



O.A.No.731 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on	24.01.2023
Order pronounced on	12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A.No.731 of 2022
and
A.Nos.5161 to 5164 and 5913 of 2022
in
C.S. No.244 of 2022

V.Senthil Balaji

... Applicant / Plaintiff

Vs.

1.Nirmal Kumar

2.YouTube LLC

Rep. by its Resident Grievance Officer,
Suraj Rao,
Google LLC India Liaison Office Unit,
Unit No.26, The Executive Centre,
Level 8, DLF Centre,
Sansad Marg, Connaught Place,
New Delhi – 110 001.

3.Twitter Inc.,

Rep. by its Resident Grievance Officer,
Vinay Prakash,

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8th Floor, The Estate, 121, Dickenson Road,
Bengaluru – 560 042.

4. Ananda Vikatan Digital Private Limited,
Rep. by its Managing Director,
Mr. Srinivasan
757, Anna Salai,
Chennai – 600 002.

... Respondents / Defendants

PRAYER : This Original Application is filed under Order XIV Rule 8 of O.S. Rules r/w Order XXXIX Rule 1 & 2 of CPC 1908:

(a) Why this Application should not be treated as urgent ?

(b) Why this Hon'ble Court may be pleased to grant an order of interim injunction restraining the first respondent/defendant from in any way making, printing, publishing, broadcasting, disseminating or circulating the statements, articles, pictures, cartoons, caricatures, sketches, tweets and video mentioned in the Schedule A to L herein or its contents and/or any other defamatory statements, articles, pictures, cartoons, caricatures, sketches, tweets or videos which causes damage or tends to lower the applicant/plaintiff's reputation on YouTube, Twitter, Facebook, and/or in any other media and/or in any other manner pending disposal of the above suit?



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(c) Why this Hon'ble Court should not be pleased to pass such further or other orders as it may deem fit and proper in the circumstances of the case ?

For Applicant : Mr.M.S.Krishnan
senior counsel for Mr.Richardson Wilson

For Defendants : Mr.Yashod Vardhan,
senior counsel
for M/s. Adithya Reddy and
K.Govindarajan for R1/D1
Mr.G.Balasubramanian
for M/s.Leela & Co
for R2/D2

M/s.Arun C.Mohan
Mr.Keerthikiran Murali for R3/D3
No appearance for R4

Application No.5161 of 2022

V.Senthil Balaji

... Plaintiff

Vs.

1.Nirmal Kumar

2.YouTube LLC

Rep. by its Resident Grievance Officer,
Suraj Rao,



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Unit No.26, The Executive Centre,
Level 8, DLF Centre,
Sansad Marg, Connaught Place,
New Delhi – 110 001.

3. Twitter Inc.,
Rep. by its Resident Grievance Officer,
Vinay Prakash,
8th Floor, The Estate, 121, Dickenson Road,
Bengaluru – 560 042.

4. Ananda Vikatan Digital Private Limited,
Rep. by its Managing Director,
Mr. Srinivasan
757, Anna Salai,
Chennai – 600 002.

... Defendants

PRAYER : This Application is filed under Order XIV Rule 8 of O.S. Rules
r/w Section 151 of CPC 1908:

(a) Why this Application should not be treated as urgent ?

(b) Why this Hon'ble Court may be pleased to grant an order of
interim direction directing the third respondent/defendant to remove all the
tweets and video mentioned in the schedule A to F and H to L herein from
its platform www.twitter.com pending disposal of the above suit?



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(c) Why this Hon'ble Court should not be pleased to pass such

further or other orders as it may deem fit and proper in the circumstances of the case ?

Application No.5162 of 2022

V.Senthil Balaji

... Plaintiff

Vs.

1.Nirmal Kumar

2.YouTube LLC

Rep. by its Resident Grievance Officer,
Suraj Rao,
Google LLC India Liaison Office Unit,
Unit No.26, The Executive Centre,
Level 8, DLF Centre,
Sansad Marg, Connaught Place,
New Delhi – 110 001.

3.Twitter Inc.,

Rep. by its Resident Grievance Officer,
Vinay Prakash,
8th Floor, The Estate, 121, Dickenson Road,
Bengaluru – 560 042.

4.Ananda Vikatan Digital Private Limited,

Rep. by its Managing Director,
Mr.Srinivasan
757, Anna Salai,
Chennai – 600 002.

... Defendants



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PRAYER : This Application is filed under Order XIV Rule 8 of O.S. Rules

r/w Section 151 of CPC 1908:

(a) Why this Application should not be treated as urgent ?

(b) Why this Hon'ble Court may be pleased to grant an order of interim direction directing the fourth respondent/defendant to remove the video mentioned in the schedule G herein from its YouTube channel <https://www.youtube.com/c/vikatanwebtv> or any other media pending disposal of the above suit?

(c) Why this Hon'ble Court should not be pleased to pass such further or other orders as it may deem fit and proper in the circumstances of the case ?

Application No.5163 of 2022

V.Senthil Balaji

... Plaintiff

Vs.

1.Nirmal Kumar

2.YouTube LLC

Rep. by its Resident Grievance Officer,
Suraj Rao,



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Unit No.26, The Executive Centre,
Level 8, DLF Centre,
Sansad Marg, Connaught Place,
New Delhi – 110 001.

3. Twitter Inc.,
Rep. by its Resident Grievance Officer,
Vinay Prakash,
8th Floor, The Estate, 121, Dickenson Road,
Bengaluru – 560 042.

4. Ananda Vikatan Digital Private Limited,
Rep. by its Managing Director,
Mr. Srinivasan
757, Anna Salai,
Chennai – 600 002.

... Defendants

PRAYER : This Application is filed under Order XIV Rule 8 of O.S. Rules
r/w Section 151 of CPC 1908:

(a) Why this Application should not be treated as urgent ?

(b) Why this Hon'ble Court may be pleased to grant an order of
interim direction directing the second respondent/defendant to remove the
video mentioned in the schedule G herein from its platform
www.youtube.com pending disposal of the above suit?



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(c) Why this Hon'ble Court should not be pleased to pass such

further or other orders as it may deem fit and proper in the circumstances of the case ?

Application No.5164 of 2022

V.Senthil Balaji

... Plaintiff

Vs.

1.Nirmal Kumar

2.YouTube LLC

Rep. by its Resident Grievance Officer,
Suraj Rao,
Google LLC India Liaison Office Unit,
Unit No.26, The Executive Centre,
Level 8, DLF Centre,
Sansad Marg, Connaught Place,
New Delhi – 110 001.

3.Twitter Inc.,

Rep. by its Resident Grievance Officer,
Vinay Prakash,
8th Floor, The Estate, 121, Dickenson Road,
Bengaluru – 560 042.

4.Ananda Vikatan Digital Private Limited,

Rep. by its Managing Director,
Mr.Srinivasan
757, Anna Salai,
Chennai – 600 002.

... Defendants



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PRAYER : This Application is filed under Order XIV Rule 8 of O.S. Rules

r/w Section 151 of CPC 1908:

(a) Why this Application should not be treated as urgent ?

(b) Why this Hon'ble Court may be pleased to grant an order of interim direction directing the first respondent/defendant to remove all the defamatory tweets and video mentioned in the schedules A to L herein from YouTube, Twitter and all media accounts of the first respondent/defendant pending disposal of the above suit and pass such further or other orders as this Hon'ble Court may deem fit considering the facts and circumstances of the present case and thus render justice?

(c) Why this Hon'ble Court should not be pleased to pass such further or other orders as it may deem fit and proper in the circumstances of the case ?

Application No.5913 of 2022

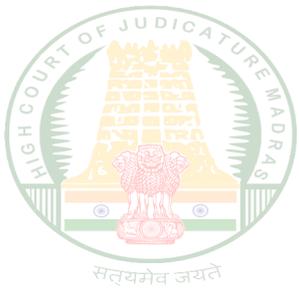
V.Senthil Balaji

... Plaintiff

Vs.

1.Nirmal Kumar

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WEB COPY 2.YouTube LLC

Rep. by its Resident Grievance Officer,
Suraj Rao,
Google LLC India Liaison Office Unit,
Unit No.26, The Executive Centre,
Level 8, DLF Centre,
Sansad Marg, Connaught Place,
New Delhi – 110 001.

3.Twitter Inc.,

Rep. by its Resident Grievance Officer,
Vinay Prakash,
8th Floor, The Estate, 121, Dickenson Road,
Bengaluru – 560 042.

4.Ananda Vikatan Digital Private Limited,

Rep. by its Managing Director,
Mr.Srinivasan
757, Anna Salai,
Chennai – 600 002.

... Defendants

PRAYER : This Application is filed under Order XIV Rule 8 of O.S. Rules
r/w Section 151 of CPC 1908:

(a) Why this Application should not be treated as urgent ?

(b) Why this Hon'ble Court may be pleased to pass an order to
arrest and detain the first respondent in civil prison?

(c) Why this Hon'ble Court should not be pleased to pass such



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further or other orders as it may deem fit and proper in the circumstances of the case?

For Applicant : Mr.P.Wilson,
senior counsel
for M/s.Richardson Wilson
(in all Applications)

For Defendants : Mr.Yashod Vardhan,
senior counsel
for K.Govindarajan for D1

COMMON ORDER

The suit is directed at alleged defamation by the first defendant by using the media/platforms of defendants 2 to 4. In respect of such alleged defamation, the plaintiff has prayed for damages of Rs.2 crore, a permanent injunction to restrain the first defendant from broadcasting the tweets and video described in Schedules A to L of the plaint and any other defamatory statements and for mandatory injunctions to direct the removal of the said allegedly defamatory tweets and video. In the said suit, several interlocutory applications have been filed seeking injunctive relief and interim directions in line with the relief prayed for in the suit. In addition, the plaintiff filed



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A.No.5913 of 2022 to punish the first defendant for wilful disobedience of the order of *ad* interim injunction granted on 17.11.2022.

2. The plaintiff is the Minister for Electricity, Prohibition and Excise in the Government of Tamil Nadu. The first defendant was the Tamil Nadu State President of BJP for IT and Social Media. The first defendant published a series of tweets with or without videos attached thereto. All these tweets and videos relate to the affairs of the Tamil Nadu State Marketing Corporation Limited (TASMAC), a corporation owned and controlled by the State of Tamil Nadu. The said tweets and videos are the focus of the suit and interim applications. The plaintiff alleges that these tweets and videos lower the reputation of the plaintiff in the eyes of society. By asserting that the plaintiff has been in public life for 25 years and has earned a respectable name in society, the plaintiff seeks relief in respect of the allegedly defamatory tweets and a video. The first defendant denies the assertion that the plaintiff enjoys a good reputation in society. The first defendant states that all the tweets and the video relate to the public functions of the plaintiff. The first defendant further states that there is

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sufficient material in the public domain to come to the reasonable belief that such acts of corruption are not just a result of the plaintiff's negligence but his active involvement. Therefore, the first defendant concludes that all the applications are liable to be rejected.

3. Oral submissions on behalf of the parties were advanced by: Mr.M.S.Krishnan, learned senior counsel, and Mr.P.Wilson, learned senior counsel, both for the plaintiff; Mr.Yashod Vardhan, learned senior counsel for the first defendant; Mr.G.Balasubramanian, learned counsel for the second defendant; and Mr.Arun C.Mohan, learned counsel for the third defendant. The fourth defendant was not represented at the hearing. The plaintiff and the first defendant also filed written submissions.

4. Mr.M.S.Krishnan, learned senior counsel, submitted that the plaintiff has been in public life for more than two decades. He has successfully contested multiple elections. He is currently the Minister for Electricity, Prohibition and Excise in the Government of Tamil Nadu. Therefore, he has a high reputation in society. The first defendant is the

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State President for IT and Social Media of the BJP. As the President of the State Unit of a political adversary, learned senior counsel submitted that the first defendant regularly uses the social media platforms of defendants 2 to 4. Mr.Krishnan submitted that criticism of the public functions of a Minister is necessary and welcome in a constitutional democracy. As long as such criticism is not defamatory and malicious, he contended that the plaintiff has no grievance. By drawing reference to a series of tweets between 04.02.2022 and 28.10.2022, learned senior counsel submitted that these tweets are not only defamatory but actuated by malice towards the plaintiff. He invited me to read all the tweets and watch the videos accompanying such videos. In particular, he focused attention on the following tweets:

4.1 The tweet on 18.06.2022 and the attached television news report, wherein the first defendant referred to the plaintiff being sorrowful because the collection was only Rs.30 crore per day as against the target of RS.50 crore per day and to the thwarting of the formula for earning without a tender.



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4.2 The tweet of 07.07.2022, wherein the first defendant described the plaintiff as an 'international thief'.

4.3 The tweet on 04.02.2022 regarding the High Court's decision to close all the bars in 6 months and wondering whether it has finished the syndicate and whether the advance received from the liquor companies would have to be returned.

4.4 The tweet of 06.12.2022 wherein reference is made to the sacking of employees who did not cooperate in the collection with the hashtag 'kallapatti singaram' and a statement that it is not anybody's father's money.

5. According to learned senior counsel, the above tweets clearly crossed the boundaries of fair comment and are *per se* defamatory. While conceding that the public functions of a Minister are open to comment and even criticism, he submitted that the right of free speech is not untrammelled and that Article 19(2) of the Constitution of India recognizes

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defamation as one of the restrictions on freedom of speech and expression.

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In support of these contentions, learned senior counsel referred to and relied upon the following judgments:-

1. *P.Balasubramania Mudaliar and another v. Sr. C.Rajagopalachariar*, 1944 M.W.N. (Criminal) 322, particularly page 99 thereof;
2. Sanjoy Narayan, Editor-In-Chief, Hindustan Times and others, (2011) 13 SCC 155, particularly paragraphs 4 and 5 thereof;
3. *R.Rajagopal @ R.R.Gopal and another v. State of Tamil Nadu and others (Auto Shankar)*, (1994) 6 SCC 632, particularly paragraph 26 thereof;
4. *A.Raja v. P.Srinivasan Publisher and Printer of Junior Vikatan Vasan Publications Private Limited*, 2009-5-L.W.117, particularly paragraphs 13 to 16 and 20 thereof.

6. Mr.P.Wilson, learned senior counsel, advanced arguments on behalf of the plaintiff in the applications for interim direction. He contended that the impugned tweets and the video are liable to be removed pending



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disposal of the suit because the said tweets and the video are likely to cause irreparable loss to the plaintiff's reputation, if they remain in the social media until disposal of the suit. By drawing reference to a few of the tweets, he submitted that such tweets cannot be permitted on the ground of freedom of speech and that freedom of speech is not an absolute right. Indeed, he submitted that the right to reputation is a facet of the right to life under Article 21 of the Constitution of India. He also submitted that the first defendant flagrantly violated the interim order of this Court by continuing to publish defamatory tweets and by giving an interview containing defamatory statements. Therefore, he urged the Court to direct the first defendant and the relevant social media intermediary to delete the tweets and the video. In support of these submissions, he referred to and relied upon the following judgments:-

1. *Whitehat Education Technology Pvt. Ltd. v. Aniruddha Malpani*, 2020 SCC Online Del 1616;
2. *Dr.Mukul M.Sangma v. P.A.Sangma and others*, 2014 SCC Online Del 1956;
3. *Hanuman Beniwal and others v. Vinay Mishra and Others*,



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4. *Lakshmi Murdeshwar Puri v. Saket Gokhale*, 2021 SCC Online Del 3675
5. *Nirmaljit Singh Narula v. Yashwant Sing and others*, 2012 (132) DRJ 370;
6. *Sonakka Gopalagowda Shanthaveri and Others v. U.R.Anantha Murthy and Others*, AIR 1998 Kar 255
7. *Vinai Kumar Saxena v. Aam Aadmi Party*, CS (OS) 593/2023

7. In response to these contentions, learned senior counsel for the first defendant submitted that the plaintiff should first establish that he enjoys a good reputation in society. By inviting my attention to a speech made by the Chief Minister of Tamil Nadu on 18.04.2016, he submitted that the Chief Minister made scathing remarks about the involvement of the plaintiff and his brother in several grave offences and scams. Learned senior counsel stated that the Chief Minister's speech continues to be available on his website. Learned senior counsel next turned his attention to the proceedings initiated against the plaintiff by the Association of Democracy

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Reforms and submitted that the matter pertained to a cash-for-job scam and related to the plaintiff's tenure as Transport Minister. The Division Bench of this Court had terminated the proceedings based on an agreement reached between the complainant, the plaintiff herein and the other accused, but the Hon'ble Supreme Court overturned the said judgment on the ground that criminal proceedings pertaining to serious corruption charges cannot be quashed on the basis of an agreement between private parties. Learned senior counsel contended, on this basis, that the plaintiff did not enjoy a reputation for honesty and integrity even prior to the impugned tweets.

8. The next contention of learned senior counsel was that a pre-trial injunction is ordinarily not granted in a suit for defamation if the defendant pleads truth or justification as a defence unless the plaintiff establishes that it is certain that the defendant cannot succeed in such defence. In support of this proposition, he relied on the judgment of the Delhi High Court in *Tata Sons Limited v. Greenpeace International and others (Greenpeace International)*, MANU/DE/0220/2011, wherein



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Bonnard v. Perryman (Bonnard)[1891] 2 Ch 269 was cited with approval.

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He also contended that all the impugned statements of the defendant relate to the public functions of a public official and, therefore, an action for libel is not maintainable unless the the defendant's statements were made with knowledge of falsity or reckless disregard for the truth. In this connection, he relied upon the judgment of the Hon'ble Supreme Court in *Auto Shankar*, wherein the standard formulated in *New York Times v. L.B. Sullivan (New York Times)* 376 U.S. 254 (1964) was quoted with approval. He also relied on the judgments of this Court in *R.Rajagopal v. J.Jayalalitha (Rajagopal)*, AIR 2006 Mad. 312, particularly paragraph 23 thereof, and *M/s.Menaka and Company v. Arappor Iyakkam and another(Menaka)*, O.A.No.18 of 2019 batch, order dated 03.06.2019.

9. As regards the meaning of the expression “reckless disregard for the truth”, he again placed reliance on *Greenpeace International*, particularly paragraph 19 thereof, and pointed out that there should be a high degree of awareness of probable falsity. He further pointed out that the



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use of hyperbole and exaggerated forms of speech is protected under the freedom of speech and expression. According to him, there should be sufficient evidence that the defendant entertains serious doubts about the truth of the statements made by him for the Court to draw the inference that the defendant made the impugned statements with reckless disregard for the truth.

10. Learned senior counsel referred to statements made by the present Finance Minister of Tamil Nadu, which were published in the New Indian Express on the basis of an interview given on 09.09.2022. In the said interview, the Finance Minister made damaging observations about the functioning of TASMAC and the tax revenue leakage arising out of its operations. He also pointed out that the above state of affairs is on account of TASMAC dealing almost exclusively in cash and not providing receipts to customers. He next relied upon statements made by the TASMAC Employees State Federation, including at the meeting on 03.12.2022. In particular, he pointed out that the office bearers of the TASMAC Employees State Federation spoke of the revenue leakage, the illegal operations of the

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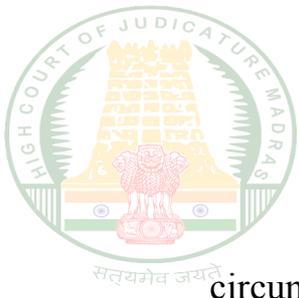
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Karur Company, the overpricing of liquor, the unlawful operation of bars by TASMAC outlets and the interference of the plaintiff and his brother in these dealings. The YouTube video of speeches made by office bearers of the TASMAC Employees State Federation was relied upon in such regard. He also referred to a programme on Vikatan TV with regard to alleged corruption by the plaintiff and his brother and other reports in the print media with regard to the manner in which the plaintiff has conducted the affairs of the Ministry. According to learned senior counsel, the above videos and publications evidence that the tweets of the first defendant were not made with a reckless disregard for the truth. On the contrary, he submitted that these tweets serve the public purpose of focusing the spotlight on the social evils of corruption and alcoholism.

11. Thus, learned senior counsel submitted that the plaintiff has completely failed to establish that the first defendant does not have a credible defence. He also submitted that the three tweets of 04.12.2022, 06.12.2022 and 08.12.2022 were deleted by the first defendant, and that the *ad interim* order of this Court was not wilfully disobeyed. In the

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circumstances, learned senior counsel submitted that the interim order granted earlier is liable to be discharged and all the applications seeking interim directions for the deletion of the tweets and for punishment for alleged wilful disobedience are liable to be rejected.

12. Mr.G.Balasubramanian, learned counsel for the second defendant, stated that the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules 2021, were recently amended. Prior to such amendment, a social media intermediary was required to ensure that defamatory content is not uploaded on its platform. After the amendment, this obligation does not exist. In the changed statutory context, learned counsel submitted that the social media intermediary is not permitted to adjudicate as to whether content is defamatory or not. Instead, the aggrieved person is required to approach a court of law and the social media intermediary would abide by orders of court.

13. Mr.Arun Mohan, learned counsel for the third defendant, made similar submissions. In addition, he placed for consideration two



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judgments pertaining to tweets. The said judgments are *Jack Monroe v. Katie Hopkins (Jack Monroe)*, (2017) EWHC 433 (QB), and *T.V.Today Network Limited v. Cognate and others*, 2021 SCC Online Del 3244.

14. The rival contentions warrant a discussion on the law relating to libel actions. Undoubtedly, Article 19(1)(a) of the Constitution of India confers on all citizens the fundamental right of freedom of speech and expression. Unlike the first amendment to the US Constitution, the fundamental right of freedom of speech and expression is subject to reasonable restrictions that are incorporated in the Constitution. An expressly recognized reasonable restriction is if speech or expression is defamatory. Thus, it becomes necessary to strike the appropriate balance between upholding the fundamental right to freedom of speech and expression, on the one hand, and a person's right to protect his or her reputation, on the other. Another question of considerable significance, which is not *res integra*, is whether a different standard should be adopted while considering libel actions by a public official in relation to statements



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by the defendant on his public functions. The precedents discussed below instruct that, in the context of private life, the need to protect privacy is compelling. By contrast, while dealing with the public functions of a person, greater latitude is given to the media and the general public to comment and even criticise stridently or caustically provided such statements are not published with knowledge of falsity or reckless disregard for the truth. In this case, none of the tweets or videos relate to the private life of the plaintiff.

15. In *New York Times*, in the factual context of statements made in a paid advertisement on police action against a group of black rights activists and a libel action instituted by the Commissioner of Montgomery, Alabama, the US Supreme Court examined the constitutional protection accorded under the first and fourteenth amendments of the US Constitution and concluded that an action for damages for libel does not lie at the instance of a public official in respect of statements made in relation to his public functions unless such statements were made with actual malice, i.e.



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unless such statements were false to the knowledge of the maker or made with a reckless disregard for the truth. The rationale underlying the decision is that freedom of speech is sacrosanct in a constitutional democracy and there would be a chilling effect on free speech if a person commenting on the public functions of a public official could be sued successfully for defamation unless he could prove the veracity of his statements. The Court recognized that even if such person knew or believed that his statements were true, it would very difficult to marshal the evidence necessary to prove it in a court of law. In *Auto Shankar*, the Supreme Court recognized the standard laid down in *New York Times* as being applicable in the Indian context.

16. A critical issue follows from the *New York Times* test: how do you determine whether a person acted with reckless disregard for the truth? In *Jim Garrison v. State of Louisiana (Garrison)*, 379 U.S.64 (1964), in the context of an action for criminal libel against a District Attorney who alleged that the backlog of pending criminal cases was because of the



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inefficiency, laziness and long vacations taken by judges, the US Supreme Court held, in relevant part, as under:

*“...And since erroneous statement is inevitable in free debate, and it must be protected if the freedoms of expression are to have the breathing space that they need to survive, only those **false statements made with a high degree of awareness of their probable falsity** demanded by **New York Times** may be the subject of either civil or criminal sanctions....” (emphasis added).*

A finding of reckless disregard for the truth was reached by the majority in *Curtis Publishing Co. v. Wallace Butts*, 388 U.S.130 (1967), in a case where the publisher was notified that the intended publication was false and was aware of the consequences to the people concerned. In *Phil A. ST. Amant v. Herman A. Thompson (ST. Amant)*, 390 U.S.727 (1968), in the context of a television speech by a candidate for public office in which defamatory statements were made on the basis of answers provided by a third party, the US Supreme Court recognized that reckless disregard cannot be fully



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encompassed in one infallible definition and that its outer limits will be marked by case-by-case adjudication. The Court proceeded to hold as under:

“ *There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.*” (emphasis added)

A finding of reckless disregard for the truth was also reached in *Harte-Hanks Communications, Inc. v. Daniel Connaughten*, 491 U.S.657 (1989), after noticing that the defendant failed to examine a key witness and by entering a finding of purposeful avoidance of the truth.

17. Courts in the UK have followed a different path. In a seminal judgment, *Reynolds v. Times Newspapers Ltd.* [2001] 2 AC 127, the House of Lords, speaking through Lord Nicholls, set out the following material considerations in deciding whether to interfere with freedom of speech:

“*The elasticity of the common law principle enables*



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interference with freedom of speech to be confined to what is necessary in the circumstances of the case. This elasticity enables the court to give appropriate weight, in today's conditions, to the importance of freedom of expression by the media on all matters of public concern. Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only.

- 1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is untrue.*
- 2. The nature of the information, and the extent to which the subject matter is a matter of public concern.*
- 3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind or are being paid for their stories.*



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4. *The steps taken to verify the information.*
5. *The status of the information. The allegation may have already been the subject of an investigation which commands respect.*
6. *The urgency of the matter. News is often a perishable commodity.*
7. *Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.*
8. *Whether the article contained the gist of the plaintiff's side of the story.*
9. *The tone of the article. A newspaper can arise queries or call for an investigation. It need not adopt allegations as statements of fact.*
10. *The circumstances of the publication, including the timing.”*



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The law laid down in *Reynolds* is referred to as *Reynolds* privilege. It was followed in several subsequent judgments such as *Flood v. Times Newspapers Limited* [2012] 2 AC 273 until the enactment of the Defamation Act, 2013, which codified the law and thereby replaced the rule in *Reynolds*.

18. As noticed earlier, the actual malice standard was adopted by the Supreme Court in *Auto Shankar* and, thereafter, cited with approval by the Division Bench of this Court in *Rajagopal* and by the Delhi High Court in *Greenpeace International*. Hence, the said standard clearly applies in the Indian context. In *Garrison*, in order to draw a conclusion of 'reckless disregard', the US Supreme Court held that false statements should be made with a high degree of awareness of probable falsity. In *ST.Amant*, it was held that there should be sufficient evidence to permit the conclusion that the defendant entertained serious doubts as to the truth of his publications. These benchmarks are not binding in the Indian context. The expression 'reckless disregard' is defined as follows in the Black's Law Dictionary, 10th



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- “1. Conscious indifference to the consequences of an act.*
- 2. Defamation. Serious indifference to truth or accuracy of a publication. “Reckless disregard for the truth” is the standard in proving the defendant's actual malice toward the plaintiff in a libel action.*
- 3. The intentional commission of a harmful act or failure to do a required act when the actor knows or has reason to know of facts that would lead a reasonable person to realize that the actor's conduct both creates an unreasonable risk of harm to someone and involves a high degree of probability that substantial harm will result.”*

Auto Shankar throws light on the meaning and content of the expression 'reckless disregard for the truth' by holding, in relevant part, as under:

- “3. There is yet another exception to the Rule in (1) above- indeed, this is not an exception but an independent rule. **In the case of public officials, it is obvious, right of privacy, or for that matter, the remedy of action for***



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damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages....” (emphasis added).

By taking into account the overall constitutional and statutory context in India, *Auto Shankar* and the definition of 'reckless disregard', in my view, the contours of 'reckless disregard for the truth' would encompass all defamatory statements made without being concerned as to whether such



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statements are true or false, such as where such statements were made without any verification. Indeed, in the UK, as would be evident from the extract from *Reynolds*, the responsible publication obligation is imposed. I am inclined to the view that imposing the obligation to verify the veracity of the statement before publication is not inconsistent with the fundamental right of freedom of speech and expression provided the verification bar is not set high and, more importantly, the defendant is not saddled with the obligation of proving the truth of the statements. The peculiar problems presented by interlocutory applications in the context of defamation and particularly actions for defamation by a public official are addressed next.

19. Actual malice, including by way of reckless disregard for the truth, cannot be definitively determined at the interlocutory stage. Yet, significant damage to the plaintiff's reputation could be caused if the defendant is permitted to make defamatory statements until final disposal. This problem is exacerbated in the context of social media because of the high frequency and interactive nature of these platforms, as recognized in



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Jack Monroe. With regard to the grant of interim injunctions in libel actions, in **Bonnard**, the Court held, in relevant part, as under:

“... Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions....”

In subsequent judgments, courts in the UK affirmed the rule in **Bonnard** but concluded that an exception may be made where the defamatory statement is clearly untrue (see *Holley v. Smyth* [1998] QB 726). In the context of a non-governmental organization involved in *inter alia* disseminating information to the public and seeking action in respect of corruption by public officials, in **Menaka**, this Court refused to grant an interim injunction by applying both **Bonnard** and the reckless disregard for the truth standard. These applications should be determined by bearing these aspects in mind.

20. A preliminary issue to be examined is with regard to the reputation of the plaintiff. The first defendant relied on the statements of the



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Chief Minister and the restoration of a case of alleged corruption to contend that the plaintiff does not have a reputation for honesty. Because the criminal case was restored and a charge of corruption is pending adjudication against the plaintiff, it cannot be concluded that the plaintiff does not enjoy a reputation. Considering the fact that the plaintiff is a Minister and was elected to the State Legislature on more than one occasion, for interlocutory purposes, I conclude that the plaintiff meets the threshold. The next question is whether interim relief should be denied because of the defence of truth or justification. To my mind, the answer depends on whether it can be concluded *prima facie* that the first defendant acted with reckless disregard for the truth. This determination cannot be made in a vacuum and should be made by assessing the material that the first defendant relied on to make the statements. Before publishing the impugned tweets and video, the first defendant does not assert that he conducted an independent probe into alleged irregularities and corruption in the functioning of TASMACH or, more specifically, corruption involving the plaintiff. Instead, the first defendant relied on prior publications. Therefore, these publications should be examined.

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21. The first defendant has placed on record two volumes of articles and videos. These articles and videos fall into several categories. The articles published in the Deccan Herald and Tamil Samayam on 03.01.2022 and the articles published in the New Indian Express and DT Next on 04.01.2022 are in respect of irregularities in tenders floated by TASMAL. The articles published in the Hindu on 23.05.2022 and 26.05.2022 and the article in Savukku online on 22.06.2022 deal with the VR Mall incident. The articles published in DT Next on 13.08.2022 and in the Organiser on 07.10.2022 relate to drug/ganja abuse. The articles published in the Times of India on 30.10.2022 and in the Economic Times on 21.11.2022 pertain to irregularities in the functioning of TASMAL, such as not providing bills to customers, charging more than the MRP, procurement of alcohol from manufacturers on the basis of extraneous considerations and the like.

22. These articles indicate that several journalists have noticed and reported on irregularities in the functioning of TASMAL with respect to several aspects such as not providing bills to customers, charging more than

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the MRP, functioning beyond permitted hours, unaccounted and off-the-record sales, procurement of alcohol from manufacturers on the basis of extraneous considerations, etc.

23. Apart from the articles discussed above, the first defendant has also placed for consideration an article published by the Junior Vikatan on 23.11.2022. As in the case of the article published in the Economic Times on 21.11.2022, this article was published after the impugned tweets and video (Schedules A to L of the plaint) were published. This article provides details on irregularities and illegalities noticed by visiting retail outlets of TASMAL in multiple districts of Tamil Nadu. It also contains a section on the Karur Company. It is stated therein that the Karur Company is a finance company. The names of the plaintiff's brother, Ashok, Karthi and Ramesh are mentioned as the persons in charge of the Karur Company. The names of persons allegedly in charge of the operations of the Karur Company in specific areas or places in Tamil Nadu are also mentioned. In addition, videos wherein office bearers of the Tamil Nadu State TASMAL Employees Federation make allegations with regard to irregularities in transfers and in

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the functioning of TASMAL units and the commission demanded by the Karur Company are on record. No information is on record with regard to the constitution of the Karur Company: is it a limited company or partnership? If it is a limited company, who are the shareholders and directors? If it is a partnership, who are the partners? There is also no information as to whether public records corroborate the statements on the persons in charge of the Karur Company. The first defendant has also placed for consideration representations made by him to the Vigilance and Anti-Corruption Department, the Accountant General and the Director, CBI on 29.10.2022. All these representations were submitted after publishing the impugned tweets and video described in Schedules A to L of the plaint. These representations allege corruption in the functioning of TASMAL and the involvement of the plaintiff in such corruption. Whether the tweets and video may be *prima facie* construed as not made in reckless disregard for the truth, on account of the above material, falls for consideration next and entails an examination of the tweets.



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24. It is not possible to adopt a broad-brush approach and paint all the tweets and the video of the first defendant with the same brush. Therefore, individual tweets should be examined. The tweets and the video referred to in Schedules A to L of the plaint were placed on record by the plaintiff. In addition, three tweets of 04.12.2022, 06.12.2022 and 08.12.2022 and a video uploaded on the 4th defendant's YouTube channel were also placed for consideration. These tweets and videos may be classified for interlocutory purposes into two broad categories. The first category consists of publications relating to irregularities in the functioning of TASMAC and the alleged consequences of easy availability of alcohol. The second category consists of publications in which allegations of corruption were levelled, either directly or indirectly, against the plaintiff and his brother.

25. For interlocutory purposes, I classify the following publications as directed at the irregularities in the functioning of TASMAC and the consequences thereof:

Sl.No	Date of tweet/video	Contents	Description, if any, in plaint
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1.	08.12.2022	"செந்தில் பாலாஜி என்ன மக்கள் தலைவரா, திமுகவை பொறுத்தவரை அவர் ஒரு ஏடிஎம் மெஷின் தான்! முழு வீடியோலிங்க் Youtube / bx9jTOXJtD4"	
2.	24.03.2022	"Result of # syndicate_ senthil_balaji"	Schedule - B
3.	17.10.2022	"அணில் பாலாஜி பேராசையின் விளைவு! இதேபோல் மென்மேலும் சிறக்க வாழ்த்துக்கள் @V_Senthilbalaji..."	Schedule - I
4.	20.10.2022	"சந்தோஷமா @V_Senthilbalaji... தமிழக பெண்களையும் ரோட்டுக்கு கொண்டு வந்தாச்சு, இந்த செந்தில் பாலாஜியின் பேராசையால் இன்னும் எத்தனை குடும்பத்தை தெருவுக்கு கொண்டு வரப் போகிறீர்கள் @mkstalin?"	Schedule - T
5.	01.04.2022	"24 மணி நேரமும் பார் சிண்டிகேட் மூலம் கிடைக்க சிறப்பான ஏற்பாடு செய்துள்ளார் @V_Senthilbalaji... இடம் வண்டலூர் மேம்பாலம்!!!"	Schedule - C
6.	02.10.2022	"விற்பனை செய்வதே @V_Senthilbalaji தான், அப்புறம் எப்படி சட்ட விரோதம் ஆகும் @News18TamilNadu?"	Schedule - H



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7.	26.10.2022	“சிறப்பு @V_Senthilbalaji #பொன்னியின்செல்வன் 3 Weeks 476 Crores #தண்ணியின்செல்வன் 3 Days 600 Crores	Schedule - K
8.	28.10.2022	“கொள்முதல் மட்டுமல்ல, - *24 மணி நேர கள்ள சந்தையில் மது விற்பனை! *ஒவ்வொரு பாட்டிலுக்கும் டாஸ்மாக்கில் 10% கூடுதல் வசூல் *பார் மூலம் காலி பாட்டில்கள், அட்டைப்பெட்டி விற்பனை,, என மிகப் பெரிய கருப்பு பணம் டாஸ்மாக்கில் புழக்கத்தில் கொண்டு வந்துள்ளார் @V_Senthilbalaji.	Schedule - L

26. Although I classified all these tweets under one category, a brief, illustrative discussion is in order. The tweet of 24.03.2022 enclosing a video of a news report about school girls consuming alcohol in a Government bus was flagged by the plaintiff because it carried the hashtag “syndicate-senthil-balaji”. As the minister-in-charge of prohibition, the plaintiff is morally responsible for the unlawful consumption of alcohol by school girls in a public bus. Notwithstanding the hashtag “syndicate-senthil-



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balaji”, *prima facie*, this tweet would fall within the realm of fair comment.

The tweet of 17.10.2022 was accompanied by a video clipping of a news report on the Puthiya Thalaimurai news channel with regard to the havoc caused by drunken youth. Once again, as the minister-in-charge of the relevant ministry, moral responsibility may be attributed to the plaintiff. The relevant tweet refers to the incident being the consequence of the plaintiff's greed. While there is a measure of innuendo in this tweet, some latitude should be extended since the tweet relates to the social ills caused by excessive consumption of alcohol. The tweet of 20.10.2022 also refers to the greed of the plaintiff and alludes to the allegedly inebriated condition of the women who are shown on the road as a consequence of such greed. In the context of TASMALC being at least one of the highest contributors to the State's revenue, it cannot be concluded that the tweet is directed at the personal corruption of the plaintiff. The tweet of 01.04.2022 alleging the 24 hour operation of a TASMALC outlet falls in the same category. The tweets of 02.10.2022, which relate to sales by TASMALC and the Rs. 600 crore turnover of TASMALC in three days fall within the ambit of fair comment on the easy availability of alcohol and the realization of revenues from the sale



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thereof. The tweet of 08.12.2022, which refers to the plaintiff as an ATM machine and not a people's leader, falls in the grey area. The expression "ATM machine" could be construed as a reference to the high revenue yielding potential of TASMAC, which functions under the ministry headed by the plaintiff. Equally, it could be construed as innuendo directed at the corrupt practices and, therefore, the disproportionate income possessed by the plaintiff. Significantly, this tweet was subsequently deleted. The wide range of publications on irregularities in the functioning of TASMAC and the fact that many of these publications contain details of visits made by journalists to retail outlets lead to the *prima facie* conclusion that the above tweets on the functioning of TASMAC and alleging irregularities in relation thereto cannot be construed as having been made in reckless disregard for the truth. Whether tweets alleging corruption by the plaintiff are in reckless disregard for the truth should be examined next by first setting out the tweets.

27. For interlocutory purposes, I classify the following tweets as



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alleging corruption by the plaintiff:

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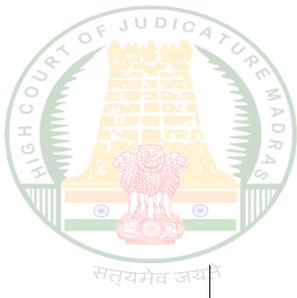
Sl.No	Date of tweets/ videos	Contents	Description, if any, in plaint
1.	07.07.2022	“குட்கா முதல் கஞ்சா விற்பனை வரை @V_Senthilbalaji போன்ற உலக திருடர்களை வைத்து தமிழ் கத்தில் எல்லா வழியிலும் பணம் பார்க்கும் திமுக.”	Schedule - F
2.	19.06.2022	“போதை பொருளுடன் ரேவ் பார்ட்டி நடத்தி 22 வயது நபர் இறந்து 10 நாளில் VR மால் பாருக்கு “கூடுதலாக பார்ட்டிகள் நடத்த வேண்டும்” என்ற கட்டளையுடன் மீண்டும் @V_Senthilbalaji லைசென்ஸ் வழங்கியிருப்பது வேற லெவல், யாரு செத்தா என்ன, எதை வித்தா என்ன, நம்ம டார்கெட் தினமும் 50 கோடி தம்பி அசோக்!	Schedule - E
3.	04.02.2022	“அனைத்து பார்களை 6 மாதத்தில் மூட உயர்நீதிமன்றம் உத்தரவு சிண்டிகேட் போச்சா,,, அப்போ சரக்கு கம்பெனியிடம் வாங்கிய அட்வான்ஸ் திருப்ப கொடுப்பீங்களா @V_Senthilbalaji?	Schedule - A
4.	18.06.2022	நாளொன்றுக்கு 50 கோடி டார்கெட் வைத்து, 30 கோடி தான் கலெக்சன்	Schedule - D



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		ஆகுது என ஏற்கனவே வேதனையில் இருக்கிறார் @V_Senthilbalaji... டெண்டர் இல்லாமல் சம்பாதிக்க ஒரு பார்முலா அமைத்தும் அதையும் இப்படி கெடுத்தால் எப்படி?"	
5.	04.12.2022	“என்ன தத்தி பாய்ஸ் @RSBharathiDMK அவர்களை இப்படி பொலம்ப வைக்கிறீங்க? சரி அந்த உழைக்காதவர்களுக்கு பதவி நம்ம #கல்லாப்பெட்டி- சிங்காரம் இருக்குமோ?”	
6.	06.12.2022	வதுலில் ஒத்துழைக்காத ஊழியர்களை பணி நீக்கம் செய்து வருகிறார் #கல்லாப்பெட்டி- சிங்காரம்! இது ஒன்றும் எவன் அப்பன் வீட்டு சொத்து கிடையாது, கொத்தடிமைகள் போல் நடத்தப்பட்டு இன்று கருவேப்பிலையாக தூக்கி எறியப்பட்ட அப்பாவி ஊழியர்களுக்கு இழைக்கப்பட்ட அநீதிக்கு நீதிமன்றத்தை நாடுவோம்!”	
7.	01.12.2022	“தெலுங்கானா முதல்வர் மகள் @RaoKavitha 100 கோடி ரூபாய்க்கு டெல்லியில் மது விற்பனையில் முறைகேடாக பணம் பெற்றதாக Enforcement directorate குற்றச்சாட்டு, அப்போ நம்ம #கல்லாப்பெட்டி- சிங்காரம்?”	
8.	28.09.2022	Video found at the following link: https://youtube.com/watch?	Schedule G



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		v=ymV4zkOYxtM	
9.	29.11.2022	Video found at the following link: https://youtube/772VtBRx7js	

28. In the tweet of 07.07.2022, there is a direct allegation that the plaintiff is an "international thief" and that the DMK has used persons like the plaintiff to earn money, including through the sale of Gutka and Marijuana. The explanation in the counter is that this expression is used in Tamil to refer to a 'heavily' corrupt person. While the first defendant stated that there were several media reports regarding the increase in consumption of 'gutka' and 'ganja' in Tamil Nadu, the first defendant does not set out any basis for the allegation that the plaintiff is an international thief. The tweet of 19.06.2022 relates to an incident that took place at VR Mall, Chennai. To the extent that it refers to the incident at VR Mall, including the renewal of the bar licence of the relevant bar owner, it is largely factual. The second part of the tweet refers sarcastically to the single-minded focus of the plaintiff and his brother on achieving the daily target of Rs.50 crore irrespective of the loss of life on account of the sale of illicit substances such as drugs. In the counter, the first defendant alleges that the plaintiff is



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not only morally responsible for such incidents but culpable because he has a personal stake in increasing liquor sales, especially outside the system.

The latter part of the tweet is *per se prima facie* defamatory. The tweet of 04.02.2022 refers to the High Court order directing closure of bars in six months and to the end of the syndicate on that account. The latter part of the tweet raises the question whether the advance received from liquor companies would be returned. The latter part of the tweet is directed at the plaintiff and clearly alludes to the receipt of advances by the plaintiff. *Prima facie*, this tweet is defamatory. The tweet of 18.06.2022, likewise, refers to the alleged target of Rs.50 crore and the plaintiff's sorrow on account of collecting only Rs.30 crores. The latter part of the tweet refers to the alleged formula to earn without a tender and sarcastically refers to the thwarting thereof. This tweet is also *prima facie* defamatory. The video at Schedule G is *prima facie per se* defamatory to the extent that the first defendant makes allegations of corruption against the plaintiff as regards the irregularities in the functioning of TASMAL.

29. Apart from the above, there are at least three tweets that refer to the plaintiff as kallapatti singaram. In the counter, the first defendant does

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not state that this expression is not being used to describe the plaintiff. One tweet refers to Mr.R.S. Bharathi's statement about persons who do not work being given positions in the Government and the plaintiff is hashtagged as kallapatti singaram. The second tweet refers to the sacking of employees who refused to cooperate in collecting money, and the third to the proceedings initiated by the Enforcement Directorate against Kavitha Rao in relation to alleged irregularities in the sale of alcohol. In both cases, the plaintiff is hashtagged as kallapatti singaram. These tweets are *prima facie per se* defamatory. These tweets were made after the *ad interim* order and the tweets of 04.12.2022 and 06.12.2022 were subsequently deleted by the first defendant. It is unclear from the record as to whether the tweet of 01.12.2022 was deleted. Unless the material on record supports a *prima facie* view that they were not made in reckless disregard of the truth, all these tweets and the video described in Schedule G to the plaint are *prima facie per se* defamatory.

30. Therefore, it becomes necessary to examine whether the material on record leads to the conclusion that these tweets are not in

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reckless disregard for the truth. As discussed earlier, apart from the article in the Junior Vikatan and the statements made by the Tamil Nadu State TASMACH Employees Federation, the other materials deal with irregularities in the functioning of TASMACH but do not allege that the plaintiff is corrupt. It bears repetition that the article in the Junior Vikatan was published after the impugned publications were made. The article in the Junior Vikatan refers to the Karur Company and the control exercised allegedly by the plaintiff's brother and two others over the said entity. The tweets of the first defendant, however, do not refer to the Karur Company. Besides, the first defendant does not assert that he conducted a probe and unearthed material indicating the complicity of the plaintiff in corruption relating to the operations of TASMACH either through the Karur Company or otherwise. He also does not state that he examined public records relating to the ownership and control of the Karur Company. In my view, the materials relied upon by the first defendant do not satisfy the verification benchmark especially on account of the seriousness of the allegations. In the absence of verification and evidence to back the allegations, I also conclude that the defences of the first defendant would probably fail as regards publications alleging

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corruption by the plaintiff. Hence, the interim injunction should continue to operate only in respect of tweets and videos that allege corruption by the plaintiff subject to a carve-out for publications made after verification and supported by some evidence. In my view, this approach allows an appropriate balance to be struck at this juncture and would prevent irreparable loss.

31. In *Jack Monroe*, the Queen's Bench Division dealt extensively with the nature of tweets and held that, for purposes of defamation, the court should assume the existence of a hypothetical reader of such tweets, who should be possessed of the characteristics of a reasonable representative of the users of Twitter who follow the defendant. The Court dilated upon the functioning of Twitter and, in particular, on the multidimensional conversations that occur on Twitter through processes such as impressions, engagements and re-tweets. In *Greenpeace International*, the Delhi High Court considered the question whether the principles and standards that are applied for defamation in the print and



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audio-visual medium should also apply to social media and answered the said question in the affirmative. The plaintiff stated that the first defendant has about 83800 followers on his twitter account and also provided information regarding the number of likes and re-tweets in respect of each impugned tweet. In my view, the speed and frequency with which messages can be disseminated to users of social media platforms and the interactive nature of these platforms would be a material consideration especially for the purpose of deciding interlocutory applications, including applications for deletion of the tweets and the video. The judgments of the Delhi High Court, which were cited by Mr. Wilson, also point in this direction.

32. In sum, for reasons aforesaid, I conclude that some tweets are *prima facie* defamatory whereas those pertaining to irregularities in the functioning of TASMACH are not. In cases that fall in the grey, in the context of an action for defamation, I lean in favour of the first defendant. The first defendant stated that the tweets made on 04.12.2022, 06.12.2022 and 08.12.2022 were deleted. Considering all these aspects cumulatively, I am not inclined to take action on the application for wilful disobedience.

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33. In the result, these applications are disposed of as follows:-

(a) The first defendant is restrained by an order of interim injunction from publishing or disseminating, on any media, publications that directly or indirectly allege corruption on the part of the plaintiff pending disposal of the suit. This order will not, however, stand in the way of the first defendant making such allegations if such allegations are made after verification and backed by some evidence of corruption. This order will also not stand in the way of statements relating to irregularities in the functioning of TASMACH;

(b) The first and third defendants are directed to take necessary steps to delete the tweets of 04.02.2022 (Schedule – A of the plaint); 18.06.2022 (Schedule – D of the plaint); 19.06.2022 (Schedule – E of the plaint); 07.07.2022 (Schedule – F of the plaint); and 01.12.2022, if not already deleted, pending disposal of the suit;

(c) The first, second and fourth defendants are directed to remove the video described in Schedule G of the plaint from the YouTube



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channel <https://www.youtube.com/watch?v=ymV4zkOYxtM> pending

disposal of the suit; and

(d) A. No.5913 of 2023 is closed.

12.04.2023

NCC :Yes/No
Internet :Yes/No
Index :Yes/No
PKN



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SENTHILKUMAR RAMAMOORTHY, J.

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