

Bombay High Court

Shilpa S. Shetty vs Magna Publications Co. Ltd. & Ors. on 12 January, 2001

Equivalent citations: AIR 2001 Bom 176, 2001 (2) ALD Cri 272, 2001 (2) BomCR 649, (2001) 3 BOMLR 134

Author: H Gokbale

Bench: H Gokhale

ORDER H.L. Gokbale, J.

1. Plaintiff is a film actress of some standing. Defendant No. 1 is a Publishing House. Defendant No. 2 is its Director and 3rd defendant is the Editor of a Film Journal brought out by the 1st defendant under the name of "Stardust" and defendant No. 4 is one of the contributors and reporters of that Journal. The present suit makes a grievance that three articles published in November and December 2000 and January 2001 Issues of this Journal, which are annexed at Exhibits 'A', 'B' and 'C' to the plaint, are per-se defamatory, false and malicious to the plaintiff's character. Hence this suit is filed to seek damages of Rs. 20 Crores. The plaintiff has also taken out a Notice of Motion seeking to restrain the defendants from in any way or manner carrying out defamatory allegations and imputations in future against the defendants.

2. Mr. Maneshinde has appeared for the plaintiff and has drawn my attention to the statements made in the three articles. These statements are quoted in paragraph 4 of the plaint. They are extracts from the three articles which are annexed as Exhibits 'A', 'B' and 'C' to the plaint. Prior thereto it is stated in paras 3 and 4 of the plaint that during her career since 1992 the plaintiff acted in a number of films as a lead heroine opposite one Akshay Kumar and fell in love with him. However, the relationship ended abruptly. Her Interview appeared in the October 2000 Issue of Stardust which explained her version of this break-up. In the same issue, the interview of this Akshay Kumar was also published giving his version. Thereafter these extracts from Exhibits 'A' to 'C' are quoted. Amongst others it is stated that as per Exhibit 'A' after the break-up with Akshay Kumar, the plaintiff developed a clandestine affair with another actor so much so that she attempted to break-up his relationship with another actress. This trend continues in Exhibit 'B'. The article which appeared in the December Issue, is at Exhibit 'B' and is written by defendant No. 4. After referring to the alleged relationship with the two actors in bold letters printed on page 37, a question is asked "After all, only men qualify as womanisers. Nobody refers to a woman who changes companions as a 'maniser'. right?" Then there is the reference to the third article (Exhibit 'C') under the caption 'Scoop of the mouth Shilpa's involvement with a married man'. It gives an impression that she is carrying on an adulterous relationship with a married man as stated in para 7 of the plaint.

3. Mr. Maneshinde submits that these articles bring down the reputation of the plaintiff and since these three articles have appeared one after another, it is time that an injunction ought to be granted against the defendants restraining them through the prayer which is made in the Notice of Motion. Mr. Maneshinde has relied upon three unreported judgments in support. Firstly, he relied upon a judgment in Miss Neelam S. Kothari v. Mr. Ashwin Vorde, which was also filed by a film actress and in that suit also the present defendant Nos. 1 and 3 were joined as defendant Nos. 4 and 1 respectively. In that matter also similar article was printed amongst others in the May 1995 Issue of

the same Journal under the caption "Neelam's Steamy Liaison with her Co-star". An injunction was sought amongst others restraining the defendants from republishing those articles or any defamatory statement about the plaintiff. On behalf of the defendants, a passage from "Galley on Libel and Slander" (eighth edition para 1574) was relied upon as also "Press Rule" amongst others, The learned Judge (N. D. Vyas. J. as he then was) after hearing both the Counsel recorded that in his opinion these three articles which had been printed by the defendants gave a distinct impression that the plaintiff was a promiscuous woman. The learned Judge, therefore, granted an injunction In terms of prayer clause (a) as prayed excluding the bracketed portion. Mr. Virag Tulzapurkar, learned Counsel appearing for the defendants, points out that bracketed portion was "or any other defamatory statement about the plaintiff- Mr. Tulzapurkar therefore submits that an injunction was granted against republishing those very articles but not a general injunction against any defamatory statement in future. In his submission such an injunction would be a vague and wide one.

4. Mr. Maneshinde, then relied upon another order passed by Vyas, J. on Sharad G. Pawar v. Vinod Mehta, filed by Shri Sharad Pawar against Shri Vinod Mehta, Editor of a Journal "Outlook". In that matter, it was alleged that the plaintiff was having close relations with an undesirable anti-social criminal. The learned Judge, after hearing both the parties, granted an injunction restraining the defendants from republishing the article or any part thereof and from printing/distributing any republished article or any part thereof. The third order relied upon by Mr. Maneshinde is passed by my brother A. P, Shah, J. on 21st July 1995 on Indian Express Newspapers (Bombay) Ltd. and another v. M/s. Magna Publishing Co. Ltd., taken out by Indian Express Newspapers. That was regarding the publication in the May 1995 issue of a magazine called "Island" which is also published by the 1st defendant Publishing House. The article alleged that the 2nd plaintiff-Shri Vivek Goenka had entered into a secret deal with one Rupert Murdoch, an international Press Baron and that the paper was taken over by the concerned Press Baron and that it was a benami transaction with a view to defeat the Government policy. In that matter also an injunction was sought and was granted in terms of prayer (a)(i) of that Motion- That prayer amongst others enjoined the defendants "from in any manner writing, publishing or republishing any article alleging that the plaintiffs are selling and/or transferring ownership and control of Indian Express and the other publication to the said Rupert Murdoch including the Article Exhibit "A" to the plaint". Mr. Maneshinde, therefore, submits that the injunction granted in the Indian Express case was not confined to republishing the disputed article but was against printing and publishing any article making such allegation and in that sense it was a wider one. In his submission in the present case also a similar order is required to be passed. The articles published by the defendants in their Issues of November, December and January annexed at Exhibits 'A', 'B' and 'C' to the Plaint, are per se defamatory, scandalous and bringing down the reputation of the plaintiff and, therefore, the defendants ought to be restrained from printing these articles or any similar material.

5. Mr. Virag Tulzapurkar, learned Counsel appearing for the defendants states on instructions that they are justifying what is published in the three articles and are proceeding with the final hearing of this Motion on the basis of denial of the statements in the supporting affidavit though without filing any affidavit in reply. He submits that the situation was brought about by the plaintiff herself and she cannot make grievance about it. Mr. Tulzapurkar, learned Counsel appearing for the defendants, has relied upon a judgment of the Court of Appeal in the case of Woodward v. Hutchins. That was a

matter wherein one Hutchins, who was appointed as a Public Relation Officer by a Pop Group, on termination of his service, had gone to the Press and printed articles which showed the Pop Group in less favourable light and hence an action in libel amongst others was taken. The judgment laid down that those who seek and welcome publicity of every kind bearing upon their private lives so long as it shows them in a favourable light, are in no position to complain of an Invasion of their privacy by publicity which shows them in an unfavourable light. Mr. Tulzapurkar pointed out that admittedly in the October Issue of Stardust the plaintiff had given interview against Akshay Kumar. That was prior to the disputed articles from November onwards. In that interview she had stated that he was a Her and that he needed a treatment from a psychiatric. It is, in this context, that the reaction of Akshay Kumar was printed in October Issue of "Stardust" and then the disputed articles followed. The submission of Mr. Tulzapurkar is that once the plaintiff opened her personal life for comments, she could not prevent any comments being made by the defendants or others at large and one must take the rough with the smooth.

6. Mr. Tulzapurkar then relied upon a few passages from two other judgments. Firstly, he relied upon a Judgment of the Apex Court in the case of Kartar Singh v. The State of Punjab, wherein at the behest of a Minister, the appellant was prosecuted under section 499 of the Penal Code and in that the Apex Court has quoted the observations of Cockburn, C. J. in the case of Seymour v. Butterworth, with approval viz. "Those who fill a public position must not be too thin skinned in reference is comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time". The third judgment relied upon by Mr. Tulzapurkar was a judgment of a Single Judge of Gujarat High Court (per Ravanji. J. as he then was) in the case of Narrotamdas L. Shah v. Patel Maganbhai Revabhai. In that matter, in the context of a strike by the lawyers an article appeared in a newspaper wherein the lawyers, as a class, were described as "Kajia Dalal" and hence the editor was sought to be prosecuted under section 499 of Penal Code. In a proceeding to quash the institution of that complaint, the learned Judge has observed in paragraph 21 that 'character is what a person "actually is", while reputation is what neighbours and others say "what he is"It's the estimation in which a person is held by others and not the opinion which he himself may have about himself.' Mr. Tulzapurkar, therefore, submits that it is the opinion of others about the plaintiff which is relevant and she having herself permitted to write about her personal life, now she cannot make a grievance of any thing being printed against her. Mr. Tulzapurkar points out that the plaintiffs had given interviews in other journals which are published even after the articles disputed in the present Suit. His submission, therefore, is that this conduct should dis-entitle the plaintiff from claiming the relief which she has claimed.

7. I have heard both the learned Counsel at length and considered the submissions canvassed by them. No doubt, it is true that the plaintiff did write her article or gave interview first against another actor and. therefore, the journal cannot be criticized for printing the reaction of the concerned actor to her interview. The question is whether the defendants were entitled to write anything thereafter particularly about her personal life as to whether she was having a relationship with a third actor or whether she was having a relationship with a married man and then to call her a 'maniser' in the manner in which men are called 'womanisers'. The answer will have to be in the negative. The articles are not on plaintiffs performance as an artist and cannot be defended as a part

of film journalism on that count also. The articles bring down the reputation of the plaintiff and have the impact on her personal life and show her in an undesirable manner to the world at large. The authority relied upon by Mr. Tulzapurkar in the case of Woodward v. Hutchins (supra) is in a situation where a Pop Group itself had appointed a Public Relation Officer and that officer has subsequently gone to the Press and printed the articles. It is in that context that the House of Lord has observed that "In these cases of confidential information it is a question of balancing the public interest in maintaining the confidence against the public interest in knowing the truth" and then it is observed that "The reason is because the interest of the public in knowing the truth outweighs the interest of a plaintiff in maintaining his reputation" and further that "These Courts rarely, if ever, grant an injunction when a defendant says he is going to Justify." In the present case, the plaintiff having given an interview herself, she exposed herself to reaction by the concerned actor. To that limited extent the submission of Mr. Tulzapurkar is right and the plaintiff cannot make a grievance on that. Question is whether some others like the defendants, who are third parties, have a right to write further articles and dwell upon the private life of the plaintiff and as to whether she has relationship with some others including another married man. Here again, what one has to see is whether it is in public interest in the sense that whether it is the interest of society that such articles ought to be printed about the private life. The answer will have to be in the negative. The three articles are per-se defamatory as claimed by the plaintiff and the defendants cannot be permitted to go ahead to print any further articles of the like nature.

8. Mr. Tulzapurkar submitted that the prayer made in the present Motion is a wide one and it will have to be curtailed. The submission of Mr. Tulzapurkar in this behalf is well taken, but at the same time, the tenor of the articles has to be seen, what is indicated in those articles has to be noted and it cannot be ignored that the prayer has been sought in that context. The injunction sought by the plaintiff will therefore be granted in a modified form. Therefore, as directed In the case of Indian Express Newspapers (supra), a modified injunction is hereby granted restraining the defendants from republishing the three articles and/or from writing and publishing any defamatory article in the nature of the three articles (which are disputed in the present suit) alleging that the plaintiff is having relationship with other actors or a married man, which will operate till the disposal of the suit. It is for the defendants to justify these articles when the suit is heard and decided but in the meanwhile, the above-referred injunction will continue to operate.

9. The Motion is made absolute in terms of the above order.

10. Mr. Tulzapurkar for the defendants requests for stay of this order for a period of four weeks.

11. Request is rejected.