

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER 2021

BEFORE

THE HON'BLE MR. JUSTICE B. M. SHYAM PRASAD

WRIT PETITION No.18038/2021 (GM-CPC)

BETWEEN :

MR.SRIDHAR RAO S
AGED ABOUT 28 YEARS
S/O SRI SIVAJI RAO
7, 7TH B CROSS
80 FT ROAD,
SUBBANNAPALYA
BENGALURU - 560 033.

... PETITIONER

(BY SMT. AYANTIKA MONDAL, ADVOCATE)

AND :

1. NETFLIX ENTERTAINMENT
SERVICES INDIA LLP
11TH FLOOR OF GODREJ BKC, PLOT C-68
G-BLOCK, BANDRA KURLA COMPLEX
BANDRA EAST MUMBAI,
MUMBAI CITY MH 400051 IN
REPRESENTED BY
MR. ABHISHEK NAG
DIRECTOR
2. MINNOW FILMS LTD
NO. 58-60
RIVINGTON STREET,
LONDON EC2A 3AU,
REPRESENTED THROUGH ITS CEO

MR. MORGAN MATTHEWS
(PRODUCER/DIRECTOR).

... RESPONDENTS

(BY SRI.S.S. NAGANAND, SENIOR ADVOCATE FOR
SRI. VIKRAM UNNI RAJAGOPAL, ADVOCATE FOR R1;
SRI. UDAYA HOLLA., ADVOCATE FOR SENIOR
ADVOCATE FOR SRI. ANAND MUTTALI,
ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO A) QUASH THE ORDER DATED.29.9.2021 OF THE CCH 19 VII ADDL CITY CIVIL AND SESSIONS JUDGE IN O.S NO.5265/2021 IN SO FAR "IT IS FOUND NECESSARY TO HEAR TO OTHER SIDE BEFORE PASSING ORDERS ON I.A.1 HENCE ORDER ISSUE SUMMONS AND EMERGENT NOTICE ON IA NO.1 TO DEFENDANT THROUGH COURT AND RPAD RETURNABLE BY 08.10.2021"; RESTRAIN THE RESPONDENTS ITS AGENTS, SERVANTS FROM MARKETING BROADCASTING, STREAMING TELECASTING AND MAKING AVAILABLE IN ANY FORM OR IN ANY MEDIUM FOR SALE PUBLISHING DISTRIBUTING ETC THE DOCUMENTARY TITLED KNOW "CRIME STORIES, INDIA DETECTIVES A MURDERED MOTHER SERIES 1 OF THE EPISODE 1" AND ALSO THE NAME AND FACT OF THE PETITIONER IN ANY METHOD AND/OR ITS TRAILERS OR ABRIDGED VERSIONS AND TO TAKE DOWN THE SAME FROM THE WEBSITE AND SOCIAL MEDIA PLATFORMS TILL DISPOSAL OF THE O.S.NO.5265/2021 PENDING AT THE FILE OF HONBLE

CCH 19 VII ADDL CITY CIVIL AND SESSION JUDGE; B) DIRECT THE RESPONDENTS TO REMOVE AND WITHDRAW ALL PUBLICATIONS MADE BY THE RESPONDENTS CONCERNING TO THE PETITIONER;

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner, who is the plaintiff in O.S. No.5265/2021 on the file of the VII Additional City Civil and Sessions Judge, Bengaluru [for short '*the civil Court*'], has filed this petition invoking the special jurisdiction of this Court under Article 227 of the Constitution of India because the civil Court has not accepted the petitioner's request for *ad interim ex parte* injunction restraining the respondents from streaming, broadcasting, telecasting or otherwise publishing the tele-documentary styled "*Crime Stories. India Detective* titled *A Murdered Mother - Series-1 of the Episode-1*".

2. The petitioner's case is that he is accused of committing offences punishable under Sections 302, 307, 212, 201 read with Section 34 of the Indian Penal Code, 1860 and a charge sheet is also filed against him after investigation. He was initially arrested on 06.02.2020 and the respondents videographed not only his arrest but also the subsequent investigation and this is presented as the tele-documentary as aforesaid. This violates the petitioner's right to privacy as also free and fair trial. The petitioner asserts that with the telecast of this tele-documentary, he has suffered humiliation with being asked to leave certain public places.

3. This Court, in consideration of these submissions and also the ground that the civil Court has refused the prayer for *ad interim ex parte* injunction without considering that the delay would defeat the very object of moving an application for temporary

injunction, has directed the respondents, by way of *ex parte* order on 1.10.2021, to block streaming, broadcasting, telecasting or otherwise making available the content of the Episode No.1 on its *Over The Top* [OTT] platform '*Netflix*'. This interim order has been continued on the next dates of hearing.

4. The respondents contest the petitioner's right to not only permanent/temporary injunction but also the *ex parte ad interim* injunction. When it is pointed out that the petitioner's application for temporary injunction is still pending before the civil Court for grant of temporary injunction, Sri S.S. Naganand and Sri Udaya Holla, learned senior Counsels, who appear for the first and second respondents respectively, submit that therefore they would restrict their canvass to demonstrate that the petitioner would not be entitled for continuation of the *ex parte* order of injunction even if the petition is

disposed of calling upon the civil Court to decide on the petitioner's application for temporary injunction.

5. Sri S.S. Naganand and Sri Udaya Holla contest the continuation of *ex parte* injunction granted by this Court for twin reasons. Firstly, they submit that the petitioner has deliberately not disclosed certain material facts and there is a definite mis-statement of facts, and this violates the rule of candour which is a concomitant of the rule of '*utmost good faith*', a condition precedent for grant of *ex parte* temporary injunction. They submit that the petitioner is videographed with his consent and the telecast is after certain exchanges with the petitioner. This exchange disclose negotiations commenced after giving consent. But the petitioner has suppressed these material facts. Secondly, they submit that the petitioner has also not explained the delay in approaching the civil Court and this failure, especially in the facts and circumstances of

the case, shall disentitle the petitioner to the continuation of *ad interim* order.

6. The learned counsel for the petitioner, relying upon the assertions in paragraph-8 of the plaint where the petitioner mentions that the jurisdictional Police have taken his signature on plain paper given by the second respondent's representative, Ms. Claire Goodlass, submits that the petitioner has pleaded the necessary material and therefore there cannot be allegations of non-disclosure of any fact. The learned counsel emphasizes that the petitioner was arrested on 06.02.2020 and released over the next thirty days. The petitioner's consent, which is relied upon by the respondents to buttress the submission that there is deliberate non-disclosure and mis-statements, is dated 7.2.2020 when the petitioner was in police custody. This purported consent is tainted, and no significance can be attached to the same.

7. On behalf of the respondents, reliance is placed upon certain email correspondences, purportedly by the petitioner's counsel Sri. Arvind Kamath, with the respondents for a certain negotiation over the telecast on its OTT platform and a complaint lodged with the Regulatory Authority. It is canvassed that the petitioner cannot deny the knowledge of the negotiations conducted by his counsel over his consent. Therefore, there is deliberate non-disclosure, and a definite misstatement. The petitioner, in the least, having consented and negotiated over such consent should have disclosed the same to discharge the onus of '*utmost good faith*' to enable this Court to consider the question of grant of *ad interim ex parte* injunction in the light of such circumstances. The respondents also rely upon the time lag between the date of the consent and the date of the suit to emphasize that the petitioner could not have contended that if there is any delay in granting such relief, he would be seriously affected.

8. Sri S.S. Naganand and Sri Udaya Holla rely upon the decision of the Hon'ble Supreme Court in '*Morgan Stanley Mutual Fund v. Dr. Kartick Das*' reported in [1994] 4 SCC 225 to emphasize that a plaintiff who does not show '*utmost good faith*' in making an application for *ad interim ex parte* injunction would not be entitled for such relief. Sri. S.S. Naganand also relies upon a decision of the Hon'ble Supreme Court in '*Ramjas Foundation and Another v. Union of India and Others*' reported in [2010] 14 SCC 38 to emphasize that it has been held that a party who invokes extraordinary/special jurisdiction under Article 226 of the Constitution of India, must approach with clean hands and if there is violation of this rule, such party would not be entitled to be heard on the merits of his grievance. Sri. S.S. Naganand canvasses that the object underlying this principle is that every court is not only entitled but is duty bound to protect itself from

unscrupulous litigants. He also relies upon this decision to emphasize that the petitioner cannot as an excuse plead that he was not aware of certain facts.

9. Sri S.S. Naganand and Sri Udaya Holla further rely upon the decision of the Hon'ble Supreme Court in '*Prestige Lights Ltd., v. State Bank of India*' reported in [2007] 8 SCC 449 to canvass that because the petitioner has not disclosed the full facts, and has suppressed the relevant material, this Court must reject the petition even without adjudicating on the petitioner's grievance. In addition, the learned senior Counsels also rely upon the decisions of the Hon'ble Supreme Court to present the salient law that if there is fraud, there cannot be an order of injunction.

10. The learned counsel for the petitioner does not refute the legal propositions relied upon by the learned senior Counsels, but attempts to justify that there is neither suppression nor mis-statement of facts.

Thus, this Court has heard the learned senior Counsels for the respondents and the learned counsel for the petitioner on the merits limited to the question of continuation of the *ad interim ex parte* order granted by this Court while disposing of the writ petition calling upon the civil Court to decide on the petitioner's pending application for temporary injunction on merits otherwise.

11. On the point of law, this Court must opine that with the decision of the Hon'ble Supreme Court in *Morgan Stanley's* case referred to *supra*, it is settled that that the factors which should weigh with the Court for granting *ex parte* order of injunction are whether there would be irreparable or serious mischief to the plaintiff, whether refusal of *ex parte* order involve greater injustice to the plaintiff; and the Courts will also have to consider whether the plaintiff has shown '*utmost good faith*' in making the application for grant of *ex parte*

order. The salutary principles in this regard as enunciated by the Hon'ble Supreme Court in the aforesaid decision read as under:

"36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are -

[a] whether irreparable or serious mischief will ensue to the plaintiff;

[b] whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

[c] the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

[d] the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

[e] the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

[f] even if granted, the ex parte injunction would be for a limited period of time.

[g] General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court."

12. If there cannot be any quarrel with the proposition that a plaintiff would not be entitled for *ex parte* order if there is any deliberate non-disclosure or mis-statement of facts, the only question would therefore be whether there is deliberate non-disclosure of material facts, and therefore violation of the rule of utmost good faith which must persuade this Court to conclude against the continuation of the interim order for the period during which the petitioner's application is being considered by the civil Court.

13. The petitioner has filed his suit stating that his signature on a particular piece of paper was taken when he was in police custody at the instance of the second respondent. As against this pleading, the respondents have placed on record certain email

correspondences by a learned counsel, Sri Aravind Kamath, with the respondents on behalf of the petitioner. These email correspondences on *prima facie* reading disclose a negotiation prior to the date of telecast of the tele-documentary. The petitioner in meeting the allegations that there is deliberate non-disclosure and definite mis-statement in not mentioning the negotiations between the aforesaid learned counsel for the petitioner and the respondents has filed an affidavit before this Court.

14. The petitioner in this affidavit has not denied the email correspondences but has chosen to distance himself from the correspondences stating that these correspondences were by his counsel, Sri. Aravind Kamath, who continued to represent him until 2.10.2021, but without his authorization. It is also canvassed that the fact that the email correspondences are neither addressed nor marked to him, demonstrates

that he could not have had any knowledge. However, the negotiations on behalf of the petitioner by Sri Aravind Kamath, his learned counsel, is with Ms. Claire Goodlass and the petitioner, in paragraph-8 of the plaint and in the affidavit filed before this Court on 25.10.2021, has referred to the very same person and states that he was induced by this person to sign the form with the promise that he would be helped in securing bail.

15. This Court, on a conjoint reading of the statements in the plaint and in the affidavit, cannot but opine that there is a definite violation of the rule of '*utmost good faith*', a condition that must not be breached as canvassed by the learned senior Counsels both for grant of the *ex parte* interim order and for the continuation thereof. If the petitioner had disclosed these circumstances, and indicating a possible consent for the shooting of tele-documentary and subsequent

telecast, this Court would not have been persuaded to grant *ad interim ex parte* order of injunction. The negotiations include request for payment of certain amount to the petitioner by the respondents. The question of greater injustice to the petitioner if there is no extension of the interim order when the application is pending for consideration before the civil Court, is examined in the context of a possible petitioner's consent and a subsequent negotiation. This Court can only reasonably opine that the petitioner is not entitled for continuation of the *ex-parte* injunction granted by this Court.

For the foregoing, the writ petition stands disposed of calling upon the civil Court to expeditiously consider the petitioner's application within six [6] weeks from the date of receipt of a certified copy of this order [it is stated on behalf of the respondents that they have already entered appearance, but their pleadings are yet

to be complete] uninfluenced by any observations made by this Court in the course of this order as these are only to consider whether the petitioner would be entitled for continuation of the *ex parte* order.

In view of disposal of the main writ petition, the pending applications do not survive for consideration and hence disposed of.

**SD/-
JUDGE**

AN/-