

.* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Order Pronounced on: January 16, 2014**

+ **I.A. No.723/2014 in CS(OS) No.102/2014**

SWATANTER KUMAR Plaintiff

Through Mr.Mukul Rohatgi, Sr.Adv.,
Mr.A.S.Chandhiok, Sr.Adv.,
Mr.Rajiv Nayar, Sr.Adv.,
Mr.Neeraj Kishan Kaul, Sr.Adv.,
Mr.Vinay Bhasin, Sr.Adv.,
Mr.Maninder Singh, Sr.Adv.,
Mr.Kirti Uppal, Sr.Adv.,
Mr.Sandeep Sethi, Sr.Adv.,
Mr.Aman Lekhi, Sr.Adv. with
Mr.Sudhir Walia, Mr.Ralan
Karanjawala, Ms.Fareha Ahmad
Khan, Mr.Abhijat, Mr.Mohit Mathur,
Mr.P.Banerjee, Ms.Manmeet Arora,
Ms.Meghna Mishra, Mr.Akshay
Makhija, Mr.Ashish Dholakia,
Mr.Abhimanya Mahajan, Ms.Mansi
Sharma, Ms.Nidhi Parashar,
Ms.Niyati Kohli & Mr.Varun Kumar
Tikmani, Advs.

versus

THE INDIAN EXPRESS LTD. & ORS Defendants

Through Mr.Ashwani Mata, Sr.Adv. &
Mr.Dinesh Dwivedi, Sr.Adv. with
Mr.Vijay Sondhi, Mr.Kunal Tandon,
Mr.Kapil Arora & Ms.Nidhi, Advs.
for D-3.
Dr.Saif Mahmood, Adv. for D-4.
Mr.Rajeeve Mehra, ASG with
Mr.Sachin Datta, CGSC & Mr.Vineet

Tayal, Adv. for D-6.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The plaintiff has filed the abovementioned suit for permanent injunction and damages against six defendants, namely, (i) The Indian Express Ltd. through Editor-in-Chief and Publisher, (ii) Mr.Maneesh Chibber, Reporter, The Indian Express Ltd., (iii) Bennett, Coleman and Company Ltd., The Managing Director & The Editor-in-Chief of 'Times Now', (iv) Global Broadcast News (GBN) through Managing Director, Editor-in-Chief of 'CNN-IBN' and Turner International through Managing Director, (v) Ms.Intern through defendant No.2, and (vi) Union of India through the Secretary, Ministry of Information and Broadcasting.

2. The plaintiff has prayed for the relief of permanent injunction against the defendant Nos.1 to 5, its associates, sister concerns, its agents, representatives, correspondents, officers, employees and/or any other person, entity, in print or electronic media or via internet or otherwise from publishing, republishing, carrying out any further reports or articles or any other matter telecasts or repeat telecasts or programs, or debates or any discussion or reporting of any kind, directly or indirectly, pertaining to the purported complaint dated 30th November, 2013 and also prayed for a decree of damages against the said defendant Nos.1 to 5, jointly and severally, at least for an amount of ₹5 crores or for any higher amount and sought leave of this Court in this regard.

3. Admittedly, the plaintiff has been an eminent lawyer for 23 years before being elevated to the position of a Judge of this Court. The plaintiff then served as a Judge in the High Court of Punjab and Haryana at Chandigarh and thereafter returned as a Judge of this Court, before being elevated to the position of Chief Justice of the Bombay High Court. The plaintiff was elevated to the Hon'ble Supreme Court of India on 18th December, 2009 and resigned on 19th December, 2012 to take over as the Chairperson of the National Green Tribunal, a position that he presently holds. The plaintiff has served as a Judge for over 23 years in his career.

4. The plaintiff is stated to have approached this Court as a consequence to the breach of his fundamental and personal rights, due to the alleged defamatory and malicious acts of defendant Nos.1 to 5.

5. Defendant No.5, details relating to whose identity are not disclosed and who is now stated to have become a lawyer, is stated to have sent an affidavit dated 30th November, 2013 to the Hon'ble Chief Justice of India making certain allegations against the plaintiff. Defendant No.5 claims to have interned under the plaintiff in the Hon'ble Supreme Court of India, however, the plaintiff on the basis of the information received regarding the name of the defendant No.5 from defendant No.2, mentioned that defendant No.5 was neither an intern nominated by the Supreme Court nor by the plaintiff himself. With a view to safeguarding her dignity and maintaining her privacy, the identity of the said defendant Nos.5 at this stage, is being kept confidential and this defendant is not being named and is being referred to as the "intern". However, for the sake of disclosure to this Court, the plaintiff has filed the name of the defendant No.5 in a sealed envelope.

6. Defendant No.1 is a prominent national daily having high circulation both in India and abroad. The defendant No.2 is the author of the alleged defamatory news items published by the defendant No.1 on 10th January 2014, 11th January 2014 and 13th January 2014. The defendant Nos.3 and 4 are broadcasters who telecast news and current affairs on their TV channels; defendant No.3 is the owner of the TV channel “Times Now” while the defendant No.4 is a partnership entity between Global Broadcast News and Turner International which owns and operates the TV channel “CNN-IBN”.

7. The defendant No.6 is the Union of India through the Secretary, Ministry of Information and Broadcasting, Government of India, which has regulatory control over the print, electronic and internet media of this country. The defendant No.6 has been arrayed as a necessary party to the present suit in order to enable this Court to do comprehensive adjudication and pass all effective direction(s), judgment(s) and decree(s).

8. On 10th January 2014, a news item written by defendant No.2 was published in the defendant No.1 Newspaper. The said news item pertained to an alleged complaint made by an individual (Defendant No.5) against a retired Judge of the Hon’ble Supreme Court, with the headline “*Another intern alleges sexual harassment by another SC Judge*”.

9. It is the case of the plaintiff that no attempt of any verification of the allegations or the authenticity of the alleged complaint was undertaken by said defendants before publishing the news item because, even as per the news report, the defendant Nos.1 and 2, at the time of going to the Press, did not have the alleged affidavit dated 30th November 2013 in their possession. The plaintiff states that the incidents that have been alleged by defendant

No.5 did not take place and that the alleged complaint is baseless, fraudulent and motivated.

10. At about 7.00 p.m., the same evening, on the show called ‘The News Hour’, the channel of the defendant No.3 (Times Now) was conducting a debate as to whether the name of the judge with regard to the complaint that had been filed by an intern ought to be disclosed or not. The defendant No.3 also sought to publicize its programme, by publishing and asking the following questions on its page at www.facebook.com as well as on the channel itself, prior to the telecast to the said show. The captions/tickers running on the show were:

“If a sitting Supreme Court Judge has sexually harassed his intern, should his name be made public?”

“If Justice AK Ganguly's name was made public, should the Judge's name be made public in this case as well?”

11. It is stated by the plaintiff that on the evening of 10th January 2014, the defendant No.2, called the plaintiff on his mobile and asked the plaintiff for his comments on his news item published earlier that day. On the plaintiff’s asking defendant No.2 as to why the defendant No.2 was asking for the plaintiff’s comments on the said article, the defendant No.2 informed the plaintiff that the said news item dated 10th January 2014 pertained to him and at that point, defendant No.2 also informed the plaintiff about the name of the alleged complainant, being defendant No.5.

12. The plaintiff is stated to have then requested defendant No.2 to refrain from publishing the allegation as it may have serious consequences.

However, defendant Nos.1 & 2 published a news item on 11th January 2014 with the headline:

“Justice S Kumar... put his right arm around me, kissed me on my left shoulder... I was shocked”.

The plaintiff is stated to have later learnt that in fact, the said news item was published on the website of defendant No.1 at 11.20 p.m. on 10th January, 2014 itself along with his photograph.

13. It is averred that defendant No.3 conducted a public poll soliciting opinions on whether its channel should disclose the name of the said retired Supreme Court Judge. While the aforesaid show of defendant No.3 was being watched live, defendant No.4 in a telecast on 10th January 2014 at around 9-10 p.m. in a show anchored by Mr.Rajdeep Sardesai, allegedly with a view to steal a march over the defendant No.3's TRPs and allegedly in order to create sensation, proceeded to name the plaintiff as the Supreme Court Judge against whom allegations of sexual misconduct had been made.

14. In the meanwhile, the anchor and Editor-in-Chief of defendant No.3, Mr.Arnab Goswami, in a follow-up debate aired later in the evening, announced the name of the plaintiff and also repeatedly displayed the photograph of the plaintiff during the show. The said reporting was done by defendant No.3 without seeking any prior comments from the plaintiff.

15. It is specifically alleged in the plaint that it is not known how the defendant Nos.1 to 4 learnt the name of the plaintiff as on 10th January 2014, since the copy of the purported complaint, which was circulated by defendant No.1 to the media, and a copy whereof has now come into the possession of the plaintiff, has the names of the persons allegedly involved being blackened out.

16. It is the case of the plaintiff that he learnt from the news item dated 11th January 2014 published by the defendant Nos.1 & 2 that the purported complaint is dated 30th November, 2013 and that there is no explanation as to why the same was not published for two months and why no verification was undertaken by the said defendants or anyone else, from 30th November, 2013, prior to the publication on 10th January, 2014 and 11th January, 2014, especially when the institution sought to be maligned is the highest Court of the country.

It is also the case of the plaintiff that the reckless and irresponsible action of the defendant Nos.1 to 4, seeking to increase their circulation and TRPs at the cost of the reputation of the plaintiff and his public office have caused grave and irreparable injury to the reputation of the plaintiff and degraded the dignity of the Institution of Justice. It is stated that the defendant No.5 caused the publication of her false complaint to the media both print as well as electronic. The said acts of defendant Nos.1 to 5 are stated to have lowered the esteem of the plaintiff in the estimation of the public at large and his colleagues, staff, peers, and members of his social circle.

17. It is further the case of the plaintiff that the aforesaid acts and omissions are also violative of all the norms and canons of responsible journalism. Such conduct has been actuated by malice, against the plaintiff in particular and generally against the justice dispensation system. The acts of the said defendants as well as of defendant No.5 tantamount to blatant scandal mongering and are *per se* defamatory as they seek to denigrate both the plaintiff and harm his impeccable reputation in the public estimation. The defendants have failed to abide by the minimum moral standards of

ethics and there is a complete failure to comply with the etiquette and ethical standards expected from them.

18. It is believed by the plaintiff that the purported affidavit dated 30th November, 2013 has been circulated by an officer of defendant No.6, the Union of India, to the persons in the media. A copy of the said affidavit, as circulated to the media, found its way into the hands of a friend of the plaintiff who handed over a copy of the same to the plaintiff on 11th January 2014. The name of the alleged complainant, being defendant No.5 and the person against whom the allegations have been made were blackened out and therefore, it was impossible for the plaintiff to either identify the name of the complainant or ascertain the name of the person against whom the alleged complaint was made. The plaintiff states that it is intriguing as to how defendant Nos.1 to 4 discovered the name of the plaintiff.

19. It is further the case of the plaintiff that the defendants without any sensitivity named the plaintiff and without having any regard for the dignity and the privacy of the plaintiff and his family as well as the Institutions of Justice with which the plaintiff's name is associated, the defendants withheld from disclosing the name of the defendant No.5 who has claimed to have made such allegations against the plaintiff. The plaintiff's right to dignity, reputation, fair name and privacy are at par with the right of the defendant No.5 and cannot be violated.

20. The plaintiff has denied each and every allegation made in the alleged affidavit/complaint dated 30th November, 2013 of defendant No.5. The said allegations are stated to be false, scandalous and a product of a conspiracy between defendant No.5 and other influential persons who have vested interest in destabilizing the Institution of justice disposal. The plaintiff states

that the allegations have been made up by defendant No.5 with the intention of defaming the plaintiff and lowering his estimation in the eyes of those who, directly or indirectly, become privy to the purported affidavit in which the same are contained. Defendant No.5 is guilty of vicious and gross libel.

21. It is stated by the plaintiff that despite service of a legal notice dated 11th January, 2014 on defendant Nos.1 to 4, the said defendants have, to further their commercial interests, lent credence to the false allegations in the alleged affidavit, by telecasting various programmes wherein the said allegations have been repeated. The media has resorted to blatant scandal mongering and continue to place defamatory content in the public domain. It is the case of the plaintiff that once besmirched by an unfounded allegation in a national newspaper and its telecast by electronic media, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. The repeated telecast of the unfound, false and manipulated contents of the affidavit dated 30th November, 2013 publicise the said false allegations of the defendant No.5. In this manner, the media also continues to lower the plaintiff in the estimation of the society.

22. The plaintiff has also stated that there are a large numbers of newspapers in various languages in India. There are also several news and general entertainment channels and online websites. Due to the advent of internet and mass media, it is impossible for the plaintiff to determine as well as to implead all the newspapers and TV channels as well as entities reporting/carrying publishing defamatory material against the plaintiff. Defendant No.6 has regulatory control over the said entities/persons. The plaintiff prays that an injunction order be passed against the said other persons also who are not made party hereto, including defendant Nos.1 to 5.

23. It is submitted that grave prejudice and irreparable injury will be caused to the plaintiff if the defendants are not immediately restrained from defamatory material against the plaintiff and that the balance of convenience is in favour of the plaintiff and against the defendants and the plaintiff has a strong *prima facie* case and there is every likelihood of the suit being decreed in terms of the prayers made therein.

24. The plaintiff has also filed 13 affidavits of such persons who have either interned or worked with the plaintiff from time to time. In a sample affidavit of Mr.Shobit Phutela son of Sh.Sant Parkash, who is a 5th year student at the National University of Juridical Sciences, Kolkata, it is deposed by him that he had interned with the plaintiff from 17th April, 2011 to 15th June, 2011 and during this period, he had assisted the plaintiff with research, preparation of judgments, making of case notes and reading of case briefs and also assisted the plaintiff with the preliminary organization of the “International Seminar on Global Environment and Disaster Management: Law and Society”. The work involved inviting speakers, calling for papers, printing of invitations, making phone calls, writing of speeches and designing the brochure, etc. The deponent has further deposed that during the time of his internship, apart from him, there were other people, namely, Ms.Deepti Jayakrishnan (Law Clerk), Ms.Nithya Anand (Intern who later became the Law Clerk with the plaintiff) and Mr.Sudhanshu (Intern) involved in the organization of the abovementioned conference. He also deposed that during the course of his internship, the complainant/defendant No.5 also joined the office but worked only for 2-3 days. She helped in the preliminary organizational work for the aforementioned Conference, though such help was short-lived. He deposed that during the period of his

internship, no such incident, as alleged by defendant No.5, took place or was brought to anyone's notice in the office, including him. The reason quoted by defendant No.5 for quitting her internship was her mother's ailment and that she had to leave because there was no one at home to take care of her mother. The deponent further deposed that after his internship got over, he met the defendant No.5 in the College (Calcutta) and even at that time, she did not inform him of the alleged incident. On the last day of his internship, the plaintiff invited him to attend the Conference at New Delhi on 22nd July-24th July which he attended and did whatever organizational work that was required of him. He further deposed that he became aware of such an allegation only after reading the newspaper report published in "The Indian Express". This news came to him as a shock and he believes that such an incident could not have transpired. He also deposed that after reading the newspaper, the image and reputation of the plaintiff has been tarnished in his estimation and also in the estimation of the relatives, friends, and public at large who have constantly been supportive and have reposed their faith in the hard work and dedication of the plaintiff.

25. The plaintiff has pressed for interim orders against the defendant Nos.1 to 4 as per the prayers made in the interim application.

26. Mr.Mukul Rohatgi, learned Senior counsel appearing on behalf of the plaintiff along with other Senior Advocates appearing for the Bar have made their submissions which can be outlined in the following manner:

- a) Mr.Rohatgi argued that the plaintiff has his hard earned reputation and integrity before the legal fraternity as well as in the society at large as he is still holding the responsible position as a presiding

officer of the significant tribunal. It has been argued that the defendant Nos.1 to 4 by their irresponsible acts cannot simply proceed to injure the reputation of the plaintiff and damage the same by creating an adverse publicity merely on the basis of the allegation levelled against him by some intern/defendant No.5 against which the enquiry is yet to be commenced and completed. Mr.Rohatgi, learned Senior counsel has argued that allowing the defendants to continue to flash the name and photograph of the plaintiff in the print media or on internet or on news channels and continue to connect him with such allegations, creating adverse atmosphere in the public would definitely damage his reputation in the society and such damage is irreversible in nature which has to be prevented. As per Mr.Rohatgi, learned Senior counsel such damage is actionable and the same is required to be prevented by way of prohibitory orders of the Court.

- b) As per Mr.Rohatgi, learned Senior counsel the freedom of press as envisaged under Article 19(1) of the Constitution of India is not absolute right and the same is subject to the reasonable restrictions provided under Article 19(2) of the Constitution. It has been argued by Mr.Rohatgi learned Senior counsel that excessive adverse publicity beyond fair reporting not merely injures the reputation of the person but also affects the fair administration of justice and in such cases, the inherent power vests with the superior Courts including High Court to interdict and pass interim orders including the postponement of the publications as per the well settled law.
- c) Mr.Rohatgi, learned Senior counsel while drawing aid from the previous submission has argued that the defendant No.5/intern had

sought remedy from the Supreme Court wherein the Hon'ble Supreme Court has agreed to hear the matter on 14th February, 2014 and also appointed Mr.F.S.Nariman and Mr.K.K.Venugopal, learned Senior Advocates to assist the Court as *Amicus Curiae* and even sought Attorney General's assistance in order to set up a mechanism to probe allegations in view of the guidelines in *Vishaka vs. State of Rajasthan*, (1997) 6 SCC 241 formed in Supreme Court. As per Mr.Rohatgi, once the remedy has been preferred by the intern, the defendant Nos.1 to 4 should not conduct the adverse publicity by showing or projecting the plaintiff as culprit by prejudging him on the basis of the mere allegation which will result in an adverse atmosphere amongst the public and the likelihood of the plaintiff getting fair trial and justice would be seriously prejudiced. It has been argued that in the instant case, there is real and tangible danger of the interference with administration of justice. It has been argued that in the absence of any fact finding or any cogent and clear back up evidence, the media trial affecting the Court trial cannot be allowed by giving juicy news in order to create sensation in the minds of the public.

- d) Mr.Rohatgi, learned Senior counsel has read over the news articles from the documents file including the headlines of the news articles which contain the wordings or allegations from the affidavit filed by the Intern and the said headlines as per Mr.Rohatgi are aimed at creating hype in the public mind and prejudicially affect the reputation of the plaintiff and institution of justice. The said titles include the titles: (i) "*Justice S Kumar... put his right arm around me,*

kissed me on my left shoulder... I was shocked", (ii) *"Sex taint on another former S.C. Judge"* and (iii) *"Ex-Judge Claims Green Plot in Sex Slur"*, published in "Mail Today" on 15th January, 2014. As per Mr.Rohatgi, learned Senior counsel such kind of news is not fair journalism or responsible acts but is aimed at earning profits at the cost of someone's hard earned reputation. It has been argued that such publications without any enquiry or verification with evidence coupled with belated allegations should not be spread in the manner done by the defendants No.1 to 4.

- e) Mr.Rohatgi, learned Senior counsel has argued that the defendants have played with the reputation of the plaintiff by deliberately disclosing the name on the open channels and showing the photographs time and again so that the confidence of the public in the institution of justice as well as the reputation of the plaintiff in the minds of the public is impaired. It has been argued that whatever damage has been caused by the defendants is subject matter of the suit but the defendants should be prevented from further repeating such acts of causing such prejudice to the reputation of the plaintiff.
- f) Mr.Rohatgi has argued that the plaintiff has his right to maintain dignity, right to live dignified life, right to preserve reputation and they are all facets of right to life as provided under Article 21 and also parts of basic human rights which are fundamental rights and legally enforceable rights. It has been argued that the plaintiff can therefore invoke the inherent jurisdiction of this Court by seeking injunction orders against the publications of the articles which may prejudicially affect the reputation of the plaintiff causing irreversible damage to

him. It has been argued that such invocation of the inherent jurisdiction is available to the plaintiff by informing the Court that there is real and imminent danger of the plaintiff not getting fair trial or it may cause interference in the course of the justice by creating undue pressure on account of the public pressure by way of publication. He has also questioned the issue of delay in filing the complaint by defendant No.5/Intern after the gap of two and a half years.

27. Mr.Rohatgi, learned Senior counsel in order to substantiate his submissions has relied upon the judgment passed by the Apex Court in the case of *Sahara India Real Estate Corporation Limited and Others vs. Securities and Exchange Board of India & Another*, (2012) 10 SCC 603 wherein the Supreme Court has laid down principles governing the passing of the prior restraint order against the publication in some exceptional cases and discussed in detailed the exceptions involved.

28. Mr.Rohatgi, learned Senior counsel also relied upon the judgment passed by the Supreme Court in the case of *Reliance Petrochemicals Ltd vs. Proprietors Of Indian Express*, (1988) 4 SCC 592 wherein the Supreme Court had laid down the test governing the grant of the prohibitory orders against the publication in the context of interference with the administration of justice which is a real and imminent danger that there would be such interference with the administration of the justice.

29. Mr.Rohatgi, learned Senior counsel has further handed over several other judgments cited at the bar but mainly summed up his case on the basis of the submissions recorded above as well as the decisions quoted above. It has been prayed that the plaintiff has no objection towards the defendant

Nos.1 to 4 doing fair reporting of the happenings as facts but this Court should pass interim orders restraining the defendant Nos.1 to 4 from publicising the plaintiff's name, picture with the allegations of the defendant No.5 in the form of headlines which may create an impression that the plaintiff has done something unwelcomed when the facts are still verifiable or subjected to the scrutiny and the same are without any accompanying evidence. He has alleged that fair reporting is always permissible and the defendants are entitled to inform the public the correct facts and information, Court orders and events of Court proceedings as a news item. However, the media itself cannot form its own opinion and pre-judge the matter and pronounce the judgment before the public without the matter is examined and decided by the Court and particularly, without any back up by cogent evidence, otherwise it would amount to what is called as "Media Trial". It is submitted that the media even under the law is not entitled to distort the facts for the purpose of juicy news. If they do it, they are held responsible to suffer damages. He states that the present case is a fittest case of this nature.

30. Per Contra, Mr.Dinesh Dwivedi and Mr.Ashwini Matta, learned Senior counsel appearing on behalf of defendant No.3 have made their submissions which can be outlined in the following manner:

- (i) Learned Senior counsel argued that the freedom of the press which is part of the freedom of the expression is hallmark of any democracy and is part of the fundamental right under Article 19(1) of the Constitution of India. It has been argued that the defendant Nos.1 to 4 are merely publishing the write ups on the basis of the

affidavit supplied by the defendant No.5 and are not making any such wild and reckless allegations as alleged by the plaintiff.

- (ii) Learned Senior counsel have argued that the defendants are indulging in fair reporting. It has been argued that the defendant Nos.1 to 4 have not expressed anything out of their own but the defendants have merely reproduced the contents of the affidavit written by the defendant No.5 in her complaint to the Supreme Court. It has been argued that the plaintiff is unnecessarily alleging the defendant Nos.1 to 4 as guilty of irresponsible journalism. It has been argued that the public debate or discussion on public platform on issues of the public interests is part of free and fair democracy. It has been argued that if the defendant Nos.1 to 4 have done public debate on television or written articles in the newspapers describing the allegations of the defendant No.5 against the plaintiffs, the defendants did no wrong and have merely expressed and exercised their freedom of press.
- (iii) Learned Senior counsel argued that there is no danger of the plaintiff's not getting fair trial or any obstructions in the administration of justice and thus, the plaintiffs apprehensions are totally out of the context and should not be acceded to by the Court.
- (iv) Learned Senior counsel argued that the present suit for injunction is not maintainable in as much as the publications have already been made and thus the plaintiff cannot approach this Court belatedly and even in future, the defendant No.3 would telecast its programmes in fair reporting.

- (v) Learned counsel appearing for defendant No.4, upon instructions, made the statement that without prejudice, his client, i.e. defendant No.4 shall not conduct the telecast of the programme like earlier telecasted on 10th January, 2014 in respect of the plaintiff.

By making all these submissions, learned counsel for the defendants have argued that this Court should not pass any injunction against the defendants and allow them to file the written statements and replies to the injunction application.

31. I have gone through the plaint, injunction application as well as the documents filed therewith. I have also given careful consideration to the submissions advanced by the learned counsel for the parties at the bar. I shall now briefly discuss the plaintiff's entitlement to the interim injunction at this stage.

32. It is correct that freedom of expression in press and media is the part of Article 19(1) of the Constitution of India where by all the citizens have a right to express their view. However, the said right of the expression is also not absolute but is subjected to the reasonable restrictions imposed by the Parliament or State in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The said position is clear from the plain reading of the Article 19(1) and (2) of the Constitution of India.

33. The Courts have time and again emphasized that the media and press should not be unnecessarily restricted in their speech as the same may amount to curtailment of expression of the ideas and free discussion in the public on the basis of which the democratic country functions. The Courts

should thus refrain from making any prior restraints on the publications in order to curtail such freedom.

34. In *Express Newspapers (Private) Ltd. & Anr. vs. The Union of India & Ors.*, 1959 S.C.R. 12, the Supreme Court held that freedom of speech and expression includes within its scope the freedom of the Press. The Supreme Court referred to the earlier decisions in *Romesh Thappar vs. State of Madras*, AIR 1950 SC 124 and *Brij Bhushan vs. State of Delhi*, AIR 1950 SC 129. *Romesh Thappar's* case (supra) related to a ban on the entry and circulation of Thappar's journal in the State of Madras under the provisions of the Madras Maintenance of Public Order Act, 1949. Patanjali Sastri, J. speaking for the Court said in *Romesh Thappar's* case (supra) that "*...there can be no doubt that the freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation publication would be of little value.*" In *Brij Bhushan's* case (supra), Patanjali Sastri, J. speaking for the majority judgment again said that "*...every free man has undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press.*" Bhagwati, J. in the *Express Newspaper's* case (supra) speaking for the Court said that the freedom of speech and expression includes freedom of propagation of ideas which freedom is ensured by the freedom of circulation and that the liberty of the press is an essential part of the right to freedom of speech and expression and **that the liberty of the press consists in allowing no previous restraint upon publication.** (Emphasis Supplied)

35. In another case of *Express Newspapers Pvt. Ltd. & Ors vs. Union Of India*, AIR 1986 SC 872, the Supreme Court speaking through A.P. Sen, J. emphasized that though the freedom of press is an inalienable right, but the same is not absolute and is subject to Article 19 (2) as uncontrolled right to speech leads to anarchism. The Supreme Court observed thus:

“I would only like to stress that the freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. It is necessary to emphasize and one must not forget that the vital importance of freedom of speech and expression involves the freedom to dissent to a free democracy like ours. Democracy relies on the freedom of the press. It is the inalienable right of everyone to comment freely upon any matter of public importance. This right is one of the pillars of individual liberty—freedom of speech, which our Court has always unfailingly guarded. I wish to add that however precious and cherished the freedom of speech is under Art.19(1)(a), this freedom is not absolute and unlimited at all times and under all circumstances but is subject to the restrictions contained in Art. 19(2). **That must be so because unrestricted freedom of speech and expression which includes the freedom of the press and is wholly free from restraints, amounts to uncontrolled licence which would lead to disorder and anarchy and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State.**”
(Emphasis Supplied)

36. As it seen above, the right to press and its freedom to express the ideas in public has always been the integral part of healthy democracy and the prior restraint on the publication was considered to be acceptable under the earlier line of authorities. The Courts have always indicated that the fine

balance is required to be made so that the said liberty of press should not be uncontrolled or regulated by laws including the laws relating to public order, contempt etc and the same is subject to reasonable restrictions as per the Article 19 (2) of the Constitution of India.

37. The position of law as to no prior restraint on the publication has been revisited by the Supreme Court in a number of cases including the case of *Reliance Petrochemicals Ltd vs. Proprietors Of Indian Express*, AIR 1989 SC 190 wherein Sabyasachi Mukherjee, J. speaking for the Supreme Court observed that the Court can pass interim orders restraining the publication if the Court finds that there exists a real and imminent danger that the continuance of the publication would result in interference with the administration of justice. As per Mukherjee, J., it was observed thus:

“Mr.Baig drew our attention to page 282 of the said report where Justice Frankfurter had observed that free speech was not so absolute or irrational a conception as to imply paralysis of the means for effective protection of all the freedoms secured by the Bill of Rights. The administration of justice by an impartial judiciary has been basic to the conception of freedom ever since Magna Carta. Justice Frankfurter further reiterated that the dependence of society upon an unswerving judiciary is such a common place in the history of freedom that the means by which it is maintained are too frequently taken for granted without heed to the conditions which alone make it possible. (Emphasis supplied). The role of Courts of justice in our society has been the theme of statesmen and historians and constitution makers, and best illustrated in the Massachusetts Declaration of Rights as the right of every citizen to be tried by Judge as free, impartial and independent as the lot of humanity will admit.

Justice Frankfurter dissenting in his Judgment with whom Justice Stone, Justice Roberts and Justice Byrnes agreed, reiterated at page 284 of the report that the Constitution is an

instrument of Government and is not conceived as a doctrinaire document, nor was the Bill of Rights intended as a collection of popular slogans. It is well to remember that Justice Frankfurter recognised that we cannot read into the 14th Amendment the freedom of speech and of the Press protected by the 1st Amendment and at the same time leave out the age old means employed by States for securing the calm course of justice. He emphasised that the 14th Amendment does not forbid a State to continue the historic process of prohibiting expressions calculated to subvert a specific exercise of judicial power. So to assure the impartial accomplishment of justice is not an abridgement of freedom of speech or Press, as these phases of liberty have heretofore been conceived even by the stoutest libertarians. Actually, these liberties themselves depend "upon an untrammelled judiciary whose passions are not even unconsciously aroused and whose minds are not distorted by extrajudicial considerations."

“The test of imminent and present danger as the basis of Justice Holmes's ideas has been referred to by this Court in *P.N. Duda v. P. Shiv Shanker & Ors.*, AIR 1988 SC 1208. This question again cropped up in *John D Pennekamp v. Slate of Florida*, [1945] 90 L.Ed. 331 and Justice Frankfurter reiterated that the 'clear and present danger' conception was never used by Mr. Justice Holmes to express a technical legal doctrine or to convey a formula for adjudicating cases. It was a literary phrase not to be distorted by being taken from its context. He reiterated that the judiciary could not function properly if what the Press does is reasonably calculated to disturb the judicial judgment in its duty and capacity to act solely on the basis of what is before the Court. A judiciary is not independent unless Courts of justice are enabled to administer law by absence of pressure from without, whether exerted through the blandishments of reward or the mance of disfavour. A free Press is vital to a democratic society for its freedom gives it power.”

38. The Supreme Court on facts of the case of *Reliance Petrochemicals* (supra) proceeded to apply the test of real and imminent danger and

proceeded to vacate the injunction due to the reason that as per the Court no such real and imminent danger exists due to the change of circumstances. This is evident from the reading the concluding paragraphs of the judgment wherein it was observed thus:

“In the peculiar facts of this case now that the subscription to debentures has closed and, indeed, the debentures have been over-subscribed, **we are inclined to think that there is no such imminent danger of the subscription being withdrawn before the allotment and as to make the issue vulnerable by any publication of article.** On a balance of convenience, we are of the opinion that continuance of injunction is no longer necessary. In this peculiar situation our task has been difficult and complex. The task of a modern Judge, as has been said, is increasingly becoming complex. Furthermore, the lot of a democratic Judge is heavier and thus nobler. We cannot escape the burden of individual responsibilities in a particular situation in view of the peculiar facts and circumstances of the case. There is no escape in absolute. Having regard however, to different aspects of law and the ratio of the several decisions, by which though we are not bound, except the decisions of this Court referred to hereinbefore, about which we have mentioned, there is no decision dealing with this particular problem, we are of the opinion that as the Issue is not going to affect the ,general public or public life nor any injury is involved, it would be proper and legal, on an appraisal of the balance of convenience between the risk which will be caused by the publication of the article and the damage to the fundamental right of freedom of knowledge of the people concerned and the obligation of Press to keep people informed, that the injunction should not continue any further.”
(Emphasis Supplied)

39. From the reading of the aforementioned observations of the Supreme Court in *Reliance Petrochemicals*’ case (supra), it is clear that the Supreme Court has applied the test of the real and imminent danger in order to infer as to

whether the proposed publication would lead to interference in the course of justice for the purposes of grant and non grant of the interim injunction or prior restraint against the publication.

40. Recently, the Supreme Court again in the case of *Sahara India* (supra) reconsidered the position in law relating to passing of the prior restraint order against the proposed publication and has proceeded to lay down the guidelines as to under what circumstances the prior restraint order can be passed, what are factors, which fall for consideration prior to the passing of such interim order and other aspects necessarily required to be satisfied for the grant of the interim order or postponement of the publication.

41. In *Sahara India*'s case (supra), the Supreme Court has made certain significant findings and it is pertinent to discuss the judgment of *Sahara India* (supra) in detail due to the reason that it has been relied upon heavily by the plaintiff and it is as per the tests laid down in *Sahara India* (Supra) that the case of the parties is required to be tested by this Court. Firstly, in *Sahara India* (supra), the Supreme Court has held that the prior restraint of publication is not constitutionally impermissible. It has been observed thus:

“At this stage, we wish to clarify that the reliance on the above judgments is only to show that “prior restraint” per se has not been **rejected as constitutionally impermissible. At this stage, we may point out that in the present IAs we are dealing with the concept of “prior restraint” per se and not with cases of misuse of powers of pre- censorship which were corrected by the Courts** [see Binod Rao v. Minocher Rustom Masani reported in 78 Bom LR 125 and C. Vaidya v. D’Penha decided by Gujarat High Court in Sp. CA 141 of 1976 on 22.03.1976 (unreported)]” (Emphasis Supplied)

42. Thereafter, the Supreme Court in *Sahara India* (supra) proceeded to quote the judgment of the *Reliance Petrochemicals* (supra) and proceeded to observe that the prior restraint against publication is vested in the form of inherent powers of the superior Courts including High Court under the provisions of Section 151 of the Code of Civil Procedure wherein the Court can proceed to pass such restraint orders if the administration of justice so warrants approving the judgment of *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1. It has also been held by the Supreme Court that the right to open justice which is free and unprejudiced is a basic right that has to be balanced vis-a-vis the right to press and expression of ideas which is the facet of the right to speech and expression.

43. In the case of *Surya Prakash Khatri vs. Madhu Trehan*, 2001 (92) DLT 665, the Full Bench of this Court in para 23 of the judgment has held as under:

23. It is thus needless to emphasise that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set up there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an

educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatma Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among the people certain desirable sentiments; and the third is to fearlessly express popular defects. It therefore turns out that the press should have the right to present anything which it thinks fit for publication. But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled license. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organized society, the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by Court of law. (See. In re Harijai Singh and another, AIR 1997 SC 73). The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reasons that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations" If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline. It is the duty of a true and responsible journalist to strive to inform the people with

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

44. Thus, the principle of open justice is not absolute. There can be exceptions in the interest of administration of justice. In *Mirajkar's* case (supra), the High Court ordered that the deposition of the defence witness should not be reported in the newspapers. This order of the High Court was challenged in the Supreme Court under Article 32 of the Constitution of India. The Supreme Court held that apart from Section 151 of the Code of Civil Procedure, the High Court had the inherent power to restrain the press from reporting where the administration of justice so demanded. The Court held vide para 30 that evidence of the witness need not receive excessive publicity as fear of such publicity may prevent the witness from speaking the truth. That, such orders prohibiting publication for a temporary period during the course of trial are permissible under the inherent powers of the Court whenever the Court is satisfied that interest of justice so requires. As to whether such a temporary prohibition of publication of Court proceedings in the media under the inherent powers of the Court can be said to offend the rights under Article 19(1)(a) [which includes freedom of the press to make such publication], this Court held that an order of a Court passed to protect the interest of justice and the administration of justice could not be treated as violative of Article 19(1)(a) of the Constitution of India.

45. **“The judgments in Reliance Petrochemicals Ltd. and Mirajkar were delivered in civil cases. However, in Mirajkar, this Court held that all Courts which have inherent powers, i.e., the Supreme Court, the**

High Courts and Civil Courts can issue prior restraint orders or proceedings, prohibitory orders in exceptional circumstances temporarily prohibiting publications of Court proceedings to be made in the media and that such powers do not violate Article 19(1)(a).

Further, it is important to note, that, one of the Heads on which Article 19(1)(a) rights can be restricted is in relation to “contempt of Court” under Article 19(2). Article 19(2) preserves common law of contempt as an “existing law”. In fact, the Contempt of Courts Act, 1971 embodies the common law of contempt. At this stage, it is suffice to state that the Constitution framers were fully aware of the Institution of Contempt under the common law which they have preserved as “existing law” under Article 19(2) read with Article 129 and Article 215 of Constitution. The reason being that contempt is an offence sui generis. **The Constitution framers were aware that the law of contempt is only one of the ways in which administration of justice is protected, preserved and furthered. That, it is an important adjunct to the criminal process and provides a sanction. Other civil Courts have the power under Section 151 of Code of Civil Procedure to pass orders prohibiting publication of Court proceedings. In Mirajkar, this Court referred to the principles governing Courts of Record under Article 215 [see para 60]. It was held that the High Court is a Superior Court of Record and that under Article 215 it has all the powers of such a Court including the power to punish contempt of itself. At this stage, the word “including” in Article 129/Article 215 is to be noted. It may be noted that each of the Articles is in two parts. The first part declares that the Supreme Court or the High Court “shall be a Court of Record and shall have all the powers of such a Court”. The**

second part says “includes the powers to punish for contempt”. These Articles save the pre-existing powers of the Courts as Courts of record and that the power includes the power to punish for contempt [see Delhi Judicial Service Association vs. State of Gujarat [(1991) 4 SCC 406] and Supreme Court Bar Association vs. Union of India [(1998) 4 SCC 409].

As such, a declaration has been made in the Constitution that the said powers cannot be taken away by any law made by the Parliament except to the limited extent mentioned in Article 142(2) in the matter of investigation or punishment of any contempt of itself. **If one reads Article 19(2) which refers to law in relation to Contempt of Court with the first part of Article 129 and Article 215, it becomes clear that the power is conferred on the High Court and the Supreme Court to see that “the administration of justice is not perverted, prejudiced, obstructed or interfered with”.** (Emphasis Supplied)

46. From the mere reading of the excerpts from the judgment of *Sahara India* (supra), it can be said that the High Court has ample powers under its inherent powers to restrain the publication in media in the event it arrives at the finding that the said publication may result in interference with the administration of justice or would be against the principle of fair trial or open justice. Although the aforementioned observations seem to suggest that the Court can restrain the publication of the news relating to Court proceedings or postpone the same in order to obtain the fair trial. The later part of the judgement in *Sahara India* (supra) suggest that the order of the prior restraint is a preventive order and the said order may proceed to restrain any publication which may cause obstruction of the justice which include intrusion in right to have open justice unbiased by any public opinion

expressed in publication. Thus, the interference with the course of justice as a term is not merely confined to the restraint order only on the publications relating to pending Court proceedings. But also, any publication which would give excessive adverse publicity to the accused or alleged victim which may likely to hamper the fair trial in future is also covered within the ambit and sweep of the enquiry of the Court as to what may constitute the interference with the course of the justice. This can be seen if one reads the following paragraphs of the judgment in *Sahara India* (Supra) wherein it has been observed thus:

“To see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court/High Court to prohibit temporarily, statements being made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High Court or even in the subordinate Courts. In view of the judgment of this Court in [A.K. Gopalan v. Noordeen](#) [(1969) 2 SCC 734], such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair trial of a suspect or accused under Article 21 from the time when the criminal proceedings in a subordinate Court are imminent or where suspect is arrested.” (Emphasis supplied)

“Presumption of innocence is held to be a human right. [See : [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra](#) (2005) 5 SCC 294]. **If in a given case the appropriate Court finds infringement of such presumption by excessive prejudicial publicity by the newspapers (in general), then under inherent powers, the Courts of Record suo motu or on being approached or on report being filed before it by subordinate Court can under its inherent powers under Article 129 or Article 215 pass orders of postponement of publication for a limited period if the applicant is able to**

demonstrate substantial risk of prejudice to the pending trial and provided he is able to displace the presumption of open Justice and to that extent the burden will be on the applicant who seeks such postponement of offending publication.” (Emphasis Supplied)

47. Thereafter the Supreme Court in *Sahara India* (supra) further proceeded to lay down that the applicant who seeks the interim injunction or postponement of the publication must discharge the onus as to show that the publication would seriously impair his right to open justice. It has been observed that the temporary restraint orders on publication are necessarily required to be passed for a limited period. This has been observed by Supreme Court in the following words:

“The very object behind empowering the Courts to devise such methods is to see that the administration of justice is not perverted, prejudiced, obstructed or interfered with. At the same time, there is a presumption of Open Justice under the common law. **Therefore, Courts have evolved mechanisms such as postponement of publicity to balance presumption of innocence, which is now recognized as a human right in Ranjitsing Brahmajetsing Sharma v. State of Maharashtra (supra) vis-a-vis presumption of Open Justice.** Such an order of postponement has to be passed only when other alternative measures such as change of venue or postponement of trial are not available. **In passing such orders of postponement, Courts have to keep in mind the principle of proportionality and the test of necessity. The applicant who seeks order of postponement of publicity must displace the presumption of Open Justice and only in such cases the higher Courts shall pass the orders of postponement under Article 129/Article 215 of the Constitution.**” (Emphasis supplied)

48. The Supreme Court in *Sahara India* (supra) proceeded to observe that the superior Courts would assume jurisdiction not merely in cases, where

there is an actual contempt committed by the media but also order of restraint to prevent the future committal of the contempt. It has been observed by the Supreme Court that in an exceptional cases where the publicity is so excessive that in a given case when it appears to the fair reporting but the prejudice is such that may result in fair trial, then the Court has no option short of the prevention of the publication even if some kind of fairness is ascribed to the publication. In the words of the Supreme Court, it has been observed thus:

“As stated above, sometimes, fair and accurate reporting of the trial (say a murder trial) would nonetheless give rise to substantial risk of prejudice not in the pending trial but in the later or connected trials. In such cases, there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice to the later or connected trials. Thus, postponement order not only safeguards fairness of the later or connected trials, it prevents possible contempt by the Media.” (Emphasis Supplied)

49. Upon fair reading of the aforementioned paragraph of the *Sahara India* (supra), it is clear that it is the question of degree of prejudice and its nexus with fetching the fair justice or open justice which is a potent factor which is required to be examined and tested by the Courts at the time of passing of the injunction restraining or postponing the publication. The line between fairness and unfairness is sometimes blurred but if the same is likely to prejudice the accused and project him as culprit which may cause irreversible damage to a person, the Court can step in and assume

jurisdiction for future prevention of such damage so that the administration of the justice is not impaired.

50. It is seen that the Supreme Court has given only one instance of murder trial where such excessive adverse publicity even if be it fair may compel the Court to interdict and pass postponement order. It is only one such example where the degree of prejudice is so higher and the same may affect the fair trial and impact in administration of justice. Similar can be other cases where such degree of the prejudice exists due to the excessive publicity which may put the party in such an irreversible position by creating a public opinion which may create impediments in getting fair trial or interferes in the administration of the justice due to dominant adverse public opinion. Prima facie, I find that such degree of prejudice exists in the cases of persons who are seen with the eyes of public confidence and public faith like judges of the Supreme Court or the other superior Courts of justice. The said confidence reinforces the faith in the minds of the public about the fairness and credibility attached the institution of the justice. If some allegations are casted against any member of the Judiciary of the Apex Court current or retired relating to his service in his office as a judge of the Apex Court, the publicity relating to the same has to be handled with care and caution as the excessive adverse publicity relating to the said instance may not merely because a damage to the person himself (as it jeopardizes his repute which he has earned for several years as serving officer of the institute) and put question mark on the integrity of the person, but it also could damage the public good due to the reason that the confidence of the public reposed in higher judiciary muchless the Apex body as a last hope for getting justice is seriously prejudiced. The said loss of faith in turn results in

bad repute for the person and the institution of justice as a whole. Thus, the degree of prejudice in such case not merely creates an adverse public opinion but also casts doubts on the institution as a whole. The person who is accused of such allegations is seen with extreme suspicion and the same also creates a kind of pressure of adverse public opinion which may affect his likelihood of getting fair trial or may lead to interference in the course of the justice.

51. The Supreme Court in the case of *Sahara India* (supra) also proceeded to observe that the postponement of publication orders can be passed by the Court after seeing the publication and no general orders restraining future publications can be made but the Court will adopt a judicious approach while making the orders of postponements after the considering the material available on record. In the words of the Supreme Court, it was observed thus:

“The principle underlying postponement orders is that it prevents possible contempt. Of course, before passing postponement orders, Courts should look at the content of the offending publication (as alleged) and its effect. Such postponement orders operate on actual publication. Such orders direct postponement of the publication for a limited period. Thus, if one reads Article 19(2), Article 129/ Article 215 and Article 142(2), it is clear that Courts of Record “have all the powers including power to punish” which means that Courts of Record have the power to postpone publicity in appropriate cases as a preventive measure without disturbing its content. Such measures protect the Media from getting prosecuted or punished for committing contempt and at the same time such neutralizing devices or techniques evolved by the Courts effectuate a balance between conflicting public interests. It is well settled that precedents of this Court under Article 141 and the Comparative Constitutional law helps Courts not only to

understand the provisions of the Indian Constitution it also helps the Constitutional Courts to evolve principles which as stated by Ronald Dworkin are propositions describing rights [in terms of its content and contours] (See “Taking Rights Seriously” by Ronald Dworkin, 5th Reprint 2010). The postponement orders is, as stated above, a neutralizing device evolved by the Courts to balance interests of equal weightage, viz., freedom of expression vis-a-vis freedom of trial, in the context of the law of contempt” **(Emphasis Supplied)**

52. It has been further observed by the Supreme Court that the Court while seeking to pass postponement order should examine the content of the publication on case to case to basis in order to form an opinion. It was observed thus:

“What constitutes an offending publication would depend on the decision of the Court on case to case basis. Hence, guidelines on reporting cannot be framed across the Board. The shadow of “law of contempt” hangs over our jurisprudence. This Court is duty bound to clear that shadow under Article 141. The phrase “in relation to contempt of Court” under Article 19(2) does not in the least describe the true nature of the offence which consists in interfering with administration of justice; in impeding and perverting the course of justice. That is all which is done by this judgment” **(Emphasis Supplied)**

“We do not wish to enumerate categories of publication amounting to contempt as the Court(s) **has to examine the content and the context on case to case basis**” **(Emphasis Supplied)**

53. In the present case, it is an admitted position that the alleged incident is of May, 2011 and that the complaint was filed before Hon’ble Chief Justice of India in November, 2013. The allegations made in the complaint have neither been examined or tested in any Court of law nor have they

been proved. No civil or criminal case has been filed by defendant No.5 nor any cogent evidence has been produced along with the complaint.

54. It is also not clear from the material placed on the record, how the TV channels/media have received the copy of the complaint, name of the plaintiff and his photograph and who has provided all such details. These certainly are serious matters which are required to be inquired at the appropriate time in view of the nature of the present case.

55. It is also true that the freedom of press cannot be extended beyond reporting of facts. The plaintiff admittedly has an illustrious career spending over 43 years and has earned name in bar and bench and has an impeccable reputation and is well-known for his integrity and high moral values. He has a reputation in India as well as outside India. In his career over 23 years as a Judge, the plaintiff has dealt with many important cases and has always protected and preserved the interests of justice.

56. Assuming for the sake of example that a false complaint is filed against the retired judge of high judiciary after his death by raising similar nature of allegations after the retirement of about 10 or 20 years. One would fail to understand that after his death who would protect his interest and defend the case in Court of law when he had in his career given landmark judgments and had a great name and reputation in bar and bench. These questions are to be examined by the Court when the fresh cases are considered.

57. In view of the recent stringent provisions incorporated in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which provides for a mechanism of dealing with the cases of sexual harassment, this Court is of the opinion that strict view

would have to be applied equally to both the sides, i.e. complainant as well as alleged accused specially in cases where the complaint is filed after the lapse of long period. Thus, this Court is also of the view that there should be a limitation of time for the purpose of filing of such complaints, otherwise no one would know when the complaint ought to have been filed and decided. Thus, a balanced approach has to be taken, particularly, in these types of matters.

58. In the present case, assuming the complaint filed by the defendant No.5 is found to be false after inquiry, then who would ultimately compensate and return the repute and sufferings of the plaintiff and mental torture caused to him and his family members.

59. It is thus a question of fact which has to be examined on case to case basis as to what constitutes the offending publication which may result in future obstruction of justice after examining the content of the publication and its likely effect on the public. Applying the said test to the instant case, It can be seen that there are some allegations against the plaintiff about his alleged involvement in the sexual harassment against which the remedial measures have been taken by the defendant No.5 by approaching the Supreme Court to set up a mechanism in view of guidelines set out in *Vishaka's* case (supra). It is further pertinent to mention that the occurrence of the alleged incident is stated to be 2 and a half year prior to the filing of the said complaint. It is the grievance of the plaintiff as per the material available on record wherein on the basis of mere stray allegation verification of which is required to be tested in the Court, the defendants are excessively publicising the same by the titles which connects the plaintiff with that of the said allegations alongside the photographs and his name which creates

an impression as if the plaintiff is actually involved in the incident in order to create adverse public opinion. The said titles include document filed at page No.6 in the documents file which reads that “Justice S Kumar..... put his right arm around me, kissed on my left shoulder.... I was shocked” in the beginning of the national daily newspaper along with the photograph and the name prominently written on the same in order to connect plaintiff with such imputations which are still at the stage of mere allegations levelled at the belated stage. Similar news articles are pointed in the documents filed at page No.8 and 10 which use the expressions like “sex taint on another SC judge” and “Supreme Court urged to probe charge against former Judge”. I have examined the contents of the said publications at the relevant pages No.6, 8 and 10. I have already observed that continuous adverse publicity of the persons who are seen from the eyes of public confidence and faith is destructive of their reputation as well as the public good in the form of the loss of confidence in the institution itself. It may also result in creating an atmosphere in the form of public opinion wherein a person may not be able to put forward his defence properly and his likelihood of getting fair trial would be seriously impaired. Prima facie, I find that the publications at page No.6, 8 and 10 connect the plaintiff with the such allegations in the manner which creates a trial by media kind of situation by creating a sensation amongst the public by highlighting and underscoring mere allegations on the front pages of daily routine news and thus the same or similar nature of publications are required to be postponed.

60. It has been observed by the Supreme Court in *Sahara India* (supra) that the order by the Court may include the direction not to disclose the

identity of the victim, witness of complaint or of alike nature. The Court observed thus:

“In the light of the law enunciated hereinabove, anyone, be he an accused or an aggrieved person, who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his/ her rights under Article 21 to a fair trial and all that it comprehends, would be entitled to approach an appropriate writ Court and seek an order of postponement of the offending publication/ broadcast or postponement of reporting of certain phases of the trial (including identity of the victim or the witness or the complainant), and that the Court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the abovementioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. Such neutralizing device (balancing test) would not be an unreasonable restriction and on the contrary would fall within the proper constitutional framework.” (Emphasis supplied)

61. In view of the observations of the Supreme Court, it is clear that the order in the cases preventing the publication may include directions not to disclose the identity of the person or postpone the publication amongst other directions. In the instant case, the identity of the plaintiff is already disclosed prior to approaching this Court, however, the plaintiff states that the photograph of the plaintiff is repeated shown in the national dailies and televised news on day to day basis with an attempt to create an adverse public image. Prima facie I find that besides postponing the publications, the order or directions restraining the defendant not to publish the photograph of the plaintiff time and again till the time any fact finding is made by the

relevant authorities is also necessary so that the adverse publicity against him can be avoided.

62. I have already examined in the preceding paragraph of this order the argument that even if some amount of fairness is attached to the publication, still the Court can proceed to prevent the same on the basis of the excessive prejudice. Suffice it to say, no conclusive finding as to fairness or unfairness can be arrived at this juncture. Upon the fair reading of material available on record, it prima facie appears that the same can prejudicially affect the public mind and there is real and tangible risk of the plaintiff in not getting fair trial or open justice as contemplated by the common law as per the dictum laid down by the Supreme Court of India in *Sahara India* (supra).

63. In view of the aforementioned discussion, I find that the plaintiff has been able to make out a strong prima facie case on the basis of the disclosure of the material available on record especially copies of newspapers at page Nos.6, 8, 10 of the documents and the CDs which clearly show that the defendants have published the write ups and telecasted by highlighting the allegations on the front page in order to create sensation amongst public and made it apparent by creating the impression that the plaintiff in all probability is involved in such incident. The balance of the convenience is also in favour of the plaintiff as the degree of the prejudice is far more excessive than that of the defendants. The irreparable loss shall ensue to the plaintiff at this stage and not to the defendants if such publications and telecast of TV news of such nature on similar lines are not postponed. The interim order is also passed against any other person, entity, in print or electronic media or internet in view of the settled law in the case of *ESPN Software India Private Limited vs. M/s Tudu Enterprises and Others* in

CS(OS) No.384/2011 dated 18th February, 2011 and ***Indian Performing Right Society Ltd. Vs. Badal Dhar Chowdhry and Ors.***, 2010 (43) PTC 332 (Del.).

64. Accordingly, the defendants, their agents, assigns or any of them acting on their behalf and/or any other person, entity, in print or electronic media or internet are:

- a) Restrained from further publishing the write ups as mentioned in page Nos.6, 7, 10 of the documents file or publishing any article or write up and telecast which highlights the allegations against the plaintiff in the form of headlines connecting or associating plaintiff with those allegations, particularly, without disclosing in the headlines of article that they are mere allegations against the plaintiff or any other similar nature of articles, write up and telecast.
- b) The directions made in para (a) restrains the defendants from publication either in print media or in electronic form or in any manner publishing the said news in televised form. The defendants shall delete the offending content as mentioned in para (a) from internet or other electronic media and shall take necessary steps within 24 hours from today.
- c) The defendants are further restrained from publishing the photographs of the plaintiff either in print media or electronic media or Internet or on TV channels which may suggest connection of the plaintiff with the said allegations made by defendant No.5 and remove his photographs from internet or all other electronic media as well as upload defamatory articles.

65. The said interim directions as mentioned in paras (a) to (c) of postponement of publications shall remain in force till the next of date of hearing which is a temporary measure as per Sahara India (supra) and the same are subject to further monitoring by this Court from time to time.

66. The observations made in this order are prima facie in nature and will not preclude the defendants to report the Court cases and happenings as facts which are covered ambit of fair reporting on the basis of true, correct and verified information.

67. Compliance of Order 39 Rule 3 CPC be made by the plaintiff within one week.

68. Copies of this order be given *dasti* under the signatures of the Court Master to the parties for the purpose of immediate compliance.

69. List this matter on 24th February, 2014 the date already fixed.

(MANMOHAN SINGH)
JUDGE

JANUARY 16, 2014