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Case Comment: Swatanter Kumar v The Indian Express Ltd & Ors

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INTRODUCTION

The far-sightedness of the constitution makers made it possible for the fundamental rights to be flexible. In other words, they while prescribing various fundamental rights also made reservations about some restrictions. Freedom of Speech and Expression and the Right to Life and Personal Liberty are guaranteed rights under Article 19(1)¹ and Article 21² respectively. Freedom of the Press and the Right to Fair Trial are consequences of such rights as marked by the precedents. However, when these rights clash with each other, it takes the form of a Media Trial. Media Trial pictures itself in the form of media's negative and prejudicial effect on the public and the official system of justice and thereby steamrolling either party's fair trial. It is an established rule that trial by the press is illegal and immoral in the eyes of the law and can lead to the travesty of justice in the form of contempt of court. Therefore, there are certain restrictions including but not limited to Article 19(2)³ for the due administration of justice. The current case

¹ Constitution of India 1950, art 19(1)

² Constitution of India 1950, art 21

³ Constitution of India 1950, art 19(2)

involving Swatantar Kumar⁴ bears some resemblance. The Delhi High Court in this landmark judgment addresses the clash between the free press and fair trial by using the temporary injunction as an apt tool for the harmonization of their relationship.

FACTS OF THE CASE

On 10th January 2014, the first defendant, The Indian Express Newspaper Ltd. without taking the comments of the plaintiff (Former Supreme Court Justice and then National Green Tribunal Chairperson Swatanter Kumar) published a news item in its newspaper that was backed by the copy of the complaint that was filed on 30th November 2013 by an undisclosed defendant, a Supreme Court Judicial Intern. Furthermore, the newspaper agency forwarded the copy of the complaint to other defendants, the broadcasting agencies “CNN-IBN” and “Times Now” who also without taking the plaintiff’s input, repeatedly showcased his name along with his photograph as a Former Justice who committed sexual misconduct on his intern. The Newspaper Agency later on, after presenting an opportunity to the plaintiff to comment on the news item; went on to publish another new item along with the photo of the plaintiff on its website despite the plaintiff’s plea not to publish such a news item. The plaintiff got hold of the alleged affidavit on 11th January 2014 through his friend wherein the name of the complainant and accused were blackened out. Thereafter the plaintiff served a legal notice on the respective defendants, the newspaper, and the broadcasting agencies, however, the media outlets went on to give credence to the alleged accusations against the plaintiff by continuous reporting. The plaintiff then filed a petition under section 151 of the CPC⁵ requesting a permanent injunction and damages against the defendants.

LEGAL ISSUES

- Is it appropriate to lay down a permanent injunction against the newspaper and broadcasting agencies from publishing and telecasting news against the plaintiff?

⁴ *Swatanter Kumar v The Indian Express Ltd* (2014) DLT 221

⁵ Civil Procedure Code 1908, sec 151

- Whether the preventive action under the previous issue is moved against the non-party entities involved in the publishing and broadcasting businesses.
- Whether the news against the plaintiff is defamatory in nature.
- Whether the plaintiff is entitled to damages of Rs 5 Crores or above against the defendants.

OBSERVATIONS OF THE COURT

The Court has accentuated the basic right of freedom of expression that drives its force from the propagation of ideas thereby putting the onus on the applicant who prays relief in any form including an order of injunction against the concerned circulation of ideas by showing how their right to a fair trial and open justice would be impaired. Thereafter, the court noted that the postponement order is a neutralizing device evolved by the Courts to balance interests of equal weightage, viz., freedom of expression guaranteed under Article 19(1) vis-a-vis freedom of fair trial guaranteed under Article 21 of the Constitution, in the context of the law of contempt. The court went on to emphasize the objective behind empowering the superior courts in this regard in the form of keeping a check on the due flow of justice and making sure that principles of open justice are followed.

The court also pressed on the statement that destructive criticism of the court which includes the dignity of a former Supreme Court Judge, cannot in any circumstance be tolerated under the veil of freedom of speech. Therefore, it gave the ratio decidendi that publication based on destructive criticism had lightened the scales of justice from the plaintiff's side; thereby overshadowing his basic right flowing from the general legal principle i.e., innocent until proven guilty beyond a reasonable doubt. Moreover, while observing the fact that the complaint was made two and half years after the alleged incident and the accusation was neither examined nor proved by law, the court in light of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 decided to take a balanced approach for both sides especially since the complaint was filed following a significant delay.

The court further noted that the position of putting up the restriction is to appropriately overshadow the effect of the right rather than completely canceling it out and the extent of such restriction differs in each case, therefore the courts have time and again opted for the interim injunction rather than permanent injunction and that also, only where such publication leads to real and imminent danger to the administration of justice. Further, while addressing the case, the Court alleges that a temporary injunction is precautionary and could be utilized to limit any release that is obstructing the right to have open justice and which is unbiased of public opinion. Regarding the contents of the said publications, the court was of the view that Continuous negative publicity about the individuals who are regarded with public confidence and faith is damaging to their reputation as well as the institution itself.

DECISION

After making the above thorough observations and going by the precedents, the court accepted the petitioner's arguments that such allegations in the manner they were presented by the media outlets is a "media trial" which is illegal and immoral. The court also accepted the petitioner's argument that repeated showcasing of the photo of the plaintiff in the newspapers and news channels creates a bad public image of the plaintiff. On the other hand, the court dismissed the defendant's contention of calling their reporting as fair as it found their reporting to be excessive. In deciding whether it is a fit case of putting an interim injunction, the court applied the principles of proportionality and the test of necessity. Regarding the principles of proportionality, the court determined that the media trial can hinder the process of open justice by lowering the esteem and confidence that the plaintiff has earned throughout his career. The court held the balance of convenience in favor of the plaintiff considering the excessive prejudice against the plaintiff due to the bad publicity that was backed by no thorough inquiry by the statutory bodies. Further, the court considering the established law accepted the plaintiff's plea to pass the interim injunction against any other person, or entity, in print or electronic media or the internet. After following the stringent tests, the court concluded to pass an interim injunction against the media outlets from publishing and reporting any news which links the accusations against the plaintiff till they are proved beyond doubt. The Court further held that the news was

defamatory and that the plaintiff had suffered damages as a result of its publication and thus directed The Indian Express Ltd. to pay damages amounting to a sum of Rs. 10 lakhs and publish an apology in its newspaper and also pay the plaintiff's legal costs. The Court while admonishing the defendants for failing to take any steps to verify the truth of the allegations made in the news, directed them to remove his photographs from the internet or all other electronic media as well as uploaded defamatory articles within a day.

ANALYSIS AND CONCLUSION

"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. A true and responsible journalist must strive to inform the people with an 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."

- Mons Lopez's Report to the ECOSOC

Freedom of the Press and the right to fair trial flowing from the wider sense of Article 19 and Article 21 of the Constitution respectively have time and again come into clash with each other. As opposed to the free press, which is focused on the dissemination of information and influencing public opinion; the latter is concerned with conforming to the principles of natural justice which includes *audi alterum partem* and also the principle of *ei incumbit probatio qui dicit, non qui negat* which implies a presumption of innocence unless proven guilty. The clash between these two fundamental rights took the form of a "Media Trial" in the instant case. The court's decision heavily relies on judicial precedents to harmonize the relationship between the two fundamental rights. This case, like many others, followed the idea of analyzing the substance of the publication and its anticipated effect on the public to determine what constituted an infringing publication that may result in future obstruction of justice. According to the court's reasoning, even if some fairness is associated with the adverse publication, the Court may nonetheless proceed to restrict it and in the instant case, there is no conclusive finding

concerning the fairness and authenticity of the news. Despite the court's attempt to harmonize the relationship between a free press and a fair trial, there is still no end to the future clashes between the two fundamental rights. However, this case accentuates the importance of truth and good faith in the publication of articles. It also serves as a reminder to media outlets that they must take responsibility for the accuracy of the information they publish and that they must be mindful of the potential harm that false and defamatory statements can cause. Furthermore, this case serves as a warning to media outlets that they may be held liable for defamation if they fail to take reasonable steps to verify the accuracy of the information they publish.