; and not to embellish, by impelling or sponsoring an opinion they seek.

14. Though the Press has a duty to inform the public, the publication of lurid details and other sensitive investigative inputs, which are within the sole jurisdiction of the courts to decide upon, certainly require to be put on a tight leash.

15. In **Sahara** (Supra), the Hon'ble Supreme Court has spoken in great detail about the "width of the postponement orders" in paragraphs 41 to 50 and we are certainly of the view that if they are followed by the appellant and other members of the Press implicitly, the hazard of intrusion and interference with the Trial/Investigation will stand avoided and averted to a substantial extent.

16. Coming back to the impugned order, though we do not propose to speak in detail on the merits of the rival factual contentions, we are left without doubt that a direction not to publish/broadcast/telecast '**any item**' concerning or relating to the appellant', certainly travels beyond the reasonableness of the restrictions sanctioned by the Hon'ble Supreme Court in **Sahara** (supra) and other judgments covering the field. The term 'any item' is not merely very vague, but would also cause an unfair fetter on the Press to make a fair reporting within the parameters of law, and therefore, we feel it necessary to modify the same, though to a very limited extent.

17. In such circumstances, we deem it apposite to dispose of this Writ Appeal, vacating the impugned order to the extent to which it has restrained the appellant from reporting 'any item' relating to the first respondent; but clarifying that they shall not engage in sensationalism, or pursue any line of reportage intended to forge an impression against the first respondent or any other accused or witness with respect to their involvement or otherwise in the crime; and without, in any manner, commenting about the 'in camera' proceedings in S.C.No. 118/2018 pending before the Additional Special Sessions Court

(SPE/CBI) III, Ernakulam, except in full deference to the earlier orders of the said court, namely Exhibits P5 to P7.

18. It is so ordered.

19. However, as regards the further directions in the impugned order issued against the State Police Chief - to ensure that no information regarding the investigation of Crime No.6/2022 of the Crime Branch Police Station be leaked out to anybody by the Investigating Officers - is concerned, we are fully in affirmation of the same and resultantly uphold it.

20. Before we part, we must say that, going by the pleadings on record, the real case of the appellant is not that the Media illegally secured sensitive information and published it, but that some of the Investigating Officers made it available to them; or in other words, 'leaked' it to them, which was then published in the manner as has been shown in Exhibits P8 to P12 paper and media reports.

21. Viewed from that stand point, when the Investigating Officers have already been restrained by the aforesaid order against the State Police Chief, the apprehension of the first respondent stands allayed fully; and resultantly, an absolute ban for publication of 'any

item' relating to the writ petitioner would perhaps be not relevant any further.

This appeal is thus ordered, further directing the appellant to abide by the parameters fixed by the Hon'ble Supreme Court in **Sahara** (supra), while reporting about the cases mentioned above; however, making it luculent that our observations herein are only limited to the contentions referred above and will not influence or trammel any other assertions or contra-assertions of the parties, when the writ petition is finally decided.

Sd/-
Devan Ramachandran, Judge

Sd/-
Sophy Thomas, Judge