

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 10th July, 2017.**

+ **CM(M) 687/2017**

MAHADEV I TODALE

..... Petitioner

Through: Mr. Manohar Pratap, Ms. Aastha
Vashistha & Mr. Peeyush Bhatia,
Advs.

Versus

**FRANKFINN AVIATION SERVICES
PVT LTD & ORS**

..... Respondents

Through: Ms. Meenakshi Midha & Mr. Kapil
Midha, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM Nos.23671-72/2017 (both for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 687/2017 & CM No.23670/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 4th March, 2017 of the Additional District Judge (ADJ) of dismissal of the application filed by the petitioner / defendant for deletion of his name as defendant in a suit filed by the respondent no.1 / plaintiff for recovery of damages for defamation.

4. The counsel for the respondent no.1 / plaintiff appears on advance notice and considering the nature of the controversy, the counsels have been heard at length.

5. The respondent no.1 / plaintiff Frankffin Aviation Services Pvt. Ltd. is carrying on business of imparting education in vocational training in the field of aviation industry.

6. The respondents no.6 and 7 viz. Rahul Haresh Bhatia and Haresh Bhatia, residents of Pune, approached the Police with a complaint of the respondent no.1 / plaintiff having cheated the respondents no.6 and 7 as well as other students by misrepresenting that the respondent no.1 / plaintiff was entitled to impart education and confer a qualification when in fact the respondent no.1 / plaintiff was not entitled to. An FIR was registered against the respondent No.1/plaintiff and its officials.

7. The petitioner herein, an Assistant Police Inspector in Maharashtra Police was the Investigation Officer (IO) of the said FIR. On enquiry, I am told that though charges were framed by the concerned Court at Pune in the said FIR but the Sessions Court, Pune in a revision petition preferred by one of the accused persons has set aside the order framing charge and directed the Court concerned to re-hear on framing of charge.

8. The respondent no.1 / plaintiff instituted the suit from which this petition arises, in this Court (and which has since, on change of pecuniary jurisdiction, been transferred to the District Court) and not in the Courts at Pune, for recovery of damages for defamation qua certain news articles published in the newspapers Times of India, Mumbai Mirror, Pune Mirror and Bangalore Mirror of the respondents no.2 to 5 viz. Bennett Coleman & Co. Ltd., Nidheesh Tyagi, Meenal Baghel and K.R. Srinivasan herein. In the said suit, besides the respondents no.6 and 7, at whose instance the FIR against the respondent no.1 / plaintiff and its officials had been registered,

the petitioner who was the IO and Ms. Sona Pardasani, Advocate, Pune who was the counsel for the respondents no.6 and 7, were also impleaded.

9. The respondent no.1 / plaintiff has since withdrawn the suit insofar as against the publishers of Times of India, Mumbai Mirror, Pune Mirror and Bangalore Mirror as well as against the counsel Sona Pardasani and the suit now remains only against the complainants and the petitioner herein who was the IO.

10. The petitioner though at the relevant time the IO of the said FIR, has since been transferred to the Bomb Detection and Disposal Squad (BDDS), Police Commissionerate, Pune, Maharashtra.

11. The petitioner applied to the suit Court for deletion of his name and which application has been dismissed by the learned ADJ in view of the averments in the plaint filed by the respondent no.1 / plaintiff against the petitioner/defendant.

12. I have at the outset enquired from the counsel for the respondent no.1 / plaintiff as to how the respondent no.1 / plaintiff can maintain a suit for damages for defamation qua what has transpired during the investigation of the FIR and in Court in pursuance thereto, when the outcome of the prosecution is not known as yet.

13. This Court in *Shri Ram Singh Batra Vs. Smt. Sharan Premi* 133 (2006) DLT 126 also was concerned with a suit for recovery of damages for defamation by publication in the newspapers of the FIR registered against the plaintiff therein and arrest of the plaintiff therein. It was pleaded that the complaint on the basis of which FIR was registered was false. It was found

that the process of criminal law was still on and the plaintiff had not been acquitted or discharged. It was held (i) that malicious prosecution is actionable as a tort but mere presentation of a false complaint which first seeks to set the criminal law in motion will not furnish an action for damages for malicious prosecution; (ii) that till the plaintiff obtains an order of acquittal or discharge in his favour, no cause of action to file a suit against the defendant on the tort of malicious prosecution accrues; (iii) that the newspaper reports of registration of FIR against the plaintiff and disclosing the nature of offence alleged of the plaintiff and of arrest of the plaintiff are also not actionable; (iv) that till it is established that the FIR in question is based on a false allegation, no action is found maintainable on the newspaper reports; (v) that till the investigation is on, there can be no cause of action. Accordingly, the plaint in the suit was rejected.

14. This Court, again in *Vijay Gulati Vs. Radhika* (2010) 119 DRJ 482 was concerned with the maintainability of a suit for damages for defamatory statements made in complaints made to the police and wide spread and open circulation thereof. It was held (a) that till the time the charges levelled against the plaintiff are not disproved or not proved, it could not be said that the allegations in the complaint were without any merit; (b) that the allegations in the complaint could not be said to be defamatory; (c) that a suit for damages for defamation cannot be initiated as a surrogate litigation as a counter-blast and to use it as a lever to tame the defendant; (d) that the defendant/complainant cannot be put on a defensive by initiation of such a suit for damages for defamation; (e) that the suit for damages for defamation cannot be used as a lever to get the dragnet by criminal cases; (f) reliance

was placed on *Bira Garari Vs. Dulhin Somaria* AIR 1962 Patna 229 (DB) laying down that in a case of defamation on the basis of registration of a cognizable offence, it could not be said that the person had been defamed unless and until the said complaint is tested before the appropriate forum; (g) once a person puts criminal law into action, the other party cannot lodge and bring about a suit for defamation so as to stop those criminal proceedings; (h) that the appropriate remedy for such a plaintiff would be either to institute a suit for damages for malicious prosecution or to get a case registered under Section 182 Cr.P.C.; (i) that the suit for damages for defamation is pre-mature till the complaint is rejected. Accordingly, the suit held not maintainable and the plaint was rejected.

15. I also had an occasion in *Primero Skill & Training Pvt. Ltd. Vs. Selima Publications Pvt. Ltd.* 2017 SCC OnLine Delhi 7619 to consider the maintainability of a suit *inter alia* for damages for defamation by publication in the newspaper of the FIR lodged against the plaintiff and the proceeding thereon in the Court. There also, though the FIR against the plaintiff was of Hailakandi, Assam and all the defendants were also situated in Assam, the suit was instituted in this Court. Though without noticing the aforesaid two judgments, I observed and held:

“8. It was further put to the counsel for the plaintiff, whether not the action of the plaintiff of, despite carrying on business in Assam where all the defendants are situated and where the newspaper in local dialect containing allegedly defamatory article was published, filing this suit far away in this Court was nothing but an attempt on the part of the plaintiff to shut up and stifle the defendants and to coerce the defendant no.7 to withdraw her complaint and to not pursue / support the FIR. It was further put to the counsel that the plaintiff could have very

well taken the action, if genuinely aggrieved, locally and why should the attempt of the plaintiff to drag the defendants to this Court and which the defendants may be unable to do as they do not appear to be persons of much means, be not nipped in bud. Attention of the counsel was also invited to **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India** (2004) 6 SCC 254 and **Sterling Agro Industries Ltd. Vs. Union of India** AIR 2011 Del 174 incorporating principle of forum convenience in domestic civil law.

9. The counsel for the plaintiff argued that if the plaintiff was entitled to invoke the territorial jurisdiction of this Court, it could not be compelled to invoke the territorial jurisdiction of another Court which may be more convenient to the defendants. However the main emphasis of the counsel for the plaintiff, with reference to the terms of PMKVY and other documents concerning therewith filed by the plaintiff, was that PMKVY itself provides for the procedure of crediting the account of the trainee with Rs.5,000/- and automatically debiting a sum of Rs.4,500/- therefrom and crediting the same to the account of the plaintiff as a training partner and thus the allegations of the defendants published in the impugned article are false and defamatory of the plaintiff.

10. The aforesaid argument of the counsel for the plaintiff misses the charge which the defendant no.7 has levied against the plaintiff and which is the subject matter of legal proceedings initiated against the plaintiff in Assam. The case of the defendant no.7 is that the plaintiff lures the labourers to the training scheme with the promise of their account being credited with Rs.5,000/- and without disclosing that Rs.4,500/- would be automatically debited therefrom.

11. It was further put to the counsel for the plaintiff, whether not complaints to the Police Authorities enjoy absolute privilege and there can be no defamatory action with respect thereto and whether not the remedy in such a case is of action of malicious prosecution only.

12. No reply in this respect was forthcoming from the counsel for the plaintiff nor has anything in this respect been stated in the written arguments filed by the plaintiff and taken on record; rather the said written arguments are a re-production of the contents of the plaint save reliance towards the end being placed on (i) **Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.** (1988) 4 SCC 592; (ii) **Sahara India Real Estate Corporation Limited Vs. Securities and Exchange Board of India** (2012) 10 SCC 603; and (iii) judgment dated 16th January, 2014 in CS(OS) No.102/2014 titled **Swatanter Kumar Vs. The Indian Express Ltd.** and copies whereof are annexed to the written arguments.

13. Having given further thought to the matter, I remain of the same view as on the day when the suit had come up for admission, that this suit does not deserve to be entertained and deserves to be thrown out at the threshold to save the defendants, who do not appear to be persons with much monetary means, from travelling to Delhi, engaging an Advocate, appearing and contesting this suit at Delhi.

14. My reasons therefor are as under:-

(a) Supreme Court, in **Youth Bar Association of India Vs. Union of India** (2016) 9 SCC 473, concerned with a petition under Article 32 of the Constitution of India and while issuing guidelines/directions for supply of copy of FIR has inter alia directed that the copies of the FIR (unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under Protection of Children from Sexual Offences (POCSO) Act, 2012 and such other offences) should, within twenty-four hours of the registration of the FIR, be uploaded on the police website, and if there is no such website on the official website of the State Government so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court for redressal of his grievances and that the decision not to upload the copy of the FIR on the website shall not be

taken by an officer below the rank of Deputy Superintendent of Police or a person holding equivalent post.

(b) As per the law aforesaid declared by the Supreme Court, the contents of FIR, irrespective of whether published in a newspaper as a news event or not, are in public domain. Once the Police itself, as per law declared by the Supreme Court is required to publish the FIR, I fail to see how the defendants no.1 to 6 as editor/publisher of the newspaper or the defendant no.7 as complainant, can be proceeded against in an action for defamation for publishing the contents thereof.

(c) It is not as if the direction aforesaid of the Supreme Court is without regard to the reputation of the persons complained against in the FIR. The law of defamation, which as far as India is concerned is uncodified and based on common law, has always recognised certain situations as privileged, words spoken or written wherein cannot furnish a cause of action for a claim on account of defamation. Supreme Court in **Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha** (2007) 3 SCC 184 held that the term "privilege in law" is defined as an immunity or an exemption from some duty, burden, attendance or liability conferred by special grant in derogation of common right. The term "privilege" was stated to be derived from an expression "privilegium" which means a law specially passed in favour of or against a particular person.

(d) The reason is that the law recognises those situations as where a person should have freedom of speech, without being under the fear of being hauled up subsequently for defamation.

(e) As far back as in **Golap Jan Vs. Bholanath Khettry** MANU/WB/0056/1911 it was held by the Division Bench of the Calcutta High Court that though defamation is a good cause of action but even if the

*complaint to the Magistrate was defamatory still the complainant was entitled to protection from a suit for defamation and this protection was the absolute privilege accorded in the public interest to those who make statements to the Courts in the course of and in relation to judicial proceedings. The Division Bench of the Madras High Court also in **Pedda Sanjivi Reddy Vs. Kondasari Koneri Reddi** AIR 1926 Mad 521 held that the statements made to the police officer which could only be made with a view to their being repeated on oath before the Magistrate as well as statements in the petition presented to the Magistrate have been invested by the common law of England with absolute privilege which attaches not merely to the actual proceedings of any tribunal exercising judicial function, but to all preliminary steps which are in accordance with the cognised and reasonable procedure of such a tribunal. It was also held that the public policy which renders the protection of witnesses necessary for the administration of justice necessarily involves that which is a step towards, and is part of the administration of justice, namely the preliminary examination of witnesses to find out what they can prove, and consequently statements made by a witness to a litigant or his solicitor in preparing proof are absolutely privileged. A subsequent Division Bench of the Calcutta High Court in **Madhab Chandra Ghose Vs. Nirod Chandra Ghose** AIR 1939 Cal 477 added that it is a matter of public policy and administration of justice that witnesses giving their evidence on oath in a Court of justice should not have before their eyes the fear of being harassed by suits for damages; the only penalty which they should incur if they give evidence falsely should be an indictment for perjury. No action for libel or slander was held to lie against Judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognised by law even though the words were written or spoken maliciously, without any justification*

or excuse, and from personal-ill-will and anger against the person defamed. It was emphasised that a witness must be protected for a preliminary statement as well. It was further held that though some hardship may be caused to the person defamed but it would be impossible to administer justice, if people were to be afraid to give their testimony.

*(f) Subsequently, in **Anjana Saikia (Das) Vs. Anuradha Das** 2003 SCC OnLine Gau 321 it was held that though an action for defamation by statement in the FIR would lie but only after the FIR case was decided. Similarly, in **Mahavir Singh Vs. Surinder Singh** 2010 SCC OnLine P&H 9094 also it was held that mere lodging of the FIR, though it may contain false imputation, does not amount to defaming the person against whom FIR is lodged. To the same effect is **Kamlesh Kaur Vs. Lakhwinder Singh** 2008 SCC OnLine P&H 920.*

*(g) A learned Single Judge of the High Court of Madras in **A.N. Shanmugam Vs. G. Saravanan** 2015 SCC OnLine Mad 728 held the filing of a suit for defamation in such circumstances to be a process to escape from criminal prosecution and to make the defendant to come to terms. It was held that if every complainant who lodges the complaint with law enforcing agency is to face civil cases for defamation on the premise that the imputations made in the complaint according to the accused are false, many people fearing such actions on the part of the accused may not come forward to lodge a complaint to the law enforcing agency. It was further held that when an imputation has been made in a complaint made to the law enforcing agency with the belief that such agency would take criminal action against the persons against whom such imputations are made, the same provides a valid exception taking such act outside the scope of tort of defamation. It was held that the lodging of the complaint*

with the police could not be considered to be publication of a defamatory statement and that if any wrong is committed by lodging a false complaint with the police and thereby setting the criminal law in motion, it may amount to malicious prosecution for which action can be taken only after disposal of the criminal case, wherein a specific finding is given to that effect.

*(h) With respect to malicious prosecution also, I have in **Gangadhar Padhy Vs. Prem Singh** 211 (2014) DLT 104 relying on **S.T. Sahib Vs. N. Hasan Ghani Sahib** AIR 1957 Madras 646 held that action for malicious prosecution is not favoured in law and should be properly guarded and its true principles strictly adhered to, since public policy favours the exposure of a crime and it is highly desirable that those reasonably suspected of crime be subjected to the process of criminal law for the protection of society and the citizen be accorded immunity for bona fide efforts to bring anti-social members of the society to the bar of justice.*

(i) Thus there is no cause of action for a claim for defamation in favour of the plaintiff against the defendant No.7 for the statements made by the defendant No.7 in the complaint and in the FIR lodged by her.

*(j) A Nine Judges Bench of the Supreme Court in **Naresh Shridhar Mirajkar Vs. State of Maharashtra** AIR 1967 SC 1 reiterated that Journalists have a fundamental right to carry on their occupation under Article 19(1)(g); they have also a right to attend proceedings in Court under Article 19(1)(d); and that the right to freedom of speech and expression guaranteed by Article 19(1)(a) includes their right to publish as Journalists a faithful report of the proceedings which they have witnessed and heard in Court. Freedom of speech and expression guaranteed by Article 19(1)(a) was reiterated to include the freedom of press. It was further held that what takes place in Court is public and the publication of the proceedings merely enlarges the*

area of the court and gives to the trial that added publicity which is favoured by the rule that the trial should be open and public; it is only when the public is excluded from audience that the privilege of publication also goes because the public outside then have no right to obtain at second-hand what they cannot obtain in the court itself. It was yet further held that if the matter is already published in open court, it cannot be prevented from being published outside the court room provided the report is a verbatim or a fair account.

(k) I have already hereinabove noticed that it is not the plea of the plaintiff that what has been published by the defendant Nos. 1 to 6 in their newspaper is not a fair account of the complaint and the FIR lodged by the defendant no.7.

(l) The Division Bench of the High Court of Bombay in **Saroj Iyer Vs. Maharashtra Medical of Indian Medicine, Bombay** 2002 (1) Mh.L.J. 737 held that the Medical Council being a Quasi Judicial Tribunal and the inquiry before it being quasi judicial in nature, there can be no blanket ban for public in attending the enquiry proceedings.

(m) This Court in **Mother Dairy Foods and Processing Ltd. Vs. ZEE Telefilms Ltd.** ILR (2005) 1 Delhi 87 was concerned with an application for interim relief in a suit by a major supplier of milk and milk products to restrain a television channel from publishing and telecasting a programme purported to be an investigation into manufacturing of synthetic milk. It was the case of the plaintiff that the programme was created and aired to tarnish its image and reputation with the sole objective of sensationalism and to defame. Finding that there was no plea of conspiracy and the plea of malafides as set-forth to be lacking in material particulars qua the persons at whose behest the programme was being aired, interim injunction was denied holding that media being a zealous guardian of freedom of expression and speech, has a

right to comment vigorously and fearlessly on matters of public interest and the efforts of the T.V. Channels in unearthing and bringing to the notice of public the menace of manufacturing of synthetic milk was a laudable measure for public good.

(n) I may notice that similarly here, it is in public interest that it be investigated whether PMKVY is being misused to siphon off monies in the name of training, without any real benefit to the purported beneficiaries thereof.

*(o) This Court in **Vineet Jain Vs. NCT of Delhi** (2011) 184 DLT 596 was concerned with the complaint of the offence of defamation by reporting in the media contents of an FIR registered of offences under Section [294/109/34](#) of the Indian Penal Code, 1860 IPC read with Section 8 of Immoral Trafficking Act and the raid conducted at a hotel in Delhi. It was held that fair reporting pertaining to a matter of public concern, without insinuations and innuendos i.e. a news item containing statements of true facts emanating from a proper source i.e. police is not actionable for the offence of criminal defamation; a fact pertaining to an FIR being registered with reference to the activities found to be carried out from the Hotel as recorded in the FIR made public by the police, was also held to be not amounting to a criminal defamation.*

*(p) The High Court of Bombay also in **SNP Shipping Services Pvt. Ltd. Vs. World Tanker Carrier Corporation** 2000(2) Mh.L.J. 570 held that a fair and accurate gist of the findings given by the Court cannot constitute a cause of action for defamation and the plaint was rejected under Order VII Rule 11 of the CPC.*

*(q) A Constitution Bench of the Supreme Court, in **Sahara India Real Estate** supra relied upon by the counsel for the plaintiff held that the inaccuracy of reporting of court proceedings will be a contempt of*

*court only if it can be said on the facts of a particular case, to amount to substantial interference with the administration of justice; that the privilege granted under Section 4 of the Contempt of Courts Act, 1971 in favour of the person who makes a fair and accurate publication is based on the presumption of 'open justice' in courts which permits fair and accurate reports of Court proceedings to be published. It was held that the media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. It follows from the said judgment that postponement of publication of court proceedings can be applied for to the same court in which the proceedings are pending and not to another court. I am in fact at pains to understand in what context the counsel for the plaintiff has relied on the said judgment. As far as reliance on **Swatanter Kumar** supra is concerned, the law as expounded and noticed above was noticed therein also but in the facts of that case interim injunction was granted. The same also is of no benefit to the plaintiff. The same is the position of **Reliance Petrochemicals Ltd** supra.*

*(r) Mention may lastly be made of my judgment in **Veer Arjun Newspaper Pvt. Ltd. Vs. Bahori Lal** 2013 SCC Online Del 5096 wherein following the aforesaid law it was held that reporting of contents of a complaint is privileged and does not invite a claim for defamation.*

*(s) Supreme Court recently in **Subramanian Swamy Vs. Union of India** (2016) 7 SCC 221 was concerned with a challenge to the vires of Sections 499 and 500 of the Indian Penal Code, 1860 constituting defamation as defined therein as an offence, on the ground of the same being violative of Article 19(1)(a) of the Constitution of India. Negating the challenge, Supreme Court held (i) that while in a democracy, an individual has a right to criticize and dissent but his right under Article 19(1)(a) is*

not absolute and he cannot defame another person as that would offend the victim's fundamental right to reputation which is a facet of Article 21 of the Constitution and one fundamental right cannot be given higher status in comparison to the other and what is required is proper balancing of the two and harmonious construction in light of objective of fraternity and fundamental duties envisaged under Article 51A(e) and (j) of the Constitution; (ii) that Article 19(2) envisages "reasonable restrictions"; right to say what may displease or annoy others cannot be throttled; (iii) that there can be no cavil that the right to freedom of speech and expression is a right that has to get ascendance in a democratic body polity but at the same time the limit has to be "proportionate" and not unlimited; (iv) that the restrictions should not be excessive and should be in public interest; (v) the test of reasonableness cannot be determined by laying down any abstract standard or general pattern—it would depend upon the nature of the right which has been infringed or sought to be infringed and the ultimate impact i.e. the effect on the right has to be determined; (vi) that the principles of proportionality of restraint are to be kept in mind by the Court.

*(t) Notice may also be taken of **Shreya Singhal Vs. Union of India** (2015) 5 SCC 1 which was concerned with the challenge to the vires of Section 66A of the Information Technology Act, 2000 on the ground of being violative of Article 19(1)(a) of the Constitution of India. It was held (a) that the fundamental right of freedom of speech and expression requires free flow of opinion and ideas and an informed citizenry is a pre-condition for meaningful governance and the culture of open dialogue is generally of great societal importance and the ultimate truth is evolved by free trade in ideas in a competitive marketplace of ideas; (b) that it is only beyond a certain threshold that Article 19(2) is kicked in; and, (c) that wider reach and range of circulation over internet cannot justify restriction of freedom of speech and expression on*

that ground alone and that virtues of electronic media cannot become its enemies.

(u) Applying the tests aforesaid also, no cause of action in favour of plaintiff or against any of defendants is disclosed.

*(v) Supreme Court in **Pearlite Liners (P) Ltd. Vs. Manorama Sirsi** (2004) 3 SCC 172 was concerned with a suit for specific performance of a contract of personal service. The same was dismissed by the trial court and the first appellate court on a preliminary issue as to the maintainability thereof but was in second appeal restored by the High Court and remanded for trial. Supreme Court held that once the reliefs claimed of, declaration that the transfer order was illegal and void and of declaration that the plaintiff continued to be in service of the defendant could not be granted by the Court, such a suit should not be allowed to continue and go for trial and should be thrown out at the threshold on the ground of want of jurisdiction of a Court to grant the reliefs prayed for. Accordingly, the orders of the trial court and the first appellate court were upheld and restored and the order of the High Court of restoring the suit and remanding it for trial was set aside. Though in the facts of that case, the suit was dismissed after notice to the defendant and after framing a preliminary issue but the fact remains that in holding the suit to be barred, no notice of any plea of the defendant was taken. If that is so, then, in my opinion, the suit can also be dismissed without notice to the defendant, if the Court finds that the plaint discloses no cause of action.”*

The suit was accordingly dismissed.

16. The counsel for the respondent No.1/plaintiff has drawn attention to the averments in the plaint against the petitioner/defendant to the effect (i) that petitioner/defendant has interacted with the other defendants in giving

false, baseless and unsubstantiated information to the newspapers; (ii) that the acts of the petitioner/defendant are not in discharge of his official duties; and, (iii) that the petitioner/defendant as the Investigation Officer has no role in prejudging the issue/controversy or the allegations leveled in the FIR.

17. However the said averments in paragraph 2 of the plaint are in the context of the plea therein of no notice under Section 80 of CPC being required to be served on the petitioner/defendant and no permission from the State Government under Section 161 of the Bombay Police Act, 1951 for prosecuting the petitioner/defendant being required. Else, the respondent No.1/plaintiff in para 21 of the plaint, qua the petitioner/defendant has merely pleaded that the petitioner/defendant has prejudged the entire issue and has given false and unsubstantiated information to the newspapers and that the said illegal act of the petitioner/defendant has not been done in discharge of his official duty. The respondent No.1/plaintiff in this regard, in paras 21 & 22 of the plaint, has reproduced the following passages from the newspaper articles:

“21

“However, Public Prosecutor Anuradha Mane pointed out that the queries sent by Todale to the institute in London were not replied to. Todale also denied seeking any franchisee agreement between the Indian Institute and the main Institute in London. In the last hearing, Todale had filed an affidavit saying the applicants were not co-operating. “I have sent many e-mails to EDEXCEL UK without any response. The Chinchwad center is not registered with the commissionerate for service tax purpose, Todale told Mirror. In fact, Todale told the court that the center does not have a license to run the institute and therefore no authority to issue such a certificate.”

.....

22. Besides collecting information/documents regarding the allegations leveled in the FIR, investigating the same and submitting his report/charge sheet before the Hon'ble Court, Defendant No.7 has no role to play. Yet, Defendant No.7 in an illegal manner and without any basis passed on utterly false and unsubstantiated information against the Plaintiff to Defendants Nos.1 to 4. Defendants Nos. 1 to 4, who were duty bound to verify the authenticity/genuineness of information supplied by Defendant No.7 did not carry out their duty and simply relied on the said information and published the aforesaid articles making grave defamatory and scandalous allegations that **“Cops say it is illegal and has no affiliation with any UK Institute”**.

18. It is thus not the plea of the respondent No.1/plaintiff that the information which the petitioner/defendant is attributed to have supplied to the newspapers is beyond the contents of the FIR or is contrary to the investigation carried out till then.

19. Moreover, what was published in the newspapers was in the language of the newspapers. Though the respondent No.1/plaintiff instituted the suit for recovery of damages for defamation against the newspapers also but have since withdrawn the claim against them.

20. The counsel for the respondent no.1 / plaintiff though suggested that the suit against the newspapers was withdrawn owing to the apology tendered but could not make a certain statement to the said effect. The impugned order does not record that any such apology was given. It merely mentions that the suit against the newspapers had been amicably settled. I have also enquired whether the publishers of the newspapers in the amicable

settlement have given any compensation to the respondent no.1 / plaintiff. The answer is in the negative.

21. Thus it is a classic case where a suit for defamation is being proceeded against not against the publishers of the news but against the persons who are prosecuting the respondent no.1 / plaintiff for the offence complained.

22. The petitioner/defendant is still to give his deposition in pursuance to the charge if any framed and if the suit continues to be pursued by the respondent no.1 / plaintiff for a claim for damages against the petitioner/defendant, the petitioner/defendant is unlikely to depose fairly.

23. I am thus of the view that no case for taking a view different from that taken in either of the aforesaid judgments cited is made out.

24. I also find the act of the respondent no.1 / plaintiff of dragging the petitioner/defendant as well as the complainants who are all resident of Pune to Delhi for the purpose of the present suit to be by way of abuse of the process of the Court.

25. Admittedly, the respondent no.1 / plaintiff has an Institute at Pune and has been inviting prospective students at Pune to avail of the services of the respondent no.1 / plaintiff. The respondent no.1/plaintiff could have very well instituted the suit at Pune but chose to drag the petitioner and the other defendants to an alien place.

26. The petition thus succeeds; the order dated 4th March, 2017 is set aside and the application of the petitioner under Order I Rule 10 of the CPC stands

allowed. Resultantly, the name of the petitioner/defendant be deleted from the array of defendants in the suit filed by the respondent no.1 / plaintiff.

RAJIV SAHAI ENDLAW, J.

JULY 10, 2017
'gsr/bs'

HIGH COURT OF DELHI



मात्यमेव जयते