

O.A.No.1102 of 2019

in

C.S.No.697 of 2019

SENTHILKUMAR RAMAMOORTHY J.

This application is filed for an interim injunction to restrain Respondents 1 to 3 from, directly or indirectly, releasing, publishing or exhibiting a film, drama, serial, tele-serial, web serial, etc. in respect of the life of the late Dr.J.Jayalalithaa, the former Chief Minister of Tamil Nadu (the Former CM) and/or that of her family and their direct descendants without the consent of the Applicant/Plaintiff pending disposal of the suit.

2. I heard the learned counsel for the Applicant/Plaintiff, Mr. J. Thilageswaran, the learned senior counsel for Respondents 1 and 2, Mr. P.S.Raman, and the learned senior counsel for Respondent 3, Mr.Satish Parasaran.

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3. Mr. J.Thilageswaran, the learned counsel for the Applicant submitted that the suit is filed for a declaration that the defendants do not have the legal right, power or authority to make, release, publish or exhibit a film, tele-serial or web serial in the name of the Former CM

and/or her family and their direct descendants without the consent of the Plaintiff and also for a consequential permanent injunction to restrain the aforesaid.

4. The learned counsel submitted that the Applicant/Plaintiff is the brother's daughter of the Former CM. Consequently, he submitted that the applicant is, undoubtedly, her legal heir. As a legal heir, he contended that the Applicant has the locus standi to institute and maintain the suit in order to protect her right to privacy, which is infringed by the proposed film and web serial. In addition, he submitted that the Applicant's aunt was one of the best known political figures in Tamil Nadu and India and that the Applicant has a right to ensure that the personality rights of her aunt are not exploited without the Applicant's consent. In order to substantiate the contention that the above mentioned rights are reasonably likely to be infringed by the Respondents, he referred to paragraph 14 of the counter affidavit of the third Respondent, wherein it is stated that the third Respondent has directed a web series titled "Queen", which is a dramatization and fictional recreation of true events. On the basis of the said averments, the learned counsel contended that the third Respondent has admitted that the web series would be a dramatization and fictional recreation of the life of the Applicant's aunt. According to the learned counsel, such dramatization and fictional

recreation certainly constitutes an intrusion of the right to privacy and also infringes the personality rights of the Applicant's aunt, which cannot be done without the consent of the Applicant. The learned counsel further submitted, in this regard, that the third Respondent conducted a pre-launch programme on 10.12.2019, wherein the trailer of the web series was exhibited to a select audience.

5. In order to establish the Applicant's locus standi, he pointed out that the Applicant and her aunt lived together till the year 1994. In support of the contention that the Applicant is entitled to relief, he referred to and relied upon the judgment of the Gujarat High Court in **KIRTIBHAI Vs. RAGHURAMAN, Order dated 20.01.2010 (the Jalaram Bapa case)**. He pointed out that the plaintiff in the said case was a descendant of the late Shri Jalaram Bapa of Virpur, who was known for his charitable activities. In the said case, he pointed out that the defendants contended that the plaintiff did not have locus standi because he was not a direct descendant of the late Shri Jalaram Bapa. He further submitted that the Gujarat High Court considered various judgments of the Hon'ble Supreme Court and foreign courts and concluded that the plaintiff had locus standi as a descendant of the late Shri Jalaram Baba. More importantly, he pointed out that the court concluded that a prima facie case is made out for the grant of interim injunction and that the

question as to whether the plaintiff has a right of privacy and whether the defendants relied on the public record of the life of the late Jalaram Bapa are matters to be decided after trial at the time of final disposal.

6. With regard to the contention of the Respondents on non-joinder of the producer and mis-joinder of cause of action, he submitted that the suit, as framed, is maintainable as per Order II, Rule 3 CPC, which enables the Plaintiff to combine causes of action, including in cases where a common question of fact or law arises in respect of an act or series of acts. The learned counsel concluded his submissions by contending that the Applicant should be permitted to preview the film and the web series so as to ensure that disparaging or objectionable material is excised before public exhibition.

7. In response, the learned senior counsel for the first and second Respondent, Mr.P.S.Raman, made his submissions. He opened his submissions by pointing out that the first and second Respondent acquired the cinema rights in respect of a book titled "Thalaivi", which is registered under the Copyright Act, 1957. Upon acquiring the cinema rights over the said book, he submitted that the first and second Respondents proposed to make a film on the life of the Former CM. By referring to paragraph 13 of the counter affidavit of the second

Respondent, he submitted that the the release of the film, "Thalaivi", would not infringe or cause any stigma to the Applicant. He also pointed out that the second Respondent confirmed, in the said paragraph, that the film, "Thalaivi", will not have a single scene portraying the Applicant. Consequently, he submitted that the Applicant does not have a cause of action against the first and second Respondents. In support of his submissions, the learned senior counsel referred to and relied upon the Division Bench judgment of this Court in **The Managing Director, Makkal Tholai Thodarpu Kuzhumam Ltd. Vs. Mrs.V.Muthulakshmi, (2007) 6 MLJ 1152 (the Veerappan case)**, wherein, at paragraph 17 and 18, this Court held that the right to privacy of the late forest brigand, Veerappan, did not subsist after his death and that in view of the undertaking that the right to privacy of Veerappan's wife and daughters would not be affected, no case is made out for the grant of an interim injunction to restrain the release of the serial "Santhana Kadu" subject to the condition that it would be based on public records and field information.

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8. The learned senior counsel also relied upon the judgment of the Division Bench of this Court in **R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal and another Vs. J.Jayalalitha and another, Order dated 06.05.2006 in O.S.A.No.86 of 2006 (the Nakkheeran**

case). In particular, the learned senior counsel referred to paragraphs 29 to 31 of the said judgment, wherein the Court held that public figures should not be thin skinned. With regard to privacy, he pointed out the Division Bench of this Court held that in a democratic set-up a close and microscopic examination of private lives of public men is the natural consequence of holding of public offices. Therefore, the Court refused to direct the prior verification by the respondents therein, namely, J.Jayalalithaa and N.Sasikala, before publication of articles on the said public persons. He also pointed out that the Division Bench took note of the judgment of the Hon'ble Supreme Court in **R.Rajagopal vs. State of TN (1994) 6 SCC 632 (the Auto Shankar case)** and held that if the article in question relates exclusively to the personal life of a public official, it would be necessary to publish such article only after reasonable verification of the facts. As regards the first and second Respondents, he pointed out that the film is about both the public and private life of the Former CM and that the film would remain true to the book. In effect, he submitted that the film would be factual but based on the director's vision of the book.

9. This was followed by the submissions of the learned senior counsel for the 3rd Respondent, Mr.Satish Parasaran. He commenced his submissions by contending that the Plaintiff seeks publicity not privacy. As

regards the proposed web series of the third Respondent, he pointed out that it is based on a book titled "Queen", which is inspired by true events. He also pointed out that the protagonist of the web series is called Sakthi Seshadri. This web series would be fictional and would carry a disclaimer that any resemblance to real persons is coincidental and not intentional.

10.The learned senior counsel raised two preliminary objections. The first preliminary objection is that the Applicant/Plaintiff does not have locus standi to file the suit or the interim application. In this regard, he referred to an interview that was given by the Applicant to the magazine, "The Week", wherein the Applicant stated that she was estranged from her aunt and that she was not permitted to enter her aunt's house for many years. Consequently, he submitted that the Applicant/Plaintiff does not qualify as a member of the family of the Former CM. He also referred to the plaint and, in particular, paragraphs 6, 8 and 9 thereof. With reference to the statement at paragraph 6 of the plaint that the Plaintiff had a close acquaintance with the Former CM during her life time, he submitted that this statement is belied and proved false by the interview that was referred to earlier. By referring to paragraph 9 of the plaint, he pointed out that the Plaintiff asserts that she has a right to be included in the film/web series by stating that the life story of the Former CM cannot be told without including the life of the Plaintiff and that this would

amount to an interference with the privacy of the Plaintiff. Thus, he submitted that the suit is founded on the assertion of a baseless posthumous right of privacy and personality.

11. With regard to the alleged right of privacy, the learned senior counsel submitted that the privacy rights of the Former CM cannot be exercised posthumously by her estranged niece. According to the learned senior counsel, at this juncture, the Applicant has not even established that she is entitled to succeed to the estate of the Former CM as per applicable succession laws and, in these facts and circumstances, she cannot be permitted to enforce an alleged right of prior restraint. He also contended that the Applicant is not entitled to an interim injunction on account of laches. In support of his submissions, he referred to paragraph 10 of the counter affidavit of the third Respondent, wherein it is stated that the Applicant/Plaintiff waited for 9 months in spite of knowing that the third Respondent was continually incurring greater expenditure for the web serial. In support of this submission, he relied upon two judgments of the Bombay High Court in **Dashrath B.Rathod and others Vs. Fox Star Studio India Pvt. Ltd. and others, 2017 (3) Bom. CR 664** and **Akashaditya Harischandra Lama Vs. Ashutosh Gowarikar and others, 2016(5) ABR 312**, wherein the court deprecated the practice of approaching the Court for injunctive relief belatedly and dismissed the said applications with exemplary costs.

12. In order to substantiate the submission that the Applicant does not qualify as a member of the family of the Former CM, he referred to the judgment of the Kerala High Court in **M.P.Raju and others Vs. T.G.Chacko and others, 2005 SCC Online 430 (the M.P. Raju case)**, wherein, at paragraph 13 to 15, in the context of Section 499 IPC, the Kerala High Court held that a complaint in respect of the defamation of a deceased person can only be given by his family or other near relatives. In particular, he pointed out as to how the Kerala High Court concluded that the expression "family" in Section 499, IPC, should be narrowly construed so as to include only the husband, wife and children. The learned senior counsel, thereafter, referred to the case relating to the former Chief Minister of Tamil Nadu, K.Kamaraj, namely, **A.Balakrishnan Vs. R.Kanakavel Kamaraj, 1999 SCC Online Mad 563 (the Kamaraj case)**, wherein, at paragraphs 12 to 17, the Court held that the history of the national leader is not an asset which could be inherited by any person and that merely because the legal heir of the late Mr.K.Kamaraj assisted him during his last days, it cannot be said that he was the custodian of the history of the late Mr.K.Kamaraj. In that case, he pointed out that, on that basis and on the basis that the film/serial is based on reports that were already published in journals, weeklies and news papers, the Court dismissed the application for interim injunction. The learned senior counsel concluded his submissions by adverting to an article on "The

Inalienable Right to Privacy” by Professor Jennifer E. Rothman so as to emphasise that such rights are not alienable or heritable.

13. By way of rejoinder, the learned counsel for the Applicant referred to page 5 of the typed set of papers filed by the Applicant and pointed out that the web series of the third Respondent is based on the life story of the Former CM. He also compared and contrasted the stand of the first and second Respondents, on the one hand, and that of the third Respondent, on the other, and submitted that the third Respondent has not provided an undertaking or commitment that he would not depict the character of the Applicant in the web series. Consequently, he submitted that the Applicant's apprehension, in that regard, is well-founded. With regard to delay, he submitted that notice was ordered at the leave to sue stage and the application was contested, especially by the third Respondent. As a result, it became necessary to await the order in the leave to sue application and the subsequent delays were administrative delays by the Registry of the Court for which the Applicant/Plaintiff is not responsible. He concluded his submissions by reiterating that the judgment of the Gujarat High Court in the **Jalaram Bapa Case** is directly applicable because the right of a descendant of the late Shri Jalaram Baba to object to the release of a film on the life of the late Shri Jalaram Bapa was upheld by the Court.

14. The oral submissions of the learned counsel/senior counsel were considered carefully and the records were perused. In addition, the trailer of the web series was also shown to me by the learned counsel for the Applicant in the presence of the learned counsel for the Respondents and snippets of two romantic scenes wherein the protagonist and her lover exchange kisses were flagged as objectionable by the Applicant.

15. The question that arises for consideration is whether the Applicant has made out a case for the grant of an interim injunction either against the first and second Respondents or against the third Respondent. As far as the first and second Respondents are concerned, they contended that they acquired the cinema rights of a book titled "Thalaivi", which was published previously and is, in fact, the subject matter of a registered copyright. Moreover, in paragraph 13 of the counter affidavit of the second Respondent, it is stated categorically that the proposed film would not cast a stigma on the Applicant and that she would not be depicted in a single scene in the film. Thus, the privacy rights of the Applicant *per se* are addressed. Nonetheless, the Applicant asserts posthumous privacy rights and personality rights on behalf of her aunt. Given that the first and second Respondent are engaged in the production of a biopic, it is pertinent to bear in mind that the release of the film would be subject to certification by the Central Board of Film Certification(CBFC). During such

certification process, if any objectionable material is contained therein, the CBFC would raise objections and, if necessary, insist upon excising such objectionable footage as a pre-requisite for the grant of a certificate for the exhibition of the film. Therefore, as regards the first and second Respondent, notwithstanding the assertion of posthumous privacy and personality rights, sufficient safeguards are in place both in the form of the undertaking and the requirement of certification. Further, it is stated that the production of the film and its subsequent release for public exhibition would take several months. For all these reasons, even without closely examining the legal issue, no case is made out for the grant of an interim injunction against the first and second Respondents.

16. The facts with regard to the third Respondent are distinct and, therefore, have to be dealt with separately. The third Respondent has acquired the rights to make a web serial on the basis of a book titled "Queen", which was published in the year 2017, and the author appears to hold the copyright thereto. It may be noted that the said book is stated to be inspired by true events. In other words, it is not an historical novel but merely one that draws inspiration from true events. The third Respondent has taken a categorical stand that the web series would be based on the book and that it would be a fictional rendition. It is also stated that the protagonist of the web series is called Sakthi Seshadri. In

these facts and circumstances, can it be said that the Applicant is entitled to an order of prior restraint in respect of the proposed web series because it is probably inspired by the life of the Former CM? Admittedly, the Applicant is the niece of the Former CM. On that basis, is the Applicant entitled to an interim injunction in the alleged posthumous exercise of the right to privacy or personality rights on behalf of her late aunt? As regards personality rights, even on a prima facie basis, it is difficult to accept that the Applicant/Plaintiff has inherited the personality rights of her aunt. Indeed, the question as to whether such rights are capable of being inherited would have to await trial and final disposal. The question as to whether the Applicant is entitled to restrain the public exhibition of the web series in exercise of the posthumous right of privacy remains to be considered. In the **R.Rajagopal case**, the Hon'ble Supreme Court recognised that the right to privacy is both a fundamental right and a right under common law/Tort law. The Court further held that the consent or permission of a public figure is not required for the publication of a work on such public figure if it is based on public records. However, the said case did not deal with the question as to whether the right to privacy can be exercised posthumously by a relative of a deceased public figure. In this case, two important rights are at issue, namely, the right of freedom of expression, including artistic expression, and the right to privacy. It is the settled position that both the rights are fundamental

rights, albeit the former is an enumerated right while the latter is derived and read into Article 21 authoritatively and conclusively in **K.S.Puttaswamy vs. Union of India (2017) 10 SCC 1**. Consequently, a balance has to be struck and the boundaries and contours of these two rights would have to be determined, both tentatively and definitively, for interlocutory and final disposal purposes, respectively, in light of the facts and circumstances of the case.

17. In this case, the Applicant/Plaintiff clearly and indubitably has both a fundamental and common law right as regards her privacy. With regard to the first and second Respondents, as stated earlier, there is an undertaking that not a single scene would depict the Applicant. The third Respondent, on the other hand, takes the position that the web series is fictional and that an undertaking is not warranted. Nonetheless, on balance, I am of the view that the web series of the third Respondent should not infringe the privacy of the Applicant (i.e. by demarcating and differentiating it from the assertion of posthumous rights) pending determination of the suit. The assertion of posthumous privacy rights on behalf of her aunt is, however, a different matter. The Applicant is not a near relative of the Former CM, i.e. she is not a daughter or even a member of the same household. In such circumstances, one has to test, for interlocutory purposes, her asserted right - to prior restraint of the

exhibition of the web series without her consent or to insist that such series should not be made without including her in such web series - by weighing it against the Respondents' right to freedom of expression. The assertion that her aunt's life story cannot be told without including her role in it could be brushed aside as ingenuous and, in any event, it cannot be said that she has an actionable right to insist on being included as a character in the web serial. As regards her right to restrain the exhibition of the web series without her consent, at this juncture, the Applicant's right to posthumously exercise the right to privacy on behalf of her late aunt is contested fiercely by the Respondents, by citing precedent such as the **Nakkeeran case, the Veerappan case, the Kamaraj case** and the **M.P. Raju case**, in that regard, and such rights appear prima facie to be tenuous. I am unable to subscribe, in this regard, to the view expressed in the **Jalaram Bapa case** that any descendant is entitled to enforce prior restraint rights. In my view, if that principle were to be applied, agnates and cognates would emerge from the wood work and sound the death knell for the freedom of artistic expression. Nevertheless, definitive conclusions as to the posthumous exercise of the right to privacy and as to who can exercise such rights would have to await final disposal.

18. Meanwhile, it appears that 9 months have elapsed since the third Respondent commenced production of the web series and a sum of

about 20 crores is stated to be expended on such production. The said web series is stated to be a fictional rendition, which would carry a disclaimer that the resemblance to real persons is purely coincidental and not intentional. Given these facts and circumstances, I am of the view that, subject to the rider specified earlier as regards the privacy of the Applicant, the balance of convenience is in favour of the third Respondent and the right to freedom of expression of the third Respondent cannot be curtailed at the instance of the Applicant, whose assertion of posthumous privacy and personality rights for and on behalf of her late aunt are tenuous and amorphous at this stage. If an interim order is granted, it would be difficult to compensate the Respondents in case they succeed in the suit, whereas the Applicant can always re-apply at a later juncture if there is a change in circumstances on the basis of the first series of episodes of the web series. As regards the first and second Respondents, as stated earlier, the undertaking in paragraph 13 of the counter affidavit coupled with the certification requirement constitute adequate safeguards.

19. Therefore, the Application is hereby disposed of by denying interim injunctive relief, as requested, subject to the rider that the first and second Respondents shall adhere to the undertaking in paragraph 13 of the counter affidavit of the second Respondent and the third Respondent shall adhere to the commitment of providing a disclaimer that

it is a work of fiction and that resemblance to real persons is coincidental and not intentional and also ensure that no character closely resembling the Applicant is depicted in the web series pending adjudication of the suit.

12.12.2019

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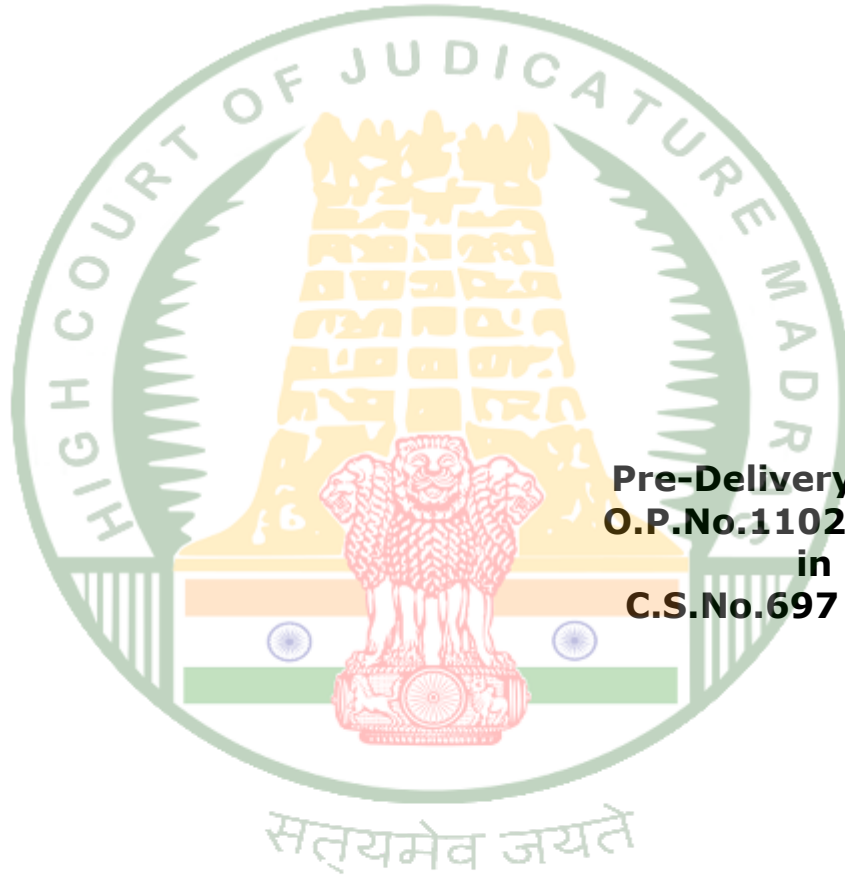


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