PETITIONER:
R. RAJAGOPAL

Vs.

RESPONDENT:
STATE OF T.N.

DATE OF JUDGMENT07/10/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1995 AIR 264 1994 SCC (6) 632
JT 1994 (6) 514 1994 SCALE (4)494

ACT:

HEADNOTE:

JUDGMENT:
The Judgment of the Court was delivered by
B.P. JEEVAN REDDY, J.- This petition raises a question concerning the freedom of press vis-A-vis the right to privacy of the citizens of this country. It also raises the question as to the parameters of the right of the press to criticise and comment on the acts and conduct of public officials.

2.The first petitioner is the editor, printer and publisher of a Tamil weekly magazine Nakkheeran, published from Madras. The second petitioner is the associate editor of the magazine. They are seeking issuance of an appropriate writ, order or direction under Article 32 of the Constitution, restraining the respondents, viz., (1) State of Tamil Nadu represented by the Secretary, Home Department, (2) Inspector General of Prisons, Madras and (3) Superintendent of Prisons (Central Prison), Salem, Tamil Nadu from taking any action as contemplated in the second respondent's communication dated 15-6-1994 and further restraining them from interfering with the publication of the autobiography of the condemned prisoner, Auto Shankar, in their magazine. Certain other reliefs are prayed for in the writ petition but they are not pressed before us.

3.Shankar @ Gauri Shankar @ Auto Shankar was charged and tried for as many as six murders. He was convicted and sentenced to death by the learned Sessions Judge, Chenglepat on 31-5-1991 which was confirmed by the Madras High Court on 17-7-1992. His appeal to this Court was dismissed on 5-4-1994. It is stated that his mercy petition to the President of India is pending consideration.

4.The petitioners have come forward with the following case: Auto Shankar wrote his autobiography running into 300 pages while confined in Chenglepat sub-jail during the year 1991. The autobiography was handed over by him to his wife, Smt Jagdishwari, with the knowledge and approval of the jail authorities, for being delivered to his advocate, Shri

Chandrasekharan. The prisoner requested his advocate to ensure that his autobiography is published in the petitioners' magazine, Nakkheeran. The petitioners agreed to the same. Auto Shankar affirmed this desire in several letters written to his advocate and the first petitioner. The autobiography sets out the close nexus between the prisoner and several IAS, IPS and other officers, some of whom were indeed his partners in several crimes. The presence of several such officers at the house-warming ceremony of Auto Shankar's house is proved by the video cassette and several photographs taken on the occasion. Before commencing the serial publication of the autobiography in their magazine, the petitioners announced in the issue dated 21-5-1994 that very soon the magazine would be coming out with the sensational life history of Auto Shankar. This announcement sent shock waves among several police and prison officials who were afraid that their links with the condemned prisoner would be exposed. They forced the said prisoner, by applying third degree methods, to write letters addressed to the second respondent (Inspector General of Prisons) and the first petitioner requesting that his life story should not be published in the magazine.

637

Certain correspondence ensued between the petitioners and the prison authorities in this connection. Ultimately, the Inspector General of Prisons (R-2) wrote the impugned letter dated 15-6-1994 to the first petitioner. The letter states that the petitioner's assertion that Auto Shankar had written his autobiography while confined in jail in the year 1991 is false. It is equally false that the said autobiography was handed over by the said prisoner to his wife with the knowledge and approval of the prison authorities. The prisoner has himself denied the writing of any such book. It is equally false that any power of attorney was executed by the said prisoner in favour of his advocate, Shri Chandrasekharan in connection with the publication of the alleged book. If a prisoner has to execute a power of attorney in favour of another, it has to be done in the presence of the prison officials as required by the prison rules; the prison records do not bear out execution of any such power of attorney. The letter concludes:

> "From the above facts, it is clearly established that the serial in your magazine under the caption 'Shadowed Truth' or 'Auto Shankar's dying declaration' is not really written by Gauri Shankar but it is written by someone else in his name. Writing an article in a magazine in the name of a condemned prisoner is against prison rules and your claim that the power of attorney is given by the prisoner is unlawful. In view of all those it is alleged that your serial supposed to have written by Auto Shankar is (false?) since with an ulterior motive for this above act there will arise a situation that we may take legal action against you for blackmailing. Hence, I request you to stop publishing the said serial forthwith."

5.The petitioners submit that the contents of the impugned letter are untrue. The argument of jeopardy to prisoner's interest is a hollow one. The petitioners have a right to publish the said book in their magazine as desired by the prisoner himself. Indeed, the petitioners have published

parts of the said autobiography in three issues of their magazine dated 11-6-1994, 18-61994 and 22-6-1994 but stopped further publication in view of the threatening tone of the letter dated 15-6-1994. The petitioners have reasons to believe that the police authorities may swoop down upon their printing press, seize the issues of the magazine besides damaging the press and their properties, with a view to terrorise them. On a previous occasion when the petitioners' magazine published, on 16-8-1991, an investigative report of tapping of telephones of opposition leaders by the State Government, the then editor and publisher were arrested, paraded, jailed and subjected to the third degree methods. There have been several instances when the petitioners' press was raided and substantial damage done to their press and properties. The petitioners are apprehensive that the police officials may again do the same since they are afraid of their links with the condemned prisoner being exposed by the publication of the said autobiography. The petitioners assert the freedom of press guaranteed by Article 19(1)(a), which, according to them, entitles them to publish the said autobiography. It is submitted that the condemned prisoner has also the undoubted right to have

638

his life story published and that he cannot be prevented from doing so. It is also stated in the writ petition that before approaching this Court by way of this writ petition, they had approached the Madras High Court for similar reliefs but that the office of the High Court had raised certain objections to the maintainability of the writ petition. A learned Single Judge of the High Court, it is stated, heard the petitioners in connection with the said objections but no orders were passed thereon till the filing of the writ petition.

6.Respondents 2 and 3 have filed a counter-affidavit, sworn to by Shri T.S. Panchapakesan, Inspector General of Prisons, State of Tamil Nadu. At the outset, it is submitted that the writ petition filed by the petitioners in the High Court was dismissed by the learned Single Judge on 28-6-1994 holding inter alia that the question whether the said prisoner had indeed written his autobiography and authorised the petitioners to publish the same is a disputed question of fact. This was so held in view of the failure of the learned counsel for the petitioners to produce the alleged letters written by the prisoner to his counsel, or to the petitioners, authorising them to publish his autobiography. It is submitted that the letter dated 15-6-1994 was addressed to the first petitioner inasmuch as "there was a genuine doubt regarding the authorship of the autobiography alleged to have been written by the condemned prisoner while he was in prison and which purportedly reached his wife. Besides, it was also not clear whether the said prisoner had as a matter of fact authorised the petitioner to publish the said autobiography. In the context of such a disputed claim both as to authenticity as well as the authority to publish the said autobiography, the said communication was addressed to the petitioners herein, since the petitioners have threatened to publish derogatory and scurrilous statements purporting to (be?) based on material which are to be found in the disputed autobiography," It is submitted that the allegation that a number of IAS, IPS and other officers patronised the condemned prisoner in his nefarious activities is baseless. "It is only in the context of such a situation coupled with the fact that the petitioner might under the guise of such

an autobiography tarnish the image of the persons holding responsible positions in public institution that the communication dated 15-6-1994 was sent to him", say the respondents. They also denied that they subjected the said prisoner to third degree methods to pressurise him into writing letters denying the authorisation to the petitioners to publish his life story.

7.Neither Auto Shankar nor his wife nor his counsel are made parties to this writ petition. We do not have their version on the disputed question of fact, viz., whether Auto Shankar has indeed written his autobiography and/or whether he had requested or authorised the petitioners to publish the same in their magazine. In this writ petition under Article 32 of the Constitution, we cannot go into such a disputed question of fact. We shall, therefore, proceed on the assumption that the said prisoner has neither written his autobiography nor has he authorised the petitioners to publish the same in their magazine, as asserted by the writ petitioners. We must,

639

however, make it clear that ours is only an assumption for the purpose of this writ petition and not a finding of fact. The said disputed question may have to be gone into, as and when necessary, before an appropriate court or forum, as the case may be.

8.On the pleadings in this petition, following questions arise:

(1)Whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorised writing infringe the citizen's right to privacy? Whether the freedom of press guaranteed by Article 19(1)(a) entitles the press to publish such unauthorised account of a citizen's life and activities and if so to what extent and in what circumstances? What are the remedies open to a citizen of this country in case of infringement of his right to privacy and further in case such writing amounts to defamation?

(2)(a) Whether the Government can maintain an action for its defamation?

(b)Whether the Government has any legal authority to impose prior restraint on the press to prevent publication of material defamatory of its officials? and

(c)Whether the public officials, who apprehend that they or their colleagues may be defamed, can impose a prior restraint upon the press to prevent such publication?

(3)Whether the prison officials can prevent the publication of the life story of a prisoner on the ground that the prisoner being incarcerated and thus not being in a position to adopt legal remedies to protect his rights, they are entitled to act on his behalf?

Question Nos. 1 and 2

9.The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to

privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising or non-advertising purposes or for that matter, his life story is written whether laudatory or otherwise and published without his consent as explained hereinafter. In recent times, however, this right has acquired a constitutional status. We shall proceed to explain how? Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21. The first decision of this Court dealing with this aspect is Kharak Singh v. State of U.P1 A more elaborate appraisal of this right took place in a later decision in Gobind v.

1 (1964) 1 SCR 332: AIR 1963 SC 1295 : (1963) 2 Cri LJ 329

640

State of M.P2 wherein Mathew, J. speaking for himself, Krishna Iyer and Goswami, JJ. traced the origins of this right and also pointed out how the said right has been dealt with by the United States Supreme Court in two of its well-known decisions in Griswold v. Conneticut3 and Roe v. Wade4. After referring to Kharak Singh1 and the said American decisions, the learned Judge stated the law in the following words: (SCC pp. 155-57, paras 22-29)

> "... privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test.
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> privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values.
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> Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child-rearing. This cataloger approach -to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty.
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> As Ely says:
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> There is nothing to prevent one from using the word 'privacy' to mean the freedom to live one's life without governmental interference. But the Court obviously does not so use the term. Nor could it, for such a right is at stake in every case.5
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> There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent

that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such 'harm' is not constitutionally protectable by the State. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted

2 (1975) 2 SCC 148 : 1975 SCC (Cri) 468

3 381 US 479 14 L Ed 2d 510 (1965)

4 410 US 113 35 L Ed 2d 147 (1973)

5 See The Wages of Crying Wolf. A Comment on Roe v. Wade, 82 Yale LJ 920, 932

641

as themselves, an image that may reflect the values of their peers rather than the realities of their natures.6

The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute.

The European Convention on Human Rights, which came into force on 3-9-1953, represents a valiant attempt to tackle the new problem. Article 8of the Convention is worth citing7:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."

Since the right to privacy has been the subject-matter of several decisions in the United States, it would be appropriate to briefly refer to some of the important decisions in that country.

10.The right to privacy was first referred to as a right and elaborated in the celebrated article of Warren and Brandies (later Mr Justice Brandies) entitled "The right to privacy" published in 4 Harvard Law Review 193, in the year 1890.

11.Though the expression "right to privacy" was first referred to in Olmstead v. United States8, it came to be fully discussed in Time, Inc. v. Hil19. The facts of the case are these: On a particular day in the year 1952, three escaped convicts intruded into the house of James Hill and held him and members of his family hostage for nineteen hours, whereafter they released them unharmed. The police immediately went after the culprits, two of whom were shot dead. The incident became prime news in the local newspapers and the members of the press started swarming the Hill's home for an account of what happened during the hold-up. The case of the family was that they were not ill-treated by the intruders but the members of the press were not impressed. Unable to stop the siege of the press correspondents, the family shifted to a far-away place.

Life magazine sent its men to the former home of Hill family where they reenacted the entire incident, and photographed it, showing inter alia that the members of the
6 See 26 Stanford Law Rev. 1161, 1187
7 See Privacy and Human Rights, Ed. AH Robertson, p. 176 8
8 277 US 438 72 L Ed 944 (1927)
9 385 US 374 17 L Ed 2d 456 (1967)
642
family were ill-treated by the intruders. When Life published the story, Hill brought a suit against Time Inc., publishers of Life magazine, for invasion of his privacy. The New York Supreme Court found that the whole story was "a piece of commercial fiction" and not a true depiction of the event and accordingly confirmed the award of damages. However, when the matter was taken to United States Supreme Court, it applied the rule evolved by it in New York Times Co. v. Sullivan10 and set aside the award of damages holding that the jury was not properly instructed in law. It directed a retrial. Brennan, J. held:

> "We hold that the constitutional protections for speech and press preclude the application of the New York statute to redress false reports of matters of public interest in the absence of proof that the defendant published the report with the knowledge of its falsity or in reckless (emphasis added)
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> "We create grave risk of serious impairment of the indispensable service of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in press news articles with a person's name, picture or portrait, particularly as related to non-defamatory matter.
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> Those guarantees are not for the benefit of the press so much as for the benefit of all of us. A broadly defined freedom of the press assures the maintenance of our political system and an open society.
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> That books, newspapers and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded.....

12.The next relevant decision is in Cox Broadcasting Corpn. v. Cohn A Georgia law prohibited and punished the publication of the name of a rape victim. The appellant, a reporter of a newspaper obtained the name of the rape victim from the records of the court and published it. The father of the victim sued for damages. White, J. recognised that "in this sphere of collision between claims of privacy and those of the free press, the interests on both sides are plainly rooted in the traditions and significant concerns of our society" but chose to decide the case on the narrow question whether the press can be said to have violated the said statute or the right to privacy of the victim by publishing her name, having obtained it from public records. The learned Judge held that the press cannot be said to have violated the Georgia law or the right to privacy if it obtains the name of the rape victim from the public records and publishes it. The learned Judge held that the freedom of press to publish the information contained in the public records is
10 376 US 254: 11 L Ed 2d 686 (1964)

11 420 US 469: 43 L Ed 2d 328 (1975)
643
of critical importance to the system of Government prevailing in that country and that, may be, in such matters "citizenry is the final judge of the proper conduct of public business".

13.Before proceeding further, we may mention that the two decisions of this Court referred to above (Kharak Singh1 and Gobind2) as well as the two decisions of the United States Supreme Court, Griswold3 and Roe v. Wade4 referred to in Gobind2, are cases of governmental invasion of privacy. Kharak Singh1 was a case where the petitioner was put under surveillance as defined in Regulation 236 of the U.P. Police Regulations. It involved secret picketing of the house or approaches to the house of the suspect, domiciliary visits at night, periodical enquiries by police officers into repute, habits, association, income or occupation, reporting by police constables on the movements of the person etc. The regulation was challenged as violative of the fundamental rights guaranteed to the petitioner. A Special Bench of seven teamed Judges held, by a majority, that the regulation was unobjectionable except to the extent it authorised domiciliary visits by police officers. Though right to privacy was referred to, the decision turned on the meaning and content of "personal liberty" and "life" in Article 21. Gobind2 was also a case of surveillance under M.R Police Regulations. Kharak Singh1 was followed even while at the same time elaborating the right to privacy, as set out hereinbefore.

14.Griswold3 was concerned with a law made by the State of Connecticut which provided a punishment to "any person who uses any drug, medicinal article or instrument for the purpose of preventing conception..... The appellant was running a centre at which information, instruction and medical advice was given to married persons as to the means of preventing conception. They prescribed contraceptives for the purpose. The appellant was prosecuted under the aforesaid law, which led the appellant to challenge the constitutional validity of the law on the grounds of First and Fourteenth Amendments. Douglas, J., who delivered the main opinion, examined the earlier cases of that court and observed:

> "... specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help to give them life and substance.... Various guarantees create zones of privacy.
> The present case, then concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon the relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to State regulation may not be achieved by means which sweep unnecessarily broadly and thereby
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> invade the area of protected freedoms". NAACP v. Alabama12. Would we allow the police to

search the sacred precincts of marital bedrooms of telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

We deal with a right of privacy older than the Bill of Rights older than our political parties, older than our schools system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions."

15. Roe v. Wade4 concerned the right of an unmarried pregnant woman to terminate her pregnancy by abortion. The relevant Texas law prohibited abortions except with respect to those procured or admitted by medical advice for the purpose of saving the life of the mother. The constitutionality of, the said law was questioned on the ground that the said law improperly invaded the right and the choice of a pregnant woman to terminate her pregnancy and therefore violative of 'liberty' guaranteed under Fourteenth Amendment and the right to privacy recognised in Griswold3. Blackmun, J. who delivered the majority opinion, upheld the right to privacy in the following words:

"The Constitution does not explicitly mention any right of privacy. In a line of decisions, however,... the Court has recognised that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment,... in the penumbras of the Bill of Rights,... in the Ninth Amendment.... or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment..... These decisions make it clear that only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty', Palko v. ConneCticut13, are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, Loving v. Virginia14; procreation, Skinner v. Oklahoma 15; contraception; Eisenstadt v. Baird16; family relationships, Prince v. Massachusetts17; and child-rearing and education, Pierce v. Society of Sisters 1 8, Meyer v. Nebraska 1 9.

12 377 US 288: 12 L Ed 2d 325 (1964)
1 3 302 US 319: 82 L Ed 288 (1937)
14 388 US 1 : 18 L Ed 2d 10 10 (1967)
15 316 US 535 : 86 L Ed 1655 (1942)
16 405 US 438: 31 L Ed 2d 349 (1972)
17 321 US 15 8 : 8 8 L Ed 645 (1944)
1 8 268 US 510: 69 L Ed 1070 (1925)
1 9 262 US 390: 67 L Ed 1042 (1923)

645

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of

personal liberty and restrictions upon State action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.

Though this decision received a few knocks in the recent decision in Planned Parenthood v. Casey2O, the central holding of this decision has been left untouched indeed affirmed.

16.We may now refer to the celebrated decision in New York Times v. Sullivan10, referred to and followed in Time Inc. v. Hil19. The following are the facts: In the year 1960, the New York Times carried a full page paid advertisement sponsored by the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South", which asserted or implied that law-enforcement officials in Montgomery, Alabama, had improperly arrested and harassed Dr King and other civil rights demonstrators on various occasions. Respondent, who was the elected Police Commissioner of Montgomery, brought an action for libel against the Times and several of the individual signatories to the advertisement. It was found that some of the assertions contained in the advertisement were inaccurate. The Alabama courts found the defendants guilty and awarded damages in a sum of $ 500,000, which was affirmed by the Alabama Supreme Court. According to the relevant Alabama law, a publication was "libelous per se" if the words "tend to injure a person ... in his reputation" or to "bring (him) into public contempt". The question raised before the United States Supreme Court was whether the said enactment abridged the freedom of speech and of the press guaranteed by the First and Fourteenth Amendments. In the leading opinion delivered by Brennan, J., the learned Judge referred in the first instance to the earlier decisions of that court emphasising the importance of freedom of speech and of the press and observed:

> "Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth whether administered by judges, juries, or administrative officials and especially one that puts the burden of proving the truth on the speaker.
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> A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions and to do so on pain of libel judgments virtually unlimited in amount- leads to... "self-censorship". Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars.... Under such a rule, would-be critics of official

> conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in

court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone'.... The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments.

The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' that is, with knowledge that it was false or with reckless disregard of whether it was false or not." (emphasis added)

17.Black, J. who was joined by Douglas, J. concurred in the opinion but on a slightly different ground. He affirmed his belief that "the First and Fourteenth Amendments not merely 'delimit' a State's power to award damages to 'public officials against critics of their official conduct' but completely prohibit a State from exercising such a power".

18.The principle of the said decision has been held applicable to "public figures" as well. This is for the reason that public figures like public officials often play an influential role in ordering society. It has been held that as a class the public figures have, as the public officials have, access to mass media communication both to influence the policy and to counter-criticism of their views and activities. On this basis, it has been held that the citizen has a legitimate and substantial interest in the conduct of such persons and that the freedom of press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events.

19.The principle of Sullivan10 was carried forward and this is relevant to the second question arising in this case - in Derbyshire County Council v. Times Newspapers Ltd.21, a decision rendered by the House of Lords. The plaintiff, a local authority brought an action for damages for libel against the defendants in respect of two articles published in Sunday Times questioning the propriety of investments made for its superannuation fund. The articles were headed "Revealed: Socialist tycoon deals with Labour Chief' and "Bizarre deals of a council leader and the media tycoon". A preliminary issue was raised whether the plaintiff has a cause of action against the defendant. The trial Judge held that such an action was maintainable but on appeal the Court of Appeal held to the contrary. When the matter reached the House of Lords, it affirmed the decision of the Court of Appeal but on a different ground. Lord Keith delivered the judgment agreed to by all other learned Law Lords. In his opinion, Lord Keith recalled that in Attorney General v. Guardian Newspapers Ltd. (No. 2)22 popularly known as "Spycatcher case", the House of Lords had opined that "there are

21 (1993) 2 WLR 449: (1993) 1 All ER 1011, HL

22 (1990) 1 AC 109: (1988) 3 All ER 545 :(1988) 3 WLR 776, HL

647

rights available to private citizens which institutions of... Government are not in a position to exercise unless they can show that it is in the public interest to do so". It was also held therein that not only was there no public interest in allowing governmental institutions to sue for libel, it was "contrary to the public interest because to admit such actions would place an undesirable fetter on

freedom of speech" and further that action for defamation or threat of such action "inevitably have an inhibiting effect on freedom of speech". The learned Law Lord referred to the decision of the United States Supreme Court in New York Times v. Sullivan10 and certain other decisions of American Courts and observed and this is significant for our purposes-

> "while these decisions were related most directly to the provisions of the American Constitution concerned with securing freedom of speech, the public interest considerations which underlaid them are no less valid in this country. What has been described as 'the chilling effect' induced by the threat of civil actions for libel is very important. Quite often the facts which would justify a defamatory publication are known to be true, but admissible evidence capable of proving those facts is not available." Accordingly, it was held that the action was not maintainable in law.

20.Reference in this connection may also be made to the decision of the Judicial Committee of the Privy Council in Leonard Hector v. Attorney General of Antigua and Barbuda23 which arose under Section 33-B of the Public Order Act, 1972 (Antigua and Barbuda). It provided that any person who printed or distributed any false statement which was "likely to cause fear or alarm in or to the public or to disturb the public peace or to undermine public confidence in the conduct of public affairs" shall be guilty of an offence. The appellant, the editor of a newspaper, was prosecuted under the said provision. He took the plea that the said provision contravened Section 12(1) of the Constitution of Antigua and Barbuda which provided that no person shall be hindered in the enjoyment of freedom of expression. At the same time, sub-section (4) of Section 12 stated that nothing contained in or done under the authority of law was to be held inconsistent with or in contravention of sub-section 12(1) to the extent that the law in question made provisions reasonably required in the interest of public order. [These provisions roughly correspond to Articles 19(1)(a) and 19(2) respectively.] The Privy Council upheld the appellant's plea and declared Section 12(1) ultra vires the Constitution. It held that Section 33-B is wide enough to cover not only false statements which are likely to affect public order but also those false statements which are not likely to affect public order. On that account, it was declared to be unconstitutional. The criminal proceedings against the appellant was accordingly quashed. In the course of his speech, Lord Bridge of Harwich observed thus:

> "In a free democratic society it is almost too obvious to need stating that those who hold office in Government and who are responsible for
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> 23 (1990) 2 AC 312: (1990) 2 All ER 103 :(1990) 2 WLR 606, PC
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> 648
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> public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. At the same time it is no less obvious that the very purpose of criticism leveled at those who have the conduct of public affairs by their political opponents is to undermine

> public confidence in their stewardship and to persuade the electorate that the opponents would make a better job of it than those presently holding office. In the light of these considerations their Lordships cannot help viewing a statutory provision which criminalities statements likely to undermin
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> public confidence in the conduct of public affairs with the utmost suspicion."

21.The question is how far the principles emerging from the United States and English decisions are relevant under our constitutional system. So far as the freedom of press is concerned, it flows from the freedom of speech and expression guaranteed by Article 19(1)(a). But the said right is subject to reasonable restrictions placed thereon by an existing law or a law made after the commencement of the Constitution in the interests of or in relation to the several matters set out therein. Decency and defamation are two of the grounds mentioned in clause (2). Law of torts providing for damages for invasion of the right to privacy and defamation and Sections 499/500 IPC are the existing laws saved under clause (2). But what is called for today in the present times is a proper balancing of the freedom of press and said laws consistent with the democratic way of life ordained by the Constitution. Over the last few decades, press and electronic media have emerged as major factors in our nation's life. They are still expanding and in the process becoming more inquisitive. Our system of Government demands as do the systems of Government of the United States of America and United Kingdom constant vigilance over exercise of governmental power by the press and the media among others. It is essential for a good Government. At the same time, we must remember that our society may not share the degree of public awareness obtaining in United Kingdom or United States. The sweep of the First Amendment to the United States Constitution and the freedom of speech and expression under our Constitution is not identical though similar in their major premises. All this may call for some modification of the principles emerging from the English and United States decisions in their application to our legal system. The broad principles set out hereinafter are evolved keeping in mind the above considerations. But before we set out those principles, a few more aspects need to be dealt with.

22.We may now consider whether the State or its officials have the authority in law to impose a prior restraint upon publication of material defamatory of the State or of the officials, as the case may be? We think not. No law empowering them to do so is brought to our notice. As observed in New York Times v. United StateS24, popularly known as the Pentagon papers case, "any system of prior restraints of (freedom of) expression comes to this

24 (1971) 403 US 713 : 29 L Ed 2d 822 (197 1)

649

Court bearing a heavy presumption against its constitutional validity" and that in such cases, the Government "carries a heavy burden of showing justification for the imposition of such a restraint". We must accordingly hold that no such prior restraint or prohibition of publication can be imposed by the respondents upon the proposed publication of the alleged autobiography of "Auto Shankar" by the petitioners. This cannot be done either by the State or by its officials. In other words, neither the Government nor the officials who apprehend that they may be defamed, have the right to impose

a prior restraint upon the publication of the alleged autobiography of Auto Shankar. The remedy of public officials/public figures, if any, will arise only after the publication and will be governed by the principles indicated herein.

23.We must make it clear that we do not express any opinion about the right of the State or its officials to prosecute the petitioners under Sections 499/500 IPC. This is for the reason that even if they are entitled to do so, there is no law under which they can prevent the publication of a material on the ground that such material is likely to be defamatory of them.

Question No. 3

24.It is not stated in the counter-affidavit that Auto Shankar had requested or authorised the prison officials or the Inspector General of Prisons, as the case may be, to adopt appropriate proceedings to protect his right to privacy. If so, the respondents cannot take upon themselves the obligation of protecting his right to privacy. No prison rule is brought to our notice which empowers the prison officials to do so. Moreover, the occasion for any such action arises only after the publication and not before, as indicated hereinabove.

25.Lastly, we must deal with the objection raised by the respondent as to the maintainability of the present writ petition. It is submitted that having filed a writ petition for similar reliefs in the Madras High Court, which was dismissed as not maintainable under a considered order, the petitioners could not have approached this Court under Article 32 of the Constitution. The petitioners, however, did disclose the above fact but they stated that on the date of their filing the writ petition, no orders were pronounced by the Madras High Court. It appears that the writ petition was filed at about the time the learned Single Judge of the Madras High Court pronounced the orders on the office objections. Having regard to the facts and circumstances of the case, we are not inclined to throw out the writ petition on the said ground. The present writ petition can also be and is hereby treated as a special leave petition against the orders of the learned Single Judge of the High Court.

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

(1)The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own,

650

his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2)The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the

interests of decency [Article 19(2) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3)There is yet another exception to the rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

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

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

651

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

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

28.In all this discussion, we may clarify, we have not gone into the impact of Article 19(1)(a) read with clause (2) thereof on Sections 499 and 500 of the Indian Penal Code. That may have to await a proper case.

29.Applying the above principles, it must be held that the petitioners have a right to publish, what they allege to be the life story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his life story, they may be invading his right to privacy and will be liable for the consequences in accordance with law. Similarly, the State or its officials cannot prevent or restrain the said publication. The remedy of the affected public officials/public figures, if any, is after the publication, as explained hereinabove.

30.The writ petition is accordingly allowed in the above terms. No costs.
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