



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

Judgment reserved on: 30.01.2013

% **Judgment delivered on: 05.02.2013**

+ **W.P.(C.) No. 12730/2005 and C.M. Nos. 9505/2005, 13315/2005 & 12222/2007**

ABC Petitioner
Through: Ms. Jayshree Satpute, Advocate.

versus

COMMISSIONER OF POLICE & ORS. Respondents
Through: Mr. Anjum Javed, Advocate along
with S.I. in person, for respondent
No. 1.
Mr. A.J. Bhambhani & Mr. Apurv,
Advocates for respondent No. 2.
Mr. S. D. Salwan, Advocate for
respondent No.3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition has been preferred under Article 226 of the Constitution of India by the petitioner herein on behalf of her daughter (minor at the time of filing of the present petition) as her mother and next friend, alleging violation of the right to privacy and confidentiality of her daughter under Article 21 of the Constitution of India, and other legal rights and seeking appropriate relief in respect thereof.



2. The cause of action giving rise to the present petition relates to the alleged disclosure of First Information Report (FIR) of the petitioner's daughter, alleging a case of sexual abuse against her own father, by Respondent No. 1 herein to other respondents herein viz. respondent No.2 - Hindustan Times House, and respondent No.3 - Aaj Tak, and consequent publicity of the same by the latter.

3. Keeping in view the gravity and nature of allegations and also the social object of preventing societal victimisation, ostracism and embarrassment of the victim of alleged sexual abuse, as taken note of by the Supreme Court in ***State of Karnataka v. Puttaraja***, (2004) 1 SCC 475, I have directed the registry not to mention the name of the petitioner and her daughter in the cause title of the present petition, and also propose to not mention the same in the judgment. The name of the petitioner and her daughter occurring in the petition and the documents filed with it have been obliterated while preserving copies/originals of the same.

Petitioner's Submissions

4. It is the petitioner's case that an FIR was registered by her daughter alleging a case of sexual abuse against her father in the concerned Police Station on 02.08.2005. It is alleged that the contents of the said FIR were leaked by respondent no. 1, as the same came to be- quoted and published in the newspaper article dated 04.08.2005 of respondent no. 2, and also reported & aired by respondent no. 3 in its television programme on 07.08.2005.



5. It is alleged that the newspaper article dated 04.08.2005 of respondent no. 2 reveals the age of the petitioner's daughter, the locality in which she resides, the class in which she studies and the occupation of her father. It is alleged that the said article extensively quotes not only the contents of the FIR but also the statement of the police officer concerned with the said complaint.

6. As regards respondent no. 3, it is alleged that the crew members of respondent no. 3 approached the petitioner and her daughter at their home and attempted to interview them in a deceptive manner against their will. It is alleged that thereafter, respondent no. 3 aired a programme on its television channel on 07.08.2005, telecasting the said intrusion and giving wide publicity to the incident- by revealing the name, designation, and office of the accused father; by showing several images of the colony in which the Petitioner and her family were residing along with the petitioner's doorstep; and by airing the recorded voice of the Petitioner refusing entry to crew members of respondent no. 3.

7. Ms. Satpute, learned counsel for the petitioner, submits that publicity of such minute details was sufficient for the identity of the victim/prosecutrix to be revealed. Respondents having done so, without obtaining the consent/authorisation from the petitioner, have violated the provisions of Section 228A of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'); the 'Norms of Journalistic conduct' laid down by the Press Council of India (PCI), governing respondent no. 2 & 3; and above all the right of the minor victim of alleged sexual abuse to privacy and confidentiality enshrined in the right to life guaranteed under Article 21 of



the Constitution of India. In this regard, reliance is placed on the judgments of the Supreme Court in ***R. Rajagopal ALIAS R.R. Gopal & Another v. State of T.N. & Ors.***, (1994) 6 SCC 632, and ***Delhi Domestic Working Women's Forum v. Union of India and Ors.***, (1995) 1 SCC 14; of this court in ***Court on its own motion v. State & Anr.***, W.P.(Crl.) No. 930/2007, ***Court on its Motion vs. State and Anr.***, 146 (2008) DLT 429, ***Commission for Women v. Delhi Police***, W.P.(Crl.) No. 696/2008, and ***Virender v. State of Delhi***, Crl. A. No. 121/2009; and of the House of Lords in ***Campbell v. MGN Limited***, [2004] UKHL 22.

8. It is further submitted that respondent no. 1 by making the contents of the FIR known to the other respondents violated its own circular No. XXXIX/140/Spl./48927-49020/C&T(AC-II)/PHQ dated 17.12.2002 wherein it has been specifically mentioned that, “*Under no circumstances the name and identity of the victim shall be given to the media and the press briefing shall always be given only by the concerned DCP or the Joint C.P. ranges/C.A.W. Cell. No member of Crisis Intervention Centre shall brief the media about the incident or follow up action taken nor permit photographs to be taken.*”

9. It is argued by learned counsel for the petitioner that on account of such publicity, the prosecutrix was faced with irremediable social embarrassment, and was unable to attend school regularly. She was constrained to move cities and had to start her education afresh in the middle of the school term, which led to great mental trauma and agony. So much so, the petitioner and the victim went into oblivion and were not contacting even their counsel for years. It was only during the pendency of the matter,



on 14.12.2012, learned counsel for the petitioner submitted that she has been able to locate the petitioner.

10. The petitioner, therefore, by the present petition seeks a direction to respondent no. 1 to order an immediate inquiry into the disclosure of the FIR and its details by the representatives of respondent no.1 to the other respondents herein and to forthwith restrain the respondents from passing off such information anymore. The petitioner also claims compensation from the respondents for the blatant violation of the fundamental and other legal rights of her daughter.

11. Ms. Satpute submits that this court under Article 226 of the Constitution is conferred with wide powers- for the purpose of enforcement of fundamental rights as well as other legal rights. Citing reference to the judgments of the Supreme Court in ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors v. V. Rudani & Ors.***, (1989) 2 SCC 691, and ***Zee Telefilms & Anr. v. Union of India & Ors.***, (2005) 4 SCC 649, Ms. Satpute argues that the power of this court to issue directions, for the purposes of enforcement, and to remedy the breach of, fundamental rights of the aggrieved, is confined not only to statutory authorities and instrumentalities of the State but also covers persons or bodies performing public functions and discharging public duties. She further submits that the Press and the media, being the fourth pillar of democracy, perform a public function and discharge a public duty in providing news, information and infusing transparency in governmental functioning. By doing so, the press and the media assume a public character and as such become subject to the writ jurisdiction of this court in relation to



the performance of their public duty. To bolster the said submission, learned counsel for the petitioner places reliance upon the judgment of the Calcutta High Court in ***Rainbow Production Pvt. Ltd. v. Programme Executive (Sponsored Section), Prasar Bharati (Broadcasting Corporation of India)***, (2001) 2 CHN 356.

12. Learned counsel for the petitioner, therefore, submits that the respondent nos. 2 and 3 apart from respondent no. 1 herein, having violated the rights of the petitioner's child, are amenable to the writ rule of this court and are, accordingly, liable to compensate her.

Respondent No.1's Submissions

13. The Station House Officer (SHO) of the concerned Police Station, on behalf of Respondent no. 1, in his affidavit has not disputed the factum of the registration of the afore-said FIR. However, at the same time he refutes the allegation of the petitioner that the contents or details of the FIR have been revealed to anyone by respondent No.1. It is stated that the as per practice, one copy of the FIR was given to the complainant, one was sent to the Court, one copy to the DCP's office and one was kept in the records of Respondent no. 1. It is submitted that due care has been taken to maintain secrecy and the Police authorities are not the source of publicity of the contents or details of the FIR in the present case.

Respondent No.2's Submissions

14. Respondent no. 2, in its counter affidavit has submitted that the allegations contained in the petition, and the acts and omissions with which



the petitioner is aggrieved relate to the other respondents herein, and not to the answering respondent.

15. It is submitted that respondent no. 2 has no intention of writing about the episode again and, as such, the prayer for injunction as against it- is infructuous. Learned Counsel for respondent no. 2, Mr. Bhambhani submits that respondent No.2 is a private entity with no governmental control and the present writ for enforcement of a fundamental right is not maintainable against a private party. Reference in this regard is made to the judgment of this court in **Indu Jain v. Forbes Inc.**, I.A. 12993/2006 in CS (OS) No. 2172/2006 decided on 12.10.2007. Placing reliance upon the judgments of the Supreme Court in **Rudul Shah v. State of Bihar & Anr.**, (1983) 4 SCC 141, and **Nilabati Behera (Smt.) Alias Lalita Behera v. State of Orissa & Ors.**, (1993) 2 SCC 746, it is submitted that compensation that may be awarded in writ proceedings are “Public law damages”, which could be granted against the State. He submits that if the petitioners wish to claim “Private law damages” against a private party, i.e., respondent No.2 for the alleged tort attributed to them, the petitioners can approach the Civil Court.

16. Mr. Bhambhani submits that the present petition is not maintainable qua the answering respondent since the petitioner has other efficacious alternate remedies. He submits that claim for compensation for breach of the right to privacy and/or defamation, as alleged in the present petition, if at all tenable, may only be brought by way of a suit and not by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, since the same requires to be proved by leading evidence in accordance with law. Further, the PCI, under and by way of the Press Council Act, would be



the proper forum for entertaining and adjudicating complaints of the nature made by the petitioner in the present petition. It is submitted that the petitioner herein could also raise its grievances under the Juvenile Justice (Care and Protection of Children) Act, 2000 which makes publication of the name of the juvenile, involved in proceedings under the said Act, punishable.

17. On merits, it is argued by Mr. Bhambhani that the respondent no. 2 has neither violated any norms of the journalistic code of conduct, as laid down by the PCI, nor has it acted with any impropriety while writing and publishing the said article. It is submitted that nowhere in the article has respondent no. 2 revealed the name of the minor in question, nor has it revealed any particulars or specifics of the minor as would likely make the identity of the minor discoverable. It is submitted that by way of the said article, it has also reported the statistics on similar sexual crimes, which would make its motives and *bona fides* clear.

18. Mr. Bhambhani argues that it is not only the right but also the bounden duty of the press to publish such reports so as to expose the perversion in the society and that respondent No. 2 while doing so in the present case, in eminent public interest, has made a sincere endeavour to strike a balance between such right and its duty to protect the identity of the minor victim of sexual abuse. He submits that the report must be read in the context in which it was reported, i.e. reporting/highlighting of such heinous acts, which was required to be pointed out, and not of highlighting the particular incident. However at the same time, it is stated that it would not have been possible to cover the incident meaningfully and effectively, if the



said article was shorn of contents of the police complaint relating to the incident, which is a public document and which had been obtained from the Police Officers concerned with the investigation.

Respondent no.3's Submissions

19. Mr. Salwan, learned Counsel for Respondent no. 3, at the outset, states that the allegations in the present petition do not pertain to the answering respondent, who has been impleaded as an afterthought i.e. after two months from the date of the impugned telecast. Reliance is placed on application under Order I Rule 10 of the Civil Procedure Code moved by the petitioner, being C.M. No. 13315/2005, and the amended petition, wherein it is stated that correspondent of the deleted respondent, namely Star News, had in a treacherous manner interviewed the petitioner and her daughter.

20. Mr. Salwan submits that the petitioner had herself given an Interview to the deleted respondent, namely Star News, and had thereafter filed through her counsel the present petition without effacing or concealing her daughter's identity. Having done so, it does not lie in the mouth of the petitioner to allege violation of the right of confidentiality or other legal rights of her daughter, as she is seeking to do now.

21. Mr. Salwan disputes the violation of the right of confidentiality or other legal rights of the petitioner's daughter by respondent no. 3 and the consequent alleged mental trauma suffered by her, as claimed in the petition. It is submitted that the crew members of the answering respondent, on getting information about the episode from its sources in the media, contacted the petitioner at her home and after disclosing the full identity of



the respondents correspondent - sought her response on the complaint filed by her daughter as well as her further course of action. However, the petitioner did not step out of her flat and did not even open the main door. It is stated that since the petitioner refused to reply to any of the queries of the news correspondent of respondent no. 3, no further questions were asked by the said correspondent, who thereafter left with the other crew members. It is submitted that when the correspondent initiated talks with the petitioner, the recording mike and the camera were put into motion- which were made fully visible and of which the petitioner was duly informed about, and no attempt had been made to hide or conceal the same. Since the petitioner refused to answer any of the correspondent's queries and had also refused to step out of the door and speak on the matter, neither the face of the petitioner was visible, nor her child's interview was recorded or photograph taken.

22. Mr. Salwan submits that the same is evident from a perusal of the telecast as well as the transcript of the said telecast, which only mentioned that a complaint had been filed by the child to the police. Neither the petitioner nor her child was interviewed by the correspondent of the answering respondent nor any information pertaining to the petitioner or the child was disclosed or stated in the telecast. It is further submitted that the telecast did not contain explicit information relating to the episode or the petitioner's child's allegations against her father. No part of the FIR was disclosed or discussed in the telecast. In fact, the answering respondent took all precautions of not disclosing the address or block where the petitioner resided. Even the office address of the petitioner's husband was not



disclosed. Nowhere in the story visual shots of the child in question were shown nor her name or was any other evidence/fact, which could directly establish her identity, telecast.

23. It is further submitted that the telecast was with the prime intention of highlighting the destruction of a pious relationship of a father and a daughter. The telecast was primarily with the aim of initiating a process of infusing values and good education in order to ensure that such episodes are not repeated in future, and not to harm the reputation of the petitioner's child or to bring her to any disrepute. In view of the same, it is submitted that the present petition is liable to be dismissed.

24. Even otherwise, it is submitted that the present case raises disputed questions of fact - which this court in the present jurisdiction cannot decide. Mr. Salwan submits that in writ jurisdiction this court would not go into the quantification of damages and, as such, the present petition seeking compensation is not maintainable.

Discussion

25. At the outset, I shall deal with the preliminary objection as regards maintainability of the present petition, on the ground that, *firstly*, the same does not lie against private respondents and, *secondly*, the petitioner has alternate efficacious remedies available to her.

Writ against private respondents

26. The relevant extract of Article 226 of the Constitution of India, reads as under:



*“226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue **to any person or authority** including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, **for the enforcement of any of the rights conferred by Part III and for any other purpose.**”*

x x x x x x x x x x”
(emphasis supplied)

27. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. Under Article 226 writs can be issued to “*any person or authority*”. Further, it can be issued for the enforcement of any of the fundamental rights and for any other purpose.

28. The jurisdiction conferred on the High Court is thus very wide. However, it is a public law remedy and it is available even against a private body or person performing a public function or discharging a public duty, that is to say that, there must exist a public element in the act of such body or person. Thus, in respect of a cause of action arising out of such public functions or duties, writ jurisdiction can be exercised in appropriate cases.

29. The scope and ambit of the writ jurisdiction of the High Courts, in context of the aforesaid, was set out by the Supreme Court in ***Andi Mukta Sadguru*** (Supra), wherein it was observed as under:

“20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power



*on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. **The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.***

(emphasis supplied)

30. Quoting with approval its aforementioned observation, the Supreme Court in ***Zee Telefilms Ltd.*** (supra), in Para 33, observed that when a private body exercises public functions, even if it is not a state, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226.

31. The Supreme Court in ***Federal Bank Ltd. v. Sagar Thomas and Ors.***, (2003) 10 SCC 733, after referring to a catena of judgments on the said aspect, laid down the scope of the expression “any person or authority”, as occurring in Article 226 of the Constitution, in the following words:

*“18. From the decisions referred to above, the position that emerges is that **a writ petition under Article 226 of the Constitution of India may be maintainable against** (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; **(vii) a private body discharging public duty or positive obligation of public nature**; and (viii) a person or a body under liability to discharge any function*



under any statute, to compel it to perform such a statutory function.”

(emphasis supplied)

32. This court in **Indu Jain** (supra), relied upon by respondent no. 2 herein, did not consider the aforementioned pronouncements of the Supreme Court dealing with the scope of the power of the High Court under Article 226 *vis-à-vis* a public duty discharged by a person who is, otherwise, not a public authority or an instrumentality of the State. In **Indu Jain** (supra), the Court observed that in order to seek enforcement of fundamental right, the dispute must not be between two private individuals, but must be between an individual and the State. The Court was not called upon to examine whether writ jurisdiction could be invoked against a private person discharging a public duty. The said observations, therefore, would have to be taken in the context in which they were made, i.e., in the exercise of civil jurisdiction. The Court was not dealing with a petition under Article 226 of the Constitution of India. The observations cannot be read as a general proposition of law applicable in cases of enforceability of fundamental rights in writ jurisdiction against a person discharging a public duty owed to the person invoking the Court’s jurisdiction, or to the person on whose behalf that jurisdiction is invoked. Consequently, the said decision would not come to the aid of the respondents in the present case.

33. Are respondent nos. 2 & 3 performing public functions or discharging public duties when they report a news item or air/publish views in the press/media? The answer to this question depends on the answer to the question, as to what would constitute public function or public duty, in context of exercise of jurisdiction under Article 226. The Supreme Court in



VST Industries v. Workers' Union, (2001) 1 SCC 298, had the occasion to consider the same. Endorsing the comments of *de Smith*, *Woolf* and *Jowell* in their book 'Judicial Review of Administrative Action' (5th Edn.), Rajendra Babu J. observed as under:

*"7. In de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that **not all the activities of the private bodies are subject to private law, e.g., the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest.** By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarised the position with the following propositions:*

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.

(2) The principles of judicial review prima facie govern the activities of bodies performing public functions.

(3) However, not all decisions taken by bodies in the course of their public functions are the subject-matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:



(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.”

(emphasis supplied)

Clearly, the present case is not covered by the two exceptions carved out in para 3(a) and 3(b) in the above extract.

34. Similar view was taken by the Supreme Court in a more recent decision in ***Binny Ltd. v. V. Sadasivan***, (2005) 6 SCC 657, wherein, while tracing the history of the law relating to judicial review of public actions, it was observed as under:

“11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading



*activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. **At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest...***

(emphasis supplied)

35. The position that emerges from the aforementioned observations is that, an activity/function of a body can be said to be a public function, for the purposes of scrutiny by a writ court, when the same is performed under a duty to act in public interest. Such duty may be cast upon the body: by virtue of the nature of the function it is performing; by the fact that it is seeking to achieve some collective benefit for the public or section of the public or which is accepted by the public or the concerned section thereof as having authority to do so. What is relevant is that such a body should participate, as a part of its functions, in social or economic affairs in the public interest.

36. Respondent No. 2 while functioning as a widely read newspaper, disseminating news & views to the public at large, and respondent No.3 while functioning as a news channel, perform the important public function of disseminating information & views and holding public debates & discussion in the society. The press and the media, in a democracy where



freedom of speech & expression is preserved, have an extremely vital role to perform in the larger public interest. The press & the media are instrumentalities through which the right to freedom of speech and expression of the citizens is exercised and they are also the repository of public trust and faith. Consequently, they owe a duty to the public at large to report news & views which ought to be reported, correctly and wherever necessary, with restraint and caution.

37. Mr. Justice Markandey Katju, (Retd.) Judge, Supreme Court of India & presently the Chairman of the PCI, when he was the Judge of the Allahabad High Court authored an Article on ***“Role of Media in the 21st Century”***, reported as AIR 2002 Journal 273, wherein he observed as under:

“Historically, the media was born as an organ of the people against feudal oppression. In Europe, the media played a major role in the transformation of feudal society to a modern one. Everyone is aware of the great role the print media played in preparing for, and during, the great British, American and French Revolutions. The only media at that time was the print media, and this was used by great writers like Rousseau, Voltaire, Thomas Paine, Junius, John Wilkes, etc. In the fight of the people against feudalism and despotism. Everyone knows of the great stir created by Thomas Paine’s pamphlet ‘Commonsense’ during the American Revolution, or of the letters of Junius during the reign of the despotic George III.

The media became a powerful tool in the hands of the people at that time because the people could not express themselves through the established organs of power, since these organs were in the hands of feudal and despotic rulers. Hence the people had to create new organs which would serve them. It is for this reason that that the print media became known as the Fourth Estate. In Europe and America it represented the



voice of the future, as contrasted to the feudal or despotic organs which wanted to preserve the status quo in society.”

38. In his concluding remark, the learned author quotes the following passage from the judgment of Mr. Justice Hugo Black of the United States Supreme Court in the decision in ***New York Times Vs. US***, 1971 402 US 4713, (the Pentagon paper’s case):

“In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfil its essential role in our democracy. The press was to serve the governed, not the governors. The Government’s power to censor the press was abolished so that the press would remain forever free to censor the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In unravelling the workings of government that led to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.”

(emphasis supplied)

39. It is, therefore, clear that the press & media are essential and indispensable organs of democracy which play a very significant and important role in the process of development and evolution of the State. The press & media act as mirrors – reflecting the conscience of the people of the State. They act as instruments of change and revolution. The fundamental



freedoms of speech & expression guaranteed by Article 19(1)(a) of the Constitution of India would remain mere theoretical concepts without a free press and media as it is through the instrumentality of press & media that the said freedoms are effectually exercised.

40. In ***Bennett Coleman Co. & Ors. Vs. Union of India & Ors.***, (1972) 2 SCC 788, the Constitution Bench of the Supreme Court while dealing with a challenge to the import policy of newsprint on the ground of infringement of the fundamental right to freedom of speech & expression under Article 19(1)(a), and the right to equality under Article 14 of the Constitution, and also to some of the provisions of the Newsprint Control Order, 1962 commented on the freedom of press and the role of the press in a democratic society. Mr. Justice A.N. Ray in his majority opinion observed as follows:

“80. The faith of a citizen is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular Government rests on the old dictum, “let the people have the truth and the freedom to discuss it and all will go well.” The liberty of the press remains an “Art of the Covenant” in every democracy. Steel will yield products of steel. Newsprint will manifest whatever is thought of by man. The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct. Therefore, the freedom of the press is to be enriched by removing the restrictions on page limit and allowing them to have new editions or new papers. It need not be stressed that if the quantity of newsprint available does not permit grant of additional quota for new papers that is a different matter. The restrictions are to be removed. Newspapers have to be left free to determine their pages, their circulation and their new editions within their quota of that has been fixed fairly.”

(emphasis supplied)



41. Mr. Justice Beg in his concurring view commented on the aspect of the freedom of the press in the following words:

“95. It is difficult to over-emphasize the importance of Freedom of the Press as one of the pillars of a Government “of the people, by the people, and for the people”. I may quote what Lord Bryce said in American Commonwealth (New and Revised Edition)(pp. 274, 275, and 367):

‘The more completely popular sovereignty prevails in a country, so much the more important is it that organs of opinion should be adequate to its expression, prompt, full, and unmistakable in their utterances.... The press, and particularly the newspaper press, stands by common consent first among the organs of opinion.... The conscience and common sense of the nation as a whole keep down the evils which have crept into the working of the Constitution, and may in time extinguish them.... That which, carrying a once famous phrase, we may call the genius of universal publicity, has some disagreeable results, but the wholesome ones are greater and more numerous. Selfishness, injustice, cruelty, tricks and jobs of all sorts, shun the light; to expose them is to defeat them. No serious evils, no rankling sore in the body politic, can remain long concealed, and, when disclosed, it is half destroyed. So long as the opinion of a nation is sound, the main lines of its policy cannot go far wrong.’

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97. Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that



such freedom must be jealously guarded. Voltaire expressed a democrat's faith when he told an adversary in argument: "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression, throughout the ages, have realised that intellectual paralysis creeps over a Society which denies, is however subtle a form, due freedom of thought and expression to its members.

*98. Although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19(1)(a) of the Constitution, yet, **it is well recognised that the Press provides the principal vehicle of expression of their views to citizens. It has been said: 'Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so subtle. But, like other liberties, this also must be limited'.***

(emphasis supplied)

42. Mr. Justice Mathew delivered a dissenting judgment. However, some of the observations made by him throw light on the scope and the characteristics of the functions performed by the press. These observations, in my view, are also of relevance for the present purpose. He observed in paragraph 168 of the judgment that the constitutional guarantee of the freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. In this regard, he placed reliance on ***Time Vs. Hill***, 385 US 374. In paragraph 174, His Lordship observed that public discussion of public issues together with the spreading of information and any opinion on the issues is supposed to be the main function of newspapers. The highest and the lowest of intelligencia resorts to its volumes for information. Newspaper is the most patent means for educating the people



as it is read by those who read nothing else and, in politics, the common man gets his education mostly from newspaper. The right of the press to import newsprint is founded upon, not only the fundamental right of the press to impress itself, but also because the community has a right to be supplied with information, and the Government a duty to educate the people within the limits of its resources.

43. Once again, the Supreme Court had the occasion to deal with the important aspect of the freedom of the press and the role that the press plays in a democratic society in ***Indian Express Newspapers (Bombay) Private Ltd. & Others Vs. Union of India & Others***, (1985) 1 SCC 641. In paragraph 32, the Supreme Court observed:

“32. In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities. Governments naturally take recourse to suppress newspapers publishing such articles in different ways. Over the years, Governments in different parts of the world have used diverse methods to keep press under control. It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression



laying down the limits of interference with it. It is, therefore, the primary duty of all the national courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it, contrary to the constitutional mandate.”

(emphasis supplied)

44. In the same judgment, the Supreme Court quotes from the Second Press Commission Report in its volume 1 at pages 34-35, wherein the Press Commission, inter alia, observes:

“39. The Second Press Commission has explained the concept of freedom of press in its Report (Vol. I pp. 34-35) thus:

‘x x x x x x x x

*16. The theory is that in a democracy freedom of expression is indispensable as all men are entitled to participate in the process of formulation of common decisions. Indeed, freedom of expression is the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to other liberties. It has been truly said that it is the mother of all other liberties. **The Press as a medium of communication is a modern phenomenon. It has immense power to advance or thwart the progress of civilization. Its freedom can be used to create a brave new world or to bring about universal catastrophe.***

17. It is the function of the Press to disseminate news from as many different sources and with as many different facts and colours as possible. A citizen is entirely dependent on the Press for the quality, proportion and extent of his news supply. The assumption in a democratic set-up is that the freedom of the press will produce a sufficiently



diverse Press not only to satisfy the public interest by throwing up a broad spectrum of views but also to fulfil the individual interest by enabling virtually everyone with a distinctive opinion to find some place to express it ’’

(emphasis supplied)

45. In a recent decision, the Supreme Court in ***Sanjoy Narayan, Editor in Chief Hindustan & Ors. Vs. Hon’ble High Court of Allahabad through Registrar General***, 2011 (9) SCALE 532, has, inter alia, observed:

“5. The media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed.

6. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process. The right to information is fundamental in encouraging the individual to be a part of the governing process.”

(emphasis supplied)

46. The Constitution and, consequently, the three limbs of the State, namely the Legislature, the Executive and the Judiciary continue to endeavour to not only provide protection to the press and the media against infringement of the fundamental right to freedom of expression of the citizens, guaranteed by Article 19(1)(a) of the Constitution, but also to proactively promote the said fundamental right.



47. Dr. D.D. Basu in his *“Law of the Press”*, Fifth Edition 2010, enlists the various rights & privileges especially conferred upon the press by State. Apart from taking note of the various provisions of the Copyright Act which permits fair dealing of works in which copyright exists, and reproduction of articles of current economic, political, social or religious topics in certain circumstances by the press, he also refers to various other statutory provisions such as Section 81 of the Evidence Act and Sections 5 & 7 of the Press and Registration of Books Act, which accord authenticity to publications made in a newspaper. He also notices that no sales tax can be imposed on a newspaper or an advertisement therein by a State Legislature and only Parliament is vested with such power under Entry 92 of List I of the Seventh Schedule. Pertinently, no such tax appears to have been imposed by the Parliament so far. He also notices that under the Central Sales Tax Act, 1956, the Central Government has excluded newspapers from the scope of sales tax for purchase of goods in the course of inter-State trade or commerce. Postal Regulations made under Section 9 of the Indian Post Office Act, 1898 provides for a reduced rate in respect of newspapers, subject to compliance of the prescribed conditions.

48. In the light of the aforesaid discussion, I am of the view, that the press and the media perform a public function and discharge a public duty of: disseminating news, views & information; initiating and responding to debates; dealing with matters of current interest in the society in all fields such as politics, morality, law, crime, arts, sports, entertainment, science, philosophy, religion, etc. There is not an aspect related to human rights and human existence which is not dealt with by the press and the media.



Considering the immense impact that the press and media has over the polity, in my view, it cannot be said that they do not perform a public function or discharge a public duty, *inter alia*, when they perform the act of reporting news. Their functions touch the lives of practically everyone. Their reach is very deep and pervasive. Infact, the audio-visual media creates an even greater impact in today's time with deeper & wider penetration all across the State. They command immense power of making, moulding, sustaining or even changing public opinion. The functions performed by the press & media are recognised by the State which, consequently, accords various rights & privileges to them.

49. The controversy in the present case, as aforementioned, relates to the alleged disclosure of the identity of the petitioner's daughter, who had reported a case of alleged child sexual abuse against her own father, by the respondents herein. The duty of the respondents herein to maintain utmost secrecy and confidence in the matter of identity of the petitioner's daughter has not been disputed. Such a duty of the press & media stems from the need to prevent social obliteration and humiliation of the victim. The potential of the press and media to cause such harm is immense because the press and the media enjoy a position of trust in the society and also because of their reach. Any function/activity, alleged to be in violation of such duty, would fall within the ambit of scrutiny of this court exercising jurisdiction under Article 226, especially when the same is alleged to have infringed the fundamental rights of the victim. Therefore, the respondent nos. 2 and 3 are subject to the writ jurisdiction of this court in respect of the public function and public duty performed by them.



Existence of alternative efficacious remedies

50. I shall now deal with the other preliminary objection as regards the maintainability of the present petition, on the ground that the petitioner herein has other alternative efficacious remedies.

51. Under Article 226 of the Constitution the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. The High Court, while doing so, has imposed upon itself certain restrictions - one of which is that if an effective and efficacious remedy is available to the aggrieved, the High Court would not normally exercise its jurisdiction. But the existence of an alternative remedy has been consistently held not to operate as a bar in at least the following contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights, or where there has been a violation of the principle of natural justice, or where the order or proceedings are wholly without jurisdiction, or the vires of an Act is challenged.[See ***Whirlpool Corporation v. Registrar of trademarks, Mumbai and Ors.***, (1998) 8 SCC 1].

52. In the present case, the petitioner herein has alleged violation of the fundamental *right to life* of her daughter at the hands of the respondents. Remedy against such alleged violation would, therefore, lie also by way of a writ petition seeking enforcement of the infringed fundamental rights. The existence of other alternatives would not prevent this Court from stepping in and performing its constitutional mandate- which is to protect, uphold and enforce the of fundamental rights that each individual, for the sustenance of life as a human being, is entitled to.



53. Further, it cannot be stated that in every case involving claim of compensation, recourse can only be had by way of a civil suit. In **Rudul Shah** (supra), the Supreme Court was faced with a situation where the petitioner, who was acquitted by the Court of Session, was released from jail more than 14 years thereafter. The petitioner approached the Court asking for his release on the ground that his detention in the jail was unlawful and claimed compensation for his illegal incarceration. The petitioner was released from jail and as regards the compensation for illegal detention the Court held that though Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, however, in order to rectify the *grave injustice* perpetrated upon the petitioner by illegally detaining him in jail for 14 years after his acquittal, which violated his fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India, the Court in the exercise of its jurisdiction under Article 32 can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. Chandrachud, C.J. speaking for the bench observed as under:

“9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such



cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. We cannot resist this argument. **We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government.** Happily, the State's counsel has not raised that objection. **The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish**



in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

(emphasis supplied)

54. The order of compensation passed was in the *nature of a palliative*, leaving the petitioner the liberty to file a suit for compensation, wherein the nice points of facts and law could be adjudicated upon.

55. Apart from the aforementioned decision, the question has been dealt with extensively by the Supreme Court in ***Smt Nilabati Behera*** (supra), ***Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Ors. v. Sukamani Das (Smt.) and Anr.***, (1999) 7 SCC 298, ***Tamil Nadu Electricity Board v. Sumathi and Ors.***, (2000) 4 SCC 543 and ***S.P.S Rathore vs. State of Haryana***, (2005) 10 SCC 1. The position that emerges from these decisions is that the writ court may award compensation in appropriate cases, where the facts are not in dispute; there is established negligence in the acts and omissions of the respondent on the face of the record, and; there is consequent deprivation of a fundamental right of the petitioner or his legal representatives. The existence of an alternate remedy for claim of compensation by way of a suit, as contended by the respondents, would, thus, not bar this court from entertaining and allowing the present petition, if the requisite essentials, as aforesaid, are fulfilled.

56. The remedies provided for under the Press Council Act, 1978 and/or the Juvenile Justice Act also cannot be said to be efficacious alternate remedies, to the one claimed for by the petitioner herein. The PCI has been



constituted under the Press Council Act, 1978, mainly to preserve freedom of press and to maintain and improve the standards of newspapers and news agencies in the country. For such purposes the PCI, upon receipt of a complaint alleging breach of standards of journalistic ethics or public taste or professional misconduct, has been endowed with the power of censure under Section 14 of the said Act. The existence of the said forum, conferred with such power, cannot be treated an effective alternative efficacious remedy for the alleged violation of fundamental right, as claimed by the petitioner herein. Similarly, the Juvenile Justice (Care and Protection of Children) Act, 2000 cannot be said to be an effective alternate remedy to pursue for the alleged violation of the fundamental right of the petitioner's daughter and the reliefs claimed herein. It is nobody's case that the petitioner's daughter at the relevant time was a minor in conflict with Law. The remedies provided for under the aforesaid Acts cannot be said to be adequate and, indeed, cannot come in the way of this court to exercise jurisdiction under Article 226 of the Constitution of India for the purposes of enforcement of fundamental rights.

57. The present writ petition for claim of compensation, for alleged breach of fundamental rights of the child, is, therefore, not barred by the existence of alternate remedies, as contented by the respondents.

58. One of the contentions of the respondents herein is that the present case involves determination of disputed questions of fact and that the same cannot be gone into by this Court in exercise of writ jurisdiction. It is, therefore, contended that the present petition seeking compensation cannot be entertained.



59. In general, a disputed question of fact is not investigated in a proceeding under Article 226. However, this is a rule of discretion and not of exclusion of jurisdiction. Therefore, merely because a disputed question of fact is raised, the High Court will not be justified in relegating the applicant to seek relief by a lengthy, dilatory and expensive process of a civil suit. Mr. Justice Khanna in the case of ***Babulal Patel v. Nandlal Barot***, (1974) 2 SCC 706, laid down the position of law in this regard, in the following words:

“10. ... The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see *Gunwant Kaur v. Bhatinda Municipality* [(1969) 3 SCC 769:



AIR 1970 SC 802)]. If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.”

(emphasis supplied)

60. The High Court, in exercise of writ jurisdiction, cannot shirk its responsibility by dismissing a petition on the ground that it raises a disputed question of fact when the material to determine the said question is on record. [See **L.G. Chaudhari v. Govt. of Bihar**, AIR 1980 SC 383]

61. In the present case, the facts which are not disputed by the parties are: the registration of the FIR by respondent no. 1 upon complaint by the petitioner's daughter; publishing of a newspaper article in relation to the said complaint by respondent no. 2; attempt to interview the petitioner and her daughter by the crew members of respondent no. 3 at the petitioner's residence in connection with the aforesaid complaint; reluctance of the petitioner to give an interview in relation to the complaint; and telecast of a programme, in connection with the complaint of the petitioner's daughter, by respondent no. 3 on its news channel.

62. However, at the same time, the respondents have disputed certain facts as alleged by the petitioner herein. Respondent no. 1 has disputed giving information pertaining to the FIR to the other respondents herein. Respondent no. 2 has disputed revealing the name of the minor in question and/or any particulars or specifics of the minor as would likely make the identity of the minor discoverable. Respondent no. 3 has disputed attempting



to interview the petitioner and her daughter deceptively and/or revealing explicit information.

63. The newspaper article published by respondent no.2 and the news item telecast by respondent no.3 are a matter of record, and are undisputed. As to whether, or not, the said publication/telecast amount to infringement of the fundamental rights of the petitioner's daughter, is, therefore, a matter which can be examined by the Court. The only disputed question of facts is: How respondent nos.2 and 3 got the particulars of the FIR registered with respondent no.1? In my view, this aspect would not make any difference to the liability, if any, of respondent nos.2 and/or 3. If at all, the same would only impinge on the liability of respondent no.1. This objection is, therefore, rejected. I now proceed to consider the case on merits.

Merits

64. The petitioner herein has alleged breach of the right to privacy and confidentiality, of her daughter, under right to life guaranteed under Article 21 of the constitution of India. The "right to privacy" is recognised as an integral part of the right to personal liberty under Article 21 of the Constitution of India.

65. In **R. Rajagopal** (supra), the Supreme Court had the occasion to comment on the origin, basis, nature and scope of the right to privacy in India. Mr. Justice B.P. Jeevan Reddy, referring to the earlier decision of the Supreme Court in **Kharak Singh v. State of Uttar Pradesh**, 1964 (1) SCR 332: AIR 1963 SC 129 and the decision in **Gobind v. State of Madhya**



Pradesh, 1975 (2) SCC 148: AIR 1975 SC 1378, has summarized the concept of right to privacy as under:

“(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interest of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.”

(emphasis supplied)

66. The said right to privacy is subject to certain exceptions, as enumerated by the Supreme Court hereinabove, such as where the matter becomes part of a public record- in which case the right to privacy comes to an end and the press and the media get a legitimate right to comment upon the same. There are exceptions to this, as recognised by the Supreme Court



in cases, such as, where they pertain to a victim of sexual assault, kidnap, abduction or a like offence. Therefore, even if the matter relating to a case of alleged sexual abuse etc. becomes a part of the public record, the fundamental right of the victim to be safeguarded from further disclosure of identity and consequent subjection to social indignity does not come to an end. Therefore, an act which violates the said right gives cause of action to, *inter alia*, stake a claim of damages.

67. The petitioner herein has also alleged commission of an offence under Section 228A, IPC on the part of the respondents- for disclosing the name of the petitioner's daughter. The said submission cannot be considered by this court in exercise of the present jurisdiction. The commission of the alleged offence has to be adjudicated and decided upon by a Criminal Court of competent jurisdiction. Consequently, I shall not delve into the said aspect in these proceedings.

68. The submission of the respondent no. 1 that it did not disclose the contents of the FIR to the other respondents herein does not appear to stand the test of reason, and neither does it appeal to common sensibility. Firstly, the contention of the petitioner herein as regards the alleged disclosure by respondent no.1 has not been denied by the other respondents herein. To the contrary, it is their categorical stand that the contents of the said FIR were provided to them by the officials of respondent no. 1. Secondly, it is also not respondent no. 1's case/allegation that the contents of the said FIR were provided by the petitioner and/or her daughter to the other respondents. A mere denial of it not having leaked the FIR cannot absolve respondent no. 1



of its obligation of maintaining utmost secrecy and confidentiality of the name and identity of the victim of sexual assault.

69. As per respondent no. 1's own circular, as quoted above, no official except the concerned DCP or the Joint C.P. Ranges/CAW Cell could have briefed the press about the incident complained of. With no such briefing having been referred to, or having been brought to the notice of this court by respondent no. 1 herein, I cannot but reject the submission of respondent no.1 and, accordingly, hold them liable for the disclosure of the FIR. Such conduct of the officials of respondent no. 1 herein is nothing short of gross negligence and dereliction of duty which has, consequently, resulted in breach of the very basic right of privacy and confidentiality of the petitioner's daughter.

70. In order to test the merits of the petitioner's case qua the conduct of the other respondents herein and the counter submissions of the latter, I also consider it appropriate to briefly refer to the norms of journalistic conduct, as laid down by the PCI in 1996 and thereafter revised in 2005, which are germane to the issue involved in the present case. The same read as under:

“ **NORMS OF JOURNALISTIC CONDUCT**

Principles and Ethics

The fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased, sober and decent manner. To this end, the Press is expected to conduct itself in keeping with certain norms of professionalism, universally recognised. The norms enunciated below and other specific guidelines appended thereafter, when applied with due



discernment and adaptation to the varying circumstance of each case, will help the journalist to self-regulate his or her conduct.

X X X X X X X X X X

Right to Privacy

i) ***The Press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So, however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the Press and the media, among others.***

Explanation: *Things concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of PRIVACY excepting where any of these impinges upon the public or public interest.*

ii) **Caution against Identification:** *While reporting crime involving rape, abduction or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published.*

iii) ***Minor children and infants who are the offspring of sexual abuse or 'forcible marriage' or illicit sexual union shall not be identified or photographed.***

X X X X X X X X X X

Recording interviews and phone conversation

i) ***The Press shall not tape-record anyone's conversation without that person's knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason.***



ii) *The Press shall, prior to publication, delete offensive epithets used by a person whose statements are being reported.*

iii) *Intrusion through photography into moments of personal grief shall be avoided. However, photography of victims of accidents or natural calamity may be in larger public interest.*

X X X X X X X X X X

Paramount national interest

i) *Newspapers shall, as a matter of self-regulation, exercise due restraint and caution in presenting any news, comment or information which is likely to jeopardise, endanger or harm the paramount interests of the State and society, or the rights of individuals with respect to which reasonable restrictions may be imposed by law on the right to freedom of speech and expression under clause (2) of Article 19 of the Constitution of India.*

X X X X X X X X X X”
(emphasis supplied)

71. As per the aforementioned norms of journalistic conduct, it is the duty of the press to not reveal the particulars of the victim of sexual abuse which would lead to the disclosure of his/her identity and resultant breach of his/her right to privacy. It is on the anvil of such duty emanating from the fundamental right to privacy of the victim of sexual abuse that the alleged conduct of the respondent no. 2 and respondent no. 3 has to be evaluated, for the purposes of the present petition.

72. Respondent no. 2 published an article in relation to the incident complained of by the petitioner’s daughter, which came to be registered by respondent no. 1. In the said article, respondent no. 2 has revealed the age, the district in which she resides and the class in which she studies. Apart



from this, the article also mentions- the particulars of the incident reported and registered by the respondent no. 1 both in quotes and also otherwise; and the figures of the incidents of police cases in the year 2004, wherein the rapist was a relative of the victim.

73. A perusal of the aforesaid article shows that particulars which would identify the victim of alleged child sexual abuse, have not been disclosed. Mere reference to the age, academic standard and residential district of the victim cannot be considered as revealing her identity. These particulars are too general for anyone to identify the petitioner or her daughter as the locality is very large and there could be hundreds of children in the locality who could meet the description given by respondent no.2. The particulars pertaining to the complaint made by the petitioner's daughter, which have been referred to in the said article, are not such which could lead to the inference of the possibility of the identity of the victim being revealed. The same only cites the instances of alleged sexual advances/abuse by the father of complainant victim, without any further particulars which could lead to the identification of the victim. I also find merit in the submissions of Mr.Bhambani that respondent no.2 has exercised discretion and restraint in lifting the details and particulars from the FIR lodged by the petitioner's daughter. The article also displays a journalistic trait in as much, as, it raises the issue of prevalence of such crimes in the society. The focus of the article is not the particular incident of the petitioner's daughter, but the occurrence of such crimes in our society.

74. Consequently, I do not find merit in the submissions of the petitioner herein qua respondent no. 2. Accordingly, I do not find the conduct of



respondent no. 2 guilty of negligence and consequent breach of fundamental right of the petitioner's daughter, in publishing the aforementioned article, for the purposes of the present petition.

75. Respondent no. 3, as aforesaid, broadcasted a programme on its news channel, in connection with the complaint made by the petitioner's daughter to respondent no. 1. Having so done, respondent no. 3 cannot pass the buck upon the deleted respondent and try to wash away its hands. The said broadcast, therefore, would have to stand the test of judicial scrutiny as mentioned above.

76. Learned counsel for the respondent no.3 has submitted that the petitioner herself has brought the information regarding the alleged incident experienced by her daughter in public domain by, *firstly*, giving an interview to the deleted respondent, i.e., Star TV and, *secondly*, by filing the present petition in her own name, i.e., in the name of the victim's mother. The petitioner has explained that the Star TV reporter had coaxed the petitioner/her daughter into making some disclosures to Star TV. The specific averment made by the petitioner in this regard reads as follows, which is contained in their legal notice sent to Star TV:

“x x x x x x x x x x

3. *A representative from your channel, Ms....., approached our client without revealing her identity and tried to get information from her, at about 12:30 pm today.*

4. *That inspite of protests from our client and her family members your representative persisted with her attempts to gain information regarding the FIR lodged.*



5. *We have been informed that your representative by tricking our client and managed to gain information through sheer persistence and emotional blackmail.*

6. *Kindly note that the use of any information gained by you/your representative in the said matter could reveal the identity of the victim which is totally illegal and unethical for which you would be liable to pay damages and suffer other criminal and civil consequences.*

x x x x x x x x x x”

77. Pertinently even before the said interview could be publicised or telecast, the petitioner took immediate steps to restrain Star TV from telecasting the same by the above notice sent on the same day, i.e., 04.08.2005. Therefore, the giving of the interview to the representative of Star TV cannot be said to be a deliberate and conscious decision on the part of the petitioner or her daughter to publicise the alleged incidents or the FIR. As regards the filing of the present petition in the name of the petitioner, it is to be appreciated that the petition was filed on 04.08.2005, i.e., the same day on which the representative of the Star TV had taken the interview. It was filed in evident urgency. Obviously, the petitioner could not have intended to publicise either her or her daughter’s identity and the disclosure of the name of the petitioner in the petition clearly appears to be on account of the petitioner’s innocence/ignorance and the counsel’s possible lack of experience and thoughtlessness on account of paucity of time.

78. The submission of respondent no. 3 – that the telecast only mentioned that a complaint had been filed by the child to the police; that respondent no.3 took all precautions of not disclosing the address or block where the petitioner resided; that the office address of the petitioner’s husband was not



disclosed, and; that the telecast did not contain any information pertaining to the petitioner which could directly establish her identity – appear to be in teeth of the material on record, which is self-explanatory.

79. A perusal of the video recording of the said telecast along with its transcript reveals blatant violation and disregard of the petitioner's daughter's right to privacy and confidentiality as also the duty of respondent no. 3 herein to maintain utmost secrecy and confidentiality in the matter of the identity of the victim of alleged child sexual abuse. The said telecast discloses: the name of the accused father & his place of work along with his designation – which would not only identify him but also the victim as it is disclosed that the victim is his own daughter; the age of the victim; visual shots of the display board of the colony containing particulars regarding the Sector and Pocket, wherein the petitioner resides with her daughter; visual shots of the staircase leading to the house along with the side shot of the doorstep of the house and; the voice of the petitioner. Revelation of particulars of such nature and to such an extent, are patently sufficient for the disclosure of the identity of the petitioner's daughter in the petitioner's community and society. The fact that the petitioner and her daughter came to be identified by their acquaintances and neighbours is also indicated by the fact that they had to leave their home and go into hiding and have been located by their counsel only recently Respondent no. 3 by its conduct, has acted in utter disregard and disrespect of the right of the victim of sexual abuse to privacy, recognised not only as inherent to the fundamental right to life under Article 21 of the Constitution, but also enumerated in the norms of journalistic conduct by which respondent no. 3 is governed.



80. The submission of the respondent no. 3 that the recording mike and the camera, which were put into motion when the correspondent initiated talks with the petitioner, were made fully visible and of which the petitioner was duly informed about and no attempt had been made to hide or conceal the same, is also entirely meritless. There is not an iota of suggestion, from a perusal of the telecast, of any such information having being passed onto the petitioner by the crew members of respondent no. 3. The crew members on the other hand, chose to remain silent as regards the factum of such recording. Even if this submission of respondent no. 3 were to be accepted, the same is no excuse to justify their conduct. Once the petitioner had expressed her reluctance to speak to the correspondents of respondent no. 3, they should have left without making any further recording and could not have utilised and aired any part of the recording made by them. They cannot now turn around and say that they did not conceal the recording and that the same was within the knowledge of the petitioner who, admittedly, was still inside her house while the cameraman of respondent no. 3 was recording from the side down below the staircase leading to the petitioner's house. Such gross misconduct on the part of respondent no. 3 calls for the strongest condemnation. Their act was a display of *a prurient or morbid curiosity* as proscribed in the '***Norms of Journalistic Conduct***' laid down by the PCI.

81. I therefore, hold respondent no. 3 herein liable for gross negligence and, consequent, breach of fundamental right of the petitioner's daughter in telecasting the said programme containing particulars, sufficient for the disclosure of the identity of the petitioner's daughter.



82. Though the exact amount of compensation to which the petitioner and her daughter are entitled to on account of the conduct of respondent nos.1 & 3 cannot be determined with certainty in these proceedings, this Court can certainly grant compensation as a palliative measure, leaving it to the petitioner's daughter to seek further damages from the said respondents in appropriate civil proceedings. I am of the view that the petitioner would be entitled to damages of at least Rupees One Lakh from respondent No.1 and of at least of Rupees Five Lakhs from respondent No.3.

83. While arriving at the aforesaid figures of damages awarded against respondent no. 1 & 3, this Court has taken into account the extent of negligent role played by each of them in the serious infraction of the fundamental right to life of the petitioner's daughter. The main wrongdoer is respondent no. 3 who was obliged not to so explicitly display the details regarding the petitioner's residence etc. as already discussed above, even if respondent no. 1 provided to it the copy of the FIR in question. Respondent no. 1 should have been discreet in its disclosure of the details to respondent no. 2 & 3, which it was not.

84. The award of damages in such cases, of necessity, has to be on the basis of some guess work. The embarrassment caused to the petitioner and her daughter by the telecast of the programme by respondent no. 3 in the manner that they did was so great that they had to relocate themselves and go into hiding for several years. The purpose of award of damages in such cases is also to set an example for others, so that it acts as a deterrent against such similar misadventures at the cost of victims of alleged sexual abuse. I



have taken all these considerations into account while computing the damages which, in my view, are a conservative side.

Decision

85. Accordingly, I direct as under:

- (i) The Commissioner of Police shall immediately set up an inquiry into the disclosure of the FIR and its details by the representatives of respondent no.1 to the other respondents herein. The inquiry shall be headed by an officer not below the rank of a DCP, who shall not be from the same District with which this case pertains and who should not have had any connection or dealing with the FIR in question in the past. While conducting the inquiry, due care shall be taken to maintain secrecy of the identity of the petitioner and her daughter. The inquiry shall be conducted within four months from now.
- (ii) Respondent no. 1 to 3 are restrained from passing on, in any form whatsoever, information pertaining to the said incident which could possibly lead to the further identification of the petitioner's daughter herein.
- (iii) Respondent no. 1 and 3, are directed to pay to the petitioner's daughter compensation of Rs.6,00,000/- (Rupees Six Lakhs), out of which Rs.1,00,000/- (Rupees One Lakh) shall be paid by Respondent No. 1 and Rs.5,00,000/- (Rupees Five Lakhs) shall be paid by Respondent No. 3. The same shall be deposited within four weeks



from today with the Registrar General of this Court, who shall thereafter release the same to the petitioner's daughter, in her name.

The petitioner and her daughter shall be entitled to claim further damages from the persons/entities concerned, if they are so advised, by approaching the Civil Court concerned. The fact that this Court has computed the damages as above shall not prejudice the further claim that the petitioner or her daughter may have. However, the damages awarded by this Court shall be taken into account by the Civil Court while awarding damages, if any.

- (iv) Respondent nos. 1 and 3 shall pay Rs.25,000/- (Rupees Twenty Five Thousand), as litigation costs each in favour of the petitioner herein.
- (v) The Registry is directed to preserve the record of the case in a sealed cover. If any one, other than the parties to the case seek inspection or copies of any part of the record (excluding the judgment), the same shall be provided only after satisfying the identity of the applicant and the purpose for which the same is sought.

86. With the aforesaid directions, the present petition along with the pending applications stand disposed of.

(VIPIN SANGHI)
JUDGE

FEBRUARY 05, 2013

BSR