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

Judgment delivered on: 20.07.2026

+ CS(OS) 749/2023

SHRI NARESH KUMAR

.....Plaintiff

Through: Mr. Manik Dogra, Sr. Advocate with
Ms. Bani Dikshit, Mr. Dhruv Pandey,
Mr. Uddhav Khanna and Mr. Dhruva
Viz, Advocates.

versus

THE WIRE & ORS.

.....Respondent

Through: Ms. Nitya Ramakrishnan, Sr.
Advocate with Mr. Sarin Naved, Ms.
Stuti Rai, Mr. Saurabh Sagar, Md.
Zeeshan Ahmad and Md. Noumaan,
Advocates. Mr. Deepak Gogia, Mr.
Aadhar Nautiyal, Advocates for D-3.
Mr. Aditya Mathur and Ms. Anuparna
Chatterjee, Advocate for D-4.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

I.A.NO. 22961/2023

By way of the present application filed under Order XXXIX
Rules 1 and 2 read with section 151 of the Code of Civil Procedure,
1908 ('CPC') the applicant/plaintiff seeks the following reliefs:

*“a) That pending the hearing and final disposal of the Plaint;
(sic) the Defendants, be restrained from in any manner, directly or
indirectly publishing and/or commenting and/or communicating
and/or issuing or causing to be published/commented/communicated/
issue any tweet, article, interview and material to the public in any*



manner whatsoever, containing or referring to allegations similar to the ones set out under the said tweets/posts/videos or any part thereof or in any manner similar thereto, except when proceeding with the same in accordance with law;

b) That pending the hearing and final disposal of the Plaint; (sic) the Defendants, be directed to remove/take down/withdraw all defamatory and unwarranted allegations made against the Plaintiff in the posts impugned herein or any other allegations similar to the ones set out under the said tweets/posts/videos or any part thereof or in any manner similar thereto;

c) That pending the hearing and final disposal of the Plaint, Defendant No.3 and 4 be directed to take down the tweets/posts/videos or any other tweets/posts/ videos containing or referring to allegations similar to the ones set out under the said posts/tweets/videos or any part thereof or in any manner similar thereto;

d) For ex parte ad-interim reliefs in terms of prayer clause (a, b, c);

e) For such other and further reliefs as the nature and circumstances of the case may require be granted and that this Hon'ble Court may deem fit in the interest of justice;

f) Any other ex parte ad interim orders, in terms of the above."

2. The prayers in the application have been made in the context of an article dated 09.11.2023 titled "*Links of Son of Delhi Chief Secretary to Beneficiary's Family in Land Over-Valuation Case Raise Questions*" published by the respondents/defendants Nos.1 and 2 on the website "<https://thewire.in/>" ('subject article').
3. The essential narrative in the subject article is as follows:
 - 3.1.The publication relates to the acquisition of a certain parcel of land by the National Highways Authority of India ('NHAI') for the Dwarka Expressway. The parcel of land was proposed to be acquired from two Delhi businessmen, Subhash Chand Kathuria and his brother, Vinod Kathuria, one of whom is related by



marriage to the promoter of a real estate company in which the plaintiff's son, Karan Chauhan, is employed. In May of the relevant year, the District Magistrate, South-West District, Delhi ('DM'), passed an order awarding compensation of Rs. 353 crores to the two individuals in relation to 19 acres of land situate in Village: Bamnoli, which was to be acquired for the road project, working out to Rs. 18.54 crores per acre. By this order, the DM reversed an earlier decision of 2018 of the adjudicating authority, (*i.e.*, the Additional District Magistrate) which had awarded compensation of (only) Rs. 41.52 crores for the same land, on the basis of a valuation of Rs. 53 lakhs per acre. The direct beneficiaries of the enhanced compensation were the afore-named Subhash Chand Kathuria and Vinod Kathuria.

3.2.The subject article said that Subhash Chand Kathuria is the father-in-law of Mr. Aman Sarin, the promoter of the realty company M/s. Anantraj Limited; and that the son of the plaintiff (at which time the plaintiff was Chief Secretary of Delhi) is an employee of Anantraj Limited and is also a director in 03 other companies, some of which have business links with Anantraj Limited. It is stated in the subject article that not only do the said companies and Anantraj Limited and its various verticals have common directors, but in certain cases the postal address and email address of these entities are the same as that of Anantraj Limited.

3.3.In the subject article defendants Nos.1 and 2 also carried the plaintiff's version as regards the transaction in question, where he denied any knowledge of, or connection with, his son's business



dealings. In the subject article the Chief Secretary Naresh Kumar is reported to have stated that his son is not dependent upon him, and that the son's commercial affairs are not known to him. The plaintiff is further quoted as stating that his son, Mr. Karan Chauhan, has been employed with a listed public limited company, M/s. Anant Raj Housing Ltd., since June 2019; and that he has no knowledge of the relationship, if any, between the directors of M/s. Anant Raj Housing Ltd. and Mr. Subhash Kathuria, nor has he had any occasion to become aware of such relationship.

3.4. Most importantly the subject article recorded the plaintiff's assertion that there is no conflict of interest on his part. The plaintiff is quoted as saying that the queries posed appear to have been framed with the intent of maligning him at the instance of the officer who had committed the alleged misconduct. The subject article also quotes the plaintiff as asking whether the publication was siding with the officer who passed the impugned order. The plaintiff is further reported to have contended that certain disgruntled elements, against whom action has been taken or is under way, including in matters relating to the so-called "Delhi Excise Scam" and "Sheesh Mahal" issue, are attempting to circulate false and fabricated complaints against him.

3.5. While the subject article notes that concerns have been raised about a possible conflict of interest, it duly records the plaintiff's categorical denial of any wrongdoing and says that the plaintiff has been making efforts to distance himself from the transaction. It is, however, also stated in the subject article that questions remain



regarding the plaintiff's failure to disclose any potential conflict of interest when NHAI raised an alarm in relation to the over-valuation of the land.

4. Notice on the present application was issued on 21.11.2023; pursuant to which reply dated 21.12.2023 has been filed by defendants Nos.1 and 2; and reply dated 18.12.2023 has been filed by defendant No.3. Rejoinder dated 05.03.2024 has also been filed by the plaintiff to the reply filed by defendants Nos.1 and 2. Defendant No.4 has only filed its written statement; without filing any reply to the present application. Written submissions have also been filed by the plaintiff and defendants Nos.1 and 2.
5. At the interim stage, *vidé* judgment dated 22.11.2023, the learned Predecessor Bench had passed the following *ad-interim* directions in the present application:

“30. In the circumstances, following ad-interim directions are passed:-

(i) the defendant nos. 1 & 2 are directed to remove/take down the impugned article titled 'Links of Son of Delhi Chief Secretary to Beneficiary's Family in Land Over-Valuation Case Raise Questions' dated 09.11.2023, available at <https://thewire.in/government/delhi-chief-secretary-nhai-land-compensation> .

(ii) the defendant nos. 1 & 2 are directed to remove/take down the tweets/posts circulated and published on defendant no.3, available at https://twitter.com/thewire_in/status/1722624013942636890 and <https://twitter.com/meetujain/status/1722921620522860765>, images of which are filed as Document nos. 4 & 5 of the documents accompanying with the plaint.

(iii) the defendant nos. 1 and 2 are further directed to not post, circulate or publish any similar defamatory content against the



plaintiff as set out in the subject article/publication dated 09.11.2023.”

6. The court has heard Mr. Manik Dogra, learned senior counsel and Ms. Bani Dikshit, learned counsel for the plaintiff/applicant; and Ms. Nitya Ramakrishnan, learned senior counsel for defendants Nos.1 and 2/non-applicants.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

7. Learned counsel appearing for the plaintiff have made the following principal submissions in support of the plaintiff's case:

7.1.It has been submitted that the plaintiff is the (now former) Chief Secretary of Delhi and has had an illustrious government service career since August 1989, against whom defendants Nos.1 and 2 have made libelous allegations in the subject article. It has been argued that even the title of the subject article in itself is sensational and falsely gives an immediate portrayal and perception of guilt, abuse of power and the existence of a *quid pro quo* in relation to a transaction concerning a parcel of land, to any reader of the subject article.

7.2.It has been submitted that through the subject article defendants Nos.1 and 2 have attempted to create an obscure linkage between the plaintiff's son and a private party involved in the matter of enhanced valuation of a plot of land situate in Village: Bamnoli, Delhi which was being acquired by the NHAI. The subject article falsely suggests wrong-doing on the part of the plaintiff since the plaintiff's son works in a real estate company, one of whose directors is the son-in-law of one of the private persons whose land



was being acquired. It has been submitted that the tone, tenor and language of the subject article gives an immediate impression of guilt against the plaintiff; and gives the impression of underhand dealing by the plaintiff by emphasising the aforementioned link.

7.3.It has been argued that the subject article is a pre-planned conspiracy, and an attempt to gain cheap publicity by sensationalising the issue, with the intention of injuring the plaintiff's reputation and defaming him, based on half-truths and gross misrepresentations, while acting as mouthpieces of certain persons who may have personal/political agenda against the plaintiff in order to browbeat him.

7.4.It has further been argued that the subject article only includes selective portions of the plaintiff's response, and does not emphasise the fact that it was the plaintiff's intervention that resulted in highlighting the over-valuation of the plot of land in question, consequent to which action was taken. It is the plaintiff's argument that had the assertions made in the subject article been true, the plaintiff would not have brought the matter to the notice of the competent authority on his own volition, as soon as the matter came to the plaintiff's notice.

7.5.It has also been submitted that the plaintiff's counsel served upon defendants Nos.1 and 2 a lawyer's notice dated 13.11.2023, calling upon them to take-down the subject article within 48 hours of service of the notice, and to further cease and desist from circulating/re-circulating the same; and also to tender an unconditional apology to the plaintiff and publishing the same on a primary location on defendant No.1's website for at least 24 hours



at a stretch. However, neither did defendants Nos.1 and 2 accede to the aforementioned demands, nor did they even reply to the lawyer's notice.

7.6.It has further been submitted that in judgment dated 22.11.2023 granting *ad-interim* relief to the plaintiff in the present application, the learned Predecessor Bench has observed that the:

“ ... impugned article is a litany of misrepresentations and convoluted insinuations made in a reckless manner, without any regard for the truth, and with a view to inflict damage on the reputation of the plaintiff.”

It has been pointed-out that subsequent to the passing of judgment dated 22.11.2023, defendants Nos.1 and 2 took-down the subject article; and the said judgment has not been challenged by defendants Nos.1 and 2.

7.7.It has been argued that even though defendants Nos.1 and 2 have challenged the maintainability of the suit, no application seeking dismissal of suit or rejection of plaint or seeking setting-aside of judgment dated 22.11.2023 has been filed by them till date. It has also been argued that the maintainability of the suit cannot be adjudicated at this juncture, in an application seeking interim relief.

7.8.Since, as recorded in order dated 14.03.2024, defendants Nos. 1 and 2 have challenged the maintainability of the present suit citing the Supreme Court ruling in ***R. Rajagopal vs. State of T.N. and Ors***¹, learned counsel for the plaintiff have drawn attention to para 26(3) of the said judgment, which reads as follows:

¹ (1994) 6 SCC 632



“26. We may now summarise the broad principles flowing from the above discussion:

** * * * **

“(3) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.”

(emphasis supplied)

It has been submitted that a bare perusal of para 26(3) of *R. Rajagopal* inures to the benefit of the plaintiff, since in the present case the subject article is a publication made in “*reckless disregard for truth*” and even “*reasonable verification of the facts*” was not conducted by the defendants.



7.9. It has further been submitted that the subject article is *not* a comment on the discharge of official duties by the plaintiff, and that there is no mention of the plaintiff's official duties in the entire article. The subject article is focused on the link between the plaintiff's son (not the plaintiff himself) and the beneficiaries of the enhanced compensation, one of whom is related to the director of the real estate company, in which company the plaintiff's son is also a co-director. The subject article goes on to allege that the parties have benefited from the position of the plaintiff as the Chief Secretary of Delhi in relation to acquisition of land.

7.10. It has been submitted that even if the subject article was a comment on the discharge of the plaintiff's official duties, *R. Rajagopal* would not protect defendants Nos.1 and 2 since there is no truth in what has been stated in the subject article; and the tone, tenor and allegations made in the subject article do not report the correct facts, though the defendants had access to all facts from the plaintiff directly. It has been argued that the subject article is therefore a reflection of recklessness and 'yellow journalism', for which there can be no protection.

7.11. In support of their submissions, on the point of what have been held to be 'official duties', learned counsel for the plaintiff have relied on the Supreme Court's judgment in *State of Orissa & Ors. vs. Ganesh Chandra Jew*², the relevant portion of which reads as follows:

² (2004) 8 SCC 40



“11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned.”

(emphasis supplied)

Learned counsel for the plaintiff also places reliance on the Supreme Court’s ruling in *Centre for Public Interest Litigation & Anr. vs. Union of India & Anr.*³ the relevant portion of which reads as follows:

“9. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such

³ (2005) 8 SCC 202



act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

“10. Use of the expression **“official duty”** implies **that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty.** The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

“11. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.”

(emphasis supplied)

Reliance has also been placed on ***K.K. Mishra vs. State of Madhya Pradesh and Anr.***⁴ wherein the Supreme Court has interpreted ‘official duties’ as under:

“11. The problem of identification and correlation of the acts referred to in an allegedly defamatory statement and those connected with the discharge of public functions/official duties by the holder of the public office is, by no means, an easy task. The sanction contemplated under Section 199(4) CrPC though in the opposite context i.e. to prosecute an offender for the offences committed against a public servant may have to be understood by reference to the sanction contemplated by Section 197 CrPC which deals with sanction for prosecution of a public servant. There is a fair amount of similarity between the conditions precedent

⁴ (2018) 6 SCC 676



necessary for accord of sanction in both cases though the context may be different, indeed, the opposite.

“12. While dealing with the requirement of sanction under Section 197 CrPC this Court in *Urmila Devi v. Yudhvir Singh* [*Urmila Devi v. Yudhvir Singh*, (2013) 15 SCC 624 : (2014) 5 SCC (Cri) 470] had taken the following view which may have some relevance to the present case: (SCC p. 651, para 59)

“59. The expression “official duty” would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 CrPC may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code.”

(emphasis supplied)

7.12. It has further been submitted that ascertaining whether defendants Nos.1 and 2 acted with reckless disregard for truth is a question of trial and cannot be summarily adjudicated at this interim stage. To support this submission the plaintiff has placed reliance on the judgment of this Bench in *Lakshmi Murdeshwar Puri vs. Saket Gokhale and Anr.*⁵, in which case also the matter concerned the discharge of official duties; and in order to adjudge whether or not there had been reckless disregard for truth, the entire process of trial was undertaken.

⁵ 2024 SCC OnLine Del 4446



7.13.It has accordingly been prayed that the application be allowed and the interim order passed *vidé* judgment dated 22.11.2023 by the learned Predecessor Bench be made absolute.

SUBMISSIONS ON BEHALF OF DEFENDANTS NOS.1 & 2

8. Opposing the prayers made in the application, learned senior counsel appearing for defendants Nos.1 and 2 has made the following principal submissions:

8.1.It has been submitted that the subject article is a factual presentation of two views, published after taking both sides of the story and after giving the plaintiff sufficient opportunity to respond; and has been published after proper due diligence. It has further been submitted, that the subject article does not allege any wrongdoing by the plaintiff; and it is not even the plaintiff's case that the subject article presents any factually inaccurate narration of events. It has further been submitted, that the incident reported in the subject article was in the public domain and thus satisfies the test of public interest.

8.2.It has been argued that the plaintiff does not deny that the son-in-law of one of the private parties, which party was awarded compensation, is a co-director with the plaintiff's son in another company. It has also been alleged that throughout the course of disciplinary proceedings against the delinquent DM, the plaintiff did not disclose the aforementioned link to any authority.

8.3.It has further been argued that essentially the plaintiff's grievance seems to be that he has not been extolled for his actions in the terms that he would have liked; that it was the plaintiff who initiated action against the delinquent DM and the plaintiff's main grouse is



that he has not been sufficiently appreciated for the same in the subject article. It has been submitted that this does not, by any means, amount to defaming the plaintiff. Furthermore, even if the plaintiff's grievance that the title of the subject article is 'unpalatable' is considered to be valid, that alone does not make it a case for issuance of an injunction.

8.4. It has been submitted that as recorded in order dated 14.03.2024, the present suit is not maintainable in view of the Supreme Court ruling in *R. Rajagopal*, which holds that the remedy of damages for defamation is simply not available to public officials in relation to acts done in discharge of their public duties *even if* the allegations made in that regard are not true. It has been alleged, that as the record would show, defendants Nos.1 and 2 took reasonable steps to verify the facts narrated in the subject article, and even reached-out to the plaintiff to give him a proper opportunity to communicate his version of events. It has been argued therefore, that the defendants cannot be said to have acted with 'reckless disregard for truth' in the present case. It has further been contended that the plaintiff has not even alleged disregard for truth or falsehood; and the subject article relates to the plaintiff's duties as a public servant, and is thereby covered by the Supreme Court's decision in *R. Rajagopal*.

8.5. It has been stated that defendants Nos.1 and 2 have complied with the *ad-interim* directions issued *vidé* judgment dated 22.11.2023; however, the direction contained in para 30(iii) of that judgment, which directs that "(iii) the defendant nos. 1 and 2 are further



*directed to not post, circulate or publish any similar defamatory content against the plaintiff as set out in the impugned article/publication dated 09.11.2023”, amounts to a ‘gag-order’ and is contrary to the “Bonnard Standard” and that direction ought to be recalled. In order to substantiate this assertion, defendants Nos.1 and 2 have placed reliance on the Supreme Court decision in **Bloomberg Television Production Services India Pvt. Ltd. vs. Zee Entertainment Enterprises Ltd.**⁶, the relevant extract of which reads as follows:*

“6. Significantly, in suits concerning defamation by media platforms and/or journalists, an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy must be borne in mind [R. Rajagopal v. State of T.N., (1994) 6 SCC 632]. The constitutional mandate of protecting journalistic expression cannot be understated, and courts must tread cautiously while granting pre-trial interim injunctions. The standard to be followed may be borrowed from the decision in Bonnard v. Perryman [Bonnard v. Perryman, (1891) 2 Ch 269 (CA)]. This standard, christened the “Bonnard standard”, laid down by the Court of Appeal (England and Wales), has acquired the status of a common law principle for the grant of interim injunctions in defamation suits [Holley v. Smyth, 1998 QB 726 (CA)]. The Court of Appeal in Bonnard [Bonnard v. Perryman, (1891) 2 Ch 269 (CA)] held as follows : (Ch p. 284)

“... But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that

⁶ (2025) 1 SCC 741



individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.”

(emphasis supplied)

“7. In *Fraser v. Evans* [*Fraser v. Evans*, (1969) 1 QB 349 : (1968) 3 WLR 1172 (CA)], the Court of Appeal followed the *Bonnard* principle and held as follows : (QB p. 360)

*“... insofar as the article will be defamatory of Mr Fraser, it is clear he cannot get an injunction. The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since (*Bonnard v. Perryman* [*Bonnard v. Perryman*, (1891) 2 Ch 269 (CA)]). The reason some times given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a Judge. But a better reason is the importance in the public interest that the truth should out. ...”*

(emphasis supplied)

“8. In essence, the grant of a pre-trial injunction against the publication of an article may have severe ramifications on the right to freedom of speech of the author and the public's right to know. An injunction, particularly *ex parte*, should not be granted without establishing that the content sought to be restricted is “malicious” or “palpably false”. Granting interim injunctions, before the trial



commences, in a cavalier manner results in the stifling of public debate. In other words, courts should not grant ex parte injunctions except in exceptional cases where the defence advanced by the respondent would undoubtedly fail at trial. In all other cases, injunctions against the publication of material should be granted only after a full-fledged trial is conducted or in exceptional cases, after the respondent is given a chance to make their submissions.

“9. Increasingly, across various jurisdictions, the concept of “Slapp suits” has been recognised either by statute or by courts. The term “Slapp” stands for “Strategic Litigation against Public Participation” and is an umbrella term used to refer to litigation predominantly initiated by entities that wield immense economic power against members of the media or civil society, to prevent the public from knowing about or participating in important affairs in the public interest [Donson, F.J.L., Legal Intimidation : A Slapp in the Face of Democracy (London, New York : Free Association Books, 2000).] . We must be cognizant of the realities of prolonged trials. The grant of an interim injunction, before the trial commences, often acts as a “death sentence” to the material sought to be published, well before the allegations have been proven. While granting ad interim injunctions in defamation suits, the potential of using prolonged litigation to prevent free speech and public participation must also be kept in mind by courts.”

(emphasis supplied)

It has been argued that the test of ‘exceptionality’ laid down in the aforementioned rulings is not met in the present case, and that therefore an injunction ought not to have been granted. It has also been submitted, that as set-out in their written statement, defendants Nos.1 and 2 have established their defence in relation to the subject article, viz., that the article was published after due diligence, after verifying facts,



and that it amounted to ‘fair comment’ on the actions of a public official, and was published in public interest. In view of the aforementioned, it has been prayed that the *ad-interim* direction contained in para 30(iii) of judgment dated 22.11.2023 be recalled.

SUBMISSIONS ON BEHALF OF DEFENDANT NO.3

9. At the outset, it has been submitted on behalf of defendant No.3, *i.e.*, X Corp., which is a company incorporated under the laws of the United States of America and operates an online social media platform called ‘X’ (formerly known as ‘Twitter’), that the present application and the suit have no legal or factual basis *vis-à-vis* defendant No.3.
10. It has been submitted that defendant No.3 plays no role in creation of the content uploaded by users on the aforesaid platform, and thus defendant No.3 only qualifies as an “intermediary” under section 2(1)(w) of the Information Technology Act, 2000 (‘IT Act’). Under section 79 of the IT Act, being an intermediary, defendant No.3 is exempt from any liability in relation to third party information or data made available or hosted by it.
11. It has further been submitted that under section 79(3) of the IT Act, an intermediary cannot claim the said exemption only if it fails to expeditiously remove, or disable access to, any offending material upon receiving ‘actual knowledge’ that the material is being used to commit an unlawful act; and that in *Shreya Singhal vs. Union of India*⁷ the Supreme Court has held that in case of an intermediary, ‘actual

⁷ (2015) 5 SCC 1



knowledge' must only be through the medium of a court order. It has been argued therefore that an intermediary is obligated to remove any alleged offending content only after the same has been specifically identified and directed by a court order, for which an intermediary is not required to be impleaded as a defendant merely for the purpose of complying with court orders. It is submitted that directions can be issued to intermediaries even if the intermediary is not party to the proceedings. It has therefore been submitted that defendant No.3 is not a necessary party to the present suit and ought to be deleted as a party-defendant.

12. It has also been argued that in *Myspace Inc. vs. Super Cassettes Industries Ltd.*⁸, it has been held that if an intermediary is tasked with the responsibility of identifying infringing content from non-infringing content, it could have a chilling effect on free speech; and that in case of intermediaries, interim relief has to be specific and must point to the actual infringing content.
13. It has therefore been argued that in view of the above decisions, it is clear that any relief of prospective injunction *vis-à-vis* unidentified future content cannot be sought or granted against an intermediary. It is pointed-out that prayer (a) in the present application seeks a prospective injunction in relation to unidentified future content, which is inconsistent with the principles laid-down in *Shreya Singhal* and *Myspace*, since the relief sought would require defendant No.3 to monitor, detect and take down unidentified future content. It has further been argued, that prayers (b) and (c) in the present application seek the take-down of allegedly

⁸ 2016 SCC OnLine Del 6382



defamatory content; however, the prayers are vague and do not specifically provide the URLs of such content, which is inconsistent with the law laid-down in *Myspace*, and therefore cannot be granted.

14. It has been argued that similarly prayers (b) and (c) of the application refer to “*all defamatory and unwarranted allegations*” and “*any other allegations similar*” (to the ones, in the subject article) which are vague expressions; and whether any content is defamatory or not has to be decided by a court, since that decision cannot be based on the plaintiff’s subjective satisfaction nor can an intermediary be burdened with adjudging whether or not certain content is defamatory.
15. In view of the above, it has been submitted, that the present suit is not maintainable against defendant No.3; and it is in the interests of justice that defendant No.3 be deleted from the array of party-defendants.

SUBMISSIONS ON BEHALF OF DEFENDANT NO.4

16. Defendant No.4, *i.e.*, Google Inc./Google LLC., which is a company incorporated under the laws of the State of Delaware, United States of America and is in the business of *inter-alia* providing technological products and services including operating an online search engine, known as the Google Search Engine, has filed a written statement though no reply has been filed by them to the present application.
17. It has been submitted on behalf of defendant No.4 that the present suit is essentially between the plaintiff and defendants Nos.1 and 2 in relation to the subject article. It has been submitted that the plaintiff claims to be further aggrieved by the content and posts relating to or referring to the subject article that have been posted by defendants Nos.1 and 2 and other third parties on defendant No.3’s platform. It has been pointed-out, that



the plaintiff has made no averments or allegations against defendant No.4 in the plaint; and defendant No.4 has been impleaded as a party-defendant in the limited capacity of being the operator of the Google Search Engine, with a view to seeking directions for de-indexation/disabling of allegedly defamatory content from being displayed on defendant No.4's platform.

18. It has been submitted that the Google Search Engine is a freely available, internet-based search engine on which a user can search for any pre-existing content or information. Therefore, defendant No.4's platform merely performs the task of indexing pre-existing information already published on the web by third-party websites/source websites and defendant No.4 does not own, control or exercise any editorial oversight over the third-party websites or content appearing on its platform.
19. It has further been submitted that the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 categorically recognise and exempt such transient and incidental storage from the ambit of 'publishing' or 'hosting'.
20. It has also been submitted that once the subject article is disabled/removed from their source URLs/links, the said URLs/links including any extracts of the alleged defamatory content will no longer be indexed as search results on defendant No.4's platform. Therefore it is submitted that if during the course of the present proceedings this court passes a direction for taking down the subject article at the identified source/URLs and web links, such direction has to be directed against entities and individuals who are the source of the content. Once they remove the alleged defamatory content, the said URLs/web links will no



longer be indexed as search results on the Google Search Engine, and in due course, will no longer appear in the search results on the Google Search Engine. Further it has been submitted that even if defendant No.4 was to be directed to remove the URLs and links containing allegedly defamatory content, that would not result in the removal of the offending content from its source website, since the same content can appear/resurface on other search engines. Once the content is deleted from the source, it automatically gets de-indexed from the Google Search Engine, for which no court orders would even be required *qua* defendant No.4.

21. It has also been argued that being an intermediary, it is impossible for defendant No.4 to have ‘actual knowledge’ of the content of millions of third-party websites appearing on the Google Search Engine, or for it to be able to sift through the same to determine what content is defamatory or not. It has been argued, that courts have repeatedly upheld the view that intermediaries cannot be called upon to monitor and sift through such content. It has been submitted, that since the plaintiff’s prayer places the onus upon defendant No.4 to adjudicate which content (or part of it) is defamatory or not, which power of adjudication lies only with the court, the prayer is untenable; apart from being a threat to free speech. It has further been submitted, that it is also now well settled that after a court adjudicates whether any alleged content is defamatory, specific URLs reflecting defamatory content have to be identified and no active monitoring is required on the part of an intermediary.
22. It has also been argued that defendant No.4 is an “intermediary” in relation to the search results on the Google Search Engine and is entitled



to the defences available under section 79 on the IT Act. It has further been submitted that since defendant No.4 is neither the author nor the publisher nor does it have any actual knowledge of the allegedly defamatory content, defendant No.4 is not a necessary party to the present proceedings.

23. It has been submitted however, that in compliance of judgment dated 22.11.2023, defendants Nos.1 and 2 appear to have removed the subject article from the source URL on defendant No.1's website, and the identified content posted on defendant No.3's platform also seems to have been removed. Accordingly, the subject article or its excerpts will no longer be indexed on the Google Search Engine run by defendant No.4.
24. Additionally, it has been argued that the plaintiff is also seeking an over-broad injunction against defendant No.4 for take-down/removal of any other allegations made against the plaintiff which are similar to, or arise from, the subject article and the posts in relation to that article appearing on social media platforms, which prayer is wholly misconceived, untenable, technologically impossible, apart from being contrary to the settled law on the role of intermediaries.
25. In view of the above, it has been submitted that defendant No.4 has no role to play in the present suit; and the suit ought to be dismissed *qua* defendant No.4.

DISCUSSION & CONCLUSIONS

26. The essence of the insinuation against the plaintiff in the subject article may be gathered from the following extracts thereof:



“The chief secretary has been at pains to distance himself from the entire affair. But questions about his role in not declaring the potential conflict of interest when NHAI raised an alarm in the summer remain.

“Also, sources say that once NHAI raised the alarm, the matter should have rested there because the DM was acting in his judicial capacity and his decision was anyway being challenged in court. Instead, the chief secretary recommended action against the DM, which set in motion a chain of events by other government departments which led to the latter’s transfer away from Delhi.”

27. The subject article also says:

“If the DM’s decision to raise compensation was “suspect”, as his immediate superior, the divisional commissioner, made it out to be, then the matter should have gone to the National Capital Civil Services Authority (NCCSA) headed by chief minister Arvind Kejriwal.

* * * * *

“Surprisingly, Hemant Kumar was also transferred out to the Andaman Islands. Delhi government sources say they suspect the reason Hemant Kumar was transferred out was that the NCCSA could have summoned the files and Kejriwal could have had a say in the matter.”

28. Defendants Nos.1 and 2 also covered the plaintiff’s response to them *inter-alia* narrating in the subject article that:

“He said, “ Since you haven’t shared any complaint(s), I request you to share such complaint(s) so that replies to the same be provided to you, and actions as per law may be taken against such disgruntled elements who made such false and motivated complaint(s)... In case of publication of factually incorrect information, I reserve my rights to take appropriate action.”

29. On point of fact, it is noticed that the subject article does set-out the plaintiff’s version of events and his denial as to any wrongdoing on his part, and reproduces his statements at *some* length. The article also



carries the response of the Anantraj Limited group in relation to the plaintiff's son being employed with them.

30. However, the perspective of defendants Nos.1 and 2 appears to be that the plaintiff *did not take* any action against the delinquent DM *until NHAI raised the issue*; and that thereafter, the plaintiff *ought not to have taken* any action in the matter since the DM had acted in his judicial capacity. However, merely because the land acquisition award was amenable to challenge before a court, does not mean that if any wrongdoing was made out on the DM's part, action on the administrative side could not have been taken by the plaintiff, which he did. Besides, this also begs the question as to how the plaintiff would have known about the wrongdoing in the passing of the land acquisition award *until* NHAI raised the issue?
31. The timeline for the action, that the plaintiff claims to have initiated, is important. According to the plaintiff, he had initiated action against the delinquent DM in June 2023, leading to his approval of recommendation dated 09.08.2023, which resulted in issuance of letter dated 20.09.2023 by the Directorate of Vigilance, Government of National Capital Territory of Delhi recommending action by the Central Bureau of Investigation ('CBI') against the delinquent officer (a copy of which was also was provided to defendant No.2). Thereafter the Chief Minister, Delhi at the National Capital Civil Service Authority ('NCCSA') meeting held on 20.09.2023, agreed to transferring the delinquent officer; and on 19.10.2023 the Ministry of Home Affairs, Government of India transferred the delinquent officer to Andaman & Nicobar Islands. These actions also resulted in initiation of a CBI inquiry against



the officer on 20.10.2023. Furthermore, *vidé* order dated 31.10.2023 the Delhi High Court also set-aside land acquisition award dated 15.05.2023 passed by the delinquent DM.

32. In para 41 of the plaint, the plaintiff asserts that:

“41. Had the Defendant Nos. 1 and 2 provided the entire conspectus of facts, the readers of their article would have been able to cull out the fact that it was the Plaintiff himself who had pro-actively and promptly acted upon the information received by his office regarding impropriety in passing an arbitral award by the District Magistrate favouring certain private persons by hiking the compensation amount to be received towards acquisition of a plot land. The Defendant Nos. 1 and 2 have completely misled its readers by utterly failing to highlight the action and departmental processes initiated by the Plaintiff, which led to a departmental enquiry upon the delinquent officer, the delinquent officer's suspension and subsequent CBI inquiry into the matter, all of which were much before the Defamatory Publication.”

33. Other things apart, once it is seen that *months before* publication of the subject article, the plaintiff had already initiated action against the DM, and had thereby taken action that was adverse to the interests of the putative beneficiaries of the enhanced compensation, the fact that the plaintiff did not disclose the so-called potential conflict of interest, becomes irrelevant.
34. Also, from the documents cited by the plaintiff, it would appear that the matter *did* go before the NCCSA and action against DM was approved even by the then Chief Minister of Delhi, heading the NCCSA.
35. It is important to note that the subject article did not carry the details of the actions taken by the plaintiff against the DM, who had passed the land acquisition award enhancing that compensation. Based on the material placed before the court, it would appear, that once NHAI had



raised the objection, the matter would ordinarily have rested with the judicial or quasi-judicial scrutiny of the DM's order, particularly since in passing the award, the latter was acting in his judicial capacity and his decision was already under challenge before the competent court. Instead, the record shows that the plaintiff, in his capacity as Chief Secretary, recommended action against the DM, thereby triggering a series of consequential steps by various governmental departments, culminating in the DM's transfer out of Delhi.

36. The summary of the actions that were taken at the administrative level, including personally by the plaintiff, have been summarized in paras 33 and 44 of the plaint. The relevant portion of para 44 of the plaint reads as under :

“44. In fact, had there been an iota of misdoing by the Plaintiff or his son, as is being repeatedly asserted by the Defendants, the Plaintiff would not have been the officer who started taking action on the very same day i.e. 18.05.2023 when the matter was brought into his notice and (i) recommended for CBI inquiry on 09.08.2023 to Hon'ble LG. After approval of Hon'ble LG, the same was recommended to MHA on 20.09.2023; (ii) proposed internal transfer of District Magistrate (South West) to post of Special Secretary (Administrative Reforms) in the meeting of the National Capital Civil Service Authority's meeting held on 20.09.2023 chaired by the Chief Minister. Accordingly, order for his transfer was issued on 21.09.2023; and (iii) recommended for initiation of disciplinary action against District Magistrate (South West) Sh. Hemant Kumar recommended to MHA on 20.09.2023; pursuant to which MHA asked CBI to inquire into the matter of passing such arbitration awards by Sh. Hemant Kumar on 20.10.2023, and also suspended Sh. Hemant Kumar vide order dated 20.10.2023.”

37. If the actions referred to above are proved to have been taken against the delinquent DM; which will have to be done in the course of trial; it will



be seen that well before the subject article came to be published on 09.11.2023, much action had been taken at the administrative level, including personally by the plaintiff. The question as to why the details of such actions did not find mention in the subject article needs to be addressed, and would be relevant in deciding whether or not the publication was made with “reckless disregard for truth”⁹ and/or whether the subject article was “false *and* actuated by malice or personal animosity”¹⁰.

38. The omission on the part of defendants Nos.1 and 2 to include these aspects in the subject article has been flagged by the plaintiff in para 34 of the plaint. As a matter of fact, the plaintiff asserts that immediately upon receiving queries from defendant No.2, he provided to her a detailed chronology of events followed by a detailed response, and also suggested that defendant No.2 should check the relevant public records surrounding the issue, instead of putting out any false or misleading story, and called-upon defendant No.2 to personally examine the official records on 06.11.2023 and 07.11.2023, as per her convenience.
39. It is now necessary to address the argument placed by defendants Nos.1 and 2, who contend that the subject article relates to the discharge by the plaintiff of his official duties; and the contrary proposition argued by the plaintiff, that it does not. In support of their contention, defendants Nos.1 and 2 have placed reliance on the decision of the Supreme Court in *R. Rajagopal*.

⁹ para 26(3) *R. Rajagopal*

¹⁰ *ibid*



40. The plaintiff's contention is that the subject article *did not* relate to the official duties of the plaintiff; and to support that contention, the plaintiff has cited certain rulings rendered in the context of the requirement for sanction for prosecution of public servants. However, even going by the judicial precedents cited by the plaintiff on the question of what constitutes 'official duty', it is seen that the most relevant and pithy observation of the Supreme Court is contained in *Centre for Public Interest Litigation*. In that case, the Supreme Court observes, that though there cannot be any universal rule to determine whether a particular act is connected with the official duty of a public servant, one safe and sure test is to consider "*if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty.*"
41. More in the context of the offence of defamation, the decision of the Supreme Court in *KK Mishra* cited by the plaintiff says that what is required to be seen is a *reasonable connection* between the duties of the public servant *as a public servant* and the acts complained-of; and that connection will determine whether the public servant was acting in discharge of his official duties.
42. In the present case, on the plaintiff's own reckoning, he stands clean since he had initiated the suspension of the delinquent DM. So, had the plaintiff not acted against the DM, such neglect would have made him answerable for dereliction of duty. Therefore, even going by the plaintiff's own submission, the reportage in the subject article *did relate* to the performance by the plaintiff of his official duties.



43. Indeed, in his response to the queries put by defendants Nos.1 and 2, as part of the documents filed with the plaint, as well as in the course of arguments advanced on his behalf, the plaintiff has relied extensively on official records to highlight the steps and actions taken against the DM who is alleged to have made an erroneous valuation of the subject land. It is the undisputed position that the DM was suspended in connection with what is reported in the subject article; that a CBI inquiry was ordered against that officer on 21.10.2023; and the officer was also transferred to from Delhi to the Andaman & Nicobar Islands.
44. Now, re-reading *R. Rajagopal* in the context of the factual matrix of the present case, it is seen that the Supreme Court has said the following:

“26. We may now summarise the broad principles flowing from the above discussion:

** * * * **

*“(3) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. **In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth.** In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. **Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages.** It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish*



for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.”

(emphasis supplied)

45. It admits of little doubt that the subject article concerns the plaintiff's functioning in his official capacity as the then Chief Secretary, Delhi. The gravamen of the imputation clearly is, that the overvaluation of land under acquisition placed the plaintiff in a position of conflict, since the beneficiaries of such overvaluation were persons alleged to be associated with the plaintiff's son. In *R. Rajagopal*, the Supreme Court has unequivocally held that a public official cannot maintain an action for damages in respect of acts and conduct that bear nexus with the discharge of official duties. Apart from himself asserting that he had initiated action against the concerned DM, who was responsible for overvaluation of the land, resulting in the officer's transfer out of Delhi, the plaintiff has also urged that defendants Nos.1 and 2 ought to have examined the relevant official records prior to publishing the subject article, which according to the plaintiff, would have belied any doubt that the defendants may have entertained that there was any wrongdoing on his part. These submissions, in fact, underscore that the subject matter of the article related squarely to the plaintiff's discharge of his official duties.
46. Upon a conspectus of the foregoing therefore, it is evident that the thrust of the subject article pertains to the actions of the plaintiff in relation to, and in connection with, the discharge of his official functions as the then Chief Secretary of the Government of NCT of Delhi.



47. That however, is not where the present matter can be put to rest.
48. It cannot be overlooked that it has been alleged in the plaint that the subject article was published with *reckless disregard for truth* and that it was *false and actuated by malice*. In this behalf, the following portions of the plaint are relevant:

“27. At this juncture, it is absolutely necessary to apprise this Hon'ble Court of the extra-ordinary work done by the Plaintiff in the past 1.5 years serving as the Chief Secretary, GNCTD since 21st April 2022. Ever since he joined this distinguished office, he has diligently and meticulously discharged his Constitutional duties and responsibilities, with an intention to effect good governance in Delhi for the betterment of the public. While ensuring that the law of the land and statute are upheld in both letter and spirit, the Plaintiff has taken several decisions in the larger public interest, which may not be palatable to certain vested interests, and certain disgruntled individual(s). Thus, the present smear campaign is nothing but bestial vendetta against the Plaintiff who has, in the course of the discharge of his preordained duties, unveiled, amongst other things, the inordinate and rampant irregularities and corruption by certain government officials.

“28. Enunciated below are illustrations of the extra-ordinary work done by the Plaintiff in a span of 1.5 years:

a) Seamless organization and management of G-20 Summit in Delhi, which has been appreciated throughout the world;

b) Transparency in Vigilance through launch of Vigilance Complaint Information Management System, first of its kind in the country, so that only verified complaints are received resulting into stoppage of harassment and blackmailing of officers by vested interests;

c) Exposed Delhi Excise Scam, including charge-sheets to various delinquent officials; matter presently under investigations by ED & CBI;

d) Enquiry in the matter of Sheesh Mahal (official residence of Hon'ble Chief Minister);



e) *Exposed Scam of Thousands of Crores done in name of reduction in rates of Late Payment Surcharge to extend undue favour to electricity distribution private companies at the cost of public exchequer;*

f) *Exposed scam of about Rs.1800 crores done by the forging Govt. records to extend undue favour to electricity distribution private companies at the cost of public exchequer;*

g) *Prosecution sanction to CBI against Sh. Amanatullah Khan, MLA in illegal recruitment in Delhi Waqf Board matter;*

h) *Disciplinary action for demolition of heritage monument by the then CEO of Delhi Jal Board Sh. Udit Prakash (IAS, AGMUT: 2007) along with other officials;*

i) *. Action w.r.t. Illegal payment of several crores of rupees by officials of Directorate of Information and Publicity for political advt. against the judgments of Hon'ble Supreme Court in Common Cause Case;”*

49. Therefore, as per *R. Rajagopal*, though in the first instance, a suit for damages is not maintainable at the hands of a public official in respect of acts or conduct relevant to the discharge of their official duties, *R. Rajagopal* also carves-out an important *exception* in favour of maintainability of such a claim, namely that such action would be maintainable *if* a plaintiff shows that the publication was made *with reckless disregard for truth*, or, proves that the publication was *false and actuated by malice or personal animosity*.
50. In the present case, as per the documents cited by the plaintiff, the *veracity of which is yet to be tested*, defendants Nos.1 and 2 have completely omitted to include in the subject article, the actions taken by the plaintiff against the delinquent DM *much before* the subject article was published. Does the fact that the subject article carried no reference to these actions taken by the plaintiff, tantamount to *disregard for truth*; and whether such disregard is *reckless* in nature, are aspects that cannot



be adjudicated except in the course of trial. Another aspect that can only be tested during trial, is the question whether the omission on the part of defendants Nos.1 and 2 to include these aspects in the subject article, makes the article false *and* actuated by malice or personal animosity.

51. In view of the above, this court is *not persuaded* to accept the contention raised on behalf of defendants Nos.1 and 2, that the present suit is not maintainable at the hands of the plaintiff, in effect, at all by reason of the law laid down by the Supreme Court in *R. Rajagopal*.
52. As observed above, though the subject article *does relate* to the performance by the plaintiff of his official duties as a public servant, it is also seen that the plaintiff, in effect, alleges in the plaint that the subject article was published with reckless disregard for truth; and that the publication was false and actuated by malice or personal animosity. These contentions of the plaintiff rest upon certain specific actions that he claims to have taken in the course of his official duties, alleging that the defendant has published the subject article at instance of the persons against whom the plaintiff had acted. These allegations and contentions would have to be proved by the plaintiff, which opportunity the plaintiff can only have in the course of trial.
53. It is accordingly held that the present *suit is maintainable*.
54. Coming now to the *ad-interim* directions issued by the learned Predecessor Bench *vidé* judgment dated 22.11.2023, it is evident that the directions issued *vidé* para No.30 (i) and (ii) namely for the removal/taking down of the subject article from the website of defendant No.1, as also from the social media platform 'X' run by defendant No.3, are already stated to have been complied with by the respective parties.



In view thereof, this court is not inclined to interfere with the directions in para 30 (i) or (ii) *at this stage*; and any direction to the contrary would have to await conclusion of trial.

55. That being said, this court is of the view that the direction issued *vidé* para 30(iii) of judgment dated 22.11.2023, whereby defendants Nos.1 and 2 were directed “*not to post, circulate or publish any similar defamatory content against the plaintiff as set out in the impugned article/publication dated 09.11.2023*”, was over-broad, presumptive in nature and based purely on a hypothetical situation; and therefore, is untenable in law.
56. In the opinion of this court, *defamation* as a jurisprudential concept is different from how it is understood as a lay concept. Every statement or publication that is *derogatory in fact* may not be *defamatory in law*, since the maker or author or publisher of the statement may raise one or more of the well-recognised defences to an allegation that what they said or wrote or published does *not* amount to a *legal wrong*. These include the defence of justification by truth, fair comment, privilege, or such other legal defences in answer to an allegation of defamation.
57. Moreover, to assume that what someone *may publish* would be defamatory, is egregiously hypothetical and presumptive; and therefore cannot be the basis of a court injunction. No matter how perspicacious a court may be, it cannot act as a soothsayer and predict what an author may publish next, and presume it to be offensive to a party, and thereby gag what is *yet to be put-out* in the public. This proposition has been articulated in various precedents, some of which are cited below in support.



58. In **Bonnard vs. Perryman**¹¹ the Court of Appeal has opined the following:

“... But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.”

59. In **Fraser vs. Evans & Ors.**¹² the Court of Appeal, Queen’s Bench Division observed as follows:

“First, Libel. In so far as the article will be defamatory of Mr. Fraser, it is clear he cannot get an injunction. The court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since Bonnard v. Perryman. The reason sometimes given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a judge. But a better reason is the importance in the public interest that the truth should out. As the court said in that case:

“The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done.””

¹¹ (1891) 2 Ch. 269

¹² (1968) 3 WLR 1172



60. In ***Kailash Gahlot vs. Vijender Gupta & Ors***¹³ a Co-ordinate Bench of the court noted:

“47. Similarly, a Co-ordinate Bench of this Court in Sardar Charanjit Singh (supra), held that the court would not restrain publication on the plea that if it was published, it would result in a negative impact on the reputation of the plaintiff. What has not come into existence cannot be presumed to be defamatory. The court would not have any material before it to take even a prima facie view that what would be published would in fact result in loss of reputation.”

61. In ***S. Charanjit Singh vs. Aroon Purie***¹⁴ a Co-ordinate Bench of this court held:

“22. In the instant case the article is not in existence. The defendants intend to publish an article preferably after obtaining the views and comments of the plaintiff on the questionnaire dated 21st January, 1982. The difficulty in dealing with this case is that I do not know what the article when published will contain. It is not known what facts will be stated and what comments will be made. It is therefore not possible at this stage to determine whether the proposed article would be defamatory or not. But as the defendants state that they would plead justification and fair comment for publishing the article pertaining to the plaintiff, I am of the opinion that injunction should not issue. None of the questions asked by the defendants relate to the private life of the plaintiff. All questions are directly connected with his public life. Defence of fair comment and justification has been raised by the defendants and therefore injunction not to be issued.”

62. It is important to appreciate that in matters of defamation, the defences referred to above would only arise *once a publication is made*. There is no conceivable way, whether in fact or in law, by which it can be *presumed* that what an author or publisher is *proposing to publish* would

¹³ 2022 SCC OnLine Del 679

¹⁴ 1982 SCC OnLine Del 301



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be defamatory, even going by any past publication that may have been made by the author/publisher.

63. In these circumstances, this court is of the view that the *ad-interim* directions issued in para 30(iii) of judgment dated 22.11.2023 are required to be recalled.
64. Para 30(iii) of judgment dated 22.11.2023 is accordingly *deleted*.
65. The Registry is directed to give a copy of this judgment along with any certified copy of judgment dated 22.11.2023.
66. The present application is disposed-of in the above terms.

ANUP JAIRAM BHAMBHANI, J

JULY 20, 2026/V.Rawat