

Team Code:

IN THE
HON'BLE SUPREME COURT OF SARVIA
(FILED UNDER ARTICLE 32 OF THE CONSTITUTION OF SARVIA)

IN THE MATTER OF:

SHRI. MADHUKAR VATS

(Petitioner)

v.

UNION OF SARVIA & ORS.

(Respondent)

Memorial submitted to
Memorial Filed on behalf of Petitioner
Counsel appearing on Behalf of Petitioner

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LIST OF ABBREVIATIONS

A.I.R.	All India Reporter
Art.	Article
ASP	All Sarvian Party
Co.	Company
Ed.	Edition
Hon'ble	Honourable
Ltd.	Limited
Mgt.	Management
Ors.	Others
SC	Supreme Court
SCC	Supreme Court Cases
Sr.	Senior
&	And
U.O.I	Union of India
v./vs.	Versus

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STATEMENT OF JURISDICTION

It is humbly submitted that the petitioner has approached the Hon'ble Supreme Court of Sarvia invoking its jurisdiction under Article 32, 129 and 142 of the Constitution of Sarvia.

STATEMENT OF FACTS

Salerno is a state in the Union of Sarvia. The All Sarvian Party is the ruling party at the center while the Presidential Party is the major opposition. Two major media houses operated in Salerno namely ANB News Ltd and JanavaniNews. ANB Group was run by the ANB Industries Ltd. ANB Industries Ltd had majority stake in the ANB News Ltd. but had only 3 directors in the board of total 10 directors. Sh.Madhukar Vats, leader of ASP was the promoter and largest shareholder of ANB Industries Ltd.

Sh. D. Kamal founded Janavani and also authored the 1st election manifesto of Presidential Party in 1967. Though Mr. Kamal never held a position in the Party but he was considered the guiding light. Janavani emerged as single largest Hindi newspaper in last 3 decades. In the year 2000, a Hindi news channel named Janavani News was established by Mr. Ram Prasad son of Mr. D. Kamal who holds the position of chief editor till today.

Janavani has been at the forefront of exposing corrupt practices in the Union of Sarvia by ASP. In Oct.2011, Janavani published details of coal block allocation and lease renewal by the Government in Dec.2010. The documents published by Janavani *prima facie* revealed that coal block allocation was allowed not as per the auction method and that the minimum qualification for coal block allocation was relaxed for certain companies which were otherwise not eligible such as ANB Collieries Ltd, Natalie Collieries Ltd, Coal-Explo Sarvia Ltd.

ANB Collieries Ltd. was a publically held co. listed with NSE. ANB Industries Ltd. held a majority stake in ANB Collieries Ltd and all the companies of ANB Group used to spend 70% of its total ad.budget to ANB news Ltd. After publication of allegations regarding adoption of corrupt practices by ANB Collieries Ltd. in coal block allocation, a FIR was lodged against MD of ANB Collieries Ltd. as well as Mr. Vats. Union of Sarvia appointed an empowered ministerial committee to investigate into the scam. While the investigations were pending and the ministerial committee was yet to submit its report, a series of articles as well as news reports were broadcasted on *Janavani & Janavani News* respectively.

On 13-1-12, a charge sheet was filed by police against Mr. Vats as well as all the other concerned sr. mgt. officials of various companies. On 17-1-12, *Janavaninews* broadcasted interview of Coal Sec. (Retd) as well as CAG (Retd.) wherein they indicated that the coal block

allocation scam could have caused loss of about 18000 Crores to the State Exchequer. Next Morning, Janavani carried a front page article “ANB Group involved in largest scam in history of Sarvia”. Within next 3 weeks shares of ANB Industries and ANB Collieries Ltd dropped by 65% & 87%. Mr.Vats filed a complaint against Mr.Kamal for defamation. He also filed WP No. 1328 of 2012 before the SC praying for license cancellation of *Janavani&Janavani News*.

All the debenture holders of ANB Industries Ltd, headed by All Sarvia ANB Industries Debenture Holders Association (Regd.) filed WP No. 2642 of 2012(Civil) before the SC in which Petitioner prayed for direction to ANB Industries Ltd, Mr. Madhukar Vats and Securities Exchange Board of Sarvia (SEBS) to ensure timely repayment to all the debenture holders. On 11-3-12, SC issued notice to SEBS, Union of Sarvia and the other parties to file an affidavit regarding proposal to secure the interest of all the debenture holders. ANB Industries Ltd was directed to submit a ‘without prejudice’ proposal to SEBS within two weeks.

As the WP No. 2642 of 2012 was sub-judice, Advocate for ANB sent the proposal to ensure repayment of all the debenture holders to the Advocate for SEBS& Union of Sarvia vide an E-Mail and also under sealed cover letter. Next morning, *Janavani* published news ‘*Yet another attempt by ANB to defraud Sarvia*’. It contained all the details of security offered by ANB. The Sr. counsel for ANB mentioned the matter before SC on 18-3-12 objecting to the publication of ‘without prejudice-confidential’ proposal on sub-judice matter. Mr. Kamal published that it was necessary in public interest to inform the debenture holders about the nature of proposal made by ANB– and that publication of news article didn’t interfere with administration of justice. Mr.Vats filed IA No. 3 of 2012 in WP No. 2642 of 2012 praying for guideline formulation for print & electronic media while reporting sub judice matters.

ABN News reporters carried a sting recording the conversation of Dy. Editor of *Janavani News* stating that it won’t be carry any story about coal scam from any co. ensuring 70% of its total ad. Revenue to *Janavani & Janavani News*. Mr. Vats called for a press conference and released the sting video. An FIR was lodged & Mr. Kamalwas arrested. Then, Mr. Kamal filed WP No.3141 of 2012 for license cancellation of ANB News for broadcast of the alleged clipping pending investigation in the matter of alleged scam in coal block allegation and that the Sting violated rt. to privacy. All the aforesaid matters were clubbed(with IA 3) to be heard by the Hon’ble Chief Justice of SC of Sarviaas it involved significant questions of law and public importance.

ISSUES PRESENTED

1. WHETHER THE WRIT PETITIONS FILED BY MR. MADHUKAR VATS ARE MAINTAINABLE OR NOT?
2. WHETHER THE LICENSE OF JANAVANI AND JANAVANI NEWS IS LIABLE TO BE CANCELLED UNDER THE APPROPRIATE LAW?
3. WHETHER THE HON'BLE SUPREME COURT OUGHT TO FORMULATE THE NECESSARY GUIDELINES FOR REPORTING OF CASES PENDING BEFORE THE COURTS OR REGARDING MATTERS WHICH ARE SUB-JUDICE?
4. WHETHER THE REVERSE STING OPERATION CARRIED OUT BY ANB NEWS VIOLATES RIGHT TO PRIVACY AND AMOUNTS TO INTERFERENCE WITH ADMINISTRATION OF JUSTICE?

SUMMARY OF ARGUMENTS

1. WHETHER THE WRIT PETITIONS FILED BY MR. MADHUKAR VATS ARE MAINTAINABLE OR NOT?

It is humbly submitted that the petitioner's fundamental rights, namely, right to fair trial and presumption of innocence have been violated by the respondent's excessive media coverage as the administration of justice has been prejudiced. The media reporting has created an environment of unjustified hostility towards the petitioner, thus hampering the fair trial. Further, the alternative remedies available are ineffective and insufficient therefore they cannot be availed. . The petition has been filed in time, questions of facts are not involved and fundamental rights are sought to be enforced. Thus the writ petition is maintainable.

2. WHETHER THE LICENSE OF JANAVANI AND JANAVANI NEWS IS LIABLE TO BE CANCELLED UNDER THE APPROPRIATE LAW?

It is humbly submitted that the right to freedom of expression guaranteed under Art.19(1)(a) is subject to reasonable restrictions provided under Art.19(2) with regard to defamation and contempt of court. Since there is inadequacy of provisions under the appropriate to law to deal with cancellation, the Supreme Court, in exercise of its constitutional obligations, can provide a solution till the legislature performs its role. Further, both the court and the petitioner are the affected parties as the prejudice has been caused to administration of justice. Therefore to set a deterrent, the court can cancel the license of Janavani.

3. WHETHER THE HON'BLE SUPREME COURT OUGHT TO FORMULATE THE NECESSARY GUIDELINES FOR REPORTING OF CASES PENDING BEFORE THE COURTS OR REGARDING MATTERS WHICH ARE SUB-JUDICE?

It is humbly submitted that this Hon'ble SC ought not to formulate any guidelines for reporting of cases pending before the courts or regarding matters which are sub-judice. It is humbly put forth that formulation of the same shall be detrimental in the interest of justice on two major aspects; Firstly, it tends to encroach upon the right of freedom of media which is a fundamental right under freedom of speech and expression. Secondly, the same is not

required as pre-existing mechanisms are sufficient to check abuse of power by media along with self-regulation.

4. WHETHER THE REVERSE STING OPERATION CARRIED OUT BY ANB NEWS VIOLATES RIGHT TO PRIVACY AND AMOUNTS TO INTERFERENCE WITH ADMINISTRATION OF JUSTICE?

It is humbly submitted that in the present case there has been no infringement of privacy by the sting operation so conducted by ABN News, nor is there any interference in the administration of justice. The same was done in the best interest of the society and public good.

ARGUMENTS ADVANCED

1. THAT THE WRIT PETITIONS FILED BY MR. MADHUKAR VATS ARE MAINTAINABLE

It is humbly submitted that maintainability of writ petition for enforcement of fundamental rights can be questioned only on the ground of laches, where disputed questions of facts are involved or enforcement of private or contractual rights is sought to be enforced. None of the exceptions mentioned above exists in the present case. The petition has been filed in time, questions of facts are not involved and fundamental rights are sought to be enforced.

1.2. **VIOLATION OF FUNDAMENTAL RIGHTS** - The petitioner is an accused person facing trial before a court of law. He has right of equality under Art. 14 and entitled to trial by a fair and impartial tribunal¹ and cannot be deprived of life or personal liberty except under procedure established by law. Impartiality and fairness are inherent values of Art. 14 and 21. In *Zahira Habibullah Sheikh v. State of Gujarat*,² popularly known as the *Best Bakery Case*, the Supreme Court of India explained that a “fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor, atmosphere of judicial calm uninfluenced newspaper dictation or popular clamour.”

1.3. **PERSISTENT ADVERSE MEDIA REPORT VIOLATES RIGHTS OF THE ACCUSED:** It is submitted that sustained campaign of adverse publicity affects these rights as the judge; prosecutor and witnesses may get influenced. Also emotional hostility against the accused is generated by such actions. All this has affected the petitioner’s presumption of innocence.³ Even the Supreme Court of India has recognized presumption of innocence as a human right in *Ranjitsing Brahm Jeetsing Sharma v. State of Maharashtra*.⁴

It is the function of a court when a case is still not finally decided against an accused person to arrive at the truth and that it is not for the Press to hold the trial even for the

¹Article 10, UDHR

²(2004) 4 SCC 158

³Supra Note 1; Art. 14(2) of ICCPR

⁴(2005) 5 SCC 294

most heinous crime before the Court has given the final verdict.⁵When the existence of that fact is in dispute in pending case and its existence is yet to be determined, it is likely to prejudice a fair trial of the case when the assertion assumes the shape of an opinion of persons unconnected with the case.⁶

- 1.4. **ALTERNATIVE REMEDY DOES NOT BAR ISSUE OF WRIT UNDER ART. 32:**When a breach of fundamental right is made in the petition there the provisions of other remedies do not stand in the way of exercising power under Art. 32 of the Constitution of India. It was held in the case of *Coffee Board v. Jt. Commercial Tax Officer*⁷. It is wholly erroneous to assume that before the jurisdiction of the Supreme Court could be invoked the applicant must either establish that he has no other remedy adequate or otherwise or that he has exhausted such remedies as the law affords and has yet not obtained proper redress, for when once it is proved to the satisfaction of the Supreme Court that by state action the fundamental right of a petitioner under Art. 32 has been infringed, it is not only the right but also the duty of the Supreme Court to afford him by passing appropriate order in that behalf.⁸

The mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Art.32 if the existence of a fundamental right and breach, actual or threatened, of such right and is alleged prima facie established on the petition.⁹

- 1.5. **THE REMEDIES AVAILABLE IN THE RELEVANT LAWS ARE INSUFFICIENT AND INEFFECTIVE**

It is put forth that the Press and Registration of Books Act, 1867 only makes provisions for punishing printers and publishers for violations of that Act which only includes publishing without declaration of names of printer and publisher, submission of wrong information etc. It does not make any provision for cancellation of declaration on other

⁵*Shamim Rehmaneyv. Zinat KausarDehalvi*, 1971 Cr.L.J. 1586 at p. 1588(All.)

⁶*Lakhan Singh v. Balbir Singh*, AIR 1953 All. 342 at p.343

⁷AIR 1971 SC 870 at p. 877, ¶ 16

⁸*KharakSingh v. State of U.P.*, AIR 1963 SC 1295

⁹*KK Kochunniv. State of Madras*, AIR 1959 SC 725

grounds contained in Art.19 (2) nor for contempt of court by prejudicing impartial trial. Also, the Press Council Act, 1978 allows only warning, admonition or censuring of the newspaper or the newspaper agency. It has no powers to cancel the declaration.

Even though The Cable Television Networks (Regulation) Act, 1995 under Section 19 and 20 authorizes the Central Govt. to prohibit transmission of certain programs and cable television networks in public interest. The petitioner cannot expect a fair and impartial decision from the Govt. The reason for not approaching the Central Govt. is that the guilt of the petitioner has assumed the shape of a political question as the petitioner is the leader of the ruling party and even a bona fide and just request is likely to be interpreted by the opposition and the media as politically motivated favour and gagging of the media. Therefore the petitioner can expect no relief from the Central Govt. under the mentioned Act. Where the power to grant lease was exercised formally by authority set up under the rule but effectively and for all purposes by the CM of the state, an appeal to state gov't. would be ineffective and writ petition in such case maintainable.¹⁰

1.6. RELIEF IS BEING SOUGHT AGAINST THE STATE: It is submitted that the relief claimed by the petitioner is not a relief claimed against a private party only. He is aggrieved by inadequacy of law laid down by the Parliament and ineffectiveness of the machinery for enforcement of such laws in the circumstances of the present case as the law and machinery are not ensuring protection of fundamental rights of the petitioner as submitted in foregoing paragraph. He has a grievance against the Parliament and the Central gov't. and both these institutions are 'state' within the meaning of Art. 12 of the Constitution.

1.7. THE SUPREME COURT HAS ENOUGH POWERS AND PRECEDENTS TO GRANT RELIEF IN THE PRESENT CASE

1.7.1. Art.32 itself is a fundamental right and the Supreme Court, as guardian of the fundamental rights, has the powers for enforcement of those rights through issue of writs. Art.129 has established the Supreme Court as a court of record with inherent powers to punish for contempt. Besides, this Hon'ble Court has inherent powers

¹⁰*Ram & Shyam co. v. State of Haryana*, AIR 1985 SC 1147

issue orders to do complete justice under Art. 142. This constitutional provision empowers the court to frame remedies for ensuring justice in particular cases and ordinary law does not and cannot place constraints on its constitutional powers. The Supreme Court in exercise of its constitutional powers can overcome inadequacies and weakness of law and procedure, coin new remedies and add parties to case where need be.

1.7.2. Views of the Supreme Court reiterated in *Sushil Kumar Senv. State of Bihar*¹¹ and *State of Punjab v. Shamlal Murari*¹², conveniently digested by subsequent judgment in *Kailashv. Nanhku*¹³, the relevant portion of which reads as follows: “All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the stature, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.”

1.7.3. The observations made by Krishna Iyer, J. in *Sushil Kumar Senv. State of Bihar* are pertinent: “The mortality of justice at the hands of law troubles a judge’s conscience and points an angry interrogation at the law reformer. The procedural law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable.. Justice is the goal of jurisprudence -procedural, as much as substantive.”¹⁴

1.7.4. In *State of Punjab v. Shamlal Murai* the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as

¹¹ (1975) 1 SCC 774

¹²(1976) 1 SCC 719

¹³(2005) 4 SCC 480

¹⁴ Supra Note 11, p. 777, ¶ 5-6

mandatory on the principle that: “Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”[p. 720]

1.7.5. It is submitted that where the circumstances warrant the demand of fairness and impartiality, the Supreme Court can give appropriate orders to do complete justice under Art. 142. *In State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*¹⁵, the apex court held that Supreme Court and High Courts can order CBI probe without the consent of the state Govt. and it is not violative of the federal structure. In a federal structure, it is the duty of the courts to uphold the constitutional values and enforce the constitutional limitations as the ultimate interpreter of the constitution. Judicial review is itself the basic feature and no restriction can be imposed on the power of the Supreme Court and High Courts with regard to the enforcement of the fundamental rights which is inherent and cannot be extinguished by constitutional or statutory provisions. Previously, in cases like *C.A. Gopalan v. Inspector General of Police*,¹⁶ *State of Bihar v. Ranchi Zila Samiti Party*,¹⁷ the Supreme Court had exercised its power under Art. 32, 129 and 142¹⁸, overriding the ordinary law, to order C.B.I. probe without the consent of the concerned state govt. despite the fact that investigation fell within the purview of the state police.

1.7.6. It is submitted that the basic issues raised and reliefs claimed relate to right of an accused to have a fair trial and not to be prejudiced by opinions and emotions generated by the press, a prayer for cancellation of license of a newspaper and TV channel persistently violating above rights & working to the prejudice of a fair administration of justice as laws & machinery on the subject are inadequate and ineffective, prayer for guidelines on an issue having a direct bearing on fair and impartial administration of justice and right of privacy. All these rights are granted by constitutional provisions of Art. 14, 21, 22 and 32; they would also determine the

¹⁵ AIR 2010 SC 1476

¹⁶ 1993 Cr LJ 1543(Ker)

¹⁷ AIR 1996 SC 1515

¹⁸ Constitution of India, 1949

scope of Art. 19(1)(a) and of Art. 19(2), inherent powers of the Supreme Court under Art.129, 142 and 144. The petitioner is seeking enforcement of fundamental rights, imposition of restrictions and laying down guidelines on fundamental rights and invokes jurisdiction of the Supreme Court vested in it under Art. 32 and other provisions of the constitution. The Writs are thus maintainable.

2. THAT THE LICENSE OF JANAVANI AND JANAVANI NEWS IS LIABLE TO BE CANCELLED UNDER THE APPROPRIATE LAW.

2.1. THE PROVISIONS OF THE PRESS AND REGISTRATION OF BOOKS ACT AND PRESS COUNCIL ACT ARE INADEQUATE WHILE THOSE UNDER CABLE TELEVISION NETWORKS (REGULATION) ACT ARE ILLUSORY.

2.1.1. It is humbly submitted that the newspapers are governed by Press and Registration of Books Act, 1867 and the Press Council Act, 1978 and the rules made there under. Sec 5¹⁹ provides for the rules as to publication of newspapers Sec. 15(1) provides same punishment for printing or publishing newspaper without conforming to rules. Sub section (2) provides that where an offence is committed in relation to a newspaper under sub-section (1), the magistrate may, in addition to the punishment imposed under the said sub-section, also cancel the declaration in respect of the newspaper. The Press Councils Act, 1978 among other objects and functions of the council provides also provides to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards.²⁰ The Council can censure a newspaper, news agency or journalist for violation of standards of journalistic ethics or professional misconduct.²¹

2.1.2. Above provisions show that for non-conformity with the rules, a magistrate can cancel the declaration which is equivalent to cancellation of a license and the newspaper cannot be published when declaration has been cancelled.

2.1.3. It is submitted that the press operates under freedom of speech and expression granted by Article 19(1)(a) of the constitution and is subject to restrictions imposed

¹⁹ Press and Registration of Books Act, 1867

²⁰ Press Councils Act, 1978, § 13(2)(b).

²¹ Id., Sec. 14

under Article 19(2) . The restrictions include defamation and contempt of court. Commenting on issues which are sub-judice and trying to influence the outcome or course of justice amounts to contempt. The Hon'ble Supreme Court being Court of Record as per Article 129 is invested with inherent powers to punish for contempt. Article 142 invests the Supreme Court with powers to pass such order as is necessary for doing complete justice in any case or matter pending before it including for punishment of contempt. Cancellation of declaration can appropriately be one such action.

2.1.4. In *E.S.P. Rajaram v. Union of India*²², a five judge constitutional bench of the Supreme Court examined in detail the scope and extent of the power vested in the apex court under Art.142 of the Constitution. The court has held that under Art. 142 the SC has power to pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before it. The provision contains no limitation regarding the causes or the circumstances in which the power can be exercised nor does it lay down any condition to be satisfied before such power is exercised. The exercise of the power is left completely to the discretion of the highest court of the country and its order or decree is made binding on all the courts and tribunals throughout the territory of India.

2.1.5. As for the question of withdrawal of license of the news channel, Janvani news, the following provisions of Cable Television Networks (Regulation) Act, 1995 need to be taken into consideration. Sec. 3 provides that a cable TV network shall not be operated except after registration. As per Sec. 4 registration can be applied for to the registering authority. Central govt. may prescribe rules having regard to contempt of court, defamation etc.²³ Further, as per Sec. 4(7) The Central Government may suspend or revoke the registration granted if the cable operator violates the terms of registration. Also, clause 6 of The Cable Television Networks Rules, 1994 provides for a program code containing express restrictions like defamation[clause 6(1)(d)], half-truths²⁴ and contempt of court.[clause 6(1)(f)]

²² AIR 2001 SC 581

²³ Cable Television Networks (Regulation) Act, 1995, § 4(6)

²⁴ § 6(1)(d)

- 2.1.6. The Act further makes the following provisions to prohibit transmission of certain programmes²⁵ and operation of cable television network[Sec.20] in public interest, where the power of such prohibition is vested with an authorized officer and Central Govt. respectively.
- 2.1.7. It is humbly submitted that the provisions under The Press and Registration of Books Act are inadequate as the act does not provide for cancellation of declaration on any ground other than a few violations regarding non-publication of name of the printer or publisher, furnishing of wrong information in the declaration etc. It has no provision on what punishments or restrictions can be imposed on the grounds mentioned Article 19 (2) of the constitution. A stark contrast is The Cable Television Network Regulation (Regulation) Act which makes provision for eligibility criteria, possible restrictions and prohibition of a program or operation of a network on the grounds provided in Article 19(2) and allows operation of several other acts. This, is in spite of the fact that press and television, both work under the freedom granted under Article 19(1)(a) and are subject to same kind of restrictions under Article 19(2). Until proper provisions are made by the Parliament, imposing any restriction or penalty on the basis of Article 19(2) by the Supreme Court in exercise of jurisdiction under Article 32, 129 and 144 would be perfectly justified.
- 2.1.8. In *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers &Ors.*,²⁶ The Supreme Court of India while dealing with an issue made the observation that in exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its Constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field.
- 2.1.9. It is put forth that the powers are vested in the Central Government to cancel registration on a variety of grounds including contempt of court. The question is how the Supreme Court can assume such powers. The Contempt of Courts Act though codifies the law on contempt, it does not take away the inherent powers of the High Court and the Supreme Court provided under Article 129 and 215.

²⁵ Supra Note 23, § 19

²⁶ (2011) 8 SCC 568

Besides, Supreme Court is the guardian of fundamental rights of the citizens and of the administration of justice in the country. The Supreme Court can take *suo-moto* cognizance of any publication or broadcast that interferes with impartial administration of justice. Though powers are vested in the Central Government to take a decision on cancellation or registration or prohibition of a network, it cannot be sole judge in matters of contempt of court and must work under guidance and directions of the Supreme Court where matter concerns contempt. Once the Supreme Court decides that the publication and broadcast impair administration of justice or are contemptuous, it can issue directions to the central government for cancellation of registration.

2.1.10. It is also submitted that the petitioner cannot expect an impartial decision from the Central Govt. as any decision taken by it to ban the Janavani News will become a political issue and take a color that it is gagging the media to favor a member of its party. Thus, the remedy provided under The Cable Television Network is illusory and would be ineffective.

2.1.11. Where the circumstances warrant, the Supreme Court, in exercise of its constitutional jurisdiction under Art. 32, 129 and 142, can override the ordinary law and issue appropriate directions. For instance, the High Courts and the Supreme Court directed investigation into offences by the CBI without any consent of the state govt. even though investigation fell within the purview of state police. Consent of the State Government was held not to be necessary, if a Court orders such an investigation.²⁷ Where the Patna High Court directed the C.B.I. in the matter of Animal Husbandry Scandal to the tune of Rs. 500 crores in Bihar, the Supreme Court held that exercise of such power under Article 226 of the constitution was valid.²⁸ Likewise, the Supreme Court of India in *Union Carbide Corporation v. Union of India*²⁹ exercising its powers under Article 136 and 142 for doing complete justice, withdrew the civil and criminal case to itself from district court and effected a settlement between the parties.

²⁷ *C.A. Gopalan v. Inspector General of Police*, 1993 Cr LJ 1543(Ker)

²⁸ *State of Bihar v Ranchi ZilaSamiti Party*, AIR 1996 SC 1515

²⁹ (1991) 4 SCC 584

Thus, on similar logic, it is submitted that this Hon'ble Court in exercise of its inherent powers can grant relief as the same is inadequately covered in the press act and where remedy is illusory as in case of the cable television network legislation.

2.2. THE ADMINISTRATION OF JUSTICE HAS BEEN ADVERSELY AFFECTED

2.2.1. It is submitted that both, the petitioner and the Hon'ble Court are the affected parties in the present matter as there has been prejudice caused to the administration of justice.

2.2.2. As observed by Lord Salmon in *Attorney General v. BBC*³⁰ the object of contempt law is not to protect the dignity of the Courts but to protect the administration of justice.³¹ In *Delhi Judicial Service Association, Tis Hazari Courts, Delhi v. State of Gujrat*,³² it was observed that the public have a vital stake in effective and orderly administration of justice. The Courts have the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of Court, not to protect the dignity of the Court against insult or injury, but to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed, or interfered with.

2.2.3. Lord Diplock has laid down three requirements of “*due administration of justice.*” These are: *first*, that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; *secondly*, that they should be able to rely upon obtaining in the courts the arbitrament which is free bias against any party and whose decision will be based upon those facts only that have been provided in evidence adduced before it in accordance with the procedure adopted in the courts of law; and *thirdly* that, once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. Conduct

³⁰ (1980) 3 All ER 161

³¹ Markandey Katju, *Contempt of Court: Need for a fresh look*, AIR 2007 Mar 33

³² AIR 1991 S.C. 2176, ¶ 42

which is to prejudice any of these requirements will be observed as Contempt of Court.³³

2.2.4. It is submitted that all the three requirements have been prejudiced as petitioner's right to be heard by a fair and impartial tribunal is affected because even before his case is heard, he has been adjudged guilty, It is a case of media trial and political victimization of the petitioner due to his proximity to the ruling party. He has been targeted, under the garb unrestricted freedom of press, due to which his fundamental rights have been abridged.

Thus, license should be cancelled to deter repeated offenders from causing prejudice to administration of justice which affects the victim as well as the courts equally.

3. THAT THE HON'BLE SUPREME COURT OUGHT TO FORMULATE THE NECESSARY GUIDELINES FOR REPORTING OF CASES PENDING BEFORE THE COURTS OR REGARDING MATTERS WHICH ARE SUB-JUDICE.

It is humbly put forth that this Hon'ble Supreme Court may formulate guidelines for media while reporting of cases pending before the court and matters which are sub-judice.

In India freedom of media is derived from Art. 19(1)(a) of the Constitution enshrining freedom of speech and expression. This freedom, like all freedoms, is not an absolute freedom and is subject to 'reasonable restrictions' as imbibed in Art.19(2) of the Constitution. The expression used in Art. 19 (2) "in the interest of" give a wide amplitude to the permissible law which can be enacted to impose reasonable restrictions on the right guaranteed by Art. 19(1)(a)³⁴

It is submitted that need for set guidelines are threefold; to balance the conflict of fundamental rights so as to bring harmony in them, instill a sense of responsibility in media, and finally the guidelines would act a parameter to check media action and assist the court in future.

3.1. BALANCES CONFLICTING RIGHTS

³³ A-G v. *Times Newspaper Ltd.*, (1974) AC 273

³⁴ M.P Jain, *Indian Constitution Law* (6th Ed. Reprint 2012, Lexis Nexis Butterworth Wadhwa, Nagpur) p. 1104

- 3.1.1. At the outset, it may be stated that the Supreme Court is not only the sentinel of the fundamental rights but also a balancing wheel between the rights.³⁵ Every individual has a right of free and fair trial under article 21 of the constitution. This further includes an individual's right to privacy³⁶ and right to reputation³⁷ Thus such right needs to be harmonised vis-à-vis right of freedom of free speech and expression.
- 3.1.2. It has been observed that, “underlying our Constitutional system there are a number of important values, all of which help to guarantee our liberties, but in ways which sometimes conflict. Under our Constitution, probably, no values are absolute. All important values, therefore, must be qualified and balanced against, other important, and often competing, values... Consequently, free speech, in appropriate cases, has got to correlate with fair trial. It also follows that in appropriate case one right, say freedom of expression, may have to yield to the other right like right to a fair trial.”³⁸
- 3.1.3. SC has further held that “Liberty of the press is subordinate to administration of justice. The plain duty of a journalist is the reporting and not the adjudication of cases.”³⁹ “A trial by press, electronic media or public agitation is the very antithesis of rule of law. It may lead to miscarriage of justice.”⁴⁰
- 3.1.4. Trial by the media and over sensationalization of issues severely affect the right of fair trial to the accused. In the present case, while the matter was sub-judice Janavani instead of reporting the matter clearly pronounced the verdict that ANB Group has sought to defraud Sarvia, through their article title “yet another attempt by ANB group to defraud Sarvia”. Such an act is clear contempt of court. Clearly Janavani news has declared its “own verdict”
- 3.1.5. I ask myself, what about the accountability of those whose reputations have been irreparably damaged? What about the huge financial loss which ANB group has

³⁵ *Sahara v. S.E.B.I*, Civil Appeal No. 9813 OF 2011

³⁶ *PUCL v. UOI* AIR 1991 SC 207, 211

³⁷ *State of Bihar v. L.K Advani*, AIR 2003 SC 3357

³⁸ *Supra* Note 35

³⁹ *Rao Haranarain v. Gumori Ram*, AIR 1958 Punjab 273

⁴⁰ *State of Maharashtra v. Rajendra J. Gandhi*, (1997) 8 SCC 386

suffered? Such an act By Janavani news of taking the role of justice delivery system has spelt disaster for the petitioners in the present matter.

- 3.1.6. It is submitted that the role of courts is to provide justice and it is the justice which takes the most severe blow when the accused is prematurely clouded by unjustified suspicion, or worse, has already been denounced guilty by all.
- 3.1.7. Judges are expected to be aloof to all this, however they are also human beings and they cannot be expected to be immune from what is going around them. They are bound to be influenced, even if it is to the minutes extent.
- 3.1.8. Moreover, irrespective of the influence of judges, the society has already been made to believe that the accused is guilty. It is submitted that every citizen has a right of free and fair trial. He further has a right that the “minds of the public” should not be prejudiced against the accused “before the case has finally been heard”⁴¹
- 3.1.9. In fact, even if ultimately the person is acquitted after the due process in courts, such an acquittal may not help the accused to rebuild his lost image in the society.⁴² Public figures... are more in danger and more vulnerable in the hands of the media.⁴³
- 3.1.10. The expression used in Art. 19 (2) “in the interest of” give a wide amplitude to the permissible law which can be enacted to impose reasonable restrictions on the right guaranteed by Art. 19(1)(a)⁴⁴.The law commission of India in its 200th report pointed out that a law should be drafted restricting trial by media. Since the same hasn’t been done it is humbly put forth that this court formulates certain necessary guidelines so as to fill in the lacunae in law, relating to media reportage of sub-judice matters.

3.2. INSTILLS A SENSE OF RESPONSIBILITY IN THE MEDIA

⁴¹*Roach v. Garvan*, (1740) 2 ATK 469 (471); ; Durga Das Basu, *Law of The Press* (5th Ed. 2010, Lexis Nexis Butterworths Wadhwa) p. 133

⁴²Law Commission of India, *200th report on Trial by Media*, p. 12 (August 2006)

⁴³ Id. p. 12

⁴⁴ Supra Note 34, p. 1104

- 3.2.1. It is submitted that “without ... a lively sense of responsibility a free press may readily become a powerful instrument of injustice”⁴⁵
- 3.2.2. Stressing on media responsibility the courts have opined “Media has the immense potency to reach the public and influence them, this entails that all the channels understand and realise the heavy responsibility that is thrust on them and that there is no case for possible misuse”⁴⁶
- 3.2.3. Media in modern times has acted in a grossly inappropriate and irresponsible manner, there are a multitude of examples whereupon the media has abused its freedom. It has caused impediments in the administration of justice. It has delved into malpractices such as paid news, media trial, yellow journalism and over sensationalization of issues and has acted irresponsibly by misquoting lawyers, judges and formulating baseless assertions.
- 3.2.4. The gravity of the situation was stressed by Former CJI S.H. Kapadia, according to him, he has personally received 11-13 such complaints from senior lawyers about wrong reporting of cases. He said he also regularly receives letters from under trials in criminal cases who claim to have been condemned by newspapers or on television. “I receive letter after letter that our rights are affected. How can I keep ignoring (them)? Till when can I ignore (them)?” asked Kapadia⁴⁷
- 3.2.5. It is humbly recalled that SC had observed that “the responsibility of the press is greater than the responsibility of an individual because the press has a larger audience. The freedom of the press should not degenerate into a license to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons.”⁴⁸
- 3.2.6. It is humbly put forth that, “the press is a servant, not the master of the citizenry, and its freedom doesn’t carry with it an unrestricted hunting licence to prey on ordinary citizens”⁴⁹

⁴⁵*Pennekamp v. Florida*, (1946) 328 US 331 (365); Supra Note 41, D.D Basu, p. 63

⁴⁶*Court On Its Own Motion v.State*,146 (2008) DLT 429

⁴⁷ Nikhil Kanekal, *Will courts Regulate the Media?*, Live Mint Article, (Jan 4, 2013)

⁴⁸*Bijoynanda v.Bala Kush*, AIR 1953 Orissa 249

⁴⁹*Miami herald v. Tornillo*, (1974) 418 US 241

- 3.2.7. Former CJI, Kapadia had expressed displeasure at a 15 December, 2010, news report in a national daily that said the judiciary wanted to retain 1% of the Rs.2,500 crore deposit made by Vodafone in the court's registry in the tax case. The report said a "cash-starved" judiciary was trying to source funds through such "novel" methods. Kapadia had then said: "People write whatever they want." But the court did not initiate any action against the reporter or the newspaper.
- 3.2.8. In the impugned case irresponsible reporting by Janavani News Group has led to a huge financial loss to the ANB Group. This issue was also looked upon by the Indian judiciary and they posed certain pertinent questions, such as, "Can we issue an injunction on reporting which affects the assets of a corporate house or a company? Look at the recent news on the CAG report... the report was yet to be submitted in Parliament. The news item may be right or wrong, but the whole economy has already suffered. We are giving an illustrative example of how a news item has affected an institution," the Bench said.⁵⁰
- 3.2.9. Media's responsibility was again questioned in the aftermath of the Guwahati molestation incident, when a journalist continued to record the act of a teenage girl being molested by a mob for half an hour and later justified it by saying that he did so to enable the authorities to identify the perpetrators of the crime. I ask myself whether such an act is in conformity of decency, morality and professional standards of journalism
- 3.2.10. It's as if to say a criminal lawyer deliberately allows an offence to take place and thereafter claims that he did so as to later on move to a court of law for a remedy.
- 3.2.11. It is humbly recalled that the SC has given a wider meaning to the term decency and morality is not confined to sexual morality alone. The ordinary dictionary meaning of decency indicates the action must be in conformity with the current standards of behaviour and propriety.⁵¹
- 3.2.12. In the impugned case actions undertaken by Janavani news group by making public a confidential document was by no stretch of imagination in conformity with the standards of behaviour and propriety.

⁵⁰Krishnadas Rajagopal, *Indian Express Report*, New Delhi (Mar 28, 2012)

⁵¹*Dr. Ramesh Yeshwant Prabhuo v. Prabhakar KashinathKunte*, AIR 1996 SC 1113

- 3.2.13. Similar was the viewpoint of the Hon'ble SC in Sahara v. SEBI⁵², in which a similar situation took place, whereupon the court observed that, “We are distressed to note that even “without prejudice” proposals sent by learned counsel for the appellants to the learned counsel for SEBI has come on one of the TV channels. Such incidents are increasing by the day. Such reporting not only affects the business sentiments but also interferes in the administration of justice. In the above circumstances, we have requested learned counsel on both sides to make written application to this Court in the form of an I.A. so that appropriate orders could be passed by this Court with regard to reporting of matters, which are sub-judice.”
- 3.2.14. In the same case SC further held that “we wish to clarify that the reliance on the above judgments is only to show that “prior restraint” per se has not been rejected as constitutionally impermissible.”
- 3.2.15. It is most humbly put forth that the aforementioned illustrations have been submitted to shed light upon various instances whereupon the media has acted in irresponsibly such recurrences of media’s irresponsible behaviour have acted as encumbrances in discharge of justice. Such things, as expressed by the Indian judiciary needs to be regulated and a set of guidelines would be an expedient step to this regard

3.3. GUIDELINES WILL ACT AS A PARAMETER TO CHECK MEDIA ACTION

- 3.3.1. It is humbly submitted that since the media in our country has been the major facilitator of social change⁵³ it is essential that it is regulated to a certain extent so as avoid the abuse of power enshrined in our constitution. All the pre-existing institutions to check the abuse of power by media have proved to be grossly inefficient and blatant abuse of the power of media can be seen in our nation.
- 3.3.2. At this stage views of the Chairman of PCI, Former Justice MarkandeyKatju are worth mentioning. He enlist hurdles in regulation of press, thereby establishing that how PCI can’t be a suitable answer of the need for guidelines.
- 3.3.3. He says “I want regulation of the media, not control. The difference between the two is that in control there is no freedom, in regulation there is freedom but subject

⁵² Supra Note 35

⁵³ Fact sheet ¶ 1

to reasonable restrictions in the public interest. The media has become very powerful in India and can strongly impact people's lives. Hence it must be regulated in the public interest.”⁵⁴

- 3.3.4. But most importantly he questions “The media claims self-regulation. But by what logic? How can the News Broadcasters Association or the Broadcast Editors Association regulate TV channels driven by profit motive and high TRP ratings? The NBA and BEA claim self-regulation. Let me ask them: how many licences of TV channels have you suspended or cancelled till now? So far as we know, only one channel was awarded a fine, at which it withdrew from the body, and then was asked to come back. How many other punishments have you imposed?”
- 3.3.5. It is put forth, that, almost every section of society is regulated. Advocates are in a free profession, but their profession is regulated inasmuch as their licence can be suspended or cancelled by the Bar Council for professional misconduct. When such an act is done, then Art. 19(1)(g) is not attracted, similarly the licences of doctors, chartered accountants, etc., can be suspended/cancelled by their regulatory bodies, then also Art. 19(1)(g) is not attracted. Judges of the Supreme Court or the High Court can be impeached by Parliament for misconduct; Independence of judiciary isn't circumvented then.
- 3.3.6. But the media claims that no action should be taken against it for violating journalistic ethics, as the same would violate art. 19(1)(a) and contrary to freedom of press. In a democracy everyone has to be accountable, but the media claims it should be accountable only to itself. This self-accountability is in conflict with the maxim of *Nemo iudex in causasua*, i.e. one cannot be a judge of its own cause.
- 3.3.7. It is most humbly submitted that the concept of “self-regulation” is flawed. Under the façade of self- regulation, there is practically no regulation by the media. Just like human beings, who though expected to self-regulate their conduct tend to waiver at times; similarly the media tends to do that, but since media has a wider audience its affects are far- reaching and many times contrary to the interest of society. Men cannot be expected to self-regulate themselves always. To do this laws have been formulated to define their conduct to a certain degree, similarly it is

⁵⁴Markandey Katju, *Media Cannot Reject Regulation*, The Hindu (May 2, 2012)

implored before the Hon'ble Court that such guidelines may be drafted to regulate the conduct of media.

3.3.8. The Supreme Court can frame guidelines under Art 141. For instance, the Supreme Court had framed guidelines in the cases: *Vishakha v.StateofRajasthan*⁵⁵ and *DK Basu v.State of west Bengal*⁵⁶. In these cases guidelines were given when there was no law relating to the subject.

3.3.9. Most importantly it is submitted that guidelines were also formulated in the matter of “Sting Operations” conducted by media in the case of, *Court On Its Own Motion v. State*.⁵⁷

In summation it is humbly put forth that the Hon'ble SC formulate guidelines of reporting of cases pending before the court and matters which are sub-judice.

4. THAT THE REVERSE STING OPERATION CARRIED OUT BY ANB NEWS DOESN'T VIOLATE RIGHT TO PRIVACY AND NEITHER DOES IT AMOUNTS TO INTERFERENCE IN THE ADMINISTRATION OF JUSTICE.

4.1. It is humbly submitted that in the present case there has been no infringement of privacy by the sting operation so conducted by ANB News, nor is there any interference in the administration of justice.

4.2. The media plays an important role in a democratic society. It acts as the fourth wing outside the Government. And its actions act as a constant check on the three wings of the State. One of the mechanism through which media exercises this check is Sting operations.

4.3. The purpose of press is to advance the public interest by publishing facts and opinions without which a democratic country cannot make responsible judgements.⁵⁸

4.4. Sting operations have been admissible in the past and have at many times helped secure justice in the society, by bringing out harsh ground realities.⁵⁹ Appreciating this Justice

⁵⁵ AIR 1997 SCC 3011

⁵⁶ AIR 1997 SC 610

⁵⁷ Supra Note 46

⁵⁸ *Indian Express Newspapers(Bombay) Pvt. Ltd. v. UOI*, AIR 1985 SC 515

Katju once opined: “I totally agree with sting operations. There should be more sting operations. Corrupt elements can be brought to light by these sort of operations.”⁶⁰

- 4.5. The courts have justified that in the interest of society, sting operations are justified, they have remarked that, “There is no doubt and there is no second opinion that truth is required to be shown to the public in public interest and the same can be shown whether in the nature of sting operation or otherwise”⁶¹
- 4.6. It is regarded that, “media is well within its rightful domain when it seeks to use tools of investigative journalism to bring us face to face with the ugly underbelly of the society. However, it is not permissible for the media to entice and try to actively induce an individual into committing an offence which otherwise he is not known and likely to commit.”⁶²
- 4.7. The above observation is highly pertinent. It appreciates that practically it is not always possible to bring out the truth without resorting to investigative journalism. Many times such acts have hugely benefitted the cause of justice. It is humbly put forth that the same has been the endeavour of ANB News in the impugned matter.
- 4.8. With regard to the abovementioned authority, it has been forewarned that media shouldn’t entice or try and actively induce an individual into committing crime. It is put forth that no such thing has been done by the journalist of ANB News Group.
- 4.9. The prime objective of the sting operation was to showcase the ugly truth behind the functioning of Janavani News Group. The sting is clear testimony that Janavani group is ready to abuse the power of media for sake of financial gains.
- 4.10. In recent past it has deliberately targeted ANB Group to gain leverage since ANB News is a rival news channel. It has conducted a baseless media trial of Shri Madhukar Vats and ANB Group.
- 4.11. It is submitted that “freedom of press...doesn’t mean that the press is free to ruin a reputation or to break confidence or pollute course of justice or to do anything that is

⁵⁹ *Dr. Varsha Gautam W/o Dr. Rajesh Gautam v. State of U.P.*, MANU/UP/0857/2006; *Suresh Nanda v. CBI*, AIR 2008 SC 1414; *RK Anand v. Registrar*, (2009) 8 SCC 106

⁶⁰ *SC Bench divided over sting operations*, Times of India Report, Aug 23 2008

⁶¹ *Supra* Note 46

⁶² *Id.*

unlawful.”⁶³ Janavani News has created a hostile atmosphere for ANB Group for its selfish gains. As clear from the video their deputy editor clearly states that they are ready to change their stance if they are provided with financial favours, the court may take cognizance of this under the light of section 39 of Indian Evidence Act

- 4.12. It is pertinent to note that allegedly 3 companies was favoured for coal block allocation, however Janavani has deliberately created media pressure on ANB Collieries so that ANB News is adversely affected.
- 4.13. It is submitted that, a newspaper or broadcaster fighting an attempt to restraint for violation of privacy may, in appropriate circumstances, be able to use the defence of public interest. It must be proved that the public interest in disclosing the information outweighs the interest in preventing it.⁶⁴ It is humbly submitted that no private information with regard to private life of the Deputy Editor has been released. And quite clearly public interest is better served in the release of the statements rather than withholding them.
- 4.14. In a recent case while dealing with one of the cases of revelation of corrupt practices through sting operations Delhi HC has observed that, “In our judicial system complainant sometime faces more harassment than accused...all kinds of allegations are made against him and the most unfortunate is that he is termed as an accomplice or an interested witness not worthy of trust. I fail to understand why a witness should not be interested in seeing that the criminal should be punished and the crime of corruption must be curbed...The witness who reported the demand of bribe so as to trap the culprits cannot be considered as an accomplice or non-trust worthy or interested witness. There is no reason for the court insisting upon an independent corroboration of the complainant's evidence in regard to the demanding of bribe before the trap was laid”⁶⁵
- 4.15. The Hon'ble SC has held “Under our Constitution, probably, no values are absolute. All important values, therefore, must be qualified and balanced against, other important, and often competing, values”⁶⁶it is submitted that even the right of privacy is

⁶³ *Schering chemicals v. Falkman*, (1981) 2 ALL ER 321; Supra Note 41, D.D Basu, p. 55

⁶⁴ Supra Note 41, D.D Basu, p. 86

⁶⁵ *Aniruddha Bahal v. State*, 172 (2010) DLT 268

⁶⁶ Supra Note 35

not an absolute right. The same has to be balanced with the right of press to make dissemination of news, views, and unmask hidden truths.

In summation, under the light of aforementioned authorities it is humbly submitted that there has not been any infringement of privacy or interference in the administration of justice.

PRAYER

WHEREFORE, in the lights of the facts used, issues raised, arguments advanced and authorities cited, it is most humbly and respectfully prayed that this Hon'ble court may be pleased to adjudge and declare that:

1. Janavani and Janavani news are guilty and therefore their license is liable to be cancelled for interference with administration of justice through media trials and defamation.
2. Mr. Madhukar Vats is cleared of all charges.

The court may also be please to pass any other order, which this Hon'ble Court may deem fit in the light of justice, equity and good Conscience.

All of which is most humbly prayed

*Counsel for the **Petitioner.***

