Delhi High Court
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Khushwant Singh And Anr. vs Maneka Gandhi on 18 September, 2001
Equivalent citations: AIR 2002 Delhi 58
Author: S K Kaul
Bench: D Gupta, S K Kaul
ORDER

Sanjay Kishan Kaul, J.

1. "He that publishes a book runs a very great hazard, since nothing can be more impossible than to compose one that may secure that approbation of every reader" - rightly observed Miguel De Cervantes.

2. Two competing interests of a well-known author to publish his autobiography where references have been made to personal lives of a public figure and the public figure's claim for protection against such publication under her rights of privacy has given rise to interesting questions of law in the present appeal.

3. Mr. Khushwant Singh, appellant No.1 is a well-known author. He was desirous of publishing his autobiography and the same was proposed to be published in a book titled "Truth, Love and a Little Malice". The book was to be published and distributed by appellant No.2. The book is stated to contain a chapter under heading "Gandhis and Anands". Respondent, a public figure, is aggrieved by the contents of this chapter. The broad contents of this chapter are claimed to be known to the respondent in view of certain advance promotion/publication in magazines in respect of this autobiography though the full contents are not known. "India Today" magazine, in its issue of October 31, 1995, published an authorised and exclusive extract of they said autobiography. The said extracts purported to give an account of respondent's relationship with the Gandhi family and relationship inter se other members of the family.

4. Respondent filed a suit for injunction and damages against the appellants in their capacity as the author, publisher and the distributor respectively. In the plaint the respondent stated that she is the widow of late Mr. Sanjay Gandhi and daughter-in-law of late Mrs. Indira Gandhi, former Prime Minister of India. The respondent claimed that she was filing the suit in order to protect the fair name and respect of her family. It was also stated in the plaint that appellant no.1 is a well-known and widely read journalist and has authored several books. Respondent no.1 has been Editor in several newspapers and magazines and it was further stated that appellant no.1 herein had allegedly written his autobiography and intended to publish it under the titled 'Truth, Love and a Little Malice'.

6. Respondent in the plaint stated that she was aggrieved by the recital in the said autobiography by appellant no.1 relating to the family of the respondent, imputed actions and planted words and sentences to the members of the respondents family and stated that derogatory comments about the appellant and other members of the family were made in the said autobiography as was borne from the article published in India Today.

7. In para 5 of the plaint respondent has quoted certain extracts reported in India Today, which are stated to be part of the autobiography of appellant no.1, as derogatory and defamatory besides being incorrect material. It would be relevant to reproduce the said portions stated in the plaint by which the respondent is aggrieved.

8. 5. The defendant No.1, besides other incorrect, derogatory and defamatory words in the said extract, has written about the plaintiff as under:-

i) "All this is significant as later Mrs. Gandhi maintained that Maneka did not fit into her family because she was not of the same class as the nehru-Gandhis and did not behave in a manner becoming an Indian Woman."

ii) "She told me that Maneka had been rude to people who came to condole with them."

iii) "She was told that she was a distraction and had no table manners"

iv) "....Everyone hates you you murdered your father...your mother is a bitch."

v) "Mrs. Gandhi also accused Maneka of having accepted a bribe of one and a half lack for getting someone called Khosla a contract for shipping slabs of marble from Rajasthan."

vi) "Maneka decided that this time she would determine the terms and time of her departure. She told me several weeks ahead of the exact day on which she would be "thrown out"

vii) "Maneka and 'her mother' made full use of the opportunity to remove whatever documents they needed from the house...."

viii) "You dirty little liar. You cheat, you... She screamed, wagging her finger at Maneka"

ix) "....there was wild speculation about that relationship between Maneka and Sanjay's friend Akbar Ahmed (Dumpy)"

x) "I also described her as the biggest liar in the world barring two people, her mother and mother in law."

9. It was further stated in para 6 of the plaint that the aforesaid quoted lines as well as entire tenor of the said extract is such that it tends to hold the respondent up to hatred, contempt and ridicule and lowers the reputation of the respondent as well as the family in the eyes of the right thinking members of the society and injure her. It is further stated that such allegations tend to injure the reputation of the respondent and diminish the esteem, respect, goodwill and confidence in which the respondent is held. Such statements are stated to excite adverse, derogatory and unpleasant feelings and opinions against the respondent causing anguish and pain to her.

10. The respondent in paras 9 to 10 of the plaint invoked her right to privacy and claimed that the right to privacy is implicit in the right to life and liberty guaranteed to a citizen of the country by Article 21 of the Constitution of India. It was categorically stated that no one could publish anything concerning the matters stated in the plaint without the consent of the respondent-whether controversial or otherwise and whether laudatory or critical. It was further averred that neither the respondent nor any other member of her family had ever given a consent to the appellants to write and publish about her and her family.

11. A reference is also made by the respondent in her plaint to certain facts alleged by respondent no.1 in respect of late Pandit Jawahar Lal Nehru by his late Secretary M.O. Mathai in the book published by Mr. Mathai. It is further alleged in the plaint that the publication of appellant is not based upon any public records nor doe sit relate to the acts or conduct relevant to the discharge of any official duties.

12. The respondent prayed in the suit for a restraint order against the defendant form publishing, circulating or selling the said autobiography or any extract pertaining to respondent and her family, in any manner, as reproduced in the article in India Today and further claimed damages against appellant no.1 for publishing the defamatory statements in India Today. The claim for damages has been quantified at Rs. 5 lacs on which ad-valorem court fee has been affixed but in para 12 of the plaint the respondent has stated that the court may determine the final quantum of damages and the respondent would pay court fee of such amount of damages as may be awarded by the court. Along with the plaint an application for interim relief (IA NO. 12567/95) under Order XXXIX Rules 1 and 2 read with section 151 CPC was also filed. The respondent was granted an ad-interim ex parte order by the learned Single Judge on 16th December, 1995 against the publication of the autobiography. Appellant no.1 filed an application (IA No. 646/96) for vacation of the order dated 16th December, 1995 under Order XXXIX Rule 4 read with section 151 CPC. Appellant no.2 also filed an application (IA No.647/96) on the same terms supporting the case of appellant no.1. In the said application

appellant no.1 has denied that there are any defamatory or libellous statements against the respondent. Appellant no.1 further owed up to the statement and asserted them as correct and truthful. In para 2 of the application it is stated "the defendant no.1 submits that what is stated in his autobiography relating to Maneka Gandhi is correct and the truth of the statement will be justified at the trial." Thus appellant no.1 has stood up to what he has stated in the autobiography. Appellant no.1 has further stated that he regarded the respondent as a younger member of his family and from time to time advised her as such, supported her and defended her against false accusations and unjust attacks. In fact it is stated by appellant no.1 that he had complimented the respondent in laudatory terms on various occasions. Appellant no.1 has referred to his association with the Magazine Surya when the respondent was a journalist in-charge of the same.

13. Appellant no.1 in his application for vacation of stay further stated that the statements in question are matter of public and historical interest and significance and have been made in exercise of appellant no.1's fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. It is averred that the public has a right to know and receive information about these matters and the attempt of the respondent to suppress the publication and dissemination of true facts and information about her by means of an injunction from the court would tantamount to pre-censorship which has been held by the Supreme Court to be totally impermissible under our constitutional scheme. It is further averred that criticism and comments upon the lives and actions of International and National leaders and eminent public personalities is the life-breach of a free democracy and no historical works or memoirs or autobiography would be possible if same were to be suppressed and prevented from seeing the light of the day because the comments and criticism are adverse and unfavorable. Appellant no.1 has stated in para 3 of his application (IA No.646/96) in Suit No. 2899/95 as under:-

"Freedom of expression constitutes one of the essential foundations of a free democratic society and guarantees not only dissemination of information and expression of ideas and beliefs "that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broad mindedness without which there is no democratic society."

14. Appellant no.1 has further claimed that public interest outweighs any claim of the respondent towards her reputation or rights of privacy and has contended that the right of privacy, under Article 21 of the Constitution of India, is enforceable qua the State and not against private individuals. It is further averred that the statements in question are matters of public knowledge and have been in public domain for several years. Another material aspect which is averred by appellant no.1 is that act that the matters by which the respondent is now aggrieved were published in April, 1992 issue of India Today which had wide circulation. No only this the subject matter has also been discussed in Mrs. Pupul Jaykar's book "Indira Gandhi' and the book 'Rajiv Gandhi' by Mr. Ved Mehta. It is stated that at no stage had the respondent raised any objections or initiated any proceedings when such publications were brought out and by her silence had acquiesced and accepted the same. It is further stated that the respondent had never made any grievance about the extracts of the autobiography published in India today on 31st October, 1995 nor did she speak to appellant no.1 about the same. Though only averment has been made about certain statements of Mathai in relation to late Pandit jawahar Lal Nehru and late Smt. Indira Gandhi, appellant no.1 contends that he had not only not endorsed the statements but had even denounced Mathai for making such statements. This is stated to have been done in his column in Hindustan Times in the following terms:

"It was after Mathai had been stripped of the Nehru feathers that he revealed his truly mean nature and dishonoured the confidence that the Nehru family had reposed in him. Nehru, being a generous man, was willing to forgive and take him back. When this was suggested to Mathai he snarled: "Only a dog returns to his vomit."

For eighteen years after his dismissal Mathai chewed the cud of bitterness. After Nehru was dead and Indira Gandhi out of power, Mathai felt safe enough to spew out venom against the family whose salt he had eaten."

15. The application of respondent no.2 is on similar terms. Further the extracts of earlier publication in respect of the subject matter in India Today, Mrs. Pupul Jaykar's and Mr. Ved Mehta's books was brought on record to substantiate the allegations made in the application for vacation of ex parte order of injunction.

16. The learned Single Judge after hearing learned counsel for the parties allowed the application of the respondent and dismissed the applications of the appellants and thus confirmed the ex parte ad-interim injunction order already granted in terms of the impugned order dated 29th April, 1997.

17. The learned Single Judge was of the view that freedom of speech would not give an unbridled license to a citizen of India to write about private lives of others. The learned Single Judge further records that the facts that the subject matter was earlier written by other persons, would not give right to appellant no.1 to write about the same. Learned Single Judge observed:

"Generally, people would expect from great writers like the first defendant, high thinking, higher living and high learning. The law in India does not permit scrawly writings by individuals just for the purpose of satisfying their impulses arising out of personal animosities."

18. The learned Single Judge by the impugned order proceeded to pass an injunction order restraining the appellants from publishing, circulating or selling the autobiography "Truth Love and a Little Malice" or any extract pertaining to the respondent and her family in the manner as reproduced in the issue of October 31, 1995 of India Today magazine.

19. The appellants aggrieved by the said order have preferred the present appeal.

20. We have heard Mr. C A Sundaram, learned senior counsel for the appellant and Mr. Raj Panjwani, learned counsel for respondent at length and have perused the records of the case.

21. Mr. Sundaram, learned senior counsel for the appellant, has contended before us that there cannot be a pre-publication injunction as the book has not even been published. Mr. Sundaram has forcefully contended that appellant no.1 has categorically affirmed and has stood by what he has written by making such an averment in his application for vacation of injunction. In such a situation, Mr. Sundaram contends, that there could have been no action at all for any injunction and the relief, if any, is by way of damages. Mr. Sundaram has drawn our attention to the relief claimed in the pliant where damages have in fact been claimed. He has further contended that there is no defamation if the statements are analysed as set out in the plaint and in any case once appellant nol.1 stands by the same truth would be available as a defense to defamation.

22. Mr. Sundaram, learned senior counsel for the appellant further submitted that the statements of which the respondent is aggrieved are primarily in nature of public domain as they have been published or commented upon earlier on numerous occasions including by the India Today, Pupul Jaykar's book and in Ved Mehta's book. Not only this the respondent is stated to be instrumental in some of the comments which have arisen at the behest of the respondent at the relevant stage of time. There is further no allegation of malice in the plaint.

23. Mr. Sundaram further referred to the earlier publications in respect of the same subject matter by producing a chart giving a comparison of the passage complained of, the reference, if any, in India Today of April 15, 1982, India Today of April 30, 1982, Pupul Jaykar's book and Ved Mehta's book. Mr. Sundaram further referred to the press statements of the respondent herself and her inviting media's attention to the same subject matter by reference to the prior publications as aforesaid. It would thus be useful to reproduce this chart as the same has found basis of comparison both on behalf of the appellant and subsequently by learned counsel for the respondent.

REFERENCES TO REPORTS ALREADY IN THE PUBLIC DOMAIN PRIOR TO THE IMPUGNED WRITINGS

PASSAGE COMPLA- INDIA TODAY INDIA TODAY PUPUL JAY- VED MEHTA'S NED OF Apr. 15, 1982 Apr. 30, 1982 KAR's BOOK BOOK

(1) "All this is Reference to Reference to -Ref to Mrs. Ref. No. "Deff- significant as "different "different Gandhi's erence in later Mrs. Gandhi background" background" letter to character maintained that at page 91 at page 100 Maneka personality" Maneka Gandhi did (col.1 para1) Col. 3 para 2 making an page 120, not fit into her -Reference to "unfortunate Col.2 para 2 family because she Maneka being reference to Ref to ordi- was not of the same "cut to size" difference nary pass- class as the Nehru- & being in background" port like Gandhis and did "thrown out" Pg.117, Col.2 that of the not behave in a at Pg.105, -Ref to ayah-Pg.121 manner becoming para 1 maneka's Col.1 para- an Indian women -Reference to letter to Mrs. graph) also shabby treat- Gandhi at Pg. -Ref to

ment by Mrs. 118 Col.1 "different

Gandhi to "called my family back-

Maneka made family names" ground" at

by M.V. Kamath Pg.125,

in the India Co.1 para 1

Express(Pg 107

Col.1 last

para)

(ii) "She told me Reference to Ref to Mrs. Ref to "Vibe that Maneka had "rude manner" Gandhi's abuse" been rude to people at Pg.104 letter to pg 125 col.2 who came to condole Col.3 para 1 Maneka with them. accusing her of rudeness

at Pg 117

Col.2 para 2

(iii) "She was told Ref to "I was that she was a dis- told not to traction and had no eat at the table manners" family Dining table Pg.126

Col.1 para 1

(iv) "Everyone hates Reference Ref to Maneka's Ref. to you-you murdered to viru- letter-insulted Maneka's your father.. Your lent Ex- me/abused me in "dear your mother is a changes public" at pg Mummy" bitch." between 118 col 1 Ref letter at Mrs. Gandhi to "a particular- pg.124,

Maneka & larly unseemly Col1

Maneka's episode reported which

sister at to have taken was publi-

pg.104 Col2 place between shed in

Col.Ist para Maneka's sis- the Indian

also at ter, Ambika & Express:

Col.3, para 1 Indira Gandhi 31.3.82

at Pg.118 Co. Ref. to

1 para 2. "Vile

abuse at

pg 125 col

para 2

(v) Mrs. Gandhi also

accused Maneka of

having accepted a

bribe of one a half

lakh for getting

someone called

Khosla a contract

for shipping slabs

of marbles from

Rajasthan."

(vi) "Maneka deci- Ref to "look- Ref to: -Ref to: "She -Ref to ded that this time ing pallied "as one of heard, she "Mrs. Gandhi she would determine but composed the two said that same preemptori- the terms & time maneka chief talk had started ly told her of her departure claimed that antagonists of Maneka leav- that she she told me she had been herself put ing the house" quite the several weeks told to get it two Days at Pg.112,Col.1 house imm- ahead of the out by Mrs. after her para 4.-Ref to: diately" at exact day on Gandhi" & dramatic "If she wanted pg 119, Col which she would "She had departure to leave the 2 para 1- be thrown out been given from 1 house it was Ref to if her "marching Safdarjung for her to she atten- Orders" at Road." at decide." Pg.115 ded it the page 90, Col 3 Pg.100 Col Col.1 p.1 doors to 3 para 1 the prime

Ref to: "The -Ref to "Maneka ministers real signi- Gandhi"s pre- house would ficance lies parations to be forever in its timing" leave the House" closed to Pg.91, Col.1, at pg.117 Co. her at pg. Para3). 1 para 5 -Ref 123, Col1 to Maneka's para 2-Ref

"dear Mummy" to "Mrs.

letter at pg Gandhi

118 ordered

-Ref to "My Maneka to

mother-in-law quite the

gave me the PM's house"

marching orders" at pg.123,

at pg 101, Col.1 Col 2 last

para 1. -Ref to para. - Also

Opinion Poll at pg 124, Col2"

pg 105 -Ref to para 2.

"the day she was

thrown out" at Pg

104, Col.2 para 1

& col. 3 para 3

(last line)

(vii) "Maneka and her mother

made full use of the

opportunity to remove

whatever documents

they needed from the

house".

(viii) "You dirty little Ref to "insulted" Ref to liar. You cheat. You... & "abused" at pg Maneka's She screamed, wagging 118, Maneka's "dear" Her finger a Maneka letter. Ref to Mummy" "a particularly letter at

un-seemly episode pg 124,

was reported to Col.1

have taken place

between Maneka's

sister, Ambika,

and Indira Gandhi"

at Pg. 118 para 1

(ix) "..There was a wild Pg.122, speculation about the Col.2 relationship between

Maneka and Sanjay's friend

Akbar Ahmed (Dumpy)

(x) "A also described her as

the biggest liar in the world

barring two people, her

mother & mother-in-law.

24. It is thus the contention of the learned senior counsel for the appellant that other than the statement at Serial No. (v), (xi) and (x) all other extracts have been reported in the press more or less in the same terms. He further submitted that a reading of the passages complained of by the respondent would show that they can hardly fall within the category of defamation. Insofar as the three matters which were not previously reported, the counsel for the appellant stated that appellant no.1 stood by them. Further the reference in (ix) is itself stated by the appellant no.1 as a wild speculation.

25. The learned senior counsel also submitted that the respondent herself had been issuing press statements and inviting media when it suited her. The respondent is a public figure and it was contended that such public figures are subject to public gaze including in respect of their private lives at times. This, it was contended, was to be adjudged in view of the publicity which was sought by the respondent herself from time to time. In view of this it was contended that the respondent having herself sought the publicity she could not complain about the same. It was further contended that persons in public life often are in public gaze and have to have a thick skin when they are exposed to comments and criticisms including in respect of their private life. Public persons, thus, were contended to be different from a private citizen and the rules and law of privacy, the protection of which would be available to private citizen would not be the same for public figures who cannot brush their private life under the carpet. In any case, it was contended, that appellant no.1 was standing by the statements and was thus willing to get his statements decided in the courts of law and suffer the consequences, if any, of the same. The details of the statements attributed to the respondent were all separately submitted before us based on the records.

26. The learned counsel for the appellant then proceeded to substantiate his submissions by referring to the case law and commentaries dealing with the matter in issue. The first case referred by the learned senior counsel for the appellant was the judgment of the Supreme Court in the case of Auto Shankar reported as R Rajgopal & Anr vs. State of T.N. & others . The said case dealt with the rights of privacy of the citizens of this country and the parameters of the right of press to criticise and comment on acts and conduct of public officials. The case related to the alleged autobiography of Auto Shankar, who was convicted and sentenced to death for 6 murders. The issue arose because in the alleged autobiography Auto Shankar had commented on the conduct and relationship with various police officials. It was the stand of the police officials hat the autobiography was not a true one and was not authored by Auto Shankar. It may be stated that Auto Shankar or his wife were not made parties to the petition filed in the Supreme Court under Article 32 of the Constitution of India. The right of privacy was explained by the Supreme Court in para 9 of the judgment in the following terms.

"The right to privacy as an independent and distinctive concept originated in the filed of tort law, under which a new cause of action for damages resulting form 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 as tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognisation 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."

(emphasis supplied)

27. The Supreme Court thereafter proceeded to refer to various decisions of the India courts starting with the first decision of the Supreme Court in Kharak Singh vs. State of U.P. & ors which was subsequently elaborated in Gobind Vs. State of M.P. and another, . The right to privacy as enunciated by the courts of United States and England were discussed in great depth.

28. The Supreme Court was of the view that principles enunciated in the various judgments were applicable to public figures as well as they often played an influential role in orderly society and the citizens had a legitimate and substantial interest in the conduct of such persons. Thus the Supreme Court was of the view that freedom of the press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events. The Supreme Court felt that a proper balancing of the freedom of press as well as the rights or privacy and defamation had to be done in terms of the democratic way of life laid by our constitution. The Supreme Court concluded that the State or its officials have no authority in law to impose a prior restraint upon publication of material defamatory of the State or of the officials. The Supreme Court quoted with approval the observations in New York Times vs. United States (1971) 403 US 713, popularly known as the Pentagon papers case to the effect that "any system of prior restraints of (freedom of) expression comes to this court bearing a heavy presumption against its constitutional validity" and that in such cases, the Government "carriers a heavy burden of showing justification for the imposition of such a restraint". The Supreme Court thus held that the remedy of the public officials/public figure would arise only after the publication and would be governed by the principles indicated in the judgment and there was no law under which they could prevent the publishing of a material on the ground of such material being likely to be defamatory to them. The remedy was only after publication. In para 26 of the report in R. Rajgopal's case (supra) the broad principles were summarised by the Supreme Court as under:-

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

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

(3) There is yet another exception to the rule in (1) above-indeed, this is not an exception but 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 of 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 defense 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 At, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

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

(emphasis supplied)

29. Mr. Sundaram, learned senior counsel for the appellant referred to the judgment of Kartar Singh and Ors. Vs. State of Punjab to advance his submission that persons who fill a public position must not be too thin skinned in reference to comments made upon them. The learned senior counsel sought to draw strength from the observations of Bhagwati, J.(as he then was) in the said judgment in para 12 which is as under:-

"Those slogans were certainly defamatory of the Transport Minister and the Chief Minister of the Punjab Government but the redress of that grievance was personal to these individuals and the State authorities could not take the cudgels on their behalf by having recourse to section 9 of the Act unless and until the defamation to the security of the State or the maintenance of public order.

So far as these individuals were concerned, they did not take any notice of these vulgar abuses and appeared to have considered the whole thing as beneath their notice. Their conduct in this behalf was consistent with the best traditions of democracy. "Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time". (Per Cockburn C.J. in 'Seymour v. Butterworth' (1862) 3 F&F 372(376, 377(a) and see the dicta of the Judges in R. v. Sir Carden (1879) 5QBD).

(B) "Whoever fills a public position renders himself open thereto. He must accept appendage to his office "(Per Bramwell B., in Kelly v. Sherlock (1866) 1 Q.B. 686(689).

(C) Public men in such positions may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give an importance to the same by prosecuting the persons responsible for the same.

30. The learned senior counsel for the appellant referred to the judgment of Bombay High Court in Indian Express Newspapers (Bombay) Pvt. Limited & Another vs. Dr. Jagmohan Mundhara & another to advance his

submission that it is a well settled principle of law that although the court is satisfied that the words complained of are prima facie libellous and untrue, it will refuse interlocutory injunction where the plaintiff has been dilatory in making his application or has by his conduct disentitled himself to such relief e.g., has expressly or impliedly encouraged, acquiesced in or assented to the publication of which he complains. Mr. Sundaram, thus contended that the subject matter had been previously commented upon in publications and in fact the respondent had encouraged the media to comment on her disputes with late Smt. Indira Gandhi at the relevant stage and thus could not object to appellant no. 1 now writing about the same.

31. Mr. Sundaram, learned senior counsel for the appellant also referred to a Single Bench judgment of this court in Sardar Charanjit Singh vs. Arun Purie & others to contend that once appellant no. 1 stood by his statements, there could not be any interlocutory relief granted against publication as held in the said judgment. The observation in the said judgment were made in respect of the proposition that the court would not restrain defamatory when the defendants said that they are intending to plead justification or fair comments. The learned Single Judge of this court referred to the commentary of Gatley on Libel and Slander, 8th Edition para 884 page 387 as under:-

"Those who fill public positions must not be too thin-skined in reference to comments made upon them."

"One who undertakes to fill a public office offered himself to public attack and criticism; and it is now admitted and recognised that the public interest requires that a man's public conduct shall be open to the most searching criticism."

32. The next decision cited at the bar was of Silkin v. Beaverbrook Newspapers Ltd. and another (1958) 2 All ER 516, of the Queens Bench Division. The following observations of Diplock J were relied upon by the learned senior counsel which are at page 518 of the report as under:-

"I have been referring, and counsel in their speeches to you have been referring, to fair comment, because that is the technical name which is given to this defense, or, as I should prefer to say, which is given to the right of every citizen to comment on matters of public interest. The expression "fair comment" is a little misleading. It may give the impression that you, the jury, have to decide whether you agree with the comment, whether you think that it is fair. If that were the question which you had to decide, you realise that the limits of freedom which the law allows would be greatly curtailed. People are entitled to hold and to express freely on matters of public interest strong views, views which some of you, or indeed all of you, may think are exaggerated, obstinate, or prejudiced, provided- and this is the important thing-they are views which they honestly hold. The basis of our public life is that the crank, the enthusiast, may say what he honestly thinks just as much as the reasonable man or woman who sits on a jury, and it would be a sad day for freedom of speech in this country if a jury were to apply the test of whether it agrees with the comment instead of applying the true test: was this an opinion, however exaggerated, obstinate or prejudiced, which was honestly held by the writer?"

33. Reference was made by learned senior counsel for the appellant to the judgment of Court of Appeal in Fraser vs. Evans & others (1969) 1 All ER 8 to advance his submissions that an injunction should not be granted where a defendant is pleading fair justification and fair comments. The said case bears some similarity to the case in hand before us because in that case two journalists from newspaper had interviewed the plaintiff and the plaintiff was apprehensive about the matter to be published in the next issue. The similarity is in respect of the fact that what is to be finally published was not fully known. Lord Denning expressed as under:

"The Sunday Times have told us quite frankly that the article will be defamatory of the plaintiff. They propose to print extracts from the report, to give some of the answers that he made at the interview, and to say what they think of them. In other words, to comment on what he has written and said.: But they say that, although it will be defamatory of him, nevertheless, if he should sue them for libel, their defense will be that the facts are true that the comments which they make on those facts will be fair comment made honestly on a matter of public interest. If the facts are not true, they say that the plaintiff cannot complain because they are only

giving the facts as he told them. One of the principal difficulties in dealing with this case is that we do not know what the article when published will contain. We do not know what the extracts will be. We do not know what facts will be stated or what comments will be made. Despite this ignorance, we have to deal with the case as best we can. I will take the various points in order.

First, Libel. Insofar as the article will be defamatory of the plaintiff, it is clear he cannot get an injunction. The court will not restrain the publication of an article, even though it is defamatory, when the defendant says that he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since Bonnard v. Perryman (1). The reason sometimes given is that the defense of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a judge; but a better reason is the importance in the public interest that the truth should out. As the court said in that case (2):

"The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done."

There is no wrong done if it is true, or if it is fair comment on a matter of public interest. The court will not prejudice the issue by granting an injunction in advance of publication."

34. The learned counsel also referred to the observations of Lord Denning in Woodword and others Vs. Hutchins and others (1977) 2 All ER

751. The judgment was referred for advancing two propositions. Firstly the contention that where a plaintiff has himself sought publicity there should not be any question of interlocutory injunction and secondly that balance of convenience in such a situation is in favor of the publication leaving the plaintiff to pursue the case for damages, if so advised. Lord Denning observed:

"So far as libel is concerned, the Daily Mirror and Mr Hutchins intimate that they are going to plead justification. They are going to say that the words in the article are true in substance and in fact. In these circumstances it is clear that no injunction would be granted to restrain the publication. These courts rarely, if ever, grant an injunction when a defendant says he is going to justify. The reason is because the interest of the public in knowing the truth outweighs the interest of a plaintiff in maintaining his reputation."

"There is a parallel to be drawn with libel cases. Just as in libel, the courts do not grant an interlocutory injunction to restrain publication of the truth or of fair comment. So also with confidential information. If there is a legitimate ground for supposing that it is in the public interest for it to be disclosed, the courts should not restrain it by an interlocutory injunction, but should leave the complainant to his remedy in damages. Such that this case were tried out and the plaintiffs failed in their claim for libel on the ground that all that was said was true. It would seem unlikely that there would be much damages awarded for breach of confidentiality. I cannot help feeling that the plaintiff's real complaint here is that the words are defamatory; and as they cannot get an interlocutory injunction on that ground, nor should they on confidential information.

Finally, there is the balance of convenience. At this late hour, when the paper is just about to go to press, the balance of convenience requires that there should be no injunction. Any remedy for Mr Tom Jones and his associates should be in damages and damages only."

35. The judgment of the Bonnard vs. Perryman (1891) 2 Ch. 269 was cited to advance the submission that the subject matter of an action of defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong.

36. The learned counsel also referred to Carter-Ruck on Libel & Slander, 4th Edition at page 178 to fortify his submission that the law relating to grant of interlocutory injunctions in defamation actions is significantly different from that relating to injunctions in general. To the same effect is the commentary on "defamation" by

Colin Duncan QC & Brian Neill QC 1978 Edition at page 146 and 147 paras 19.0 to 19.03, 19.04 and 19.05. The authors have referred to observations of various courts and propounded the general rule that an interlocutory injunction will not be granted if there is any doubt as to whether the words are defamatory or if the defendant swears that he will be able to justify the words complained of. The learned counsel also drew strength from the commentary of Gatley on Libel and Slander, 8th Edition at pages 640 and 641 to the same effect.

37. In view of the aforesaid elaborate submissions and judgments cited at the bar Mr. Sundaram, leaned senior counsel assailed the judgment of the learned senior counsel assailed the judgment of the learned Single Judge and submitted that the same was contrary to the settled position in law. It was contended that the observation of the learned Single Judge that prior publication of the same material would not be a factor to be considered was not the correct view in law. Similarly, the observations of the learned Single Judge about the expectations from an author like appellant no. 1 to have "high thinking and high learning" was stated to be a moralistic view and not the legal view apart from the fact that the same was not the correct approach to take in the facts and circumstances of the case. The fact that appellant no. 1 was ready to face any consequences arising from the publication of the autobiography was contended as sufficient grounds not to obstruct the publication at this stage where considerable damage had already been caused to the appellant by non-publication of the autobiography due to the time period having passed.

38. Mr. Raj Panjwani, learned counsel for the respondent, on the other hand made submissions for sustaining the impugned order of the learned Single Judge and contended that the reputation of an individual and his/her right to privacy are both protected and it was apparent from the extracts of the proposed autobiography that such rights of the respondent were sought to be violated by the appellants. In such a situation, Mr. Panjwani contended the remedy was available both by way of damages and by way of injunction. Such injunction could be either after publication or even before that on the basis of a threat of such publication. It was also contended by learned counsel that an autobiography by its very nature deals with a person and his life who is writing about the same and there was no reason in the autobiography of appellant no. 1 for him to comment on the Gandhis or Anands and to have a complete chapter on the same.

39. Mr. Panjwani submitted that there were two competing interests which had to be balanced - right of the author to write and publish and right of an individual against invasion of privacy and the threat of defamation. It was contended on behalf of the respondent that even though appellant no. 1 was standing by what he had written, the truth and veracity of the same were yet to be established. On the other hand, the right of the individual of privacy was far from sacrosant.

40. Mr. Panjwani sought to support his arguments by referring to the judgment of R. Rajagopal's case (supra) and referred to para 26(1) of the judgment to contend that the Supreme Court itself had laid down certain parameters to safeguard the rights of a citizen. Mr. Panjwani submitted that the Supreme Court had categorically stated that "none can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical." Mr. Panjawani thus contended that since admittedly no consent of the respondent had been taken by appellant No. 1 to write about her private life, this was a clear case of invasion of the privacy of the respondent and in such a situation it is not necessary that one must wait for the publication and then claim damages, but a preventive action can be taken so that the respondents right to privacy is not violated.

41. Mr. Panjwani, learned counsel for the respondent referred to the judgment of the Single Judge of this court in Phoolan Devi vs. Shekar Kapur and others . It was contended that the plaintiff in that case also contended that in the event of the portrayal of the plaintiff in scenes where the plaintiff was being raped would offend her rights to privacy and R. Rajagopal's case (supra) was relied upon to support the said proposition. On the other hand, defendant in that matter had sought to argue that there was no right or privacy so far as public figures were concerned and further the scenes were based on public records available in inumerable number of press cuttings, press interviews etc. In examining the rival contentions the learned Single Judge had framed the

question as one to be decided was whether the defendants have a right to show a woman being raped and gang-raped if the concerned woman was alive and did not want this to be made public. The learned Single Judge held in favor of the plaintiff and granted the injunction. The learned Single Judge in Phoolan Devi's case (supra) dealt with the right of privacy in para 34 as under:-

"34. As a matter of fact, Edward Shils maintains that privacy is a zero-relationship between two persons or two groups or between a group and a person. It is a "zero-relationship" in the sense that it is constituted by the absence of interaction or communication or perception within contexts in which such interaction, communication or perception is practicable such as a family, a working group and ultimately a whole society. Privacy may be the privacy of a single individual, it may be the privacy of two individuals, or it may be the privacy of three or numerous individuals. But it is always the privacy of those persons, single or plural, vis-a-vis other persons. (Edward Shils, Privacy: Its Constitution and Vicissitudes" 31 Law and Contemporary Problems (1966) 282. It is implicit in the right to privacy as to what extent her thoughts, sentiments, emotions shall be communicated to others in India. Explicit display, graphic detail of being paraded nude, rape and gang rape does not only hurt the feelings, mutilate the soul, denigrate the person but reduce the victim to a situation of emotional abandonment which is very essence of personal freedom and dignity."

42. The learned Single Judge also examined the question of public records to reject the contention of the counsel for the defendant and held that newspapers, periodicals, magazines are not public records as contemplated by the Supreme Court in R. Rajagopal's case (supra).

43. The learned counsel for the respondent then referred to the judgment of Supreme Court in S.M.D. Kiran Pasha vs. Government of Andhra Pradesh & ors. . The said case dealt with an individuals right against alleged harassment at the hands of public authorities. Apprehending certain orders from different authorities, the petitioner therein approached the court and it was held that where a right of a person is threatened to be violated or its violation is imminent and the affected person resorts to Article 226 of the Constitution of India the court can protect observance of his right by restraining those who threaten to violate it. The protection of the right was held to be distinguished from its restoration or remedy after violation. Mr. Panjwani contended that this would be equally true where it was an inter se dispute between two individuals and the ratio decidendi of this case would apply even to the case of respondent to prevent any harm by the action of appellant No. 1 publishing the autobiography.

44. The learned counsel for the respondent then referred to the judgment in Unnikrishnan J P & Ors vs. State of Andhra Pradesh & Ors which was a case dealing with the running of private unaided and aided educational institutions. It was contended that the rights envisaged under Article 19 and 21 of the Constitution of India fully protect rights of the respondent against invasion of her privacy and her right to live her life with dignity without being defamed.

45. Mr. Panjwani also referred to Article 51A of the Constitution of India dealing with the fundamental duties and relied upon sub-clause 'J' of Article 51A which states that it is the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher level of endeavor and achievement. Though the fundamental duties cannot be enforced by writs, they can be used for interpreting ambiguous statutes. Mr. Panjwani contended that the respondent has a duty towards excellence and her duty cannot be prevented by conduct of the appellant by defaming her. The learned counsel for the respondent then referred to the case of Shelfer vs. City of London Electric Lighting Company 1895 (1) Ch. Division 287 to contend that in case of an actionable nuisance the respondent is entitled to an injunction as a matter of course to prevent recurrence of the violation of her rights by such actionable nuisance. Drawing strength from the said judgment Mr. Panjwani contended that once her right of privacy is established, she was entitled to injunction and submitted that "the court has always protested against the notion that it ought to allow a wrong to continue simply because the wrongdoer is able and willing to pay for injury he may inflict."

46. The learned counsel for the respondent then referred to judgment of King's Bench Division in Chapman vs. Lord Ellesmere & Ors. 1932 (2) KB 431 and drew support form the observation "If it were, the power of the press to libel public men with impunity would in the absence of malice be almost unlimited."

47. Learned counsel for the respondent referred to a judgment of the Single Judge in Hari Shankar vs. Kailash Narayan & Ors. to contend that an injunction cannot be refused on the ground that repetition can be compensated by paying damages where false and defamatory news is published in the newspaper. The Madhya Pradesh High Court was of the view that if the reputation of a respectable citizen can be measured in terms of money then it would amount to issue of a license against a citizen and asking him to take money as compensation for injury. It was thus contended that the freedom of speech under Article 19(1) of the Constitution of India cannot be taken to mean absolute freedom to say or write whatever a person chooses recklessly and without regard to any persons honour and reputation. In this behalf the judgment of Andhra Pradesh High Court in K.V. Ramaniah, Accused vs. Special Public Prosecutor was referred to by the Madhya Pradesh High Court to hold that the right guaranteed by the Constitution of India was to all citizens alike and such rights had corresponding duties. The relevant para 5 and 6 are reproduced as under:-

"I may here refer to K.V. Ramaniah V Special Public Prosecutor in which the position of law has been succinctly

described. It is observed in that judgment as under:

"It is therefore impossible to accept the argument of the learned counsel for the revision petitioners that freedom of speech in Art. 19(1) must be taken to mean absolute freedom to say or write whatever a person chooses recklessly and without regard to any person's honour and reputation. The right guaranteed by the Constitution, it must be borne in mind, is to all the citizens alike. The right in one certainly has a corresponding duty to the other and judged in that manner also the right guaranteed cannot but be a qualified one. Indeed the right has its own natural limitation Reasonably limited alone, it is an inestimable privilege. Without such limitations it is bound to be a scourge to the Republic.

The American Jurists and Judges as already discussed, have long understood the natural limitations and the evils of absolute unabridged freedom of speech and expression. Though the 1st and 14th amendments declare in clear terms that no law shall abridge the freedom of speech or of the press, this right having regard to its natural limitations, has invariably been construed to mean a qualified right and for this purpose the doctrines such as doctrine of danger present and clear, or of substantial evil sufficient to justify impairment of the right, have been invoked to place that right within limits. Our Constitution framers taking benefit of the experience in America have in terms provided the necessary qualifications to this right. Art. 19(2) in this behalf contains safeguards of reasonable restrictions on the exercise of the right and it reads thus:

"19(2). Nothing in sub-clause (a) of clause (1) shall affect the operation of any exiting law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

The same matter is discussed on page 1028 in Row's Law of Injunction - Vol. 2 - 1976 edition, under the heading 'Newspapers' as under:

"Newspapers are subject to the same rule as other critics and have no special right or privilege, and in spite of the latitude allowed to them, it does not mean that they have any special right to make unfair comments or to make imputations upon or in respect of a person's profession or calling. The range of a journalist's criticism or comment is as wide as and no wider than that of any subject. Though it may be said to be true in one sense that newspapers owe a duty to their readers to publish any and every item of news that may interest the, that is

not, however, such a duty as makes every communication in the paper relating to a matter of public interest a privileged one. The defendant has to show that what he communicated was relevant or pertinent to the privileged occasion."

48. Reference was made by learned counsel for the respondent to the judgment of the Allahabad High Court reported as Raghunath Singh Parmar vs. Mukandi Lal to contend that merely because there have been comments in the press on the same subject matter, though not in the same language, it would not give a license to the appellants since if a person is guilty of slander another persons repeating it cannot escape responsibility because he merely repeats the slanderous statement made by another.

49. Mr. Panjwani then proceeded to deal with the plea of justification advanced on behalf of the appellant to contend that the same would not be available to the appellant where the rights of privacy of the respondent are violated. The learned counsel referred to the decision of the Queen's Bench in Watkin vs. Hall 1868 (3) QB 396 to support the aforesaid contention that a person repeating slander gives greater weight to it. It was contended that the observations in the said judgment to the effect that "a great injury may accrue from the wrongful repetition as from the first publication of slander; the first utterer may have been a person insane or of bad character" would squarely apply to the facts of the present case and would repeal the argument of the appellants that they were only commenting on the matter already discussed in publication.

50. Mr. Panjwani referred to the judgment of learned Single Judge of Karnataka High Court in Smt. Sonakka Gopalagowda Shanthaveri & Ors vs. U R Anantha Murthy & Ors to contend that there could be restraint against republication of defamatory material.

51. Learned counsel for the respondent contended that the plea of justification would be available where truth was pleaded and it was in public interest. In case of a public figure, learned counsel for the respondent contended, it could apply to the performance of public duties by the public figure but it cannot be a ground to go into the private lives of such public figures. he sought to draw strength from the commentary of Dr. D D Basu on Law of Press, 3rd Edition at page 42 where matters which would constitute public interest were sought to be defined as under:

(a) The exercise of governmental functions, statutory powers and duties.

(b) Any transaction which is carried on by a person or persons for the public benefit, as distinguished from private profit, e.g. charitable institutions.

(c) Discharge of public functions, e.g. transport, hospital, health services or the official conduct of a public official.

(d) Judicial proceedings, excepting those which the Court would be entitled to hear in camera because they relate to private affairs or the countervailing public interests of decency, morality or safety of the State, matters which require secrecy, e.g., trade secrets.

(e) Detection or investigation of crimes, so long as it does not come to Court, and does not constitute an interference with the ordinary course of justice.

(f) Purity of food, drugs.

(g) Financial affairs of companies in which the public have interest."

52. In the said commentary it was further observed that in India constitution has avoided speculation as to what grounds of restriction upon the freedom of press should be held in public interest by enumerating those grounds in clause (2) of Article 19 and any extension of those grounds can be legitimate only by way of

interpreting constitutionally specified grounds. Article 19(2) of the Constitution of India reads as under:

"19(2). Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

53. It was thus contended that decency or morality is specifically provided for in the said Article and in fact morality was a much wider term than decency. Similarly defamation was also provided for in the said Article and there could be no public interest in making defamatory statements. Balance between the protection of personal information and the competing right to free speech must be made. Such personal information, according to the learned counsel for the respondent, would include those facts, communications or opinions that relate to the individual and which are of such a nature that it would be reasonable to accept and regard them as intimate or sensitive and, therefore, to want to withhold or at least to restrict their collection, use or circulation. The learned counsel stated that words used in the extract such as "amorous" have a very negative meaning and referred to the commentary of Webster's New Dictionary and Thesaurus where "amorous" is defined "fond of making love; Full of love; of sexual life". Similarly in the shorter Oxford English Dictionary, 3rd Edition volume 1 "amorous" has been defined as "habitually inclined to love; and have or pertaining to (sexual) life."

54. The learned counsel contended that right of privacy have been guaranteed under Article 21 of the Constitution of India and it imposed an obligation on the society and the press to protect such rights and other than the exceptions provided for under Article 19(2) of the Constitution of India, the rights to such privacy cannot be violated. In such a situation, it was contended, that damages in lieu of injunction is not a remedy. it is only when grant of an injunction would be oppressive a substitute of damages can be a valid substitute. Damages would thus be only remedy if it was capable of being estimated in money which can be adequately compensated by small amount of money and thus it was stated that no amount of money can compensate in cases of repeated defamatory statements. It was contended that such an injunction would arrest the mischief and protect the appellants from possibly avoidable damages. It was thus contended that in such a situation even if justification was pleaded, the same was not available as a defense when the rights of the plaintiff were based on privacy. Justification was, as observed before, entitled only if it was a true, a fair comment and was in public interest. The plea of prior publication was also sought to be repelled on the basis that the same were not public documents within the meaning of section 74 of the Evidence Act and one had to look to the Indian Constitution which was different from the first amendment to the U.S. Constitution. (S Rangarajan vs. P Jagjivan Ram & Ors).

55. Mr. Sundaram, learned counsel for the appellant in his rejoinder sought to repel the contention of Mr. Panjwani in so far as the right of privacy was concerned as he contended that the same was available only against the State and all the cases in that behalf were in respect to the protection provided from action by the State. It was contended that justification or claim of truth was an absolute defense and there was no right of privacy available to individual in such a situation.

56. Mr. Sundaram further contended that even a reference to the case of S. Rajgopal's would show that the Supreme Court had clearly stated that the position would be very different if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy. in this case, it was contended, the respondent herself had been responsible for the publicity in the press at an earlier stage and it was not open for people to unveil the cloak of privacy to later cloak themselves when it so suited them. Mr. Sundaram, learned senior counsel for the appellant contended that Supreme Court in R Rajgopal's case (supra) had observed that in case of violation of right of privacy the remedy is - "liable in action for damages". The remedy would not be of preventive injunction which would amount to pre-censorship. In support of his contention that the matters have been widely commented upon Mr. Sundaram referred to the material placed by the appellant on

record including India Today's 30th April, 1982 edition where the results of opinion poll were reproduced and almost 80% people were found to be aware of the problem relating to the disputes between the respondent and her mother-in-law late Smt. Indira Gandhi. Mr. Sundaram also referred to the observations in the said magazine to the effect that "overnight the respondents had converted Surya magazine into a broadsheet of the most outrageously scurrilous variety with salacious exposure of Janata politicians jostling with loud public relations for the Gandhis. As a scandal-buster of spurious effect, Surya despite its dwindling income, became synonymous with Maneka's private brand of mud-raking. It exposed her aggressive hard-bitten capacity for survival in tough times-another characteristic picked up from her husband and mother-in-law's political re-silence.

57. It was contended that the respondent had herself got into a slanging match through publications with late Smt. Indira Gandhi to put her point of view across. Thus the claim of the respondent was false and at best subject to any civil action for damages.

58. Mr. Sundram contended that the criteria would be different for a normal individual and public figures like the respondent and in this behalf drew strength from the observations of the Supreme Court in para 18 of R. Rajgopala's case (supra) where it was observed that public figures as a class have access to mass media communications both to influence the policy and to counter-criticism of their views and activities and thus citizens have 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 issues and events. Not only this in para 29 of the same judgment it had bene held that "remedy of the affected public officials/public figures, if any, is after the publication, as explained hereinabove."

59. The learned counsel referred to the judgment of the Supreme Court in S. Rangarajan's case (supra) to contend that it was no simply a case of balancing of two interests as if they are of equal weight. The freedom of speech and expression could not be suppressed unless the situation created by allowing the freedom are pressing and the community interest is endangered. It was thus contended that there could not be any such apprehension in the present case. Such rights of freedom of speech were guaranteed under Article 19(1)(a) of the Constitution of India. A specific reference was made to paras 41 to 45 of the said judgment which are reproduced hereinunder:-

"41. "When men differ in opinion, both sides ought equally to have the advantage of being heard by the public". (Benjamin Franklin). If one is allowed to say that policy of the government is good, another is with equal freedom entitled to say that it is bad. If one is allowed to support the governmental scheme, the other could as well say, that he will not support it. The different views are allowed to be expressed by proponents and opponents not because they are correct, or valid but because there is freedom in this country fro expressing even differing views on any issue.

42. Alexander Meiklejohn perhaps the foremost American philosopher of freedom of expression, in his wise little study neatly explains:

"When men govern themselves, it is they - and no one else - who must pass judgment upon unwisdom and unfairness and danger. And that means that unwise ideas must have a hearing as well as wise ones, unfair as well as fair, dangerous as well as safe, unAmerican as well... American..... If then, on any occasion in the United States it is allowable, in that situation, to say that the Constitution is a good document it is equally allowable, in that situation, to say that the Constitution is a bad document. If a public building may be used in which to say, in time of war, that the war is justified, then the same building may be used in which to say that it is not justified. If it be publicly argued that conscription for armed service is moral and necessary, it may likewise be publicly argued that it is immoral and unnecessary. If it may be said that American political institution are superior to those of England or Russia or Germany, it may with equal freedom, be said that those of England or Russia or Germany are superior to ours. These conflicting views may be expressed, must be expressed, not because they are valid, but because they are relevant...To be afraid of ideas, any idea, is to

be unfit for self-government."

He argued, if we may say so correctly, that the guarantees of freedom of speech and of the press are measures adopted by the people as the ultimate rulers in order to retain control over the government, the people's legislative and executive agents.

43. Brandies, J., in Whitney v. California propounded probably the most attractive free speech theory:

.....That the greatest menace to freedom is an inert people; that public discussion is a political duty;...It is hazardous to discourage thought, hope and imagination; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones.

44. What Archibald Cox said in his article though on First Amendment is equally relevant here:

"Some propositions seem true or false beyond rational debate. Some false and harmful, political and religious doctrine gain wide public acceptance. Adolf Hitler's brutal theory of a 'master race' is sufficient example. We tolerate such foolish and sometime dangerous appeals not because they may prove true but because freedom of speech is indivisible. The liberty cannot be denied to some ideas and saved for others. The reason is plain enough: no man, no committee, and surely no government, has the infinite wisdom and disinterestedness accurately and unselfishly to separate what is true from what is debatable, and both from what is false. To license one to impose his truth upon dissenters is to give the same license to all others who have, but fear to lose, power. The judgment that the risks of suppression are greater than the harm done by bad ideas rests upon faith in the ultimate good sense and decency of free people.

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

60. Mr. Sundaram, learned counsel lastly contended that the concept of public interest in deciding such an issue is not the concept of public interest in say a public interest petition. The expression should be" of interest to public". A matter may not be of public interest but may of interest to public and that would suffice. It was contended that there could be no doubt about the fact that Gandhis were the first family of the country at that point of time and everything which happened within or outside the household was of interest to public and thus the appellant had a right to comment and write about the same. It was contended that insofar as public figures and politicians are concerned their lives are day in and day out brought under a microscope and commented upon. There cannot be the segregation of the private life of such public figures from their public life as both are intertwined. It was thus contended that by the very nature of being a public figure, such persons' life is entitled to be scrutinised whether in respect of their public functions or their private life. It was thus contended that the interim order granted by learned Single Judge was not sustainable in law as enunciated by various courts including Supreme Court of India.

61. We have duly considered the elaborate submissions and the large number of decisions cited at the bar by both the learned senior counsel for the appellant and learned counsel for the respondent. The matter was required to be dealt with in depth as the development of law of privacy is at a nascent stage and the decision of this case would have wider ramifications for the claim of right of privacy by public figures as against the

right of the press to publish and write about such public figures.

62. We may also add here at this stage that a copy of the manuscript of the 12th chapter under the heading "With the Gandhis and Anands" of the proposed autobiography was handed over to us in sealed covers for our perusal and we had the benefit of going through the said chapter.

63. It would be appropriate to first consider the portions which have been extracted by the respondent in her plaint as derogatory and defamatory. It is not seriously disputed before us on behalf of learned counsel for the respondent that as mentioned in the chart, other than the three passages complained of, the others had already been commented upon and published in previous magazines and books. We have considered the submissions of learned counsel for the respondent that the language for expressing the subject matter gives a different connotation than what was published earlier. We are unable to agree with the said submission advanced on behalf of counsel for the respondent. The words may not be exact but the concept the meaning sought to be conveyed are more or less same, if s comparison is made of the passages complained of and the publications in India Today of April 15, 1982, April 30, 1982, Pupul Jaykar's and Ved Mehta's book. In so far other three passages are concerned the author has owned up to the statements on the basis of either the information which he has or as his own views and comments. The question thus to be considered is the effect of such prior publications on the claim made by the respondent in respect of these publications. There is force in the submissions of the learned counsel for the appellants that not only was there wide publicity about these aspects in view of the same relating to the then first family of the nation but the respondent possibly drew strength from the media to put forth her point of view against what she claimed was the injustice meted out to her by her late mother-in-law. Thus the controversy in question which is being commented upon did not really remain in the four walls of the house but drew wide publicity and comments even to the extent of poll surveys being carried out in respect of the controversy in question. No grievance was made at that stage of time. It is not a case of prevention of repeated defamatory statements as is sought to be made out be learned counsel for the respondent. The reliance placed by learned counsel for the respondent on the judgment of the Madhya Pradesh High Court in Harishankar's case (supra) and of the Andhra Pradesh High Court in K V Ramanaiah's case (supra) is thus misplaced. The controversy in question related to the dispute between the respondent and her late mother-in-law, the then Prime Minister Mrs. Indira Gandhi. The respondent did not make grievance about the reporting of their disputes in the press. The nature of controversy was more or less the same as is now sought to be published by appellant No.1 in his autobiography and thus the respondent cannot make a grievance of the same matter now being published so as to seek prevention of the publication itself. The silence of the respondent and her not making a grievance against the prior publication prima facie amounts to her acquiescence or at least lack of grievance in respect of publication of the material. Needless to add that the remedy of damages against the appellant is still not precluded in so far the respondent is concerned.

64. The right to publish and the freedom of press, as enshrined in Article 19(1)(a) of the Constitution of India is sacrosanct. This right cannot be violated by an individual or the State. The only parameters of restriction are provided in Article 19(2) of the Constitution of India. The total matter of the book is yet to be published including the chapter in question. The interim order granted by the learned Single Judge is a pre-publication injunction. The contents of subject matter had been reported before and the author stands by the same. In view of this we are of the considered view that the respondent cannot make a grievance so as to prevent the publication itself when the remedy is available to her by way of damages. We are not examining the statements attributed to appellant no.1 on the touchstone of defamation. It would not be appropriate to do so for us at this stage but what we do observe is that the statements are not of such a nature as to grant injunction even from publication of the material when the appellants are willing to face the consequences in a trial in case the same are held to be defamatory and the pleas of the appellants of truth are analysed by the trial court.

65. It is no doubt true that the reporting of the matter in controversy in the prior publication does not make them public documents as held by the learned Single Judge of this court in Phoolan Devi's case (supra) . However, he question is not of the documents being public documents but the subject matter being in the ambit of public domain in terms of there being prior reporting of the matter is controversy and the comments

on the same. It may be useful at this stage to consider the judgment in Phoolan Devi's case(supra) rendered by learned Single Judge of this court. On a careful reading of the judgment it is apparent that the matter in question was peculiar as it related to the rights being claimed to show a woman being raped and gangraped if the concerned woman was alive and did not want this to be made public. It was in those circumstances that the order was passed though we may add that subsequently on an apparent settlement the same was made public and the plaintiff therein was compensated in terms of the mutual settlement. In fact the learned Single Judge specifically dealt with this aspect and observed that the display and the graphic details of being paraded nude, raped and gang raped does not only hurt the feelings, mutilate the soul, denigrate the person but reduce the victim to a situation of emotional abandonment.

66. An important aspect to be examined is the claim of right of privacy advanced by the learned counsel for the respondent to seek the preventive injunction.This aspect was exhaustively dealt with in the case of Auto Shankar reported as R.Rajagopal's case (supra) . The Supreme Court while considering these aspects clearly opined that there were two aspects of the right of privacy. The first aspect was the general law of privacy which afforded tortuous action for damages from unlawful invasion of privacy. In the present case we are not concerned with the same as the suit for damages is yet to be tried. The second aspect, as per the Supreme Court, was the constitutional recognition given to the right or privacy which protects personal privacy against unlawful governmental action. This also is not the situation in the present case as we are concerned with the inter se rights of the two citizens and not a governmental action. It was in the context of the first aspect that the Supreme Court had given the illustration of the life story written - whether laudatory or otherwise and published without the consent of the person concerned. The learned counsel for the respondent Mr. Raj Panjwani, sought to draw strength from this aspect i.e., the lack of consent of the respondent to publish her life story in the autobiography written by appellant no.1. However, this will give rise to tortuous action for damages as per the Supreme Court since this is the aspect which is concerned with the first aspect dealt with by the Supreme Court in respect of the invasion of privacy.

67. The Supreme Court while considering the right of privacy in the aforesaid judgment was clearly of the view that the freedom of press extended to engaging any inhibited debate about the involvement of public figures in public issues and comments. There is force in the contention of Mr. Sundaram, learned counsel for the appellant, that a close and microscopic examination of the private lives of public men is a natural consequence of holding of public offices. What is good for a private citizen who does not come within the public gaze may not be true of a person holding public office. We have seen various examples of rights of public men being closely scrutinised by the press not only in our country but all over the world including of the President of the United States of America. What a person holding public office does within the four walls of his house does not totally remain a private matter. It may however, be added that the scrutiny of public figures by media should not also reach a stage where it amounts to harassment to the public figures and their family members. They must be permitted to live and lead their life in peace. But the public gaze cannot be avoided which is necessary corollary of their holding public offices.

68. It is also relevant to state that the Supreme Court in R. Rajagopal's case (supra) was concerned with the preventive action sought for by governmental authorities. Even there the Supreme Court did not rule in their favor. The observation in New York Times' case (supra) popularly known as Pentagon's case succinctly laid down the correct view in this behalf i.e., that there is a heavy burden on governmental authorities to show justification for imposition of a prior restraint. The remedy would thus be by way of damages and not an order of restraint.

69. This aspect of right of privacy analysed in view of the conclusions of the Supreme Court as set forth in R. Rajagopal's case (supra) fully support the argument advanced by the learned counsel for the appellant. Thus the observations strongly relied upon by Mr. Panjwani, learned counsel for the respondent, on the first point summarised by the Supreme Court cannot be read out of the context. As explained hereinabove the concept of consent, while dealing with the private lives of her persons was made in respect of the claim for damages. Not only this the Supreme Court further went on to observe that the position would be different if a person

voluntarily thrusts himself into a controversy or voluntarily invites or raises a controversy. Suffice it to say that the respondent in fact at the relevant time draw strength or at least kept quite when the controversy was reported in the press. Issue of public record is not material in the present case because the controversy does not relate to the fact whether prior reporting of a matter becomes public records, which in law it does not, but that wide publicity and reporting having already been given to the matter in issue at the relevant stage of time. The task, though difficult it may be, for persons holding public office, cannot be summed up but to say that such persons have to show greater tolerance for comments and criticisms. One cannot but once again rely on the observations of Cockburn C.J. in 'Seymour v. Butterworth' cited with approval in Kartar Singh's case (supra) to the effect that the persons holding public offices must not be thin skinned in reference to the comments made on them and even where they know that the observations are undeserved and unjust they must bear with them and submit to be misunderstood for a time. At times public figures have to ignore vulgar criticism and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same.

70. Be that as it may the respondent has already chosen to claim damages and her claim is yet to be adjudicated upon. She will have remedy if the statements are held to be vulgar and defamatory of her and if the appellants fail to establish the defense of truth.

71. We are unable to accept the contention advanced on behalf of the respondent by Mr. Raj Panjwani that if the statements relate to private lives of persons, nothing more is to be said and the material must be injuncted from being published unless it is with the consent of the person whom the subject matter relates to. Such pre-censorship cannot be countenanced in the Scheme of our constitutional framework. There is also some force in the submission of the learned counsel for the appellant that the prior publication having occurred much prior to the suit being filed, the principle denying the relief for interlocutory injunction where the plaintiff has been dilatory in making the application, as observed in the Indian Express Newspaper's case (supra) would also apply to the present case.

72. As stated above, one aspect is very material - a categorical assertion of the author to stand by his statement and claim to substantiate the same. In such a situation interlocutory injunction restraining publication should not be granted and we are in agreement with and duly approve the views of the learned Single Judge of this Court in Sardar Charanjeet Singh's case(supra).

73. People have a right to hold a particular view and express freely on the matter of public interest. There is no doubt that even what may be the private lives of public figures become mattes of public interest. This is the reason that when the controversy had erupted there was such wide publicity to the same including in the two editions of India Today. As observed in Silkin vs. Beaverbrook Newspapers Ltd. & another (supra), the test to be applied in respect of public life is that the crank, the enthusiast, may say what he honestly thinks just as much as the reasonable man or woman who sits on a jury.

74. It is interesting note that the Fraser's case(supra) while considering the proposed publication of Sunday Times, Lord Denning had noted that the Sunday Times had been frank enough to admit that the article would be defamatory of the plaintiff yet Sunday Times claimed that the defense would be that the facts are true. In the present case the first plea is that the statement is not defamatory apart from the fact that it has been published and commented upon in the past. The second plea is that the appellants will prove the truth of the said statements. Lord Denning had observed that the courts will not restrain the publication of an article even where they are defamatory. cone the defendants expressed its intention to justify it or make a fair comment on the matter of public interest.

75. There is no doubt that there are two competing interests to be balanced as submitted by the learned counsel for the respondent, that of the author to write and publish and the right of an individual against invasion of privacy and the threat of defamation. However, the balancing of these rights would be considered at the stage of the claim of damages for defamation rather than a preventive action for injuncting of against

the publication itself.

76. There is also considerable force in submission of Mr. Sundaram, learned senior counsel for the appellant, that what is sought to be really protected against the invasion of the right of privacy is the action of government and governmental authorities. It is, thus, this right which is protected under Article 19(1)(a) of the Constitution of India. We are also, therefore, unable to appreciate the relevance of Article 51A of the Constitution of India as was sought to be advanced by Mr. Panjwani, learned counsel for the respondent.

77. We are unable to accept the submission of learned counsel for the respondent that by very nature an autobiography must relate to the person concerned directly. An autobiography deals not only with the individual by whom it is written but about the people whom he claim to have interacted with. This is a matter between the author and the people who want to read him. Fetters cannot be put on to what an author should or should not write. It is the judgment of the author.

78. There have to be great dangers to the community if valuable rights of freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution of India are to be curtailed. In the observations by the Supreme Court in R.Rangarajan's case (supra) , Benjamin Franklin was quoted where the observed "men differ in opinion, both sides ought equally to have the advantage of being heard by the public".

79. Writings and comments by authors, publishers cannot be restricted to public interest as defined to include what is good for the public. It must be used in the connotation of what is of interest to the public as submitted by the learned counsel for the appellant. For the purposes of publication if it is to the interest to the public,it would suffice. The very fact that so much has been written about the controversy in question and the relationship between the respondent and her late mother-in-law Smt. Indira Gandhi shows the interest which the public had in the happenings though it related to matters of private relationship between the two individuals. The wide publicity in the two editions of India Today and the incorporation of the controversies in the books by Ved Mehta and Pupul Jaykar are testimony to the same. It is difficult to segregate the private life of the public figures from their public life. It is the burden of holding a public office.

80. The book has not yet been published. The claim for injunction which was granted was based on the proposed publication. We have now also had the benefit of reading the chapter in controversy in full. We do not think it is a matter where the author should be restrained from publishing the same when he is willing to take the consequence of any civil action for damages and is standing by what he has written.

81. We are unable to agree with the conclusion of the learned Single Judge. The observations of the learned Single Judge about high thinking, higher living and high learning of the author are subjective moralistic observations. The author must choose what he writes and he must take the consequences thereof. To quota Oscar Wilde - "There is no such thing as a moral or an immoral book. Books are well written, or badly written." And who can decide this but the reader.

82. The previews of the proposed autobiography stated to be an authorised version were published in the 31st October, 1995 issued of India Today. The ex-parte injunction was granted soon thereafter and was subsequently confirmed. Almost six years have passed. The book could have been published possibly soon after the October edition of India Today in 1995. The appellant has been prevented from writing and publishing his thoughts, views, personal interaction and his perspective of life in his proposed autobiography for almost six years at this late stage of his life. In our considered view this cannot be countenanced. The balance of convenience lies in non grant of injunction. Sufficient damages has already been caused. The injunction must be vacated forthwith. The three cardinal principle of balance of convenience, prima facie case and irreparable loss and injury are not satisfied in the facts of the present case. The balance of convenience is in favor of applicant rather than gag order. As discussed above well established principles weigh in favor of the right of publication and there is no question of any irreparable loss or injury since respondent herself has also claimed damages which will be the remedy in case she is able to establish defamation and the appellant is

unable to defend the same as per well established principles of law.

83. Consequently the appeal is allowed. the impugned order of the learned Single Judge dated 29th April, 1997 is set aside and the injunction application of the respondent (IA 12567/95) filed under order XXXIX rules 1 and 2 read with section 151 CPC is dismissed. The applications of the appellants (IA No. 646/96 and 647/96) are allowed leaving the appellants free to publish the autobiography "Truth, Love and a Little Malice". The truth will be decide in the claim for damages and the malice whether little or more would also be determined at the stage of trial as also the consequence thereof. The parties will have the opportunity to substantiate their averments determining their respective claims in the claim of damages. The appellants shall also be entitled to costs of Rs.10,000/-

84. Needless to add that any observations made in the judgment are prima facie expression on the matter of controversy and will not influence fair trail of the suit on merits.