

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 20TH DAY OF AUGUST 2020 / 29TH SRAVANA, 1942

WP(C).No.16349 OF 2020(S)

PETITIONER/S:

HALVI.K.S
AGED 49 YEARS
S/O.SUDHAKARAN, KOTTAPPALLY HOUSE, THIRUMALABHAGOM P.O.,
CHERTHALA, ALAPPUZHA-688 540.

BY ADV.PREMLAL KRISHNAN
SRI.P.JERIL BABU

RESPONDENT/S:

- 1 THE STATE OF KERALA
THROUGH THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE MINISTRY OF HEALTH AND SOCIAL JUSTICE
STATE OF KERALA, THROUGH THE SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 THE UNION OF INDIA
THROUGH THE SECRETARY TO GOVERNMENT, THE MINISTRY OF
INFORMATION AND BROADCASTING WEST BLOCK VIII, WING-2,
R.K.PURAM, NEW DELHI-110 066.
- 4 THE PRESS COUNCIL OF INDIA
REPRESENTED BY ITS SECRETARY, SOOCHNA BHAVAN, 8-
C.G.O.COMPLEX, LODHI ROAD NEW DELHI, 110 03 (011)
24368726, WWW.PRESSCOUNCIL.NIC.IN EMAIL PCIBP GMAIL.COM

R3-4 BY SMT.O.M.SHALINA, CGC

SRI.P.NARAYANAN,SR GP
SRI.MANU V, SR GP FOR R1 AND R2,
SMT.O.M.SHALINA, CGC FOR R3 AND R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-08-2020,
THE COURT ON 20-08-2020 DELIVERED THE FOLLOWING:

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'CR'

JUDGMENT

SHAJI P. CHALY, J

This Public Interest Litigation is filed by an Advocate, seeking to protect, the interest of the community of lawyers, and violation of the fundamental rights of the public at large regarding their rights to be kept informed about the current social, political, economic, cultural and other topics and important issues, to enable them to understand and form an opinion, how they are managed by Government and administration including but not limited to the important judicial pronouncements. Basically, petitioner wants a guideline to be formed by this court to regulate the activities of the print and electronic media.

2. According to the petitioner, honest and truthful representation of the events from time to time is envisaged in the scheme of the Constitution of India. In a democratic set up, citizens must be able to form their own opinion, comments and view points on such matters and events that affect their future. The right to freedom of speech and expression contained in Article 19 of the Constitution of India is not absolute as it is bound by sub-clause (2). According to the petitioner, deliberate planting of lies, repeated broadcast of news to malign the image of judiciary, government

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functionaries, police force, political leaders including but not limited to Prime Minister, Chief Minister and other Ministers at the will, whims and fancies without personally verifying the correctness or source in violation of broadcasting ethics exceed the scheme of Article 19 of the Constitution of India, thus creating hindrances in discharging duties of functionaries at the critical positions. It is also stated that the present acts of the media violates the principle of consideration of innocence until proved guilty and the media according to their political or other socio-economic affiliation proclaim people as guilty to generate negative opinion on people of their target in violation of fundamental rights of the targeted victims. It is submitted that such conduct on the part of the media not only creates unrest in the community, but also affects the credibility of the news broadcasted to put the public at large in a great dilemma as to what to believe and what not. Thus, according to the petitioner, the news and opinions published by the media houses infringe the fundamental rights of the citizens to know the truth and allow some unscrupulous people to indulge in cyber bullying on social media platform with the support of the unauthenticated opinions published by the media houses and cause irreparable damage to the dignity and credibility of certain personnel. Moreover, most of the media houses are engaged in spreading news of their interest to disintegrate community by

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creating political and communal polarisation in the society. It is submitted that due to such conduct on the part of the media houses, the right to privacy which is a fundamental right protecting the inner sphere of the individual from interference of both the State and non-State actors and the freedom of the individuals to make autonomous choices in life are materially affected. That apart, it is submitted that the media houses are proclaiming the names of the persons not even named in the FIR, and stories are being planted to create suspicion in the minds of the public at large. Therefore, such an act would amount to contempt of court, since the news might prejudice the judiciary. The sum and substance of the contention advanced by the petitioner is that the legitimacy of such publication is questionable as criminals are not punished according to their political affiliation or religion or caste and making false and baseless allegations against the elected functionaries, Chief Minister, Ministers or Prime Minister would amount to contempt and legitimacy of such unfounded allegations are doubtful. It is also stated that there is no rational connection between allegations and the report published. Reputation, being a fundamental right, the State must protect the same from unscrupulous media houses. The victim cannot be expected to chase down and clear his name after a long battle once his reputation is maligned as most of the individuals would not have

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resources to fight it out, contents the petitioner. However, it is submitted that the law cannot permit infringement of fundamental rights at will, only because a victim is not coming forward to file a complaint and therefore, it is necessary that appropriate guidelines are formed and ensure the media houses to follow such guidelines in the interest of the public at large. Various examples are cited by the petitioner which created repercussions and adverse consequences in the trial of various political, social, sensitive, and controversial cases, and based on such aspects, it is submitted that unless the media plays a focused role in the interest of the nation as a whole, it will damage the justice delivery system of the country destroying trust reposed in the judiciary by the common man in a systematic manner. Therefore, unless necessary interventions are made, one of the important pillars of the democracy can crumble at the hands of some unscrupulous media personnel engaged in the guise of journalism. Therefore, *prima facie*, there is failure of the sovereign to ensure the protection of fundamental rights of general public and the rights guaranteed under Articles 19 and 21 of the Constitution of India r/w the Indian Penal Code and the Contempt of Courts Act, and so also various guidelines and judgements enunciated by the Apex Court.

3. With the above background facts, certain specific instances are pointed out by the petitioner to substantiate the contention put

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forth in the writ petition, that, it was reported on 5th July, 2020, the customs officials at Thiruvananthapuram Airport seized gold weighing 30 kg. from diplomatic cargo addressed to the United Arab Emirates (UAE) Consulate in Kerala and the officials caught one Mr. Sarith Nair, a former Public Relations Officer at the Consulate using a fake ID to collect the baggage with the smuggled gold trying to pass himself off as someone who could enjoy diplomatic immunity with respect to the cargo. It is assertively stated that diplomatic cargo normally cannot be checked by customs officials. But, the customs officials had received sanction from the Government to examine the baggage, which was a news revealed by the Customs Commissioner to the Press. It is the case of the petitioner that the Customs officials were tipped off, that gold might be hidden in the cargo and suspect that there is a well organised syndicate behind the smuggling racket. At the time of interrogation by the customs officials, according to the petitioner, the aforesaid Sarith Nair is reported to have said that he was friendly with one Ms. Swapna Suresh, that she was involved in the gold smuggling operations, and according to the petitioner, the Customs officials say that it is Swapna Suresh who forged the documents and would allow them to claim diplomatic immunity over the cargo. It is also pointed out that the said lady is involved in a forgery case against an Air India employee. However, the Press sensationalised these news items and

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stories that came to be published through print, electronic and social media suggesting various suspicions like, the accused lady is in fact, daughter in law of another prominent Congress leader, Kerala Chief Minister directly or indirectly involved, a Central Minister might have helped the accused to reach Bangalore, various video and photographs were published to connect several Government officials and prominent politicians and MPs including but not limited. It was also reported that although the National Investigation Agency reportedly stated that they have strong suspicion that gold smuggling is linked with international terror funding. There is the possibility of an attempt to endanger the life of the accused. The reporters also went on to put live telecast of the journey of the accused giving details of the path, many passengers and escort vehicles. Therefore, according to the petitioner, such type of reporting even if to help anyone, it would be the potential criminals and urges one to think as to what should be the extreme limit of reporting by the media. It is also stated that the media reported that Mr. M. Sivasankar, the former IT Secretary of the State Government who has been removed, from his post as Chief Minister's Principal Secretary, is the connection between Swapna Suresh and the Kerala Government and the said Mr Sivasankar appointed Swpna Suresh as Operations Manager at the Space Park after she left the UAE Consulate. Various other aspects

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are also pointed out in the writ petition in respect of the news published by the media houses connecting the Ministers of the State Government and others. Therefore, the paramount contention advanced by the petitioner is that it is crystal clear that the publishers are misusing the right to freedom of speech and expression guaranteed under the Constitution of India for political mileage, and trying to use images and words to create apprehension in the minds of the viewers about their political leaders or government servants. Such maligned publications are rampant even in other cases where the accused is remotely affiliated with any political parties or celebrity. Other instances are also pointed out by the petitioner in respect of an investigation conducted in respect of a child abuse and it is contended that the media houses fabricate news to ensure that the accused are maligned brutally, and get them punished on the basis of the news published irresponsibly.

4. The petitioner also submits that without understanding the true implications of the news items published, even the children and students are made use of to respond to such fake news against the Government through social media. Petitioner also points out that false news are reported in respect of Covid-19 patients, steps taken by the Government, death occurring thereunder etc. Various instances in respect of rape cases and other criminal offences are

also pointed out by the petitioner.

5. In the backdrop, the grounds raised by the petitioner is that because of the trial by Media, as the term refers to the role of media, acting as a Judge overriding the official 'justice delivery system', thereby distorting, prejudicing, sensationalising, investigating the public and ultimately derailing the 'justice delivery processes', and steam-rolling the right to fair trial of the accused. That apart, it is stated that the Apex Court had even held that the trial by press, electronic media or by way of a public agitation is the very antithesis of the rule of law and can lead to a miscarriage of justice. The Law Commission of India, according to the petitioner, categorizes 10 types of publications in the media as prejudicial to a suspect or accused i.e., (1) publications concerning the character of accused or previous conclusions; (2) publication of confessions; (3) publications which comment or reflect upon the merits of the case; (4) photographs; (5) police activities (6) imputation of innocence (7) creating an atmosphere of prejudice (8) criticism of witnesses; (9) premature publication of evidence; (10) publication of interviews with witnesses. However, media in the cases cited as examples above has published almost the 10 prohibited items, and so far evaded from any stringent action against them. It is further submitted that in the guise of freedom of speech and expression, media is publishing their prejudiced opinion to convey their political

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agenda and therefore, licence to politically affiliated media house must be cancelled to bring sanity in the industry. It is also submitted that in the guise of right to impart the truth through the media, which in turn is a fundamental right of the citizens of the country to know, false stories are propagated with the intention to prejudice to the minds of the people at large, in absolute violation of Article 19 of the Constitution of India. It is also submitted that because of the careless attitude of reporting, unimaginable damages are caused to the reputation of the affected person, so as to suggest that those people are connected with an ongoing crime, even though their names are not appearing in the FIR, or no official press briefing done by the police or Government, is against the scheme of fundamental rights and the criminal jurisprudence of the country. The submission of the petitioner is that these are happening, since there is no proper guidelines formed by the State of Kerala, Union of India and the Press Council of India, and unless and until directions are issued to form the guidelines, the freedom of speech will get abused time and again enabling the media, to conduct a trial even before filing of the FIR. Therefore, according to the petitioner, steps are to be taken to strike a balance between the freedom of the press and the right of a victim to have a fair trial, failing which it will seriously prejudice the matters pending before court and the victims thereunder, as is discussed above. The

petitioner also contends that many of the media houses while making such false reports has the intention of creating political and religious polarisation.

6. With the above factual back ground, and materials produced by the petitioner, including an article written by a former Judge of the Apex Court, Hon'ble Mr. Justice G. S. Singhvi with the title 'Trial by Media: a Need to Regulate Freedom of Press', and other news appeared in various journals and newspapers, attempts to substantiate the contentions raised with respect to the alleged false reports by the media, and seeks the following reliefs :

- 1) Issue a writ of mandamus or any appropriate writ or direction or an order under Articles 226 and 227 of the Constitution of India to the respondents and/or other appropriate authorities to form guidelines to include restrictions as envisaged under Article 19 of the Constitution of India and orders of Apex Court to ensure that media does not abuse the freedom of speech and expression.
- 2) Issue a writ of mandamus or any appropriate writ or direction or an order under Articles 226 and 227 of the Constitution of India to the respondents and/or other appropriate authorities directing them to take appropriate action under contempt of court act and/or other prevailing laws to restrain mass media from conducting media trial in matters of public interest.

- 3) Issue a writ of mandamus or any appropriate writ or direction or an order under Articles 226 and 227 of the Constitution of India to the respondents and/or other appropriate authorities to restrain the media from taking names of persons, their caste, religion or political affiliation etc. of persons accused in any criminal case.
- 4) Issue a writ of mandamus or any appropriate writ or direction or an order under Articles 226 and 227 of the Constitution of India to the respondents and/or other appropriate authorities to restrain the media from taking names of the person who are not being included as accused in the FIR registered with concerned investigating authorities as potential suspect in criminal matters. The respondents must ask the media house to produce evidence, if any allegations are made apart from that is being investigated and made public by the system and suitable action must be ensured against the violators.
- 5) Issue a writ of mandamus or any appropriate writ or direction or an order under Articles 226 and 227 of the Constitution of India to the respondents and/or other appropriate authorities to ensure that media house report only true facts and not opinions and be responsible for what they are publishing. They must also be made liable to submit credible evidence to the competent court of law for the allegations made by them

or allegations made using their platform.

- 6) Issue a writ of mandamus or any appropriate writ or direction or order under Article 227 of the Constitution of India to the respondents and/or other appropriate authorities to invoke and/or prevent further violation of fundamental rights by the media houses.
- 7) Issue a writ of mandamus or any appropriate writ or direction or an order under Articles 226 and 227 of the Constitution of India to the respondents and/or other sect or class that being used to spread political or communal disharmony in the society.
- 8) Issue a writ of mandamus or any appropriate writ or direction or an order under Articles 226 and 227 of the Constitution of India to the respondents and/or other appropriate authorities to formulate laws to issue licence to private channels using social media platform to restrain them from publishing objectionable contents through their private channels with malafide intentions.
- 9) Issue a writ of mandamus or any appropriate writ or direction or an order under Article 226 and 227 of the Constitution of India to the respondents and/or other appropriate authorities to ensure not to issue a licence to any media house unless they ensured that they would report true and correct facts to

the public.

7. We have heard the learned counsel for the petitioner, Sri. Premlal Krishnan and learned Senior Government Pleader Sri. P. Narayanan, and perused the pleadings and documents on record.

8. The sum and substance of the contentions put forth by the petitioner is that scathing attacks are made by the media by acting themselves as Judges, overriding the official justice delivery system, and thereby interfering with the right to a fair trial of an accused in criminal cases. Contentions are put forth also to demonstrate that aspersions are made in the print, as well as the visual media against the Chief Minister, Ministers, Opposition Leader and others without any basis and factual foundations. According to the petitioner, a trial by press, electronic media or public agitation is the very antithesis of the rule of law and can lead to a miscarriage of justice. Therefore, according to the petitioner, in the guise of the freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution of India, media is publishing their prejudiced opinion with the intention of conveying their political agendas and matters being so, the licence of the politically affiliated media houses must be cancelled to bring sanctity in the industry. It is also submitted that by propagating false and scandalising news, the media is causing prejudice to the mind of the people at large which is absolutely in violation of the freedom of speech and expression

guaranteed under Article 19 of the Constitution, and the right of the citizens to know the truth. The case of the petitioner, therefore, is that the law prevailing in the country to deal with such situations is not sufficient enough to tackle the irresponsible acts of the press and the print and visual media, and in that eventuality, this court should step in, and form guidelines incorporating the restrictions, as envisaged under Article 19 of the Constitution of India by its framers.

9. In fact, we are venturing to dispose of the writ petition, when it came up for admission itself, since we had the advantage of hearing the learned Special Government Pleader, who was ready with the judgements rendered by the Apex Court also on the point, setting a precedent. In so far as the issue raised by the petitioner is concerned, the seminal question that emerges for consideration is whether as is sought for by the petitioner, any guidelines can be framed by this Court in order to regulate and control the activities of the press or rather the print and electronic media. It is unequivocal, and trite that under the Indian Constitution, media is not having any specific fundamental right for their freedom of speech and expression unlike the first amendment to the American Constitution where the press has absolute freedom of speech and expression. The press in India is enjoying the freedom of speech and expression in terms of the fundamental right guaranteed under Article 19(1)(a)

of the Constitution of India to the citizens of the country. Article 19(1)(a) specifies that all citizens shall have the right to freedom of speech and expression, along with other valuable rights conferred thereunder. But, fact remains, clause (2) of Article 19 delineates clear restrictions while exercising the freedom guaranteed under Article 19(1)(a) of the Constitution of India, which stipulates that 'nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.'

10. On a reading of the above specified clause, it is clear that the freedom of speech and expression guaranteed is almost absolute but for the power enjoyed by the State from making any law so as to have reasonable restrictions in respect of the matters specified thereunder. Apparently, by virtue of the powers conferred under Article 19(2) of the Constitution of India, the laws are made by the State in order to protect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt

of court, defamation or incitement to an offence. It is true, the freedom of speech and expression guaranteed under the Constitution of India is entitled to be enjoyed by all the citizens which includes, the journalists and the personnel attached to the media houses. The issue with the freedom of the press *vis-a-vis* the right guaranteed under Article 19(1)(a) of the Constitution of India was a subject matter for consideration of the constitutional courts under different context right from the year 1950 and a plethora of judgements of the Apex Court as well as High Courts are available in the law journals and reports.

11. In order to dispose of the case at hand, we are of the view that it would be worthwhile to track down the judicial history of the judgements rendered by the Apex Court, and some High Courts in the matter of freedom of speech and expression in the Indian context to arrive at a logical and worthy conclusion. First among the cases that we have come across in that regard is the judgement of the Six Member Constitution Bench of the Apex Court in ***Romesh Thappar v. State of Madras*** [AIR 1950 SC 124]. That was a case where a restriction contained under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 which authorises imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order was under consideration of the Apex Court. The distinction between public order and public safety was

considered and ultimately held that unless a law restricting the freedom of speech and expression is directed solely against the undermining of the security of the State or the over-throw of it, such law cannot fall within the reservation under clause (2) of Article 19 of the Constitution, although the restrictions which seeks to impose may have been conceived generally in the interests of public order. It was further held thereunder that clause (2) of Article 19 of the Constitution having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, and an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent.

12. In ***Brij Bhusan and another v. State of Delhi*** [AIR 1950 SC 129], the question considered was with respect to the imposition of pre-censorship of a journal namely Organiser as per the provisions of the Punjab Public Safety Act vis-a-vis the liberty enjoyed by the press. After considering the facts and circumstances and the law involved, the Six Member Constitution Bench of the Apex Court has held that "in construing the Act, we must try to get at its aim and purpose, and before the Act is declared to be invalid, we must see whether it is capable of being so construed as to bear a reasonable meaning consistent with its validity. We, therefore, cannot ignore the fact that preservation of public safety is the

dominant purpose of the Act and that it is a special Act providing for special measures and therefore, it should not be confused with an Act which is applicable to ordinary situations and to any and every trivial case of breach of public order.

13. In ***M.S.M. Sharma v. SriKrishna Sinha and others*** [AIR 1959 SC 395], the Five Member Constitution Bench of the Apex Court was considering the freedom of speech and expression of the press vis-a-vis Article 19(3) of the Constitution of India and it was held that Article 19 guarantees to all citizens freedom of speech and expression, but does not specifically or separately provide for liberty of the Press and that the liberty of the Press is implicit in the freedom of speech and expression which is conferred on a citizen. The freedom of speech and expression includes the freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. It was also held that the imposition of pre-censorship on a journal is a restriction on the liberty of the Press as is held in ***Brijbhushan*** (supra) which is an essential part of the right to freedom of speech and expression declared by [Article 19\(1\) \(a\) of the Constitution](#).

14. In ***Sakal Papers (P) Ltd. and others v. Union of India*** [AIR 1962 SC 305], the question of imposition contained under the Newspaper (Price and Page) Act, 1956 and the Daily Newspaper (Price and Page) Order, 1960 vis-a-vis the provisions of

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Article 19(1)(a) of the Constitution of India was the theme, and it was held that it must-be borne in mind that the the provisions of the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense,that certain rights have been enshrined in our Constitution as fundamental and therefore, while considering the nature and content of those rights, the Court must not be too astute to interpret the language-of the Constitution in so literal so as to whittle them down but on the other hand, the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions. Bearing the principle in mind, it would be clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under clause (2) of [Article 19 of the Constitution of India](#).

15. In ***Virendra v. State of Punjab*** [AIR 1957 SC 8896, it was observed that it is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondent and relating to or concerning what may be the burning topic of the day. and It was held that right to

freedom of speech and expression is an individual right guaranteed to every citizen by Article 19(1)(a) of the Constitution of India and there is nothing in clause (2) of Article 19, which permits the State to abridge this right on the ground of conferring benefits upon the public in general or upon a section of public and it is not open to the State to curtail or infringe the freedom of speech of one for promoting the general welfare of a section or a group of people, unless its action could be justified under a law, competent under clause (2) of Article 19 of the Constitution.

16. In ***Express Newspapers (P) Ltd. v. Union of India*** [AIR 1958 SC 578], the Apex Court has laid down that while there is no immunity to the press from the operation of the general laws, it would not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression or adopt measures calculated and intended to curtail circulation and thereby narrow the scope of dissemination of information, or fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid and further that a law which lays upon the Press excessive and prohibitive burdens which would restrict the circulation of a newspaper would not be saved by [Article 19\(2\)](#) of the Constitution.

17. In ***Indian Express Newspapers (Bombay) Private Ltd. and others v. Union of India and others*** [AIR 1986 SC

515], where a number of writ petitions filed by the other newspapers were also considered vis-a-vis the provisions of the Customs Act imposing customs duty to the News Print Import, it was held that the freedom of expression, as learned writers have observed, has four broad social purposes to serve: (i) it helps an individual to attain self-fulfilment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others and in sum, the fundamental principle involved is the right to know and therefore, the freedom of speech and expression should, receive a generous support from all those who believe in the participation of people in the administration. It was also held thereunder that the purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgements and further that the freedom of press is the heart of social and political intercourse and it is the primary duty of the courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it, contrary to the constitutional mandate.

18. In ***Printers (Mysore) Ltd. And another v. Asst. Commercial Tax Officer and others*** [(1994) 2 SCC 434], the court considered the question of the extent of immunity enjoyed by the press in the context of the sales tax imposed in inter-State sale and held that special treatment given to newspapers has a philosophy and historical background and the freedom of press has been placed on a higher footing than other enterprises. It was also observed that though freedom of press is not explicitly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression and that freedom of press has always been a cherished right in all democratic countries and it was accordingly that it has rightly been described as the Fourth Estate, though it is not immune from the general law of land including civil and criminal liability for libel and defamation.

19. In ***Harijai Singh & Anr vs Vijay Kumar [(1996) 6 SCC 466]***, the Apex Court considered the question of freedom enjoyed by the press and the restraints to be shown vis-a-vis a contumacious article published, certain observations therein would be worth-extraction. Paragraphs 9 to 11 read thus:

9. It is thus needless to emphasise that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable

them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatma Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among the people certain desirable sentiments; and the third is to fearlessly express popular defects. It, therefore, turns out that the press should have the right to present anything which it thinks fit for publication.

10. *But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by court of law. The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations "If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline". It is the duty of a true and responsible journalist to strive*

to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression.

11. In the present case, as we have noticed above, neither the printer, publisher nor the editor and reporter took the necessary care in evaluating the correctness and credibility of the information published by them as the news items in the newspapers referred to above in respect of an allegation of a very serious nature having great repercussions causing an embarrassment to this Court. An editor is a person who controls the selection of the matter which is to be published in a particular issue of the newspaper. The editor and publisher are liable for illegal and false matter which is published in their newspaper. Such an irresponsible conduct and attitude on the part of the editor, publisher and the reporter cannot be said to be done in good faith, but distinctly opposed to the high professional standards as even a slightest enquiry or a simple verification of the alleged statement about grant of petrol outlets to the two sons of a Senior Judge of the Supreme Court, out of discretionary quota, which is found to be patently false would have revealed the truth. But it appears that even the ordinary care was not resorted to by the contemners in publishing such a false news items. This cannot be regarded as a public service, but a disservice to the public by misguiding them with a false news. Obviously, this cannot be regarded as something done in good faith.

20. In ***Asharam Bapu v. Union of India and others*** [(2013) 10 SCC 37), the Apex Court was considering the question whether any guidelines to be formed for the functioning of the media and after taking into account various judgements rendered by the Apex Court, it was held that there is no need to entertain the writ petition, in view of various directions in the judgements referred there to, and expressed hope and trust that the media, both print and electronic, would follow those guidelines. Even

though there are various other judgements with regard to the nature of freedom enjoyed by the press, we found the above referred ones relevant to the context. On analysing the observations and the findings rendered by the Apex Court in the judgements discussed above, it is clear that the press enjoys only the freedom like any other citizens, in terms of the guarantee extended under Article 19(1)(a) of the Constitution of India. No doubt, the press has got the liberty and the freedom for fair and honest news reporting. However, it is discernible from the words of wisdom rendered by the Apex Court that freedom guaranteed to the press under Article 19(1)(a) cannot be misused and the press has the duty to ensure that reports are made truly and fairly so as not to interfere with the freedom enjoyed by the citizens in any manner. We are also conscious of the fact that the freedom guaranteed under Article 19(1)(a) to anyone cannot overlook the guarantee of life and liberty enjoyed by the citizens under Article 21 of the Constitution of India which specifies that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Definitely, the restrictions contained thereunder would make it clear that even the press is not at liberty to scuttle the freedom of life and personal liberty of any citizen. However, the principles of law propounded by the Apex Court also would show that the freedom enjoyed by the press as the fourth

estate in the governance of the country is vital and also distinguished so as to protect the interests of public, and in the matter of disseminating the news for the public good.

21. Taking into account the intention of the constituent assembly by incorporating Articles 19(1)(a) and 21 to the Constitution of India, it is clear that both will have to be enjoyed by the citizens among themselves without interfering *inter se* with the rights guaranteed in the said provisions.

22. That said, now the further question crops up for consideration is whether any guidelines can be framed by this Court as is sought for by the petitioner. As we have discussed above, the laws made under clause (2) of Article 19 makes reasonable restrictions in respect of the freedom enjoyed by the press also under Article 19(1)(a) of the Constitution and according to us, the restrictions contained under clause (2) of Article 19 itself is a guideline, and it is imperative that even the press while making the publication should be concerned with the public order, decency or morality because the restriction is imposed under clause (2) of Article 19 of the Constitution of India on the basis of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. Which thus means equivalent to freedom, a corresponding duty and obligation is cast upon the press to ensure restraints so as not to violate the valuable and cherished rights and

freedom , and privacy both public and private of the citizens.

23. Looking at the contentions advanced by the petitioner, it is explicit that the petitioner was not personally affected by the publication of any news and there by not personally aggrieved, however the argument put forth by the petitioner is that since the media is making irresponsible and scathing remarks against public men and leaders ruling the state and the nation, an intrinsic element of grievance, in public interest is involved. _Analysing the principles of Article 19(1)(a) of the Constitution, and the significant multifarious roles played by it, we are of the view that a constitutional court would not be able to comprehend various situations and form a guideline so as to restrict the media from enjoying its freedom conferred under Article 19(1)(a) of the Constitution of India. Moreover, making a law is the absolute domain of the parliament and the State legislatures in terms of the provisions of the Constitution of India, and the framers of the constitution intended and envisioned a clear demarcation of exercise power by the Legislature, executive and the judiciary, which is also largely dependant on the successive policies formulated by the Government for its functioning.

24. The question with respect to the framing of guidelines and similar other issues were considered by a Five Member Constitution Bench of the Apex Court in ***Sahara India Real***

Estate Corporation Limited and others v. Securities and Exchange Board of India and another [(2012) 10 SCC 603], and

after conducting a threadbare and exhaustive survey of the prior judgements of the Apex Court, as well as taking into account the freedom guaranteed to the press in various countries of the world, the Apex Court held that laying down a guideline to regulate the activities of the media is not a wise proposition. However, the proposition of law laid down by the Apex Court earlier and the law in vogue to take action against the press was taken into consideration and held that a prior restraint pre-empting the right to freedom of speech and expression guaranteed under the Constitution of India cannot be done, except under exceptional circumstances and that too after considering the issues on a case to case basis. Paragraphs 32 to 34 would be relevant to the context, which read thus:

“32. Even apart from these statutory exceptions, publicity of proceedings can be restricted ‘in the interests of justice’. In *Naresh Shridhar Mirajkar v. State of Maharashtra*, the Supreme Court held that the court has the inherent power under Section 151 of the Civil Procedure Code to order a trial to be held in camera, but that this power must be exercised with great caution and only where the court is satisfied beyond doubt that the ends of justice would be defeated if the case were to be tried in open court.

“21. ... While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the

Judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the court is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. If the principle that all trials before courts must be held in public was treated as inflexible and universal, and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open court that it can pass an order to hold the trial in camera, but to deny the existence of such inherent power to the court would be to ignore the primary object of adjudication itself. The principle underlying the insistence on hearing causes in open court is to protect and assist fair, impartial and objective administration of justice; but if the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court. In this connection it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice; it is a means, not an end. It is the fair administration of justice which is the end of judicial process and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice. That, in our opinion, is the rational basis on which the conflict of this kind must be harmoniously resolved.”⁴⁵

33. While the principle laid down cannot be faulted, whether

it ought to have been applied in the facts of that case is questionable. The matter arose out of a sensational libel suit in the Bombay High Court. One of the witnesses for the defence who had made an affidavit of facts in different proceedings, considered relevant for the libel suit, but did not adhere to them in these proceedings, made a request that his evidence be withheld from publication on the ground that publication of reports of his earlier deposition had caused loss to his business. The presiding Judge orally ordered that the witness's deposition should not be reported in newspapers. The petitioners challenged the order on the ground, *inter alia*, that their rights under Article 19(1)(a) had been infringed and that the gag order could not be justified on any ground under Article 19(2). The petitioners contended that truthful reports of proceedings could not be banned. The Supreme Court, by a majority of 8:1 dismissed the petition, applying the reasoning set out above. Hidayatullah, J. the lone dissenting voice, thought it an astounding proposition that a witness could seek protection because his truthful statement would harm his own business. The Judge held that Section 151 of the Civil Procedure Code on

which reliance was placed, in spite of its very generous and wide language could not be used to confer a discretion on the court to turn its proceedings which should be open and public into a private affair.

34. The majority went on to hold that such a judicial decision in the interests of the administration of justice cannot be held to be contrary to the fundamental right under Article 19(1)(a). Applying the direct effect test, the court came to the conclusion that if, as an incidental consequence of the order, the proceedings could not be reported, there could not be said to be any constitutional infirmity in the order. It was further held that the law empowering the court to prohibit publication of proceedings was within the reasonable restrictions contemplated by Article 19(2) which includes restrictions in relation to contempt of court. An obstruction to the administration of justice is tantamount to contempt of court and therefore, prohibition of the publication intended to prevent an obstruction to justice was within the scope of Article 19(2).”

After holding so, it was held by the Apex Court that in the light of

the law discussed and enunciated in **Sahara** (supra), it was held that, anyone, be he an accused or an aggrieved person who genuinely apprehends on the basis of the the content of the publication and its effect an infringement of his/her rights under Article 21 to a a fair trial and all that it comprehends, would be entitled to approach an appropriate writ court and seek an order of postponement of the offending publication/broadcast or postponement of reporting of certain phases of the trial, including identity of the victim or the witness or the complainant, and that the court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the abovementioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. It was further observed that such utilising device would not be an unreasonable restriction and on the contrary, would fall within the proper constitutional framework. It was also held thereunder that excessive prejudicial publicity leading to usurpation of functions of the court not only interferes with administration of justice which is sought to be protected under Article 19(2), it also prejudices or interferes with a particular legal

proceedings and under any such eventuality courts are duty bound under inherent jurisdiction, subject to above parameters, to protect the presumption of innocence which is now recognised as a human right under Article 21 of the Constitution subject to the applicant proving displacement of such a presumption in appropriate proceedings.

25. In the context of the above discussion, paragraph 52 of the judgment in **Sahara** (supra) is relevant which reads thus:

45. [Article 141](#) uses the phrase “law declared by the Supreme Court.” It means law made while interpreting the statutes or the Constitution. Such judicial law-making is part of the judicial process. Further under [Article 141](#), law-making through interpretation and expansion of the meanings of open-textured expressions such as “law in relation to contempt of court” in [Article 19\(2\)](#), “equal protection of law”, “freedom of speech and expression” and “administration of justice” is a legitimate judicial function. According to Ronald Dworkin, “Arguments of principle are arguments intended to establish an individual right. Principles are propositions that describe rights.” [See “Taking Rights Seriously” by Ronald Dworkin, 5th Reprint 2010, p. 90]. In this case, this Court is only declaring under [Article 141](#), the constitutional limitations on free speech under [Article 19\(1\)\(a\)](#), in the context of [Article 21](#). The exercise undertaken by this Court is an exercise of exposition of constitutional limitations under [Article 141](#) read with [Article 129/Article 215](#) in the light of the contentions and large number

of authorities referred to by the counsel on [Article 19\(1\)](#) (a), [Article 19\(2\)](#), [Article 21](#), [Article 129](#) and [Article 215](#) as also the “law of contempt” insofar as interference with administration of justice under the common law as well as under [Section 2\(c\)](#) of 1971 Act is concerned. What constitutes an offending publication would depend on the decision of the court on case to case basis. Hence, guidelines on reporting cannot be framed across the Board. The shadow of “law of contempt” hangs over our jurisprudence. This Court is duty bound to clear that shadow under [Article 141](#). The phrase “in relation to contempt of court” under [Article 19\(2\)](#) does not in the least describe the true nature of the offence which consists in interfering with administration of justice; in impeding and perverting the course of justice.

That is all which is done by this judgment.

26. In this scenario, we feel that the observation made by the Supreme of Court of United States *in the New York Times Company v. L. B. Sullivan* [376 US 254 (1964)] in the light of the provisions of the American Constitution is relevant:

“62. This is not to say that the Constitution protects defamatory statements directed against the private conduct of a public official or private citizen. Freedom of press and of speech insures that government will respond to the will of the people and that changes may be obtained by peaceful means. Purely private defendant has little to do with the political ends of a self-governing society. The imposition of liability for private defamation does not abridge the freedom of public speech or any other freedom protected by the First Amendment. [In most cases, as in the case at bar, there will be little difficulty in distinguishing defamatory speech relating to private conduct from that relating to official conduct. I recognize, of course, that there will be a gray area. The difficulties of applying a public-private standard are, however, certainly, of a different genre from those attending the differentiation between a malicious and nonmalicious state of mind. If the constitutional standard is to be shaped by a concept of malice, the speaker

takes the risk not only that the jury will inaccurately determine his state of mind but also that the injury will fail properly to apply the constitutional standard set by the elusive concept of malice. See note 2, supra.] This, of course, cannot be said 'where public officials are concerned or where public matters are involved. * * * (O)ne main function of the First Amendment is to ensure ample opportunity for the people to determine and resolve public issues. Where public matters are involved, the doubts should be resolved in favor of freedom of expression rather than against it.' Douglas, *The Right of the People* (1958), p. 41.”

27. It was also held in *Sahara* (supra) that any person aggrieved would be at liberty to approach the court of law wherein any proceedings is pending and seek for appropriate orders so as to have a fair trial guaranteed under Article 21 of the Constitution of India. In that context, the Apex Court had also occasion to consider the reporting by the press vis-a-vis the power of prosecution contained under Section 499 of the IPC and held that the courts would be at liberty to take appropriate steps while the trial is taking place, to restrict the press.

28. In **E. M. Sankaran Namboodiripad vs T. Narayanan Nambiar** [(1970) 2 SCC 325], it has been held that the existence of law containing its own guiding principles, reduces the discretion of the court's to the minimum. But, where the law (that is, the 1971 Act) is silent, the courts have discretion and this is more so, when the said enactment is required to be interpreted in the light of Article 21 and thereafter, held at paragraph 6 as follows:

“6. The law of contempt stems from the right of the courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right

is exercised in India by all courts when contempt is committed in facie curiae and by the superior courts on their own behalf or on behalf of courts subordinate to them even if committed outside the courts. Formerly, it was regarded as inherent in the powers of a court of record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempts. The chief forms of contempt are insult to Judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court and scandalising the Judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a Single Judge or a single court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system. The question is whether in the circumstances of this case the offence was committed”

29. That apart, the said question was considered by the Apex Court in **Anukul Chandra pradhan v. Union of India and others** [(1996) 6 SCC 354 and held that a court dealing with any matter has to bear in mind that utmost expedition in the trial and its early conclusion is necessarily for the ends of justice and credibility of the judicial process and that no occasion should arise for an impression that the publicity attached to these matters has tended to dilute the

emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial.

30. In ***State of Maharashtra v. Rajendra Jawanmal Gandhi*** [(1997) 8 SCC 386], the Apex Court had deprecated the trial by media and held that there is a procedure established by law governing the conduct of trial of a person accused of an offence and trial by press, electronic media or public agitation is the very antithesis of rule of law which can lead to miscarriage of justice.

31. In ***M.P. Lohia v. State of West Bengal and another*** [(2005) 2 SCC 86], the Apex Court strongly condemned the materials published in the newspapers, since it was found that the articles would certainly interfere with the administration of justice and the Apex Court had deprecated such practice and cautioned the publisher, editor and the journalist, who were responsible for the said article and indulging in such trial by media when the issue was *sub judice*.

32. In ***Sanjoy Narayan, Editor-in-Chief, Hindustan Times and others v. High Court of Allahabad*** [(2011) 13 SCC 155], the Apex Court considered the general functioning of the electronic and print media in a democracy and held that dignity of courts and people's faith in the administration must not be tarnished because of factually wrong, biased or unverified reporting and that

in order to avoid such biased reporting, one must be careful to verify the facts and do some research on the subject being reported before a publication is brought out. It has also emphasised the need to provide proper checks and balances so that media does not stray from its real course and also unequivocally said that the media has a duty to respect individuals' fundamental right to privacy, and in order to ensure that people's faith in administration of justice is not diminished. Paragraph 3 of the said judgment is relevant to the context, which reads thus:

"3. The media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process. The right to information is fundamental in encouraging the individual to be a part of the governing process. The enactment of the Right to Information Act, 2005 is the most empowering step in this direction. The role of people in a democracy and that of active debate is essential for the functioning of a vibrant democracy."

That said, the role played by the media to disseminate news to bring it to the notice of the public is a relevant aspect for the true and effective functioning of democracy . That is why the press is always addressed as the Fourth Estate. If the media is not permitted to undertake such an exercise, the citizens would find it

difficult to know and understand the activities undertaken by the public men by virtue of the mandate given by the citizens which would lead to total anarchy and prompt the administrators to indulge themselves in unethical and irresponsible activities, prejudicial to the interest of the public and thus causing adverse and negative situations so as to interfere with the fair administration of the justice envisioned by the framers of the Constitution. In this regard, we are of the opinion that the finding rendered by the Supreme Court of United States in ***New York Time Company v. United States*** would be relevant. Paragraph 36 reads thus:

“**36.** The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information. It is common knowledge that the First Amendment was adopted against the widespread use of the common law of seditious libel to punish the dissemination of material that is embarrassing to the powers-that-be. See T. Emerson, *The System of Freedom of Expression*, c. V (1970); Z. Chafee, *Free Speech in the United States*, c. XIII (1941). The present cases will, I think, go down in history as the most dramatic illustration of that principle. A debate of large proportions goes on in the Nation over our posture in Vietnam. That debate antedated the disclosure of the contents of the present documents. The latter are highly relevant to the debate in progress.”

33. Therefore, analysing the facts and figures, the pros and cons, and the principles of law laid down by the Apex Court in the judgements above, it is unequivocal that framing of a general guideline may not be possible, thus, restricting the freedom of press

as is held in **Sahara India** (supra). On a compendious analysis of the precedents, it has attained a shape of sufficient protective measures to insulate the rights of the citizens under the Constitution of India. That apart, we are of the view that taking into account the requisite provisions of law available under the Indian Penal Code and the Contempt of Courts Act, any person aggrieved is entitled to take necessary action so as to redress his grievances. So also, the courts are vested with ample powers while conducting trial of any sensational cases or when privacy is required to be maintained, to conduct in-camera proceedings and restrict the media from reporting any sensational news or any news so as to materially interfere with the privacy of a citizen. Moreover, we are satisfied that the Press Council Act, 1978 clearly prescribes a methodology to redress the grievances of any aggrieved person. Initially, the Press Council Act, 1965 was passed to establish a Press Council and Press Council of India was established in July, 1966. However, during emergency, the Press Council of India was dissolved with effect from 1st January, 1976 and thereupon the Press Council Act, 1965 was repealed by the Press Council (Repeal) Act, 1976 with effect from 1st January, 1976. Any how, during 1977, the Central Government felt it necessary to give effect to the proposal of bringing out a new legislation and it was accordingly that the Press Council Act, 1978 was passed with the object of preserving

the freedom of press and of maintaining and improving the standards of newspapers by constituting an authority vested with statutory powers. The Act, 1978 envisages the establishment of Press Council with a Chairman and 28 other members and the Chairman and Council shall be a person nominated by a committee consisting of the Chairman of the Rajya Sabha, the Speaker of the House of People and a person elected by the members of the Council under sub-section (6) and the nomination so made shall take effect from the date on which it is notified by the Central Government in the Official Gazette.

34. Section 13 of the Act, deals with the objects and functions of Council and sub-Section (1) specifies that the objects of the Council shall be to preserve the freedom of the Press and to maintain and improve the standards of newspapers and news agencies in India. Sub-Section (2) specifies that the Council may, in furtherance of its objects, perform the functions *inter alia among others* as follows:

(a) to help newspapers and news agencies to maintain their independence;

(b) to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards;

(c) to ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship;

(d) to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism; and

(e) to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance.

35. Section 14 of the Act, 1978 deals with the power to censure and it specifies that on receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards or journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct, the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under the Act and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist, as the case may be. The Council is also vested with further powers to direct the newspaper to publish in such manner as the Council thinks fit, any particulars relating to any inquiry under the said provision against a newspaper or news agency, an editor or a journalist working therein, including the name of such newspaper, news

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agency, editor or journalist. In order to conduct an enquiry, the Council is vested with powers in accordance with the Code of Civil Procedure, 1908 in respect of summoning and enforcing the attendance of persons and examining them on oath and such other matters that are delineated thereunder. On an appreciation of the provisions of the Act, 1978, it is clear that there is an efficacious remedy available to any aggrieved person to approach the Press Council constituted under the Act, 1978. Apart from the same, in order to regulate and control the cable television networks, the Government of India has made the Cable Television Networks (Regulation) Act, 1995 and the Cable Television Network Rules, 1994, wherein sufficient provisions are made to control the functioning of the electronic media and any aggrieved person is entitled to approach the authorities constituted thereunder and seek to redress the grievances.

36. A Division Bench of the Madras High Court to which one of us (Hon'ble the Chief Justice Shri. S. Manikumar) was a party, had occasion to consider the issue with respect to the framing of guidelines in ***M.R. Saravnan @ Cine Saravanan v. the Joint Secretary, Ministry of Information and Broadcasting, Government of India, New Delhi and others*** [W.P.(C) No. 21497 of 2017] and taking into account the entire gamut of the laws and the judgements, it is held that the provisions of law makes it clear

that a mechanism is provided to redress the grievances of any citizen and therefore, there is no reason for entertaining a writ petition in respect of formation of guidelines etc. It was held therein that "the freedom of expression is a pivotal component of our individual development – as human beings and as political animals – and to improve and radicalise democracies. The invention of the press was a turning point in the debate about freedom of expression. The printing press magnified the reach of opinions, information and ideas. Indeed, the pen became mightier than the sword. Guaranteeing each individual the right to freely give and receive information was perceived as a threat to the sovereign and sometimes even the State; when ideologies clashed. It was the era of mass media. Except for the United States of America due to the first amendment, democracies all over the world regulated mass media.

37. Considering the facts and circumstances and the law discussed above, we have no hesitation to hold that a public interest litigation to frame guidelines to restrict the media on the basis of the allegations made in the writ petition cannot be entertained and no guidelines can be framed taking into account the contentions put forth by the petitioner. We also feel that the judgements rendered by the Apex Court would make it clear that the media can be restricted by the courts on a case to case basis. Moreover, a Judge

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adjudicating any *lis* before it would be depending solely on the materials available on record, and definitely would not be guided by a press report unless the report itself is a material for consideration in the *lis*. We are also of the view that the petitioner is never an aggrieved person and no relief can be granted especially in view of the fact that the petitioner has not produced any materials to substantiate the pleadings. Thinking so, it is quite vivid and clear that the issue raised by the petitioner is set at naught by the Apex Court in *Sahara* (supra) by holding that general framing of guidelines for regulating the press is not possible. Therefore, it is a law declared under Article 141 of the Constitution of India having binding force throughout India and therefore, binding on this Court also. Before we part with the judgement, it is relevant to mention the observations made by the High Court of Judicature, Madras in ***M.R. Saravanan*** (supra) that under self regulation the media voluntarily commits to uphold a code of ethics that it, itself drafts, thus providing a mechanism to which the public can complaint about perceived breaches of the court and an independent council adjudicating on the complaints and decides upon appropriate remedies in order to secure the credibility of its profession and the trust of the public.

The upshot of the above discussion is, petitioner is not entitled to get any reliefs as is sought for in this writ petition. Writ

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petition fails and accordingly, it is dismissed.

**S. MANIKUMAR,
CHIEF JUSTICE.**

**SHAJI P. CHALY,
JUDGE.**

Rv

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APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | TRUE COPY OF THE ARTICLE BY HON'BLE JUSTICE (RTD) G.S.SINGHVI. |
| EXHIBIT P2 | TRUE COPY OF THE ARTICLE BY HON'BLE JUSTICE (RTD) R.S.CHAUHAN. |
| EXHIBIT P3 | TRUE COPY OF THE REPORTS OF THE VARIOUS MEDIA HOUSES. |

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS to Judge.

rv