

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION NO. ____ OF 2020

DISTRICT-MUMBAI

In the matter of Public
Interest Litigation under
article 226 of

Constitution of India
AND IN THE MATTER OF:
**INTERPRETATION OF SECTION-3
OF CONTEMPT OF COURTS ACT
1971.**

IN PURSUIT OF JUSTICE

Registered under the Societies Registration



Act, 1860 & The Maharashtra Public Trust Act

Regn. No. E5730-Pune

Having its office at

Shivprasad, 261/1, Budhwar Chowk

Pune- 411002

Through its authorised signatory

Advocate Shirin Merchant , age 45 year

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Wanawadi, Pune - 411001

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....**PETITIONER**

VERSUS

1. THE UNION OF INDIA,

Through The Secretary,

Ministry of Information and Broadcasting

Shastri Bahwan,

Dr. Rajendra Prasad Road

New Delhi- 110001

...**RESPONDENT NO. 1**

2. PRESS COUNCIL OF INDIA

Through Secretary,

Soochna Bhawan,

8 CGO Complex, Lodhi Road

New Delhi- 110003

...**RESPONDENT NO. 2**

3. LAW COMMISSION OF INDIA

Through Secretariat,

4th Floor, B- Wing,

LoknayaK Bhawan,

Khan Market,

New Delhi- 110003

...**RESPONDENT NO. 3**

TO,

THE HON'BLE CHIEF JUSTICE OF

THE HIGH COURT OF JUDICATURE AT BOMBAY

AND HIS COMPANION JUDGES OF THE HIGH COURT

OF JUDICATURE AT BOMBAY.

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is a society registered under the Societies Registration Act, 1860 and The Maharashtra Public Trust Act bearing Regn. No. E5730-Pune having its office at Shivprasad, 261/1, Budhwar Chowk, Pune- 411002. Copy of registration certificate is annexed herewith and marked as **Exhibit "A"**. The object of the Petitioner society is to canvass the


rights of citizens in pursuit of justice. The petitioner has published various magazines/journals containing articles by Hon'ble Late Justice Krishna Iyer, Later Dr. APJ Abdul Kalam, etc. on various issues such as "missing women" referring to foetal infanticide and other social issues

2.

The petitioner has no personal or individual interest in the matter and is being filed purely in public interest. There are no civil, criminal or revenue litigation pending against the petitioner.


3. Mindful of the freedom of expression as defined in Article 19 (1)(a) of the Constitution of India, including the Freedom of the media to publish and broadcast information relating to events and happenings in the world, in addition to providing information through the facets of debates, discussions, analysis and





opinions, etc. it is yet trite that such a freedom is not unqualified and there is an urgent need of finding an acceptable constitutional balance between free press and administration of justice which is a difficult task in any legal system.

4. It has admittedly become a matter of concern that in recent times, the media has become very proactive in focusing on incidents of crime from day one by liberally commenting on the role of the police causing the investigation, the progress of the investigation, pin pointing and declaring the perpetrator of the crime, their associates, motive, etc. even before the investigation is complete and sufficient opportunity is given to the police machinery to ascertain relevant facts. This intrusion has trampled many a private rights and destroyed the very foundation of the case which could have proceeded in a particular direction, but for the pressure, distraction and diversion of insistent reporting of convoluted facts in different direction. The Aarushi murder case is a glaring example of a media trial inducing the general public to believe in the complicity of a person indicted by the media, thereby, putting immense pressure on the course of fair investigation by the police.




5. There are many such instances where a trial has been prejudiced on account of excessive media publicity. In the case of **M.P. Lohia vs. State of West Bengal**, Reported in 2005 (2) SCC 686, bail was refused to a husband and in-laws in an FIR filed by the wife's parents under Section 498A, IPC. Ultimately, the Hon'ble Supreme Court granted interim bail to the accused, and while passing the final orders referred very critically to certain news items in a Calcutta magazine reporting in a one sided manner allegations made by the Complainants and deprecated the articles and cautioned the concerned publisher, editor and the journalist responsible for the said articles against "indulging in such trial by media when the issue was subjudice".

6. In another case of **State of Maharashtra vs. Rajendra Gandhi**, Reported in 1997 (8) SCC 386, the Hon'ble Supreme Court has held that "A trial by press, electronic media, or public agitation is the very antithesis of rule of law". The Hon'ble Supreme Court has also appealed to the media to report in a responsible manner, the reporting on Muzaffarpur Shelter Home Case, albeit setting aside the complete restraint order issued by the Hon'ble Patna High Court. Even the bench of 5 Hon'ble judges of the

Supreme Court have upheld the postponement of reporting, cases which are subjudice in the landmark case of **Sahara India Real Estate vs. SEBI**, Reported in 2010 (12) SCC 603.

7. Having brought to the notice of the Court, various instances in which trial by media has resulted in grave prejudice to the administration of justice, the filing of the present petition has been triggered by the disturbing and continuous reporting of the SSR case whereby the sanctity of the state police machinery has been demolished and the public opinion has been sought to be manipulated against the state law and order machinery, leading to an inevitable ramification that the faith and confidence of the citizens of in the police machinery of the state has been seriously impaired. This has led to a general belief that the state machinery cannot be trusted and has completely shattered the credence and reliability which the citizens are entitled to have in the local police machinery. Thus, this is nothing but an obstruction in the administration of justice and a general distrust in public institutions which is an extremely dangerous state of affairs to suffer in a democratic state.





8. Secondly, it is submitted that the constitutional protection under Article 21 which protects the rights of the person for a fair trial, is in law, a valid restriction operating on the right of free speech under Article 19(1) (a) by virtue of the force of it being a constitutional provision. It is submitted that the media has already publicly tried & convicted the alleged accused and even proceeded to attribute a number of acts to the accused person(s) attributing qualities such as murderer, abettor, addict, gold-digger, fraudster, and such unproved as yet attributes. The following are some examples of reports and salacious allegations reported against many persons declared by the media, to be involved in the suicide/murder case.

A. Statement of potential witness being the house manager to CBI has been put up in the media.

B. WhatsApp chats between potential witnesses have been broadcasted/published in the media.


C. Death, Rape, etc. threats to the alleged accused.

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- D. Reaction of investigation agency to the statements given by certain accused has been published in the media.
- E. Statements of hospital staff members reported/published in the media.
- F. The forensic specialist who carried out the autopsy of the body of the Late SSR has also been interviewed on a national TV channel.
- G. Statements of investigation officers, in respect of statements given by certain witnesses have also been published.
- H. IPS Officer of Bihar Police has also appeared in TV debates regarding the said issue.
- I. Private chats of alleged accused have been published in media.
- J. Abusing and tarnishing the reputation as well as calling into question, the character of the accused/suspect for not answering the questions posed by the media.



K. Not permitting the friends, relatives of the accused/suspects to exercise their constitutional right to move freely within the country while preserving their personal privacy. Copies of some clippings, are annexed herewith and marked as **Exhibit "C" colly.**

9. It is submitted that, suspect and accused apart, even victims and witnesses have not remained unscathed by the relentless intrusion in their private lives. In addition to the police being tarnished as incompetent and complacent in screening the concerned accused, the potential witnesses have been exposed by identifying them, interviewing them, bringing them in the public eye, deposing them on TV channels, terming their statements as confessions to such an extent that the potential witness, eventually when is required by law to depose on oath before a court of competent jurisdiction, is faced with the dilemma of sticking to his unverified public statement given to a reporter & stating the truth, when confronted on the witness stand. The witness is torn between telling the undistorted truth on the witness stand and retaining his public image by sticking to the statements to a journalist which may have been informally given, but have been heard and registered by the public.

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10. It is submitted that witnesses also suffer the danger of coming under pressure from both the accused as well as the investigating agency. At the earliest stage the witness may want to retract and get out of the muddle, which makes witness protection a huge casualty. Potential witnesses interviewed by journalists have changed their version of events from channel to channel.
11. It is also being seen that a multitude of cameras are flashed almost blinding the person and microphones are shoved in their faces and the police are seen making a Herculean effort of taking the suspect/accused from their transport vehicles to the place of interrogation.
12. It is submitted that the right to silence has been considered in detail in the 180th report of the law commission. The Law Commission has dealt with the doctrine of media trial and has submitted its comprehensive 200th report on this subject. The LCR has postulated various doctrines in its report. It has considered the universal declaration of human rights concerning the rights of suspects and accused, the international covenant on civil and political rights,


referring to Article 14(2) & (3) of the same, the European convention for the protection of human rights and fundamental freedoms, and the constitution of India, etc. the law commission has referred to article 20 of the constitution and has specifically dealt with the issue of rights of an accused person via-a-vis the right to life and liberty. The law commission has also referred to Contempt of Courts Act, 1971 which also postulates a criminal contempt in case of any act, which includes any publication which interferes or obstructs the administration of justice in any manner.

13. In the context of parallel investigation, the Supreme Court in the case of **Saibal vs. BK Sen**, Reported in AIR 1961 SC 633, has observed that "it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of such investigation". Such trial by media must be prevented as it tends to adversely interfere with the course of justice.

14. It is submitted that the issue of trial by media or prejudice to a fair trial on account of pre-trial publication is directly linked with Article 19(1) (a) of

the Constitution as well as Section 3 of the Contempt of Courts Act, 1971. The issue is about balancing the freedom of speech and expression on one hand and undue interference with administration of justice within the framework of Contempt of Courts Act, 1971 as permitted by Article 19(2). Presently, the provision of section 3 of the Contempt of Courts Act restricts the freedom of speech and expression including the freedom of the media to report, if any such publication obstructs the course of justice in connection with any civil or criminal proceeding which is 'pending'. Section 3(1) of the Act affords protection if the person who publishes has no reasonable grounds to believe that a proceeding is pending before a court of law. As per the present law, the starting point of pendency of the case is from the stage when the court actually gets involved on submission of a final report by the investigating agency under section 173, Cr.P.C. thereby meaning that any publication prior to filing of such report is not contempt.

15. In this context, it is submitted that, looking at the current scenario where the media has actually tried and convicted the suspects/accused and have brought in the public domain statements of



witnesses, confessions, details of forensic reports, and all such things which would ordinarily be a matter of trial and would form part of the investigation report to be dealt with by the court while framing charges, the constitutional right of a fair trial has been jeopardised seriously. Even the LCR has discussed at length, this aspect and has raised the issue that if the publication is one which admittedly obstructs the course of justice while the law has given immunity under Section 3(2) of the Contempt of Courts Act only because such a publication has been made before the filing of chargesheet, is such procedure fair, just and equitable?

It is thus, submitted that such a publication made in respect of a person against whom an FIR is filed but a challan has not yet been filed, nor has such a person been arrested, the procedure as one strictly subscribed by Section 3(2) of the Contempt of Courts Act may not be a procedure which is fair, just and equitable and is arbitrary and may not stand the test of Article 14. It has thus, become necessary in the interest of justice that the said provision in the Contempt of Courts Act be read down to deem that such publication may also be contemptuous as soon as an FIR is registered against a person since, the

persistent salacious publication may be prejudicial to the procedure and proceedings contemplated under the 'due process of law' which shall eventually culminate in a fair trial. It is evident that such publication is seriously likely to affect the investigation in progress and the final report to be submitted by the Agency may be affected by perceptions and prejudices created amongst the public by media pressure.

Even in the case of **AK Gopalan vs. Noordeen** Reported in 1969 (2) SCC 734, the Hon'ble Supreme Court has held that "a contempt of court may be committed by a person when he knows or has good reason to believe that criminal proceedings are imminent. The test is whether the circumstances in which the alleged contemnor makes the statement are such that a person of ordinary prudence would be of opinion that criminal proceedings would soon be launched."

16. Thirdly, the Hon'ble Supreme Court in its unanimous judgment in the matter of **Justice KS Puttaswamy v Union of India**, Reported in 2018 (1) SCC 809, has declared the right to privacy as an intrinsic part of right to life and personal liberty under Article 21 and as part of the freedoms

guaranteed under Part III of the Constitution. Thus, the relentless intrusion of the media in the personal and private life of the accused/suspect and the family and friends of such person amounts to a violation of ordered liberty.


In a recent case, the Madras High Court has restrained a media house from publishing articles touching upon the private life of Kanimozhi Karunanidhi, relying upon the Supreme Court's landmark judgment as aforementioned. While the petitioner is conscious that there cannot be any blanket injunction on the publication rights of the press, the media cannot be allowed to publish anything and everything, which the general public may find interesting but, may not be in public interest.

17. Fourthly, the publications recently in the news has the effect of decrying the reputation of the deceased and the conversations in WhatsApp messages of the deceased while living, his financial position, his eating and drinking habits, his vices and virtues, his personal relationships, and other intricacies of his life have literally placed his entire private life under the public gaze. Explanation 1 to Section 499 of the IPC, 1860 provides that "It may amount to defamation to

impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives."

18. The Hon'ble Supreme Court in the matter of **Subramaniam Swamy v Union of India**, Reported in 2015 (13) SCC 353, has also analysed the meaning of the terms defamation and reputation. The court has observed that the concept of reputation is included in the protection of 'dignity' which is part of the constitutional protection provided under the right to life. While recognising the sanctity and significance of the freedom of speech, the court has ratified that restrictions on such freedom do not have an undue chilling effect on the right and hence, the right to freedom of speech does not override the right to reputation. It is thus, unfair to sully the memory of the deceased by brazenly and blatantly publishing and broadcasting minutia of his life only for the interest of the public and not in public interest.

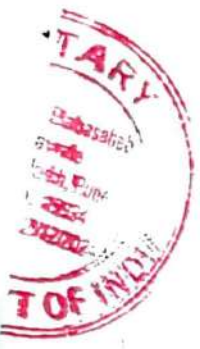
19. Fifthly the sensationalism involved in the cases of certain public profile criminal cases has become very common with the spread of mass communication. This invariable leads to the issue of prejudicial publicity placing on or the other party involved in a



disadvantaged position besides creating situations which tends to reduce legitimate space for dispassionate assessment of truth by judicial officer. Moreover such media trials unnecessary draw the judiciary into the public scanner after making a mockery of justice delivery system. Having moved from news as information to news as entertainment, the media has cast aside the once inviolable time between reality and drama. Now the right of citizens to receive news as information has been replaced by receiving news as entertainment.

20. It is submitted that even the Respondent No. 2 (Press Council of India) has declared that the journalistic norms have been violated in the SSR case and that many media outlets are in contravention of the norms of journalistic conduct framed by the PCI. In this context, the PCI has issued a media advisory dated 28.08.2020, Hereto annexed and marked as **EXHIBIT "D"**, advising the media not to use sensational headlines or photographs, video footage or social media links while reporting on suicide cases.

21. Thus, considering all above facts and circumstances and the settled legal position, the petitioner is sincerely desirous of bringing to the



notice of this Hon'ble Court, the glaring misfeasance and transgression on the rights of the parties concerned and the public at large. The right to a fair trial, the right to reputation, the right of the public of maintaining the sanctity and confidence in the law and order machinery of the state, etc. cannot be allowed to be compromised and besmirched by the unbridled and unrestricted freedom of the media. Additionally, the provision of section 3 of the Contempt of Courts Act, 1971 is required to be read down to include the stage from which publications may be held to be prejudicial to fair and just trial, upon registration of an FIR in place of arrest of the suspect or filing of chargesheet. The Respondent No. 3 Law Commission of India has been arrayed as a party since, the 200th LCR has dealt with the issue regarding doctrine of trial by media and the said report is as yet pending before the Parliament. **THE PETITIONER HAS LEARNT ABOUT THE INFORMATION AS PUBLISHED IN THE MEDIA.**

22. The petitioner submits that no other PIL or writ petition or any other proceeding has been filed by the petitioner in this Hon'ble Court or any other court claiming similar relief. **THERE IS NO OTHER EFFICACIOUS REMEDY AVAILABLE TO THE PETITIONER.**



23. The Petitioner craves leave to amend, alter, delete or add any of the ground or paragraph mentioned above with the permission of this Hon'ble Court.

24. The Petitioner craves leave to produce any document subject to the present petition as and when required or directed by this Hon'ble Court.

25. The Petitioner has paid necessary Court fee. [RS. 250/-]
 THE CAUSE OF ACTION HAS ARISEN WITHIN THE TERRITORIAL JURISDICTION OF THIS HON'BLE COURT, HENCE, THIS COURT HAS JURISDICTION TO ENTERTAIN THE PRESENT PETITION

PRAYER

26. Therefore, in the light of averments aforementioned it is humbly prayed that this Hon'ble Court may be pleased to:

A. Issue an appropriate order or direction in the like nature to the Respondent No.1 Ministry to issue appropriate orders/notification cautioning the media outlets and print media houses from publication/broadcasting of information which is likely obstruct the administration of justice, including the process of investigation;

B. Declare the scope and ambit of section 3 (2) of the Contempt of Courts Act, 1971 to include the starting point of the pending proceedings to be from registration of FIR, for the purpose of invoking the

said Act, in cases of publications which obstructs or tends to obstruct the administration of justice;

C. Direct the Respondent No. 1 to restrain publication/broadcasting of information relating to the ongoing investigation in respect of the SSR case forthwith, during the pendency of the present petition.

D. Pass ad interim orders in terms of prayer clause (C) above.

E. Any other just and reasonable orders may kindly be passed in the interests of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER ABOVE NAMED, AS IN DUTY BOUND SHALL EVER PRAY.

Mumbai

Dated this 03rd sept 2020

Drawn by:

(Shirin Merchant)

Neela Gokhale
Shruti Dixit
Kushal Choudhary

Authorized Representative of the Petitioner

