

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2009

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

O.A.NO.420 OF 2009

and

APPLICATION NO.2919 OF 2009

IN

C.S.NO.366 OF 2009

1.A.Raja

2.M.A.Parameswari

Both residing at

No.3/87, South Street,

Vellore Village,

Perambalur Village and

District

... Applicants in

OA No.420 of 2009 and

Respondents 1 and 2 in

A.No.2919 of 2009

Vs.

1.P.Srinivasan

Publisher & Printer of

Junior Vikatan,

Vasan Publications Private Limited,

No.757, Anna Salai,

Chennai-600 002.

2.K.Ashokan,

Editor,

Vasan Publications Private Limited,

No.757, Anna Salai,

Chennai-600 002.

3.Saroj Ganpath,

Chief Reporter,

Junior Vikatan,

No.757, Anna Salai,

Chennai-600 002.

.. Respondents 1 to 3 in
OA No.420 of 2009 and
Applicants in
A.No.2919 of 2009

4.Prakash Jawadekar

No.521, V.P.House,

Rafi Marg,

New Delhi-110 001.

.. Respondent No.4 in
OA No.420 of 2009 and
Respondent No.3 in
A.No.2919 of 2009

OA No.420 of 2009 is filed seeking to grant an order of ad interim injunction restraining the respondents 1 to 3/defendants 1 to 3, their men, agents, staff, subordinates or any person claim through or on behalf from in any way printing, publishing and circulating the defamatory news items and the photographs of the applicants/plaintiffs family or publishing any caricature or fudged photographs of mine or the photographs of the applicants/plaintiffs minor daughter in their bi-weekly magazine "Junior Vikatan" in any manner causing damages to the reputation of the applicants/plaintiffs without seeking any clarification from the applicants/plaintiffs.

A.No.2919 of 2009 is filed seeking to vacate the order of interim injunction granted on 28.4.2009 in OA No.420 of 2009.

For applicants/

Plaintiffs : Mr.V.T.Gopalan, SC
for Mr.P.Wilson Associates

For respondents

/defendants 1 to 3: Mr.R.Yashod Vardhan, SC
for M/s.R.Sunilkumar &
Sundar Narayan

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ORDER

The opinion of Justice Goldberg, with whom Justice Douglas of the U.S. Supreme Court had agreed, gave their concurring opinion in the Sullivan's case (New York Times Vs. Sullivan, 376 US 254), which will set the tone for a decision in this case. This judgment was quoted with approval by Courts in India. Their opinion on libel action of public figures may be reproduced below:-

"... In my view, the First and Fourteenth Amendments to the Constitution afford to the citizen and to the press an absolute, unconditional privilege to criticize official conduct despite the harm which may flow from excesses and abuses. ... The right should not depend upon a probing by the jury of the motivation of the citizen or press. The theory of our Constitution is that every citizen may speak his mind and every newspaper express its view on matters of public concern and may not be barred from speaking or publishing because those in control of government think that what is said or written is unwise, unfair, false, or malicious. In a democratic society, one who assumes to act for the citizens in an executive, legislative, or judicial capacity must expect that his official acts will be commented upon and criticized. Such criticism cannot, in my opinion, be muzzled or deterred by the courts at the instance of public officials under the label of libel.

... In a democratic society where men are free by ballots to remove those in power, any statement critical of government action is necessarily "of and concerning" that governors and any statement critical of the governors' official conduct is necessarily "of and concerning" the government. If the rule that libel on government has no place in our Constitution is to have real meaning, then libel on the official conduct of the governors likewise can have no place in our Constitution."

(Emphasis added)

2. Commenting on the Sullivan's case, Chicago Law School Professor of Jurisprudence Cass R. Sunstein, in his article "A New Deal for Speech" (Democracy and the Problem of Free Speech (New York Free Press, 1993)), wrote as follows:-

"It is striking that in Sullivan, the lower court held that the common law of tort, and more particularly libel, was not state action at all, and was therefore entirely immune from constitutional constraint. A civil action, on this view, involved a purely private dispute. The Supreme Court quickly disposed of this objection, as seems obviously right. The use of public tribunals to punish speech is conspicuously state action. What is interesting is not the Supreme Court's rejection of the argument, but the fact that the argument could be made by a state supreme court as late as the 1960s. How could reasonable judges perceive the rules of tort law as purely private?"

3. The present suit is filed by the two plaintiffs, who are also husband and wife. The first plaintiff is presently a Cabinet Minister holding the Heavy Industries Portfolio and former Union Minister for Communication and Information Technology. The second plaintiff claims to be enrolled as a bar member. The suit is filed for claiming damages of Rs. One Crore from defendants 1 to 4 to the first plaintiff and Rs. 25 lakhs to the second plaintiff together with interest at the rate of 18% for having carried out defamatory publications in the bi-weekly "Junior Vikatan" published by the first respondent in their various issues dated 16.4.2008, 19.10.2008, 19.11.2008, 26.11.2008, 03.12.2008 and 24.12.2008.

4. Apart from the claim for relief of damages, the suit also prayed for a permanent injunction restraining the defendants 1 to 3 from printing, publishing and circulating the defamatory news items and photographs of the plaintiffs family for publishing any caricature and fudged photographs of the first plaintiff or the photographs of the plaintiffs' minor daughter in the Junior Vikatan, thereby causing damages to the reputation of the plaintiffs and without seeking clarification from the plaintiffs. The suit was presented before this court on 22.4.2009 and was admitted on 27.4.2009. Pending the suit, an interim relief was sought for, which has been noted elsewhere.

5. By an interim order dated 28.4.2009, this court after holding that there was a prima facie case restraining respondents 1 to 3 from carrying out of articles of similar nature and photographs of the applicants' family members, including their minor daughter without seeking any clarification from the applicants/plaintiffs. This injunction was restricted to last till 15.6.2009. However, the matter came to be listed before this Court on 8.7.2009., when the respondents 1 to 3 took out Judges summons in Application No.2919 of 2009 for vacating the interim order. When the matter came up on 8.7.2009, the counsel for the plaintiff sought for time to file a reply affidavit and for extension of the interim order pending final orders. The same was granted by this court on that day. Subsequently, the applicants have also filed a reply affidavit, dated 12.7.2009.

6. The case of the applicants is that the Junior Vikatan published by the first respondent, has been continuously publishing news items and self write ups alleging irregularities in the conduct of the applicants. They were constantly defaming them with baseless and false allegations. In spite of the clarification by the Department of Telecommunication on the 'Spectrum issue', the respondents were bent upon harassing them with frivolous and vexatious defamatory articles and write ups. Such articles were published with extraneous considerations and to satisfy their political opponents and for boosting the sale of the magazine. It was also alleged that the respondents have failed in their primary duty of verifying the veracity and correctness of the statements before publishing. The photographs which accompanies such write ups were in poor taste and there has been a fudging of the photographs in the cover page of the magazine, dated 20.4.2008. In the very same issue, the family photographs of the plaintiffs along with their minor daughter was also published, which had not only put them to embarrassment, but also violated their right to privacy. With reference to the alleged connection of the applicants with M/s.Green House Promoters Private Ltd. and M/s.Equaas Estates Private Limited, the transactions were straight forward and the publications made in this regard were invented, false, frivolous and made with mala fide motives.

7. It was also stated that because of the general elections to the parliament to be held during May, 2009 and the first applicant being a DMK party candidate for the Nilagiry Parliamentary constituency, there has been conspiracy to bring out various defamatory articles. Such articles were published without any prior verification. The respondents should be restrained from making any future publication. Any such allowance in this regard will hamper his prospects of his getting elected. Therefore, both on a prima facie case and on balance of convenience, an order of restraint should be passed.

8. By virtue of the interim order, the applicants were successful in preventing the magazine from publishing any articles. It is also now made known that the first applicant has got elected and had become a cabinet Minister having the Heavy Industries Portfolio.

9. In the counter affidavit filed by respondents 1 to 3 dated 29.06.2009, it is asserted by the respondents, that the news items published by the Junior Vikatan will show that they have commented on the news concerning the acts and conduct of the first applicant in the discharge of his public duties as a Union Minister of Communication and Information Technology as well as the position held by the second applicant in the two companies referred to above. There was no comment on the private life of the applicants. It was also stated that the respondents have published the news based on news and proceedings in the parliament in the public domain and also on the basis of the documents that the second applicant held the position of the Director during the time the spectrum space was allotted to the company. It was also stated that the act of the respondents are not even remotely categorized as defamatory.

10. It was further stated that the Ananda Vikatan a Weekly magazine of the same group was founded in the year 1926 and during its 83 years of existence, several leading personalities were associated with the magazine. The 'Junior Vikatan' published by the same group had strived to achieve excellence in the field of journalism and never resorted to sinister methods for the sake of increasing circulations. The counter affidavit elaborately dealt with the basis of which such write ups were published. It is unnecessary to reproduce the same as such defence will be put before the trial. Even on the publication of the photographs in the cover page as well as in its inner pages, it was stated that it was not done with a view to cause embarrassment or malign the family. The family photograph published in the weekly was taken in a public function held at JK Mahal at Perambalur, which was organized to celebrate the electoral victory of the first applicant in May, 2004 assembly elections. The family members had happily posed for the media photographs.

11. With reference to the allegation that a response sent by the second applicant through e-mail was never received by the magazine. The e-mail ID given in the affidavit is not the e-mail ID of the magazine. When a denial was made by M/s.Equaas Estate Private Limited, a corrigendum was promptly published by the magazine in its issue, dated 15.2.2009. It was also stated that the respondents have fairly commented on the issue regarding improper allocation of 2G spectrum services by the Government of India and the people of India have a right to be informed about the same.

12. On the question of prior restraint, it was stated that there was no allegation on the private life of the applicants and no right of privacy of the applicants were violated. It is fairly asserted that the articles published by the Junior Vikatan constitute fair and bona fide comments on a matter of national interest. Material facts were truly stated in the articles and it was published bona fide. The articles were guided by principles of objectivity and fairness. It is also submitted that several other newspapers and magazines in India had carried such stories and the issue has become a topic for a nation wide debate.

13. It is in the light of the rival submissions, the contentions of the parties will have to be considered. Before Mr.V.T.Gopalan, learned Senior Counsel for the applicants had advanced his arguments, Mr.R.Yashod Vardhan, learned Senior Counsel for the respondents 1 to 3 fairly stated that though there was no illegality in publishing of the family photographs including the minor daughter of the applicants, the Junior Vikatan had undertaken that in future, they will not publish the photographs of the applicants' minor daughter and hence this Court's attention need not be vexed on the question of publication of the photograph of a minor child. The prayer made in this regard can be closed.

14. Mr.V.T.Gopalan, learned Senior Counsel submitted that the right of privacy of any person is sacro sanct and therefore, no amount of press freedom can intrude into the private lives of individuals. He

also stated that the injunction granted earlier was only on the basis of a prima facie opinion and there is no necessity to vary the same. He also referred to the Division Bench judgment of this Court in R.Rajagopal's case reported in 2006 (2) MLJ 689, wherein this court also granted a restraint order and demanded submitting of articles for prior verification. He also referred to the reply affidavit filed by the applicants, dated 12.7.2009 and stated that a report by another newspaper did not give rise to the respondents to reproduce the same in their magazine with imputations so as to defame the applicants. There was no reasonable verification about the truth and veracity. The issues published are not social issues and it affects the rights of the applicants. It was also submitted that a challenge to the policy in the allocation of spectrum was pending in public interest litigation before the Delhi High Court. When the fourth respondent interview was quoted in the magazine, no clarification was sought from the applicants. Though the fourth respondent is a Member of Parliament, he belonged to the BJP party. Since no clarifications were received from the two companies referred to above, the articles cannot be said to be based on any objective motive. The learned Senior Counsel also stated that the respondents have not stated that what was written was truth. The tenor of an article must be to find out the truth and not to publish some other reports so as to further defame any person and call it as truth. There must be a duty to make investigation about the veracity of such publications. He also referred to paras 10 and 11 of the plaint for justification in the grant of a prior restraint order.

15. In reply, Mr.R.Yashod Vardhan, learned Senior Counsel appearing for RR1 to 3 contended that the issue relating to the damages claimed to be contested by them in the trial and the present issue related to the prior restraint on the magazine. If granted it violates the fundamental right of the respondents granted under Article 19(1)(a) of the Constitution. He also stated that the intention of the applicants to get a gag order is to restrain the magazine from publishing any news item during elections and he has also succeeded in silencing future publications. Therefore, a great damage has been done to public good by preventing the magazine in bringing out issues on current affairs, which have a bearing on the conduct of the applicants. The applicants have not made out any case for prior restraint and the issue of the truth or veracity of the published items will have to be relegated to the main suit.

16. In this context, it is necessary to refer to certain decisions of the Supreme Court and of this court, which may have bearing on the relief claimed by the applicants.

17. Speaking about the freedom of the press, the Supreme Court vide its judgment in Odyssey Communications Pvt. Ltd. Vs. Lokvidayan Sanghatana and others reported in (1988) 3 SCC 410 has observed in para 6 "Freedom of expression is a preferred right which is always very zealously guarded by this Court."

18. While reiterating the same principle, the Supreme Court in its judgment in S.Rangarajan Vs. P.Jagjivan Ram and others reported in (1989) 2 SCC 574 has held as follows:

"45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg"."

(Emphasis added)

19. The Supreme Court vide its judgment in Indian Express Newspapers (Bombay) Private Ltd. and others Vs. Union of India and others reported in (1985) 1 SCC 641 had laid down the primary duty of the Courts is to invalidate all laws and administrative actions which interferes with press freedom, thereby interfering with constitutional freedoms. The following passage found in para 32 in the judgment may be extracted below:-

"32. In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of Government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power. Governments naturally take recourse to suppress newspapers publishing such articles in different ways. Over the years, Governments in different parts of the world have used diverse methods to keep press under control. They have followed carrot-and-stick methods. Secret payments of money, open monetary grants and subventions, grants of lands, postal concessions, Government advertisements, conferment of titles on editors and proprietors of newspapers, inclusion of press barons in cabinet and inner political councils etc. constitute one method of influencing the press. The other kind of pressure is one of using force against the press. Enactment of laws providing for pre-

censorship, seizures, interference with the transit of newspapers and demanding security deposit, imposition of restriction on the price of newspapers, on the number of pages of newspapers and the area that can be devoted for advertisements, withholding of Government advertisements, increase of postal rates, imposition of taxes on newsprint, canalisation of import of newsprint with the object of making it unjustly costlier etc. are some of the ways in which Governments have tried to interfere with freedom of press. It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it. It is, therefore, the primary duty of all the national courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it, contrary to the constitutional mandate."

(Emphasis added)

20. While going through a news item, the courts have emphasized the culture of "responsible reading". The Supreme Court vide its judgment in *Ajay Goswami Vs. Union of India* and others reported in (2007) 1 SCC 143 had dealt with such an issue and the passages found in paras 78 and 79 may be extracted below:-

"78. Be that as it may, the respondents are leading newspapers in India and they have to respect the freedom of speech and expression as is guaranteed by our Constitution and in fact reaches out to its readers any responsible and decent manner. In our view, any steps to ban publishing of certain news pieces or pictures would fetter the independence of free press which is one of the hallmarks of our democratic set-up. In our opinion, the submissions and the propositions of law made by the respective counsel for the respondents clearly established that the present petition is liable to be dismissed as the petitioner has failed to establish the need and requirement to curtail the freedom of speech and expression. ...

79. We are also of the view that a culture of "responsible reading" should be inculcated among the readers of any news article. No news item should be viewed or read in isolation. It is necessary that a publication must be judged as a whole and news items, advertisements or passages should not be read without the accompanying message that is purported to be conveyed to the public. Also the members of the public and readers should not look for meanings in a picture or written article, which are not conceived to be conveyed through the picture or the news item." (Emphasis added)

21. In these days of fundamental Right to Information, the Supreme Court in its judgment in *Union of India Vs. Association for Democratic Reforms* and another reported in (2002) 5 SCC 294 upheld an order of the Election Commission of India to make the candidates in an election to disclose all vital informations regarding their life to the voters so that there will be purity in election. The following passage found in para 22 of the judgment may be reproduced below:-

"22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, may be illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens • voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided • its result, if pending • whether charge is framed or cognizance is taken by the court. There is no necessity of suppressing the relevant facts from the voters."

(Emphasis added)

22. After summarising all the leading cases (both Foreign and Indian Courts), a division bench of this Court presided by A.P.Shah, C.J. (as he then was) in its judgment in R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal and another Vs. Ms.J.Jayalalitha and another reported in (2006) 2 MLJ 689 laid down the parameters of a prior restraint orders to be given by Courts. The relevant passages found in paragraphs 29 to 31 may be usefully extracted below:-

"29. The fundamental right of freedom of speech is involved in these proceedings and not merely the right of liberty of the press. If this action can be maintained against a newspaper, it can be maintained against every private citizen who ventures to criticise the ministers who are temporarily conducting the affairs of the Government. In a free democratic society those who hold office in Government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. As observed in Kartar Singh's case (supra) the persons holding public offices must not be thin-skinned with reference to the comments made on them and even where they know that the observations are undeserved and unjust, they must bear with them and submit to be misunderstood for a time. At times public figures have to ignore vulgar criticisms and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same. In the instant case, the

respondents have already chosen to claim damages and their claim is yet to be adjudicated upon. They will have remedy if the statements are held to be defamatory or false and actuated by malice or personal animosity.

30. As observed in R.Rajagopal's case (supra) the right to privacy has two aspects which are but two faces of the same coin. First the general law of privacy which offers a tort action for damages resulting from an unlawful invasion of privacy and secondly, the constitutional recognition given to the right to privacy which protects personal privacy against unlawful Government invasion. Though the right to privacy can be characterised as a fundamental right, as held in R.Rajagopal's case (supra) it is not an absolute right. In *Time, Inc v. Hill* 385 US 374 it was pointed out that in the case of public officials, insofar as their official function is involved, they are substantially without a right to privacy and factual error and content defamatory of official reputation or both, are insufficient for the award of damages for false statements unless actual malice-knowledge that the statements are false or reckless disregard of the truth is alleged and proved. 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. What is good for a private citizen who does not come within the public gaze may not be true of a person holding public office. What a person holding public office does within the four walls of his house does not totally remain a private matter. We agree with Mr.Jothi that the scrutiny of public figures by media should not also reach a stage where it amounts to harassment to the public figures and their family members and they must be permitted to live and lead their life in peace. But the public gaze cannot be avoided which is a necessary corollary of their holding public offices.

31. We are also unable to accept the submission advanced by Mr.Jothi that the appellants should be asked to seek prior verification from the respondents before publishing any articles and publish the denial, if any, of the respondents. According to Mr.Jothi rule of prior verification is laid down in R.Rajagopal's case (supra). We are afraid that the submission of the learned counsel is based on total mis-interpretation of the observations of the Supreme Court. The Supreme Court has not laid down that the prior verification of the facts is must in all such cases. All that the Supreme Court indicated is that the proof that the member of the press or media acted after a reasonable verification of the facts would be sufficient. However, at the same time, it must be noted that the Supreme Court in R.Rajagopal's case (supra) has clearly held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education, among other matters, and none can publish anything in reference to the above matters without his/her consent-whether laudatory or critical."

(Emphasis added)

23. The Supreme Court in its judgment in R.Rajagopal alias R.R.Gopal and another Vs. State of T.N. and others reported in (1994) 6 SCC 632 had summarised the broad principles regarding the right to privacy. Their summary found in para 26 may be usefully extracted below:-

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

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

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

(3) There is yet another exception to the rule in (1) above • indeed, this is not an exception but a 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.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

27. We may hasten to add that the principles above mentioned are only the broad principles. They are neither exhaustive nor all-comprehending; indeed no such enunciation is possible or advisable. As rightly pointed out by Mathew, J., this right has to go through a case-by-case development. The concepts dealt with herein are still in the process of evolution."

(Emphasis added)

24. A careful perusal of the materials enclosed along with the plaint and the averments made in the affidavit do not indicate either any prima facie case or balance of convenience in the grant of a prior restraint order on the respondents. On the contrary, all news items related to the conduct of the applicants in public domain and not relate to any of their private life. Since the respondents have voluntarily stated that they will not publish in future the photograph of the minor child, the court is not concerned about the legality or otherwise of such publication in respect of the prayer made in the application.

25. But with reference to the truth or otherwise of the published materials, this Court is not inclined to render any findings less it may affect the outcome of the suit even before trial.

26. But with reference to the prior restraint on the respondents magazine, it is suffice to state that the people of India are entitled to know the public activities of any person who holds a public office. The Supreme Court in the case filed by Association for Democratic Reforms (cited supra) had clearly set out that the right of the citizens to know several details of a candidate who is standing on the election which includes assets held by him, his qualifications and antecedents of his life, including involvement in criminal case. Therefore, when a person stands in an election, he cannot deny right to know about several personal information which may include even antecedents of his life as held by the Supreme Court. Even a right to privacy of a public figure gets circumscribed when he stands in an Election as a candidate.

27. As held in R.Rajagopal's case (cited supra), in case of public officials, even the remedy for action for damages is not available with respects to their acts and conduct relevant to

discharge of their official duties. It was also held that there was no law empowering the State or its officials to prohibit or to impose a prior restraint upon the press. It has been indicated by the Supreme Court in Ajay Goswami's case (cited supra) that a news item cannot be read in isolation and the publication must be judged as a whole. Any attempt to stifle or fetter the criticisms will amount to political censorship and the Supreme Court has held such attempts as insidious and objectionable. The Supreme Court in the R.Rajagopal's case (cited supra), has clearly held that at times public figures have to ignore vulgar criticisms and abuses hurled against them. It was also held that when a person holding public office does within the four walls in his house does not totally remain the private matter. The public gaze cannot be avoided which is a necessary corollary of a person holding public office.

28. In the light of the factual matrix and binding legal precedents, the application in A.No.2919 of 2009 for vacating the interim order is allowed. Consequently, O.A.No.420 of 2009 seeking for a prior restraint is dismissed with costs. The costs quantified is Rs.10,000/- (Rupees ten thousand only) payable to the first respondent.