R

Reserved on : 10.09.2024
Pronounced on : 27.09.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.11480 OF 2024 (GM - RES)

BETWEEN:

SRI S.BASAVARAJ
S/O LATE M.SIDDARAMAIAH,
AGED ABOUT 59 YEARS,
SENIOR ADVOCATE AND MEMBER,
KARNATAKA STATE BAR COUNCIL,
HAVING OFFICE AT NO.11,
2ND FLOOR, JEEVAN BUILDINGS,
KUMARA PARK EAST,
BENGALURU – 560 001.

... PETITIONER

(BY SRI GOUTHAM A.R., ADVOCATE)

AND:

1 . BAR COUNCIL OF INDIA
NO.21, ROUSE AVENUE INSTITUTIONAL AREA,
NEAR BAL BHAWAN,
NEW DELHI - 110 002.
BY ITS SECRETARY.

2 . MR. VISHALA RAGHU,
AGED MAJOR,
CHAIRMAN,
KARNATAKA STATE BAR COUNCIL,
DR. AMBEDKAR ROAD,
BENGALURU – 560 001.

3 . MR. VINAY MANGLEKAR,
AGED MAJOR,
VICE CHAIRMAN,
KARNATAKA STATE BAR COUNCIL,
DR. AMBEDKAR ROAD,
BENGALURU – 560 001.

... RESPONDENTS

(BY R-1 SERVED AND UNREPRESENTED;
SRI UDAYA HOLLA, SR.ADVOCATE A/W
SRI T.G.RAVI, ADVOCATE FOR R-2 AND R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE PROCEEDINGS INITIATED BY THE R1 VIDE LETTER DATED 12/04/2024 BEARING NO. BCI.D.1712/2024 PASSED BY THE R1 ORIGINAL PRODUCED AND MARKED AS ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.09.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner, a practicing Advocate is knocking at the doors of this Court calling in question proceedings initiated by the 1st respondent in terms of its communication dated 12-04-2024 by which certain restrictions are imposed upon the practice of the petitioner.

2. Heard Sri A.R. Goutham, learned counsel appearing for the petitioner and Sri Udaya Holla, learned senior counsel appearing for respondents 2 and 3.

3. Facts, in brief, germane are as follows:-

The 1st respondent/Bar Council of India is a statutory body constituted under Section 4 of the Advocates Act, 1961 ('the Act' for short). Respondents 2 and 3 are Chairman and Vice-Chairman of the Karnataka State Bar Council, a Council constituted under Section 3 of the Act. The functions of the State Bar Council are as enumerated under Section 6 of the Act. Internal management and

self governance are the facets of the enumeration under Section 4. The functions of the Bar Council of India are defined under Section 7 of the Act which includes general supervision and control over the State Bar Council. Certain facts which triggered registration of crime against respondents 2 and 3 in which the present petitioner is the constituent require to be succinctly observed. In the month of August 2023, the Karnataka State Bar Council had organized a State Level Advocates Conference at Mysuru. Claiming certain expenditure to have been incurred which was not on record which resulted in misappropriation of funds, the petitioner registered a complaint against respondents 2 and 3. All these factors form a part of the order passed in Criminal Petition No.3666 of 2024.

4. After registration of the crime by the petitioner against respondents 2 and 3, it is the averment in the petition that forces inimical to him have dragged the petitioner, before the 1st respondent/Bar Council of India. When the cup of allegation, was brewing, it appears that a letter is sent by a former Chairman on 05-04-2024 to the Bar Council of India. Based upon the said letter, the 1st respondent passes the impugned order on 12-04-2024 and

communicates it to the Secretary, Karnataka Bar Council. Challenging the said order, the subject petition is preferred. By the time the petition was filed, a crime had been registered by the petitioner, which had become a crime in Crime No.37 of 2024 for offences punishable under Sections 34, 37, 120B, 403, 406, 409, 420, 465, 468, 471 and 477A of the IPC. The crime so registered in Crime No.37 of 2024 becomes the subject matter of Criminal Petition No.3666 of 2024. The communication of the Bar Council of India becomes the challenge in the subject petition.

5. The learned counsel for the petitioner Sri A.R. Goutham would vehemently contend that the Bar Council of India has no power to pass gag orders, as is passed in the case at hand. The fundamental right of the petitioner, right to speech is taken away by this order. Therefore, he would submit that, on the face of it, the impugned order being contrary to and violative of the fundamental right of the petitioner, should not be permitted to remain. He would seek the writ petition be allowed.

6. The 1st respondent/Bar Council of India, **though served remains unrepresented**.

7. The learned senior counsel for respondents 2 and 3 would submit that they have nothing to do with the squabble between the Bar Council of India and the petitioner, it is on a communication sent by the ex-Chairman of the Bar Council the impugned action is taken. Therefore, they would leave the decision to the Court.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. The issue lies in a narrow compass. The factum of the issue leading to registration of a crime in Crime No.37 of 2024 need not be gone into in detail. The observations made in the course of the order would suffice. This order revolves around a communication dated 12-04-2024 under which the order dated 08-04-2024 of the 1st respondent is communicated. It reads as follows:

"I have carefully considered the concerns raised in the letter dated 05-04-2024 sent by Shri Anand Kumar. A. Magadum, Ex-Chairman and Member, Karnataka State Bar Council, Anand" Manjunath Layout, Shivagiri, Dharwad, Karnataka regarding allegations of mismanagement and corruption in the expenditure incurred during the State Level Advocates Conference organized by the Karnataka State Bar Council in August 2023.

Given the gravity of the allegations and the potential impact on the reputation and integrity of the Karnataka State Bar Council, as well as the members involved, I deem it fit to take immediate action to address the matter in a fair and transparent manner.

In accordance with the principles of natural justice and procedural fairness, I hereby order the establishment of a 3 member Committee comprising Hon'ble Mr. Apurba Kumar Sharma, Senior Advocate, Chairman, Executive Committee, Hon'ble Dr. Amit Vaid, and Hon'ble Mr. Bhakta Bhushan Barik, member, Bar Council of India to conduct a thorough inquiry into the allegations raised. The Committee will investigate into the allegations of misconduct and defamation being circulated on social media platforms and WhatsApp groups against the Chairman and Vice-Chairman of the Karnataka State Bar Council. The Committee shall endeavour to identify the individuals responsible for disseminating false or defamatory information and recommend appropriate disciplinary action against them.

The Secretary of the Karnataka State Bar Council is directed to promptly furnish all relevant documents, receipts, and financial records pertaining to the expenditure incurred during the State Level Conference within a period of 15 days. This will facilitate a comprehensive audit of the financial transactions and help ascertain whether any irregularities or mismanagement have occurred.

I authorize the conduct of an audit here at the Bar Council of India by a qualified Chartered Accountant, to be appointed by the Committee to ensure the integrity and transparency of the audit process.

> **Pending the outcome of the inquiry proceedings, I hereby order a temporary restraint/gag on all Members of the Karnataka State Bar Council or any Advocate from making any further public statements or spreading any information related to the expenditure incurred during the State Level Conference. The Members of the Bar Council of Karnataka should endeavour to ensure the same. This measure is necessary to prevent further damage to the reputation and integrity of the Bar Council pending the completion of the investigation.**
>
> I trust that the Committee will conduct its inquiry diligently and impartially, adhering strictly to the principles of natural justice and procedural fairness. The Bar Council of India remains committed to upholding the highest standards of integrity and accountability within the legal profession, and I am confident that this inquiry will help restore public confidence in the Karnataka State Bar Council.
>
> The Bar Council of India will take all necessary steps to address the concerns raised in this matter.
>
> Sd/- Chairman,
> Bar Council of India."
>
> *(Emphasis added)*

This is an order from the Chairman, Bar Council of India communicated to the State Bar Council. It is directed in the said order that the Secretary of the State Bar Council to promptly furnish all relevant documents, receipts and financial records pertaining to the expenditure incurred within 15 days. The Bar Council of India has also authorized an audit to be conducted by a qualified Chartered Accountant. Pending outcome of the enquiry proceedings, the Chairman, Bar Council of India passes a

restraint/gag order on all members of the State Bar Council or any Advocate from making any further public statements or spreading any information related to the incident. This measure is sought to be opined as necessary to prevent further damage to the reputation and integrity of the Bar Council. As observed hereinabove, this is the communication of the Chairman's order dated 08-04-2024.

10. The issue now would be, whether the Chairman of the Bar Council of India is empowered to pass such gag orders against the fraternity of Advocates at large, ordering them not to speak anything. This, on the face of it, would amount to imposing a restraint on the speech of the Advocates. The direction, in the communication, is not against any particular individual, but against the community of Advocates itself, as the words deployed are "***I hereby order a temporary restraint/gag on all Members of the Karnataka State Bar Council or any Advocate from making any further public statements….***" The said gag order is the kernel of this conundrum.

11. Since the gag order is issued by the 1st respondent, I deem it appropriate to notice the power, if any, to issue such gag orders emanating from the statute. Section 4 deals with constitution of the Bar Council of India. It reads as follows:

> "**4. Bar Council of India**.—(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely:—
>
> (a) the Attorney-General of India, ex officio;
> (b) the Solicitor-General of India, ex officio;
> (c) one member elected by each State Bar Council from amongst its members.
>
> (1-A) No person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualifications specified in the proviso to sub-section (2) of Section 3.]
>
> (2) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as may be prescribed.
>
> (2-A) A person holding office as Chairman or as Vice-Chairman of the Bar Council of India immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be:
>
> Provided that such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), assumes charge of the office.
>
> (3) The term of office of a member of the Bar Council of India elected by the State Bar Council shall—

(i) in the case of a member of a State Bar Council who holds office ex officio, be two years from the date of his election or till he ceases to be a member of the State Bar Council, whichever is earlier; and

(ii) in any other case, be for the period for which he holds office as a member of the State Bar Council:

Provided that every such member shall continue to hold office as a member of the Bar Council of India until his successor is elected."

Section 7 deals with the functions of the Bar Council of India and it reads as follows:

"7. Functions of Bar Council of India.—(1)] The functions of the Bar Council of India shall be—

(a) * * *

(b) to lay down standards of professional conduct and etiquette for advocates;

(c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;

(d) to safeguard the rights, privileges and interests of advocates;

(e) to promote and support law reform;

(f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;

(g) to exercise general supervision and control over State Bar Councils;

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolments as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

(i-a) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(i-b) to organise legal aid to the poor in the prescribed manner;

(i-c) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;

(j) to manage and invest the funds of the Bar Council;

(k) to provide for the election of its members;

(l) to perform all other functions conferred on it by or under this Act;

(m) to do all other things necessary for discharging the aforesaid functions.

(2) The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of—

(a) giving financial assistance to organise welfare schemes for indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;

> (c) establishing law libraries.
>
> (3) The Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section."
>
> *(Emphasis supplied)*

Section 7(1)(g) empowers the Bar Council of India, to have general supervision and control over the State Bar Councils. General supervision and control, in the considered view of the Court, would not clothe with any power to the Bar Council of India, to pass such gag orders, restraining the speech of Advocates or even the members of the Bar Council, as it is general supervision and control and not control over the speaking of Advocates.

12. Under what circumstances gag orders can be issued and by whom, need not detain this Court for long or delve deep into the matter. The Apex Court in the case of ***ROMESH THAPPAR V. STATE OF MADRAS***[1] has held as follows:

> "12. We are therefore of the opinion that unless a law restricting freedom of speech and expression is directed solely

[1] *1950 SCC OnLine SC 19*

against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that Section 9(1-A) which authorises imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under clause (2), and is therefore void and unconstitutional."

The Apex Court in the case of ***TATA SONS LIMITED V. GREENPEACE INTERNATIONAL***[2], has held as follows:

"36. It must not be forgotten that the Court is, at this stage, merely weighing the arguments of parties without the benefit of rival evidence, made available after trial. While the plaintiff has been able to show that the relevant statutory clearances for the port project were available, at the same time, the defendant has placed on record the circumstance that the projects likely ecological adverse impact on Olive Ridley turtles has been spoken about by environmental experts, and is also subject matter of an intervention proceeding. The matter was also referred to the Central Empowered Committee. These justify the defendant's position that there is another opinion, counter to that of the statutory authorities. If that is the case, the game is an instance where the defendant creatively (or reprehensively, depending from what is the perspective of the viewer) seeks to highlight the plight of the Olive Ridley turtles. The use of the TATA mark and logo, as demonic, is, in that context, prima facie exaggerative or hyperbolic, in respect of matters of public concern.

37. This Court next proposes to discuss the plaintiff's argument that since the Internet domain or

[2] *2011 SCC OnLine Del 466*

medium has a wider viewership, and is more readily accessible than other modes on which speech is expressed, the likelihood of injury if injunction is refused, is greater, and it is consequently, a significant factor to be dealt with, while weighing balance of convenience and irreparable hardship. The most relevant judgment relied upon by the plaintiff for this purpose, is the one of the Ontario Court of Appeals, in **Barrick Gold Corp**. The Court had observed that:

> "Communication via the Internet is instantaneous, seamless, inter-active, blunt, borderless and far-reaching. It is also impersonal, and the anonymous nature of such communications may itself create a greater risk that the defamatory remarks are believed : see Vaquero Energy Ltd. v. Weir, [2004] A.J. No. 84 (Alta. Q.B.) at para. 17.
>
> [32] These characteristics create challenges in the libel context. Traditional approaches attuned to "the real world" may not respond adequately to the realities of the Internet world. How does the law protect reputation without unduly overriding such free wheeling public discourse? Lyrissa Barnett Lidsky discusses this conundrum in her article, "Silencing John Doe : Defamation and Discourse in Cyberspace", (2000) 49 Duke L.J. 855 at pp. 862-865:
>
> Internet communications lack this formal distance. Because communication can occur almost instantaneously, participants in online discussions place a premium on speed. Indeed, in many fora, speed takes precedence over all other values, including not just accuracy but even grammar, spelling, and punctuation. Hyperbole and exaggeration are common, and "venting" is at least as common as careful and considered argumentation. The fact that many Internet speakers employ online pseudonyms tends to heighten this sense that "anything goes," and some commentators have likened cyberspace to a frontier society free from the conventions and constraints that limit discourse in the real world. While this view is undoubtedly overstated, certainly the immediacy and informality of Internet communications may be central to its widespread appeal.
>
> Although Internet communications may have the ephemeral qualities of gossip with regard to accuracy, they are communicated through a medium more pervasive than print, and for this reason they have tremendous power to harm reputation. Once a message enters cyberspace, millions of people worldwide can gain access to it. Even if the message is posted in a discussion forum frequented

by only a handful of people, any one of them can republish the message by printing it or, as is more likely, by forwarding it instantly to a different discussion forum. And if the message is sufficiently provocative, it may be republished again and again. The extraordinary capacity of the Internet to replicate almost endlessly any defamatory message lends credence to the notion that "the truth rarely catches up with a lie". The problem for libel law, then, is how to protect reputation without squelching the potential of the Internet as a medium of public discourse [emphasis added].

[33] These characteristics differentiate the publication of defamatory material on the Internet from publication in the more traditional forms of media, in my opinion.

[34] It is true that in the modern era defamatory material may be communicated broadly and rapidly via other media as well. The international distribution of newspapers, syndicated wire services, facsimile transmissions, radio and satellite television broadcasting are but some examples. Nevertheless, Internet defamation is distinguished from its less pervasive cousins, in terms of its potential to damage the reputation of individuals and corporations, by the features described above, especially its interactive nature, its potential for being taken at face value, and its absolute and immediate worldwide ubiquity and accessibility. The mode and extent of publication is therefore a particularly significant consideration in assessing damages in Internet defamation cases.

… … …

[44] Secondly, the motions judge failed to appreciate, and in my opinion misjudged, the true extent of Mr. Lopehandia's target audience and the nature of the potential impact of the libel in the context of the Internet. She was alive to the fact that Mr. Lopehandia "[had] the ability, through the Internet, to spread his message around the world to those who take the time to search out and read what he posts" and indeed that he had "posted messages on many, many occasions". However, her decision not to take the defamation seriously led her to cease her analysis of the Internet factor at that point. She failed to take into account the distinctive capacity of the Internet to cause instantaneous, and irreparable, damage to the business reputation of an individual or corporation by reason of its interactive and globally all-pervasive nature and the characteristics of Internet communications outlined in paragraphs 28-33 above.

> [45] Had the motions judge taken these characteristics of the Internet more fully into account, she might well have recognized Barrick's exposure to substantial damages to its reputation by reason of the medium through which the Lopehandia message was conveyed…"

Does internet use, for posting or publishing libellous material, call for a different standard - especially in considering a plaintiff's claim for temporary injunction, is the question this Court has to address in the light of the plaintiff's submission. Now, speech (or expression) can be in any form - printed, spoken, articulated through drama, poetry, mime, parody, or the like. The speaker can choose any medium he wishes to subject to its availability. Thus, material can be published in books, newspapers, magazines, or the underlying work performed in theatre, or films, or recited, or even sung. It can be recorded, and digitally stored in discs, tapes, and played or performed (or viewed) publicly or privately, later. Similarly, the content of articles or the views of someone can be broadcast over radio, or television, and repeatedly broadcast. The viewership of each of these or the public accessing the content through these varied mediums can differ, depending on taste, cost, inclination, and so on. One generalization, which can safely be made, is that any publication or broadcast in the electronic media, especially on television, would have greater viewership, and more ready impact, since the effect is felt audio visually. In the case of printed matter, the reader has to go through, comprehend and assimilate the content.

38. In law, the essence of defamation is its tendency to through the defendant's statement, lower the plaintiff's reputation in the eyes of others. Four requirements for liability for defamation, are to be satisfied. The first is a false and defamatory statement must be made about another's reputation or business. What is necessary in a case of defamation is that the statement made is understood by others to be "of or concerning" the plaintiff. The publication should be made out to a third party. Generally, there is no liability if the defendant did

not intend the publication to be viewed by anyone other than the plaintiff. The plaintiff must establish some extent of fault or negligence on the part of the defendant in publishing the statements. A plaintiff who is a public figure will have to show that the statements were made out of malice. The burden of proof is less demanding in case of a private individual. The statements must result in actual or presumed damage.

39. It would be apparent from the above discussion that publication is a comprehensive term, embracing all forms and mediums - including the Internet. That an internet publication has wider viewership, or a degree of permanence, and greater accessibility, than other fixed (as opposed to intangible) mediums of expression does not alter the essential part, i.e. that it is a forum or medium. Even the Ontario Court of Appeals, in Barrick Gold, while recognizing the wider impact and reach of cyber libel, did not moot a different standard for granting injunction, as is sought in this case. The Court there ruled, pertinently, that Internet publication of a libel, because of the libel's wider reach and viewership, has to be considered as an additional factor, while assessing damages. However, the judgment is not an authority to say that internet libels or cyber libels call for application of a different injunction standard, other than the Bonnard rule. The Court does not discern any such discussion; adopting such an argument would result in the anomaly of discriminating between one medium of expression and another, in assessing whether to grant temporary injunction restraining publication - which is neither salutary, or as this Court suspects, Constitutionally sanctioned. In law, publication of a libel even to one is sufficient to impel a suit for damages; the wider reach of the publication or its greater accessibility is perhaps a ground for assessing the degree of damages. Formulating and adopting any other approach would result in disturbing the balance between free speech and the interest of any individual or corporate body in restraining another from discussing matters of concern, so finely woven in the texture of the Bonnard ruling.

… … …

43. In conclusion the Court notes that the rule in Bonnard is as applicable in regulating grant of injunctions in claims against defamation, as it was when the judgment was rendered more than a century ago. This is because the Courts, the world over, have set a great value to free speech and its salutary catalyzing effect on public debate and discussion on issues that concern people at large. The issue, which the defendant's game seeks to address, is also one of public concern. The Court cannot also sit in value judgment over the medium (of expression) chosen by the defendant since in a democracy, speech can include forms such as caricature, lampoon, mime parody and other manifestations of wit. The defendant may - or may not be able to establish that there is underlying truth in the criticism of the Dhamra Port Project, and the plaintiff's involvement in it. Yet, at this stage, the materials on record do not reveal that the only exception - a libel based on falsehood, which cannot be proven otherwise during the trial-applies in this case. Therefore, the Court is of opinion that granting an injunction would freeze the entire public debate on the effect of the port project on the Olive Ridley turtles' habitat. That, plainly would not be in public interest; it would most certainly be contrary to established principles. To recall the words of Walter Lippman

> **"The theory of the free press is not that the truth will be presented completely or perfectly in any one instance, but that the truth will emerge from free discussion"**

For these reasons, the Court is of opinion that the application for interim injunction, i.e. IA No. 9089/2010 has to fail. It is accordingly, dismissed."

(Emphasis supplied)

In the case of ***ANURADHA BHASIN V. UNION OF INDIA***[3], the Apex Court has held as follows:

> **"40. The study of the aforesaid case law points to three propositions which emerge with respect to Article 19(2) of the Constitution. (i) Restriction on free speech and expression may include cases of prohibition. (ii) There should not be excessive burden on free speech even if a complete prohibition is imposed, and the Government has to justify imposition of such prohibition and explain as to why lesser alternatives would be inadequate. (iii) Whether a restriction amounts to a complete prohibition is a question of fact, which is required to be determined by the Court with regard to the facts and circumstances of each case. [Refer to State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat [State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534] .]**
>
> … … …
>
> **160.2. We declare that the freedom of speech and expression and the freedom to practise any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate under Articles 19(2) and (6) of the Constitution, inclusive of the test of proportionality.**
>
> … … …
>
> **160.11. The power under Section 144 CrPC cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights."**
>
> *(Emphasis supplied)*

---

[3] *(2020) 3 SCC 637*

The Apex Court in the case of ***MOHAMMED ZUBAIR v. STATE OF NCT OF DELHI*** [4] has held as follows:

"…. … ….

21. Essentially, the allegations against the petitioner pertain to the tweets which have been put out by him. The three notices issued by Police Stations at Hathras Kotwali, Sikandra Rao, and Khairabad under Section 91 CrPC are verbatim the same. Having found from the record that the petitioner has been subjected to a sustained investigation by the Delhi Police, we find no reason or justification for the deprivation of the liberty of the petitioner to persist any further. Consequently, we are of the view that the petitioner must be released on interim bail in each of the FIRs which forms the subject matter of these proceedings, under Article 32 of the Constitution. The existence of the power of arrest must be distinguished from the exercise of the power of arrest. The exercise of the power of arrest must be pursued sparingly. In the present case, there is absolutely no justification to keep the petitioner in continued custody any further and to subject him to an endless round of proceedings before diverse courts when the gravamen of the allegations in each of the said FIRs arises out of the tweets which have been put out by the petitioner, and which also form the subject matter of the investigation being conducted by the Delhi Police in FIR 172/2022.

22. In Arnab Ranjan Goswami v. Union of India,[8] while dealing with the issue of a multiplicity of proceedings and harassment to the accused, a two judge bench of which one of us (Dr DY Chandrachud) was a part, held:

"32. Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The petitioner is a media journalist. The airing of views on television shows

[4] *2022 SCC OnLine SC 897*

> which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). **India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal**. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). **But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom**. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position."
>
> **(emphasis supplied)**

23. Further, this Court reiterated the role of courts in protecting personal liberty and ensuring that investigations are not used as a tool of harassment:

> "60. […] Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum - the district judiciary, the High Courts and the Supreme Court - to ensure that the criminal law does not become a weapon for the selective harassment of citizens. **Courts should be alive to both ends of the spectrum - the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment**. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

> 61. […] The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. **Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many**. We must always be mindful of the deeper systemic implications of our decisions."
>
> **(emphasis supplied)**

24. As regards the prayer for quashing of the FIRs, an essential aspect of the matter which must be noticed at this stage is that the investigation by the Special Cell of the Delhi Police in FIR No 172/2022 pertains to offences of a cognate nature to those which have been invoked in the FIRs which have been lodged before the Police Stations in Uttar Pradesh. Before this court can embark on an enquiry as to whether the FIRs should be quashed, it is appropriate that the petitioner pursues his remedies in accordance with the provisions of Article 226 of the Constitution and/or section 482 of the CrPC. However, a fair investigative process would require that the entirety of the investigation in all the FIRs should be consolidated and entrusted to one investigating authority. The overlap in the FIRs, emanating as they do from the tweets of the petitioner, only goes to emphasize the need for a consolidated, as opposed to piece-meal investigation by a diverse set of law enforcement agencies."

… … …

31. The counsel for the State of Uttar Pradesh attempted to persuade this Court that the petitioner must be barred from tweeting when he is on bail. Section 438(2) stipulates that the High Court or the Court of Sessions can direct a person to be released on conditional bail. The provision provides that the Court shall impose conditions in the context of the facts of a particular case. The list of illustrative bail conditions stipulated in Sections 437 and 438 relate to the need to ensure a proper investigation and fair trial10 or to prevent the accused from committing an offence similar to the one he is suspected of11, or in the interest of justice12. The phrase 'interest of justice' has been interpreted in prior judgments of this Court where it has been held that the discretion of the Court in imposing

conditions on bail must be exercised judiciously and to advance a fair trial. [Kunal Kumar Tiwari v. The State of Bihar, (2018) 16 SCC 74; Dataram Singh v. State of Uttar Pradesh, (2013) 15 SCC 570; Sumit Singh v. State (NCT of Delhi), (2013) 15 SCC 570.] The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed. In the decision in Parvez Noordin Lokhandwalla v. State of Maharashtra, [(2020) 10 SCC 77], a two-Judge Bench of this Court, of which one of us (Dr DY Chandrachud) was a part, it was observed that bail conditions must not be disproportionate to the purpose of imposing them:

> "21. […] The conditions which a court imposes for the grant of bail - in this case temporary bail - have to balance the public interest in the enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case."

32. Merely because the complaints filed against the petitioner arise from posts that were made by him on a social media platform, a blanket anticipatory order preventing him from tweeting cannot be made. A blanket order directing the petitioner to not express his opinion - an opinion that he is rightfully entitled to hold as an active participating citizen - would be disproportionate to the purpose of imposing conditions on bail. The imposition of such a condition would tantamount to a gag order against the petitioner. Gag orders have a chilling effect on the freedom of speech. According to the petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news and misinformation

> **in this age of morphed images, clickbait, and tailored videos. Passing an order restricting him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession.**
>
> *(Emphasis supplied)*

Further, in the case of ***BLOOMBERG TELEVISION PRODUCTION SERVICES INDIA (P) LTD. V. ZEE ENTERTAINMENT ENTERPRISES LTD***[5] the Apex Court holds as follows:

> **"5. The three-fold test of establishing (i) a prima facie case, (ii) balance of convenience and (iii) irreparable loss or harm, for the grant of interim relief, is well-established in the jurisprudence of this Court. This test is equally applicable to the grant of interim injunctions in defamation suits. However, this three-fold test must not be applied mechanically,[Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622, para 38] to the detriment of the other party and in the case of injunctions against journalistic pieces, often to the detriment of the public. While granting interim relief, the court must provide detailed reasons and analyze how the three-fold test is satisfied. A cursory reproduction of the submissions and precedents before the court is not sufficient. The court must explain how the test is satisfied and how the precedents cited apply to the facts of the case.**
>
> **6.** In addition to this oft-repeated test, there are also additional factors, which must weigh with courts while granting an ex-parte ad interim injunction. Some of these factors were elucidated by a three-judge bench of this Court in Morgan

[5] *2024 SCC OnLine SC 426*

Stanley Mutual Fund v. Kartick Das, [(1994) 4 SCC 225] in the following terms:

> **"36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—**
>
> **(a) whether irreparable or serious mischief will ensue to the plaintiff;**
>
> **(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;**
>
> **(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;**
>
> **(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;**
>
> **(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.**
>
> **(f) even if granted, the ex parte injunction would be for a limited period of time.**
>
> **(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court**."

7. 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 Tamil Nadu, (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. [[1891] 95 All ER 965] 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] 1 All ER 853] The Court of Appeal in Bonnard (supra) held as follows:

> "…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."
>
> (emphasis supplied)

8. In Fraser v. Evans, [[1969] 1 Q.B. 349] the Court of Appeal followed the Bonnard principle and held as follows:

> "… 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. Ferryman, [1891] 2 Ch. 269). '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. …"**
>
> **(**emphasis supplied)

9. 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.

10. Increasingly, across various jurisdictions, the concept of 'SLAPP Suits' has been recognized 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.9 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.

11. The order of the trial Judge does not discuss, even cursorily, the prima facie strength of the plaintiff's case, nor does it deal with the balance of convenience or the irreparable hardship that is caused. The trial Judge needed to have analysed why such an ex parte injunction was essential, after setting out the factual basis and the contentions of the respondent made before the trial Judge. The trial Judge merely states, in paras 7-8, that the court has "gone through the record available as on date" and noticed certain precedents where an ad-interim injunction was granted. Without even cursorily dwelling on the merits of the plaint, the ad-interim injunction granted by the trial Judge amounts to unreasoned censorship which cannot be countenanced.

12. Undoubtedly, the grant of an interim injunction is an exercise of discretionary power and the appellate court (in this

> case, the High Court) will usually not interfere with the grant of interim relief. **However, in a line of precedent, this Court has held that appellate courts must interfere with the grant of interim relief if the discretion has been exercised "arbitrarily, capriciously, perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions**."10 The grant of an ex parte interim injunction by way of an unreasoned order, definitely falls within the above formulation, necessitating interference by the High Court. This being a case of an injunction granted in defamation proceedings against a media platform, the impact of the injunction on the constitutionally protected right of free speech further warranted intervention."
>
> *(Emphasis supplied)*

The High Court of Delhi in the case of ***AJAY KUMAR V. UNION OF INDIA***[6], has held as follows:

> **"5.** Merely because a publication pertains to a Court proceeding this Court cannot come to a conclusion that the publication either tends to impair the impartiality of the Court or affects the ability of the Court to determine the true facts**. One has to carefully see the nature of the publication and find out as to the content of the publication will cause prejudice to the trial of a case or not. Prejudice by a publication can be of two categories one which tends to impair the courts impartiality and the other which prejudices the court's ability to determine true facts.** The Petitioner has not revealed the nature of the Writ Petition which has been filed by his mother and also the prayers sought for in the said writ Petition. The Petitioner has also not filed anything relating to the pending consumer case. The contents of the newspaper does not, in the opinion of this Court, indicate any kind of apprehension or danger or prejudice that can be caused to the Petitioner or his mother.

[6] *2024 SCC OnLine Del 579*

> **6. It is well settled that gag orders should be passed only when it is necessary and to prevent substantial risk to fairness of a trial. In the absence of any material, this Court is unable to come to the conclusion that the guidelines laid down by the Apex Court in Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603, has been, in any way, violated.** This Court is, therefore, inclined to dismiss the present Writ Petition with cost of Rs. 10,000/- to be paid by the Petitioner to the Armed Forces Battle Casualty Welfare Fund for wasting the judicial time of this Court."
>
> *(Emphasis supplied)*

What would unmistakably emerge from the afore-quoted judgments of the Apex Court or that of the High Court of Delhi is that, gag orders or order of restraint or injunction should be passed only when it is necessary to prevent substantial risk, to fairness of a trial. In the absence of any material, the Court also cannot pass any restraint/gag order. The Chairman of the Bar Council of India ostensibly cannot pass any such gag order which takes away the fundamental right of any Advocate. The power of the Courts either competent civil Court or the constitutional Court cannot be permitted to be usurped by the Chairman of the Bar Council of India, as is done in the case at hand.

13. The power of passing gag order, exercised by the 1st respondent on all the Advocates on a particular topic, is *de hors* such power that can be exercised under the general supervision and control of the State Bar Council. Issuance of gag order is not a power that can be inferred from Section 7(1)(g) of the Act. Therefore, the very order directing restraint on an Advocate speaking is, on the face of it, contrary to law, and is unsustainable. The unsustainability of the order would lead to its obliteration.

14. The 1st respondent though served, has remained absent throughout the hearing of this petition till the day it was pronounced. Therefore, the petition is answered on the contentions and averments in the petition.

15. For the aforesaid reasons, the following:

O R D E R

(i) Writ petition is allowed.

(ii) Proceedings initiated by the 1st respondent by order dated 08-04-2024 communicated through letter dated 12-04-2024 stand quashed.

Consequently, I.A.No.1 of 2024 also stands disposed.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:MJ