

**IN THE HIGH COURT OF DELHI AT NEW DELHI****CS(OS) 335/2013, IA 2981/2013****VIDYA DHAR and OTHERS ..... Plaintiff****Through: Mr. Rajiv Nayyar, Mr. Sandeep Sethi, Sr. Advs. with  
Mr.Girriraj Subramaniam, Mr. Salman Hashmi, Mr. Hitesh Saini, Mr. Amit  
Sahni, Mr. Zeeshan Hashmin, Mr. Saurabh Seth, Ms. Preeti Gupta, Advs.****versus****SONY ENTERTAINMENT TELEVISION and ANR..... Defendant****Through: Mr. Dushyant Dave, Sr. Adv. with  
Mr.Vijay, Mr. Sanjay Kumar, Mr.  
Varun Pareek, Mr. Aniruddha  
Deshmukh, Advs.****CORAM:****HON'BLE MR. JUSTICE M.L. MEHTA****ORDER****22.02.2013****IA 2980/2012 (under Order 39 Rules 1 and 2 CPC)**

**1. This suit was received near about the closing hours of the court yesterday. In view of the urgency explained, summons and notices in the suit and I.A. were issued to the defendants for today. The learned senior counsel appearing for the defendant states that because of the paucity of time, the replies could not be prepared, but he is prepared to argue. Thus, I have proceeded to hear the arguments.**

**2. The plaintiffs are amongst those, who have been convicted by a Sessions Court under the Prevention of Corruption Act. One of the plaintiffs, Mr. Chautala, was the then Chief Minister of Haryana. This**

**application is filed seeking injunction against the defendant, who has publicized to telecast a T.V. Show/programme namely ?Crime Patrol Dastak? on 23rd and 24th February, 2013 i.e. tomorrow and day after tomorrow relating to the case for which the plaintiffs and others have been**

**convicted. The programme that is to be telecasted by the defendant on its channel is alleged to cause prejudice to the plaintiffs inasmuch as the appeal against their conviction by the Sessions Court was pending subjudice before this court. It was also alleged to be to their prejudice as the highlights of the telecast indicate that the programme intended to show the element of bribery, which according to the plaintiffs was not even the charge against them.**

**3. The sum and substance of the submission of the learned senior counsel appearing for the plaintiffs is that the plaintiffs would be seriously prejudiced by telecasting this show, since not only their appeal against the order of conviction was pending, but their application for suspension of the sentence as also the bail application are pending before this court. It was thus prayed that at least till such time these applications listed for hearing in April, 2013 are disposed by this court, the telecasting of the aforesaid programme may be postponed. The learned senior counsel sought to rely upon various judgments viz. Reliance Petrochemical's Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. (1998) 4 SCC 592, Attorney General Vs. Times Newspapers Limited, 1973 A.C. 273 (House of Lords), D.N.Prasad Vs. Principal Secretary, 2005 (2) ALD 451, Surya Prakash Khatri Vs. Madhu Trehan, 2001 (59) DRJ 298 (F.B.) and Sahara India Real Estate Corporation Limited and Ors. Vs. Securities and Exchange Board of India and Anr., (2012) 10 SCC 603.**

**4. On the other hand, the learned senior counsel appearing for the defendant strongly refuted the pleas and the submissions of the plaintiffs. The sum and substance of the submissions of the learned senior counsel for the defendant was that the freedom of speech and expression was the fundamental right of the media and dissemination of news and information was its duty and obligation, and further that telecasting of information regarding such affairs was also in the public interest. It was his submission that the plaintiffs have already been convicted and which was extensively reported in all the newspapers and visual media and now, there is nothing, which can be said to cause prejudice to the plaintiffs. It was also the submission of the learned senior counsel for the defendant that grant of injunction would not only prejudice the public interest, but, shall lead to breach of fundamental right of the media. The learned senior counsel placed reliance on the decisions of Greene Vs. Associated Newspapers Ltd. (2004) EWCA Civ 1462, Khushwant Singh and Anr. Vs. Menaka Gandhi, AIR 2002 Delhi 58 and Tata Press Vs. MTNL, 1995 (5) SCC 139 as also Sahara India Real Estate Corporation Limited and Ors. (supra).**

**5. I have heard learned senior counsels for both the parties extensively. Having regard to the paucity of time as the programme which is sought to be injuncted is scheduled to be telecasted by the defendant**

**only tomorrow and day after tomorrow, I propose to pass interim order, instead of disposing the application on merits. This is also the consensus of both the learned senior counsels.**

**6. There is no dispute that right to publish and freedom of press as enshrined in Article 19 (1)(a) of the Constitution of India is sacrosanct and cannot be violated. There is also no dispute that right to receive information is also the fundamental right of the public under Article 19(1)(a) of the Constitution. However, the parameters of restriction are enshrined in Article 19 (2) of the Constitution.**

**7. Here is a case in which, on one side, are the plaintiffs, who seek postponement of the telecast of a programme, showing their involvement as also conviction and sentence in the case against them under Prevention of Corruption Act, and on the other hand, is the media which claims telecast of the programme as its fundamental right as also in the interest of public at large.**

**8. Thus, we are confronted with two competing interests. In a situation like this, it is the duty of this court to balance the competing interests. There is some force in the submission of the learned senior counsel for the defendants that balancing of these rights would be considered at the stage of claim of damages for defamation, if any, rather than preventive action for injuncting of telecast of a programme itself. But, at the same time, as held by the Supreme Court in the case of Sahara India Real Estate Corporation Limited (supra), this court is not debarred from prohibiting telecast of a programme for a temporary period under inherent powers, wherever it is satisfied that the interest of justice so requires. The Supreme Court in the case of Naresh Shridhar Mirajkar Vs. State of Maharashtra, AIR 1967 SC 1 dealt with the inherent power of the court to prohibit the publication of proceedings or evidence of the cases outside the court by the media. Though, it was in the context of open justice, but the court held that apart from Section 151 of the Code of Civil Procedure, the High Court had the inherent power to restrain the press from reporting where administration of justice so demanded. This was a nine Judges' Bench judgment, which was followed by the Supreme Court in the case of Sahara India Real Estate Corporation Limited (supra), noting as under:**

**?That, such orders prohibiting publication for a temporary period during the course of trial are permissible under the inherent powers of the court whenever the court is satisfied that interest of justice so requires. As to whether such a temporary prohibition of publication of court proceedings in the media under the inherent powers of the court can be said to offend Article 19(1)(a) rights (which include freedom of the press to make such publication), this Court held that an order of a court passed to protect the interest of justice and the administration of justice could not be treated as violative of Article 19(1)(a). The judgment of this Court in Mirajkar was delivered by a Bench of nine Judges and is binding on this Court?.**

**9. Further, in the aforesaid case of Sahara India Real Estate**

**Corporation Limited (supra), the Supreme Court also held that to see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court/High Court to prohibit temporarily, statements being made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High Court or even in the subordinate courts.**

**10. The Supreme Court further held that the High Court being the court of record, even can suo moto pass orders of postponement of publication for a limited period if the applicant is able to demonstrate substantial risk of prejudice to the pending trial and provided that he is able to displace the presumption of open justice and to that extent the burden will be on the applicant who seeks such postponement of offending publication. It was further held by the Apex Court that the very object behind empowering the courts to devise such methods is to see that the administration of justice is not perverted, prejudiced, obstructed or**

**interfered with. It was held that in passing such orders of postponement, the courts have to keep in mind the principle of**

**proportionality and the test of necessity. The applicant who seeks order of postponement of publicity must displace the presumption of open justice and only in such cases, the higher courts shall pass the orders of postponement for a limited period and subject to evaluating in each case the necessity to pass such orders, not only in the context of administration of justice, but also in the context of the rights of the individuals to be protected from prejudicial publicity or misinformation, in other words, where the court is satisfied that Article 21 rights of a person are offended. There is no general law for courts to postpone publicity, either prior to adjudication or during adjudication as it would depend on the facts of each case. The necessity for any such order would depend on the extent of prejudice, the effect on individuals involved in the case, the overriding necessity to curb the right to report judicial proceedings conferred on the media under Article 19(1)(a) and the right of the media to challenge the order of postponement. Elaborating further, the Apex Court said that such orders of postponement should be for short durations and should be applied only in cases of real and substantial risk of administration of justice or to the fairness of trial. Such neutralising device (balancing test) would not be an unreasonable restriction and on the contrary would fall within the proper constitutional framework.**

**11. In view of the law as laid by the Supreme Court as noted above, and having regard to the entire factual matrix and particularly the plaintiffs having preferred an appeal against their conviction and which is subjudice in this court, I am of the view that balancing interest demands that at least till such time the applications of the plaintiffs seeking suspension of their sentence as also the bail, are adjudicated by this court, they need to be saved from any condemnation by the media. Though, I am conscious of the rights of the media as also of the public, but, at the same time, it cannot be forgotten that after the conviction and sentence of the plaintiffs and their co-accused, there was law and order problem in the court complex where their conviction and sentence**

was pronounced. The plaintiff Mr. Chautala was the Chief Minister of Haryana, which is not only a neighbouring State, but a good amount of population of Delhi consists of migrants from Haryana. Further, it is common knowledge that after the pronouncement of the conviction of the plaintiffs, the news was reported extensively in all the newspapers and the channels, and by and large, the public is aware of the entire episode. There does not appear to be that urgency in the information that is sought to be telecasted by the defendant, of which, the public would be deprived of.

12. Without commenting or making any observation as regard to the veracity or otherwise of the content that is sought to be telecasted by the defendants, the balance of convenience requires that telecasting of the above-said programme could be postponed for reasonable time so that the plaintiffs may not be prejudiced by the media persecution. On the other hand, postponement of telecasting of said programme for some time would not cause any prejudice to the rights of the defendants as also the public.

13. The learned senior counsel for the defendant also sought to contend at the last that this court has no jurisdiction to entertain the suit since it was only the writ court, which could entertain the rights inter-

se between the parties. This is entirely extraneous and misplaced submission in view of the jurisdiction of this court under Section 9 CPC.

There is no express or implied bar to entertain the present suit by this court. The submission being devoid of merit is rejected.

14. In view of my above discussion, the defendants are restrained from telecasting their programme on 23rd and 24th February, 2013 relating to the case in which the plaintiffs were convicted or telecasting the same on any other date till the disposal of the applications of the plaintiffs seeking suspension of sentence and bail in the said case.

15. Nothing contained in this order shall tantamount to opinion on the merits of the case.

16. Dasti under the signatures of Court Master.

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Written statement/reply with documents, if any, be filed by the defendant within three weeks by supplying advance copy.  
Replication/rejoinder with documents, if any within two weeks thereafter.

List on 29.04.2013.

M.L. MEHTA, J

FEBRUARY 22, 2013/akb

