IN THE COURT OF SH. SUMIT DASS, ADDITIONAL DISTRICT JUDGE - 01, PATIALA HOUSE COURTS, NEW DELHI DISTRICT, NEW DELHI

CS No: 57510/16

Dr. Rajendra Kumar Pachauri
160, Golf Links
New Delhi – 110001

....Plaintiff

Versus

1. Bennett, Coleman and Company Ltd.
The Managing Director
The Editor In Chief of "Times Now"
At: Corporate Office
Times House
7, Bahadur Shah Zafar Marg
New Delhi – 110103

2. NDTV Ltd.
At Archana Complex
Greater Kailash – I
New Delhi – 110048

3. The India Today Group
Through Its Chief Managing Editor
Mediaplex, FC-8, Sector – 16A
Film City, NOIDA – 201301

4. Vrinda Grover
w/o Not Known
At N-SQ-7, Saket
New Delhi – 110017

5. Ms. X
d/o not known
r/o: not known

6. Union of India
Through
Ministry of Information and
Broadcasting
Through its Secretary
At A-Wing, Shashtri Bhawan
New Delhi – 110001

7. Ashok Kumar/ John Doe

....Defendants

O R D E R

1. Extensively matter has been argued – each side has presented its case in a very lucid and erudite manner tampered with case law.

2. In order to do justice to the contentions raised, I have broadly categorized, parties into four –

(i) plaintiff himself;

(ii) the media houses i.e., comprising of defendants no. 1, 2 and 3; vis a vis them, there is commonality and overlapping of arguments;

(iii) defendant no.4 who is an Advocate as well as Counsel on behalf of defendant no. 5 – she in addition to what has been contended on behalf of the defendant no. 5, taken the additional plea of privilege. I also note herein that their cases have been argued by ld. Senior Advocate, however, the broad substratum of their arguments also has quite a commonalities, therefore, their stands are taken up together as third party herein;

(iv) the Union of India i.e., Ministry of Information and Broadcasting who has also informed as to their stand with regard to the controversy/ with regard to reporting of the news articles

and the statutory framework – same is categorized as fourth party.

3. Before providing the backdrop of the case, a quick run through of certain dates and events/ proceedings. The present suit was filed on 04.04.2016, summons were directed upon defendants, the matter continued at the stage of appearance and on completion of pleadings, the said situation continued – as to the fact that there was an application under Order 39 Rule (1) and (2) CPC which was not proactively pressed. Same is a decipherable from the ordersheets till 06.01.2017.

4. The matter was posted for 25.02.2017. On 25.02.2017 arguments were addressed/ advanced and heard by my ld. Predecessor and thereafter the following order / direction was passed. I am quoting the same -

> *"Admittedly arguments have to be advanced upon application u/o 39 rules 1 and 2 of CPC when all the defendants filed written statement as well as reply to the application. However, defendant no. 5 has not filed written statement and reply to the application. But the fact remains that meanwhile no party has come forward and submits that either they would not give any interview or telecast any such interview or speak against or to write any article regarding the allegations which are in dispute. Rather defendant no. 5 vehemently submits that no gag order can be passed and she has right to approach to the press to assert her legal right. Similarly other defendants except defendant no. 6 also submits that if they have to telecast or publish the article as any restrain order would definitely affect the freedom enjoyed by them in the democratic set up of this country.*
>
> *Arguments heard for more than one hour. In my considered opinion every right is having a co-related duty towards other. If a person has a right to speak then such person has to speak keeping in view of the rights and dignity of the person against whom the said first person is going to*

speak. Definitely damages cannot compensate any injury. Rather damages are only to mitigate the harm which may be caused to any person. It is not the stage where the Court has to comment whether any damage has been caused to plaintiff or not, but definitely all the parties have to ensure that if they are enjoying any right then that right should not affect the right of other parties either the plaintiff or that of any of the defendants.

*Therefore, no order is passed at this stage upon application u/o 39 rules 1 and 2 of CPC but an interim order is being passed by this court that if defendant no. 5 or any of the defendants are going to publish any interview or to speak against the plaintiff, or any of the defendants are going to publish or telecast any interview or coverage or reporting or comment whatsoever then they should publish in subtitle that "**in any court the allegations have not been proved and they may not be correct**". They shall also telecast after every five minutes during telecast that the concerned channel, publishing house is not going to comment whether the plaintiff is guilty or no judgment or verdict has been passed against the plaintiff alongwith the above said subtitle so that right of the plaintiff should also be safeguarded. The title should be in bold letters and similar in font and the manner as the channel informs about breaking news so that public should be aware that no offence or any crime has been proved against the plaintiff. In case defendant no. 5 is going to give any interview then after every five minutes or after every page she will state that whatever she is speaking or going to speak are her personal comments and have not been proved in any court of law, so that right of the plaintiff should not suffer. When such information is published in any page of a magazine or report then it should be in middle of the page in bold letters and it should be **five times** larger than the font in which the article is being published.*

Written statement shall be filed by defendant no. 5 within 10 days from today with advance copy supplied to the counsel for plaintiff. Plaintiff is at liberty to file replication thereafter within next two weeks with copies exchanged.

> *At this stage, Ld counsel for defendant no. 5 submits that she came to know about the present suit about a week ago through defendant no. 4. Therefore defendant no. 5 is at liberty to file written statement and to file reply to the application within 23 days from today.*
>
> *Now to come up for compliance of order, arguments on application u/o 39 rules 1 and 2 of CPC* ***on 06.06.2017.*****"**

5. The matter continued at the same stage and on 07.06.2017, the issues were also settled and the matter was fixed for plaintiff's evidence to be recorded through a Local Commissioner. This application, however, was not disposed of and it continued.

6. Thereafter, in C.M.Main No: 1153 of 2017, titled as "**Vrinda Grover and anr v/s Dr. Rajender Kumar Pachori and Ors.**" direction were passed by the Hon'ble High Court on 17.10.2017 to finally dispose of the interim application on or before 15.11.2017.

7. Pursuant to the undersigned having assumed charge on 06.11.2017, the time frame for passing the order was extended till 14.02.2018 in terms of the order dated 20.11.2017 in the passed in the same C.M.Main no. 1153 of 2017.

8. It is also informed by either side that evidence of plaintiff side has been concluded and matter is to be proceeded further at the stage of defence evidence. Thus, the fact of the matter is that this application is now being disposed of midway the trial.

9. The matter has been exhaustively argued. Each side has relied

upon the pleadings – opposite side has dissected the same, the documents in support of the case have been relied upon *in extenso*, case law on the subject has been cited, as such, a slightly detailed narration of facts is warranted.

10.(i) Beginning with plaintiff's case, plaintiff claims himself to be a renowned Scientist, the Director General of a reputed organization TERI. He was earlier the Chairperson of IPCC (Inter Governmental Panel of Climatic Change) established by UN and has remained at the helm from 2005-2015. He states that under his leadership IPCC was conferred with Noble Peace Award. He was also conferred with the honours of Padma Bhushan and Padma Vibhushan by the Government of India. He thereafter also has pleaded as to his position/achievements in the scientific, profession and academic fields. Delving as to the status of the defendants no. 1 to 3 they are stated to be media houses, defendant no. 4 is the Advocate/ lawyer of defendant no. 5 and vis a vis defendant no. 5 she was named as “Ms. X”, since her identity was unknown. Furthermore, no complaint was filed by her with the police or in the Court of law. Assertion of the defendant no. 5 was that she was sexually harassed by the plaintiff in the year 2002-2003 and since her identity was not known, not even to the police, on her behalf Defendant no. 4 used to release her statements/ purportedly on her behalf. Defendant no. 6 was Union of India which had the regulatory control over the media which includes the print, electronic and internet.

(ii) Genesis of the case or material facts of the case are that on 10.02.2016, a news report was aired by Defendant no. 2 at 8:00pm whereby defendant no. 4 and defendant no. 5 had appeared on television and raised false and motivated claims against the plaintiff, the news was for 15 minutes

and both defendants no. 4 and defendant no. 5 hurled/ used defamatory language against the plaintiff. The contents were incorrect and were made with ulterior motives. The Defendants no. 1, 2, 3 and 7, thereafter carried multiple reports repeating the allegations levelled by Defendant no. 4. Defendant no. 2 had published an article titled "*Sexual inneundo and more: Pachauri harassed me too, says another woman*".

(iii) It is further pleaded that before the said programme at 7:30pm, an e-mail was circulated by Ms. Ratna Apender, to all media houses titled as "*Another former TERI employee speaks out against sexual harassment by R.K.Pachauri*". Now it was stated that the aforesaid e-mail and interview were published proximate to the petition which was filed in the Hon'ble High Court of Delhi and scheduled for hearing on 11.02.2016. Apart from the publication being false and defamation it was intended to gravely prejudice the hearing of the matter before the Hon'ble High Court. Further the news report ascribes the plaintiff as "*a serial sexual harasser*" and other defamatory and inappropriate words. Defendant no. 4 had also circulated the statements to media which contained unsubstantiated and libelous allegations. Till the said date no complaint was pending against plaintiff by defendant no. 5 which fact was also corroborated by DCP South as there was no complaint with them.

(iv) It was pleaded that the allegations were orchestrated by Defendant no. 4 in connivance with other persons to defame or disgrace the plaintiff. It was also contended that the pattern and timing when these libelous allegations were levelled against the plaintiff by unknown woman, who appeared only on news channels and that too before hours of the crucial hearing in the Court. Further it was stated that earlier also, in the month of July 2015, one unknown woman had appeared on the news program hosted

by defendant no. 2 and made allegations against the plaintiff. Thereafter, there was no clue about the same and as such plaintiff apprehends that defendant no. 5 is the same woman, who had appeared in July 2015.

(v) It was further stated that the allegations were levelled to create a public perception against the plaintiff and to irreparably damaged the hard earned reputation.

(vi) It was also stated that plaintiff was facing investigation and the factual perspective qua the same was also stated. It was contended that on 17.02.2015, the plaintiff received e-mail from one Raghav Ohri working for defendant no. 2 and informed that one of the assistants working for the plaintiff has levelled allegations of sexual harassment and filed a complaint with the police and ICC of the TERI. Thereafter, the plaintiff approached the Hon'ble High Court and the Hon'ble High Court was pleased to grant an ad-interim order restraining the defendants from publishing/ airing any report in regard to the alleged complaint dated 17.02.2015.

(vii) Subsequently on 18.02.2015, the interim order was modified to the extent that the reports regarding final outcome of the complaint before the committee (ICC) under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [herein after referred as SHW Act] and action taken by the police can be published by the Defendants.

(viii) Plaintiff, thereafter approached the Hon'ble High Court for grant of anticipatory bail. The Hon'ble High Court was pleased to direct the plaintiff to approach the Sessions Court and vide order dated 21.03.2015, the Sessions Court was pleaded to grant anticipatory bail.

(ix) The complainant in the said FIR, challenged the grant of anticipatory bail and thereafter the said challenge was also negated by the Hon'ble High Court vide order dated 04.03.2016.

(x) It is further stated by the plaintiff that again on 10.02.2015, he was informed by his lawyer that a message from Ms. Nidhi Raazdan, Anchor, was received that they have been contacted by another complainant minutes before and wanted him to appear on television to give his comments. The Counsel asked him to verify the details and not to air the story without clarifications, however, Defendant no. 2 telecasted the programme live at 8:00pm. On the said aspect, it was also stated that there was nexus and hidden conspiracy between the earlier complainant and defendant no. 5 which is reflected from the fact that defendant no. 4, Mr. Prashant Mehndiratta, ld. Counsel for the complainant in the FiR had earlier organized a press conference when the allegations were made against the plaintiff by first complainant in February 2015. It was further stated that in continuation of the tirade the defendant no. 4 brought defendant no. 5 and created an outcry against the plaintiff.

(xi) It was further stated that all these resulted in protests outside the office of the plaintiff on 12.02.2016. Further defendant no. 2 with the malafide intention of raising their TRPs (Target Rating Points), without even verifying the truthfulness of the version of Defendant no. 5 and to prejudice the case of plaintiff as well as to pressurize the Governing Council of TERI to remove the plaintiff from the post had aired the said allegations, which had caused mental injury as well as the character assassination of the plaintiff. The usage of the word "*serial sexual harasser*", "*sexual predator*" were used. The articles were published showing the pictures of the plaintiff and refer him

as "*sexual harasser*", "*serial offender*".

(xii) Relying on the judgment titled as ***Swatanter Kumar v/s The Indian Express & Ors, reported as 207 (2010) DLT 221*** was relied particularly, the following observations "*that strict view would have to be applied equally to both the sides, i.e., complainant as well as alleged accused specially in case where the complaint is filed after the lapse of long period*".

(xiii) It was further stated that on 31.03.2016, ld. Counsel for the plaintiff got a call from one of the journalist informing that defendant no. 4 has once again sent an email to all the media houses stating that one woman, for whom defendant no. 4 claims to be lawyer has come forward to make allegations of sexual harassment. This statement was released by defendant no. 4 through her e-mail id – vrindagrover@gmail.com. Defendant no. 4 had released the statement purporting to be on behalf of one foreigner (identity not known). Vis a vis the same, it was stated that no foreign secretary had worked with the plaintiff. Thus, the entire underlying intent was part of an orchestrated attempt to prejudice the case of the plaintiff/ to systematically malign the reputation.

(xiv) The plaintiff further stated that he has been subjected to media trial and has been proven guilty without there being charge or trial by the Competent Court of law. The plaintiff claims that he is being subjected to unfair media trial. It was further stated that Press Council of India had framed guidelines to regulate the conduct of the press and it was hence obligatory on the part of defendants no. 1 to 3 to independently verify each report in the office in order to eschew the publication of inaccurate, baseless or distorted material. However, in the case of the plaintiff, no verification was carried out.

(xv) Plaintiff further stated that there are large number of newspaper in various language in India and with the advent of internet and mass media, it was impossible to implead all the newspaper, as such the plaintiff has sought an injunction against those persons who are not party herein and for the said purpose, Defendant no. 6 has been impleaded as a party and Defendant no. 7 is accordingly named as “Ashok Kumar/John Doe”. Various reliefs were sought for and I am quoting the same -

> *(a) Pass a decree for permanent injunction restraining the defendant nos. 1 to 3, its associates, sister concerns, its agents, representatives, correspondents, officers, employees and / or any other person, entity, in print or electronic media or via internet, or otherwise from publishing, republishing, carrying out any reports or articles or telecasts or repeat telecasts or programs or debates or any discussion or reporting or publicising in any other manner, any other matter or any kind directly or indirectly pertaining o the purported statement made by Defendant no. 5 on 10.02.2016 which was circulated through her lawyers from email id – ratnappender@gmail.com or any matter incidental thereto or any other matter related to the said statement except the publication or news of the exact judicial order, if any, passed by the Hon'ble Courts.*
> *1.*
> *(b) Pass a decree for Permanent Injunction directing the Defendant Nos. 6 to ensure that in compliance of a decree passed in terms of relief no. (a), no members of the Media, whether print or electronic or internet, falling under their jurisdiction from publishing, republishing, carrying out any reports or articles or telecasts or repeat telecasts or programs or debates or any discussion or reporting or publicising in any other manner, any other matter of any kind directly or indirectly pertaining to the purported statement made by Defendant no. 5 on 10.02.2016 which was circulated through her lawyers from email id – ratnappender@gmail.com except the*

publication or news of the exact judicial order, if any, passed by the Hon'ble Courts.

(c) Pass a decree for damages in favour of the Plaintiff and against defendant Nos. 4 & 5 jointly and severally at least for an amount of Rs.1,00,00000/- (Rupees One Crore Only) or for any higher amount as this Hon'ble Court may be pleased to determine and grant leave to the Plaintiff to make good the deficient Court Fees;

(d) Pass a decree for Permanent Injunction restraining the Defendant Nos. 1 to 3, its associates, sister concerns, its agents, representatives, correspondents, officers, employees and / or any other person, entity, in print or electronic media or via internet, or otherwise from publishing, republishing, carrying out any reports or articles or telecasts or repeat telecasts or programs or debates or any discussion or reporting or publicising in any other manner, any other matter of any kind directly or indirectly pertaining to the purported statement released / made by Defendant No. 4 on 31.03.2016 purporting to be on behalf of some foreigner which was circulated through her lawyers including Defendant No. 4 from email id – ratnappender@gmail.com and vrindagrover@gmail.com or any matter incidental thereto or any other matter related to the said statement except the publication or news of the exact judicial order, if any, passed by the Hon'ble Courts.

(e) Pass a decree for Permanent Injunction directing the Defendant Nos. 6 to ensure that in compliance of a decree passed in terms of relief no. (a), no members of the Media, whether print or electronic or internet, falling under their jurisdiction from publishing, republishing, carrying out any reports or articles or telecasts or repeat telecasts or programs or debates or any discussion or reporting or publicising in any other manner, any other matter

or any kind directly or indirectly pertaining to the statement / released made by Defendant no. 4 on 31.03.2016 which was circulated through her lawyers including Defendant No. 4 from email id - ratnappender@gmail.com and vrindagrover@gmail.com except the publication or news of the exact judicial order, if any, passed by the Hon'ble Courts.

(f) Pass an order awarding exemplary costs and costs of the Suit in favour of the Plaintiff and against the Defendants No. 4-5.

(g) Pass such other, further orders, directions and decree as this Hon'ble Court may deem fit in the facts and circumstances of this Case and in the interest of justice.

11. I am first quoting from the written statements of defendant no. 4 and 5 and thereafter I shall take up the written statement of other defendants.

(i) In the written statement of defendant no. 4 preliminary objections were taken, that the suit was without any cause of action as defendant no. 4 had acted as Counsel on behalf of defendant no. 5, as such qua her the plaint was liable to be rejected. It was further pleaded that defendant no. 4 is an Advocate and she has acted on the instruction of her clients including defendant no. 5 to provide them necessary and full representation. It was further stated that defendant no. 4 was representing defendant no. 5 as well as a foreign national woman victim and all her statements and efforts were directed towards discharging her professional duty as their lawyer. It was further stated that the defendant no. 4 is protected by the defence of privilege under the law and communications with her client/ defendant no. 5 are protected from disclosure as privileged communication. Hence, it was stated that

defendant no. 4 is neither a necessary, nor, proper party and be deleted from the arrays of party.

(ii) It was further stated that the statements made by defendant no. 5 were pertinent, relevant and connected to the complaint of defendant no. 5 and the foreign woman victim, of being victims of sexual harrassment at the hands of the plaintiff while working in TERI and defendant no. 5 asserts the truth of her statement as her justification. It was further stated that the statement made by the defendants no. 4 and 5 are immune from legal liability of civil defamation/ damages as the same have been made in pursuance of public policy. Reliance has been placed on the law enshrined Restatement of Law (Second) of Torts Section 586 (American Jurisprudence), wherein, it was stated as under:

> "*An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding."*

(iii) It was further stated that the immunity of the defendant as a lawyer was not confined to what is only done in Court but also includes pre-trial work which is intimately connected with and in the interests of the administration of justice. Furthermore, since the plaintiff claims to be a public figure and occupies a position in society must be open to scrutiny and on all such matters of public interest and public importance, the media also has a right and duty to report and the public has a commensurate right to know.

(iv) It was further stated that suit was not maintainable for misjoinder of cause of action and misjoinder of parties, hence, the suit was liable to be dismissed on this count. It was further stated that as per the plaintiff's own case, Hindustan Times, News X, had repeated the alleged defamatory imputation about plaintiff, however, they were not made parties to the suit, nor by arraying "Ashok Kumar" as unknown persons, the plaintiff cannot get a blanket and omnibus orders, when the names of such persons were known to him. It was further stated that the present suit also does not qualify for any "John Doe" or "Ashok Kumar" orders. It was further stated that injunction if granted, would violate the fundamental right to freedom of speech and the fundamental right to know the truth in matters of public interest and public importance. It was further stated that the suit was an attempt to thwart and obstruct the right of defendant no. 5 to legal representation and her access to justice. The suit is stated to have "chilling effect" on women victims of sexual harassment to terrorise them into silence.

(v) Defendant no. 4 thereafter narrated as to the facts of the case in para no. 4(a), gist whereof was that on 13.02.2015, a 29 year old woman who was working at TERI had submitted a complaint to the police against plaintiff which was registered as DD No. 43A, PS Lodhi Colony and later on culminated in registration of FIR bearing no. 18/15, PS Lodhi Colony, U/s: 354, 354A, 354D and 506 IPC. The FIR was registered on 18.02.2015.

(vi) Earlier on 09.02.2015, the said complainant had filed a complaint of sexual harassment at the workplace against the

plaintiff with the Internal Complaint Committee (ICC) at TERI in accordance with the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013.

(vii) It was further stated that on 19.05.2015, the ICC found the complaint of sexual harassment against the plaintiff to be true and held him guilty of misconduct and in violation of the law prohibiting sexual harassment at the work place. On 29.05.2015, the plaintiff obtained an ex-parte stay on the implementation of the ICC report from the Industrial Tribunal, Karkardooma Courts.

(viii) It was further stated that on 18.02.2015, defendant no. 5 learnt from the media reports that a woman employee of TERI had lodged a complaint with the police of sexual harassment against the plaintiff and defendant no. 5 met defendant no. 4 for seeking legal advice/ for representation as Counsel. It was further stated that defendant no. 5 also informed that she had been subjected to sexual harassment from the plaintiff while she was working at TERI in 2004-2005. It was further stated that defendant no. 5 had asked her lawyer – defendant no. 4 to contact the police officers on their behalf as she also intend to make a statement to the police on the ongoing investigation in the FIR/case against the plaintiff. Defendant no. 5 had also given a detailed statement describing the manner in which the plaintiff had sexually harassed her. Thereafter, in one of the press conference wherein the defendant no. 4 had participated which was also attended by other Advocates including Mr. Prashant Mehndiratta, Counsel of the complainant in the FIR during the said press conference, defendant no. 4 had reported as

to the fact that defendant no. 5 being the victim of sexual harassment which she faced from the plaintiff. Later on after reading the media reports, another woman – a foreigner had also contacted Defendant no. 4 on 22.02.2015 by e-mail that she could also relate to the allegations of sexual harassment made against plaintiff, she too had been a victim of sexual harassment by the plaintiff while she was working at TERI. Said victim also requested Defendant no. 4 to represent her as lawyer and to take necessary steps for the police to record her statement as well.

(ix) Thus, Defendant no. 4 on 26.02.2015, secured an appointment with DCP (South) and other police officials, wherein, during the said meeting, the Defendant no. 4 informed DCP and investigating team about the fact that defendant no. 5 as well as another foreign victim intends to record their statement and same may provide relevant material facts. The police authority had informed that they would revert back in this regard. Subsequently, no response was received. Defendant no. 4 had again sent SMS to DCP but again there was no response received. On 02.03.2015, Defendant no. 4 wrote a letter to the DCP, a detailed one, but no reply was given. SMSs were followed by another letter dated 27.04.2015 to the Commissioner of Police narrating the facts but no response was received from the said quarter. The defendant no. 4 contends that the same was on account to shield the accused.

(x) Defendant no. 4 further averred that on 08.02.2016, the plaintiff was promoted from the post of Director General of TERI to Executive Vice Chairman of TERI. The said aspect was also taken

up in the media. On 10.02.2016, the defendant no. 5 contacted her that in view of the promotion being given to the plaintiff as well as the fact that the police had refused to record her statement, she wanted to make her statement public so that the truth of the sexual harassment which she had faced be known. Thus, in accordance with her instructions, defendant no. 4 had made available the statement of defendant no. 5 to the media describing the sexual harassment which she was subjected to by the plaintiff.

(xi) Later on 13.02.2016, defendant no. 4 made another attempt that statement of her clients/defendant no. 5 be recorded before the police against the plaintiff before charge sheet was filed, however, despite communication, no response was received from the police and later on 01.03.2016, it was reported in the media that the IO had filed the charge sheet against the plaintiff under Section 354, 354A, 354D, 506 and 509 IPC. It was further stated that though the plaintiff was seeking an injunction to silence the media but at the same time, he was giving interviews and quotes to the media presenting his defence, same has been detailed in para no. 14 of the written statement.

(xii) It was further stated that on 27.03.2016, the plaintiff's counsel had also published excerpts from the articles accompanied by his own comments on his twitter social media page. The foreign woman victim was alarmed, deeply disturbed and shocked at reading of the aforesaid article published by the newspaper 'The Guardian' and on 31.03.2016, the foreign victim had contacted the defendant no. 4 and requested that the statement describing the

manner in which the plaintiff sexually harassed her be made public. It was further stated that defendant no. 4 received a letter from National Commission for Woman (NCW), whereby NCW had taken a *suo moto* cognizance of the statement of defendant no. 5. Again on 01.04.2016, a letter was given to the Commissioner of Police for recording the statements of the victims, however, no response was received.

(xiii) It was further stated that on 12.04.2016, Defendant no. 4 was contacted by T.V journalist of News X and she was asked to join the news programme wherein she was asked certain questions by the anchor. Subsequently in the news report, the video of the aforesaid programme was shown but certain statements were misquoted of the defendant no. 4 qua which the complaint dated 21.04.2016 was sent by the defendant no. 4 to the Editor-in-Chief of News X and thereafter the defendant no. 4 received an apology and correction was made. Later on defendant no. 5 on 16.04.2016 sent her complaint to the Internal Complaints Committee of TERI via e-mail to conduct an inquiry and the letter was addressed to Dr. Vibha Dhawan, Presiding Officer, Internal Complaints Committee (ICC), however, it was informed that the complaint cannot be entertained as the same was time barred. Defendant no. 4 urged that notwithstanding the fact that the complaint was time barred, defendant no. 5 reserves her right to say the truth. It was further stated that the suit was not maintainable as no relief of injunction was sought by the plaintiff against defendant no. 4 and defendant no. 5.

(xiv) Parawise detailed replies to the averments made in the plaint and it was stated that in so far as the factum of non-filing of the complaint by the complainant at the relevant time was concerned, while she was employed in TERI in 2004-05, she was unable to do so in as much as the TERI did not provide a credible, functional internal redressal mechanism in the form of the Internal Complaints Committee as mandated by the Hon'ble Supreme Court in the Vishaka judgment of 1997. TERI had not constituted any Internal Complaints Committee nor informed or spread awareness among its employees of the guidelines or the procedures for redress of acts of sexual harassment at the workplace. In fact defendant no. 5 had approached Commodore Joshi the then Director of the Administrative Services and TERI press, who blatantly shielded the plaintiff and dissuaded Defendant no. 5 from taking any action. It was further stated that the power and clout that the plaintiff wielded in TERI as well as outside, deterred the Defendant no. 5 from taking any other legal steps. It was further stated that in cases of sexual offences, particularly those committed by persons in positions of authority, influence and power attempts to discredit the victim's allegations on grounds of delay will only result in travesty of justice and will further embolden the perpetrators of sexual crimes.

12.(i) Separate written statement was filed by Defendant no. 5, wherein, preliminary objections were taken that the suit was devoid of cause of action; defendants asserts as to the truth of the statements as a justification and will prove the same at trial. In so far as the acts of sexual harassments are concerned, the defendant no. 5 in para no. 5 and 6 had delineated the same and I quoting the same *in verbatim,* same reads as

under:

> "*5. The answering Defendant joined TERI in 2004 and worked there for over a year. During this period the plaintiff was the Director General of TERI and the editor of the TERI Magazine. The answering Defendant's job description required her to interact with the Plaintiff directly, and the plaintiff would often phone her himself or ask his secretary to call for her. From the time the answering Defendant joined TERI the Plaintiff would often use the excuse of work assignments to repeatedly call her to his office room, even when there was no real work that he needed to discuss. This made the answering defendant feel very uncomfortable and she tried her best to dodge some of the meetings, or ask her colleagues to go for the meetings, to avoid the Plaintiff's unwelcome sexual advances, bother physical and verbal. Soon after answering Defendant joined TERI, and began interacting with the Plaintiff he re-named her with a sexually suggestive nickname "xxx". He told the answering Defendant that this was a derivative of her official name and suited her better. The Plaintiff would say to the answering Defendant things like "xxx" is so sweet; he would tell her how attractive flowers attract bee's etc, he would say this in a sexually loaded manner. These unwelcome remarks made the answering Defendant feel extremely uncomfortable. The answering Defendant felt extremely anxious about the Plaintiff's motives in making such sexually loaded comments. She kept hoping that her repeated refusals would make him stop. The answering Defendant would repeatedly request the Plaintiff not to use any nickname for her and not make other sexually loaded remarks, however, the Plaintiff continued using the nickname to address the answering Defendant. The Plaintiff would use this name only when no third person was present or when he phoned the answering Defendant. On one occasion the Plaintiff called the answering Defendant to his office which was on the fifth or sixth floor of the building to discuss some work, he then told her that he could lift heafty and heavy women and so lifting her would not be a problem. The answering Defendant found this extremely disrespectful towards her and woman working in TERI. On another occasion, the Plaintiff talked about how physically fit he was, how he played cricket with young men, how he*

could walk up the stairs of TERI's six floor building etc, he said these things in a manner which made it clear to the answering Defendant tha depsite his age he was virile. On yet another occasion when the answering Defendant was on leave from work due to ill-health, he was called her on her mobile phone and asked her why she was not in office. When the answering Defendant told him that she was suffering from a migraine headache, he said "Hum bahut achhi champi kartein hain.... aap chahein to kar sakte hain" (I give very good head massage... if you want I can give you a massage). By this time it had become evident to the answering Defendant that the Plaintiff, despite being old enough to be of her father's age, was looking for opportunities to be alone with her and make physical contact with her. This behaviour and sexual advances by the Plaintiff made the answering Defendant feel extremely disgusted, and she even shared her anxiety with one of her colleagues. On yet another occasion the Plaintiff told the answering Defendant that she needed to accompany him to attend a conference at a hotel in Central Delhi because she would have to draft a note on the conference. The Plaintiff insisted that she come to the office in the morning and travel with him in his car to the hotel instead of reaching the hotel directly. Due to his past unwelcome behaviour and advances with sexual overtones, the answering Defendant was suspicious of his intentions and insisted on reaching the hotel on her own. On arriving at the conference the answering Defendant learnt that she was not required for drafting any note or for any other work. She realised that the Plaintiff's insistence that she travel with him and attend the conference was only another pretext to make unwelcome sexual advances and for unwelcome physical proximity with her. This made the answering Defendant feel demeaned as an individual, as a woman and as a professional. The Plaintiff would also call the answering Defendant on her mobile phone once or twice a week after office hours and on holidays and ask her what she was doing, he would then go on to make extremely personal enquiries and he would keep asking her to join him for dinner and wine. On several occasions the Plaintiff would ask the answering Defendant intrusive questions about her personal life. He would ask her

when her husband was going out of town and how she spent her weekends. He would pass inappropriate sexual comments about the clothes she was wearing, he would suggestively ask her whether her husband gave her a particular dress etc. Despite the answering Defendant's refusal, the Plaintiff would repeatedly ask her to meet him socially outside the office. This behaviour of the Plaintiff caused the answering Defendant grave apprehension and discomfort and created a hostile work environment for her. The Plaintiff on one occasion described to the answering Defendant his house or farmhouse that he said opens up into a garden or field, and gave her a draft of a novel he said he had been working on in his personal capacity. The Plaintiff gave this draft to the answering Defendant and told her that he would like her to read it and make suggestions before he handed it over to the publisher. The Plaintiff told the answering Defendant not to share the draft with anyone or tell anyone that he had asked her to work on it. The Plaintiff told her that the answering Defendant that she would use his house/ farmhouse to read in seclusion and that he would like to join her for discussions. The Plaintiff even told the answering Defendant that she should meet him after work to discuss the draft of the novel. The answering Defendant categorically told him that she would not go to his house or meet him about the novel and that she found such suggestions by him very alarming, disturbing and unprofessional. When the answering Defendant went through the draft of the plaintiff's novel, she was horrified and angry to find that it contained graphic descriptions of sex, and given his conduct and demeanor with her, it was clear that he was not going to be discussing any literary merit in the novel, but wanted her to read and discuss it's pornographic aspects. Later she learnt that he had in fact published a novel called "Return to Almora" that was reviewed as a "steamy" story.

(6) On another occasion, when the answering Defendant had been called to the Plaintiff's office room, he forcibly and against her wishes held her and kissed her on her face just as she was leaving the room. This left the answering Defendant extremely shocked and traumatised and she left

his room right away. The Plaintiff repeatedly sexually harassed the answering defendant. He would call the answering Defendant to his office room on the pretext of discussing work, but more often than not the Plaintiff would only briefly talk about work and then he would make attempts to come close to the answering Defendant's body or hold her hand. Once the Plaintiff asked the answering Defendant to arrive at his office by 8:00am, there were no other employees in the office so early in the day, especially on the floor where the Plaintiff's office was situated. The Plaintiff asked the answering Defendant to sit in his chair and work on a document he had open on his desktop. When the answering Defendant sat on his chair and began working, the Plaintiff stood right behind her, very close to her. This made the answering Defendant feel extremely uncomfortable and her body froze as she was afraid of what the Plaintiff might do next. Soon the Plaintiff said that the answering Defendants hair was fragrant and it seemed like he bent down close towards her to smell her hair. To make matters worse, the plaintiff told the answering Defendant that she looked beautiful with wet hair as her hair was slightly wet at that time. This made the answering Defendant very angry, however, when she got up to leave the room the Plaintiff made matters worse by placing his hand on her shoulder and saying something in the nature of an apology in order to convince the answering Defendant not to leave. The answering Defendant rushed out of the room making an excuse that she had some urgent work to do. On another occasion, the Plaintiff called the answering Defendant to his room again on the pretext of discussing some work, but then picked up a coffee table book which had photographs of swimming pools and gardens; while he was flipping through this book, the Plaintiff told the answering Defendant that he would promise to get her a membership in a certain Foundation pool facility if she promised to join him for a swim on the weekends. The answering Defendant again told the Plaintiff very clearly that she neither sought nor accepted any favours and that she was not interested in any pool membership. Despite repeatedly having communicated to him that she did not like his sexual advances, the Plaintiff continued to make verbal and physical sexual advanced

towards her. This sexual harassment committed upon her by the Plaintiff caused her worry and adversely impacted her ability to carry on working in TERI. Due to the Plaintiff's misconduct and sexual advances the answering Defendant was forced to start looking for career opportunities outside of TERI."

(ii) Thereafter, apart from the said assertions wherein the defendant no. 5 has averred as to what actually happened with her, the further written statement is more or less in sync with that of defendant no. 4 and I am not quoting the same for the sake of brevity.

13. Coming to the written statement of other defendants – defendants no. 1, 2 and 3, Defendant no. 1 Bennett Coleman and Company Ltd. It was stated that in so far as suit pertaining to the interview shown by defendant no. 2 channel of the interview of the defendants no. 4 and 5 of which defendant no. 1 had no association or alliance. It was further stated that the news articles which were published were based on the statement supplied by defendants and they have believed the same to be true and correct as informed by aggrieved person and as such cannot be said to defamatory, in fact news publication based on truth, justification and fair comment are not defamatory. The news report/ article was in the nature of a matter of public interest/ concern. The article carried out was without any malice or ill will against the plaintiff and the defendant had not formed any expression of opinion in the said news articles and has merely reported the facts as informed. It was further stated that the suit of the plaintiff suffers from non-joinder of necessary parties as the other similarly placed media houses have not been impleaded as a party to the present suit, despite the news articles/ report of such media houses have been appended along with the plaint. It was further stated that there was delay and laches in filing of the

present suit as the plaintiff was aggrieved with the publication on 11.02.2016, whereas the present suit was filed in the month of April 2016, whereas the interview was conducted on 10.02.2016.. Furthermore, it was stated that the purpose of the present suit filed by the plaintiff is mischievous, malafide with an ulterior motive to restrain the defendant from bringing to the knowledge of the public at large, important issues of public importance and interest. Further it was stated that the suit is framed in pith and substance was suit for injunction with regard to obtain the pre-publication censorship and seeking a 'gag order' against the defendant. It is settled position of law that where truth, justification and/ or fair comment on a matter of public interest/ concern are pleaded, there can be no restraint on any publication and the only remedy is to seek damages. Reliance on the judgment titled as ***R.Rajagopal & Anr. V/s State of Tamil Nadu & Ors, reported in (1994) 6 SCC 632*** as well as ***Khushwant Singh v/s Maneka Gandhi, AIR 2002 Del 58*** and ***Fraser v/s Evans, reported at (1969) 1 All ER 8***.

(ii) On merits the contents of the plaint were denied as being false and incorrect. The order passed in case titled as **Swantanter Kumar v/s The Indian Express & Ors, reported as 207 [2014] DLT 221**, it was stated to be an interim order and not a binding precedent. Rest of the contents were also denied. Additionally it was also stated that against the order passed by the Hon'ble High Court dated 18.02.2015, passed in Civil Suit No: 425/2015, the plaintiff was unsuccessful and had withdrawn the appeal. Furthermore, it was stated that the photograph of a person in respect of whom, an article is published forms an integral part of such news article(s) which help the public at large to relate to the information sought to be disseminated by the defendants. It was denied that the defendants had violated the rights of the plaintiff to get fair trial. Furthermore, in the article dated 11.02.2016, the

defendant had stated that the new complainant had 'alleged' and had reported statements without expressing its opinion or commenting on the statement issued by the complainant or her Advocate.

14.(i) Written statement was filed by defendant no. 2 and preliminary objections were taken that the suit of the plaintiff suffers from delay and laches as such the same is liable to be dismissed. Further the suit was liable to be dismissed for acquiescence on the part of the plaintiff as the plaintiff had not taken any action allegedly made by defendant no. 5. It was further stated that the defendant no. 2 had sought the comments of the plaintiff in so far as the allegations levelled by defendant no. 4 and 5 were concerned, before the programme, however, no comments were given. The extract of the text messages sent by the Counsel for the plaintiff to Ms. Nidhi Razdan of the defendant no. 2 was relied upon. Same reads as under:

> "*Sorry Nidhi, I have no details about this fact, i won't be in a situation to comment on this, as of now. Thanks. Ashish"*
>
> *"Let her speak, if need be I will respond. But I won't appear either on TV or phone without facts and at such short notice. I hope you understand."*

(ii) It was further stated that the defendant no. 2 had demonstrated highest level of responsibility and neutrality in its media coverage of allegations of defendant no. 4 and 5 and had merely reported the 'facts'. It was further stated that defendant no. 2 had made factual statements *bona fide* and had not opinionated on the allegations to the public at large but has merely reported facts for public information and in public interest. It was further stated that the acts and conducts of a public person who functions under public gaze as an emissary/ representative of the public alike the

plaintiff, therefore the same becomes matters of public importance.

(iii) On the aspect of media trial, it was stated that the media trial was based on the excessive publicity given either to the victims, witnesses, suspects or the accused which in the present case is not even the case set forth by the plaintiff against defendant no. 2. It was further stated that the accused/ plaintiff is entitled to the privilege of presumption of being innocent till guilt is pronounced and in the present case, defendant no. 2 has nowhere breached such privilege. It was further stated that in terms of the Code of Ethics and Broadcasting Standards published by the News Broadcasters Association, New Delhi, the defendant no. 2 had fully complied with its obligations as a responsible medium of dissemination of information by keeping the identity of the defendant no. 5 undisclosed.

(iv) Further it was submitted that at point no. 4 in Section 2 “Principles of Self Regulation” of the aforesaid Code was also complied as such the plaintiff cannot be aggrieved by non-disclosure of identity of Defendant no. 5. It was further submitted that plaintiff has failed to establish a prima facie case in his favour, wherein, balance of convenience was also not in his favour, nor, any irreparable loss or injury shall be caused to him in the event of injunction not granted.

(v) On merits the contents of the plaint were denied. Reliance on the statements made in the preliminary objections was made. It was denied that the defendant was not sensitive to the dignity and privacy of the plaintiff and his family or the institution with which the plaintiff was associated.

15. Written statement was filed by defendant no. 3 (India Today Group), preliminary objections were taken that the defendant had carried out

a balance story which also included the version of the plaintiff's lawyer. It was further stated that the plaintiff had filed a compilation of the documents but there was not even a single publication or broadcast attributable to defendant no. 3. I am not quoting the other facts in detail as there is a quite similarity taken in the stand of all the media houses. Needless to state that defendant no. 3 has articulated the same position i.e., that there were well accepted defences included inter alia justification by truth, fair comment, qualified privilege, public interest and others by reason whereof again no injunctive relief if available in respect of proposed allegation that such publication or broadcast may be defamatory.

16.(i) Coming to the written statement of party no. 4/ defendant no. 6 Union of India. Defendant no. 6 has stated that there was a law – The Cable Television Networks (Regulation) Ordinance, 1995 which was promulgated and subsequently the same was replaced by the Cable Television Networks (Regulation) Bill 1995 which was the Act which regulates the telecast of programmes and advertisements telecasted by private satellite TV/ cable television. The Act does not provide for pre-censorship of programmes or advertisement, however, Section 5 and 6 of the Act provided as under:

> "*5 – No person shall transmit or re-transmit through a cable service any programme, unless such programme is in conformity with the prescribed programme code.*
> *6 – No person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code."*

(ii) It was further stated that Section 22(1) of the Act empowers the Central Government to make rules and sub-section 22(2) provides *inter alia* that such rules may provide for the programme code under Section 5 and Advertisement Code under Section 6 of the Act. As such in exercise of

powers contained in Section 22(2), the Cable Television Network Rules 1994 were promulgated. Further, in terms of the licensing arrangement, the companies had to comply with the programme and advertisement code as a condition for uplinking and downlinking of TV channels. Furthermore, it was stated that the Cable Television Network (REgulation) Act of 1995 does not provide for a pre-censorship of any programmes telecasted on TV channels, however, they have been adhered to the programme/ advertisement codes. In this regard, the Ministry had also constituted an Inter Ministerial Committee (IMC) under the Chairmanship of Addl. Secretary, Information and Broadcasting drawing officers from various Ministries and members from Advertisement Standard Council of India.

(iii) Further it was stated that the Government of India has set up the Electronic Media Monitoring Committee (EMMC) for monitoring and recording of the content telecast by private satellite TV channels with a view to keeping a watch over any violation of the programme and advertising code. It was further stated that there was a regulation at every district and State levels whereby the District Magistrate, Sub-Divisional Magistrate and Commissioners of Police were authorised officers to take action against violation of the Cable Television Networks (Regulation) Act 1995. It was further stated that a direction was also passed to constitute a Monitoring Committee at the State and District levels to review and deliberate on the litany of complaints received by the authorised officer or take *suo motu* cognizance of violations transmitted or re-transmitted in the local cable television.

(iv) It was further stated that there was a self regulation by the industry, whereby News Broadcasters Association was formulated and a self

regulation mechanism i.e., Code of Ethics and Broadcasting Standards was set up. Further, same comprises two tier structure to deal with content related complaint – Tier I complaints are dealt with by the individual broadcasters at their level and at Tier II, News Braodcasting Standard Authority (NBSA) in 2008 which is an authority comprising of a Chairperson who is a retired Judge of the Supreme Court and eight other members.

(v) It was further submitted that there is a self regulation in case of non-news (general entertainment) channels and Indian Broadcasting Foundation (IBF) had set up a mechanism for self-regulation in case of non-news channels after consultation with the Ministry and the same is also is a two tier based complaint mechanism, wherein, Tier I level each Broadcaster shall set up a Standard & Practices (S&P) Department with a content auditor to deal with the complaints received from content aired on its channel and Tier II is an apex level, wherein there is a Broadcast Content Complaint Council, which is in operation since 01.07.2011. BCCC is a thirteen member body consisting of a Chairperson being retired Judge of the Supreme Court or High Court.

(vi) It was further stated that there is a self-regulation of advertisement on TV channels, wherein, Advertising Standards Council of India (ASCI), a self regulatory body of the advertisers and advertising agencies was sent up in 1985 and the ASCI has set up a Consumer Complaints Council which consists of 28 members; 12 are from within the industry and 16 are from the civil society. Thus, the self regulation is aimed at facilitating better content regulation at broadcasters level, however, it does not preclude the Government from taking *suo moto* action as per law.

(vii) In so far as the print media is concerned, there is no pre-censorship by the Government of India in the print media sector, however, Press Council of India is a statutory autonomous body set up under the Press Council Act, 1978 to maintain and improve the standards of newspaper and news agencies in India and also inculcate the principles of self-regulation among the press. It was further stated that the PCI under Section 13(2)(b) of the Press Council Act, 1978 had formed “Norms of Journalistic Conduct' which covers the principles and ethics regarding journalism. It was further stated in para no. 18 that the concerned Ministry has not received any complaint from the plaintiff on this matter against any TV channel and there was no pre-censorship of any programme or advertisement telecast by the private TV channels, however, the TV channels are required to follow the provisions contained in the Programme & Advertising Codes prescribed under the Cable Television Networks Rules, 1994 and action is taken against the channels violating the said programme code/ advertising code, as and when brought to the notice of the Ministry. It was further stated that defendant/ Ministry has not received any complaint from the plaintiff against any TV channel/ programme.

Arguments

17. Submissions were heard at length. On behalf of plaintiff, ld. Counsels Sh. Manik Dogra along with Sh. Ashish Dixit, had addressed submission. On behalf of the defendant no. 1 Sh. Ashish Verma, ld. Counsel had argued. Sh. Biswajit Choudhary, ld. Counsel had addressed submissions on behalf of defendant no. 2, whereas, on behalf of Defendant no. 3, Ms. Mayuri Raghuvanshi and Ms. Sangya Negi, ld. Counsels had addressed

submissions.

18. Sh. Sanjeev Sindhwani, ld. Senior Advocate assisted by Sh. Harsh Vohra, Ms. Nicy Paulson, ld. Counsels had addressed submissions on behalf of the defendant no. 4 and Ms. Rebecca M. John, ld. Senior Advocate, assisted by Sh. Soutik Banerjee, ld. Counsel had put forth the arguments on behalf of defendant no. 5. Finally on behalf of Union of India, Sh. Sandeep Chandna, ld. Counsel had presented his case.

19. On behalf of the plaintiff, it was strongly and vociferously contended that the allegations which were made, their timing and intensity all are relevant. They not only were *per se* defamatory but at the same time, laced with falsity and same were solely made to ruin the hard earned reputation of the plaintiff.

(i) It was argued that the allegations were levelled/timed in such a manner when the matter – criminal case was listed before the Hon'ble High Court and just hours before the same i.e., 10.02.2016, the allegations were levelled. It was also contended that if all the allegations made at different forays are taken into account, it does shows that the same were orchestrated once/ in tandem. The underlying intent was to prejudice the case of the plaintiff which was pending in Court, thus impairing his presumption of innocence or interfering in the administration of the justice and the extent and pitch of those allegations was of such a nature that a smoke screen was created or a distorted picture about the credentials of the plaintiff was projected.

(ii) Ld. Counsel further argued that at any prior point of time, no

complaint was filed by defendant no. 5 either before the police or any other authority qua the said allegations but those allegations were made before the media which were widely reported in the cross section of print, electronic and social media. The use of the word 'serial sexual offender'/ 'sexual predator' were made not only to cause disrepute but to castigate the plaintiff in a poor light. Ld. Counsel further argues that the word 'serial sexual offender' and such other words are coined by the defendants without any material whatsoever. The likelihood or damage which was caused to the plaintiff on account of such acts is irreversible and cannot be even compensated in terms of money and in these circumstances, plaintiff is entitled to an ad-interim injunction against the defendants.

(iii) Delving further on the point of pre-concert as well as there being an element of conspiracy involved, it was stated that during the programme telecasted on 10.02.2016, Ms. Nidhi Razdan, the presenter of the programme had put a question of Defendant no. 4 Ms. Vrinda Grover *yesterday she had spoken to her* and secondly there was a press conference in which the Counsel for the complainant in the criminal case namely Prashant Mehndiratta and Defendant no. 4 were present and had voiced against the plaintiff.

(iv) Ld. Counsel for the plaintiff extensively relied upon the case of **Swatanter Kumar v/s Indian Express (supra)** and contended that the facts of the present case and that of the said case are quite similar – there is a design to tarnish the reputation of the plaintiff, the complainant alleges incidents which are more than a

decade old and rather than resorting to seeking grievance through the authorities concerned, resort to media trial is there, wherein, all the allegations are trumpeted, repeated and also distorted and exaggerated. Simultaneously, there was also protest on 12.02.2016 at the office of the plaintiff. Thus, the plaintiff is left with no option but to seek an injunction to protect his reputation, prevent recurrence and reproduction of wild and scandalous allegations. In this regard, reference is made on the following judgments -

(1) Sahara India Real Estate Corp. Ltd. & Ors v/s Securities Exchange Board of India & Anr; 2012 (8) Scale 541;
(2) Naveen Jindal v/s M/s Zee Media Corporation Ltd and Anr; 2015 (219) DLT 605;
(3) Kannan v/s State of Kerala, 1984 KLT 412;
(4) Swantanter Kumar v/s The Indian Express Ltd & Ors, 207 (2014) DLT 221;
(5) Court on its own Motion v/s State, 2009 Crl.L.J. 677;

20. *Per contra*, Sh. Sanjeev Sindhwani, ld. Senior Advocate, appearing on behalf of defendant no. 4, commenced the arguments and contended that if the plaint is read holistically, what the plaintiff is seeking only a restraint or an injunction order against defendants no. 1, 2 and 3 i.e, the media houses, whereas, no such relief of injuction has been sought qua or against the defendants no. 4 and 5. Vis a vis them, the relief of damages has been sought. He submits that at one place, the Defendants no. 4 and 5 can continue to say anything or repeat those defamatory statements but the media houses, however, should not report the same or be injuncted. He submits that such a splitting of reliefs vis a vis the defendants by itself disentitles the plaintiff from seeking any sort of injunction order.

(ii) He submits that defendant no. 4 and 5 have sought justification by way of truth which is a complete defence or by itself an answer to the claim of the plaintiff and in such an eventuality, there could not have been an injunction against either the defendants no. 4 and 5 or even the defendants. He submits that it is not the case that defendant no. 5 had either resiled or disowned the statements or the same proved to be false. Matter is still pending at the stage of trial, plaintiff's evidence has been concluded and defendants still have to lead their evidence.

(iii) Ld. Sr. Counsel argued that there are well grafted defences to an action of defamation and the same comprise of truth, fair comment and privilege. He further submits that though the offence of defamation still remains in the penal code, the exceptions grafted therein are well established grounds to resist a suit for defamation. He further argues that a question of grant of injunction does not arise in as much as the alternate and efficacious remedy is damages and the Specific Relief Act clearly makes out the said principle evident. He further submits that in so far as the role of defendant no. 4 Ms. Vrinda Grover is concerned she has spoken on the instruction of defendant no. 5, in the capacity of her being Counsel and the role has to be viewed accordingly - as that of Counsel who is acting on instructions and discharging the duty casted upon her, thus, she is well entitled to claim privilege - her role/ acts and statements made cannot be questioned in any manner whatsoever in the present suit. Ld. Sr. Advocate argues that this privilege is extended to a counsel not only at the time while she is in Court but this extends to matters concerning the suit or in relation to the suit, thus, there could not have been any case at the first instance against Defendant no. 4 in the capacity of the Counsel of defendant no. 5.

Apart whereof, Defendant no. 4 is a woman rights activist and whatever she has said was solely on account in discharge of her professional duties and by way of present suit she cannot be throttled or made to succumb to the illegal designs of the plaintiff.

(iv) Ld. Sr. Advocate further contends that it is not that one sudden day the defendant no. 4 and 5 appeared before the media and made the statements. If the case is to be holistically seen, whilst the first complaint was filed in the month of February 2015 before the police and since then till the telecast of the programme on 10.02.2016, many a times the Defendant no. 4 had requested DCP South to record the statement of Defendant no. 5 in the pending criminal matter in as much as she could have been witness to be character of the plaintiff which fact was not even bothered to be replied by the investigative agency, so much so a person who was facing a serious criminal action involving moral turpitude was promoted during the pendency of the criminal case then the Defendant no. 5 instructed the Defendant no. 4 to make the statement public i.e, 10.02.2016, wherein she had narrated as to what happened to her. It is not that allegations were just made at the heck of it but there was ample correspondence to show that defendant no. 5 intended to depose/ record her statement before the criminal proceedings which legitimate request of hers was not acceded to.

(v) Ld. Senior Counsel further argued that the ratio of the case of **Swatanter Kumar v/s Indian Express (supra)** – heavily relied upon by the plaintiff side has to be read in the light of the peculiar facts and circumstances of the said case and it is not even a final judgment – was an interim order. He has filed on record the copy of the petition of the said case to buttress the point that one important facet of the said case was that there were not one

but thirteen persons who had given the statements in favour of the petitioner therein to negate the alleged incident in the said case. Apart whereof, he submits that the ratio of the said case/ the ratio was taken note by the Hon'ble High Court in the case of **Naveen Jindal v/s Zee Telefilms (supra).**

(vi) Ld. Senior Advocate further submits that any sort of restraint or injunction order as sought for by the plaintiff is against Article 19(1)(a) of the Constitution. Furthermore, the interim order which has been passed by my ld. Predecessor dated 25.02.2017 – in vogue / existence also affronts the constitutional mandate and that is the reason they have sought for early disposal of the application under Order 39 Rule (1) and (2) CPC. There cannot be any gag order or any order whose effect is to muzzle the voice or negate freedom of speech and expression.

(vii) On the aspect of prejudice or there being any impairment to the constitutional safeguard of presumption of innocence, he submits that the case of the plaintiff, wherein, he is facing prosecution, is altogether different and the contention that the media reports may prejudice the case, is too far fetched/ without any rational basis.

(viii) In support of his arguments, ld. Senior Advocate has relied upon:-

(a) Mother Diary v. Zee Telefilms ILR (2005) Delhi 87;
(b) Khushwant Singh v. Maneka Gandhi, 2001 SCC Online Del 1030;
(c) Sardar Charanjit Singh v. Arun Purie, 1982 Delhi HC;
(d) Naveen Jindal v Zee Media, 2014 SCC Online Del 1369;
(e) Bhagat Bro's v. Paras Nath Upadhyay (2008) 149 DLT 381

(f) Central Board of Dawoodi Bohra Community v. State of Maharashtra (2005) 2 SCC 673;
***(g) Sidharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694*;**

21. On behalf of Defendant no. 5 Ms. Rebecca M. John, ld. Senior Advocate argued and contends that the factual narrative of the defendant no. 5 by itself is sufficient to disentitle the plaintiff from seeking any injunction as he has sought justification by way of truth. Both plaintiff and defendant are equally placed – there is nothing on record to sustain that the statements made by defendant no. 5 are defamatory as such there is no prima facie case in favour of the plaintiff at this juncture. She further submitted that on the aspect of delay qua which the plaintiff side had argued, this incident pertained to the year 2003-04 and at that relevant point of time, the Defendant no. 5 had informed Commodore Joshi who did not initiate any action and on the contrary advised the Defendant no. 5 to read some book on meditation. Furthermore, there was no ICC, in so far as TERI is concerned, in as much as wherein, she could have confided it or lodged any complaint. The question of lodging a FIR also does not arise as Section 354A IPC was not on the statue books and neither at that relevant point of time, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was there – it also came into force in the year 2013. Thus, to argue or contend that the Defendant no. 5 could have lodged her complaint is without any substance. There was no mechanism for vindication of rights and secondly, the offence was not even crystallised – on the legislative books by way of penal offences.

(ii) Ld. Senior Advocate further argued that from the woman's perspective/ woman's point of view it is not that immediately upon happening of any such event – sexual harassment, she would immediately go and file

any complaint. There are many factors which she weighs in her mind. The stigma attached, the probable comments of the society in the said regard, the might and position of the accused as well as the fact that she may have to first of all muster the courage in herself and then only she can even think of lodging any complaint. However, at the same time, when once the complaint is lodged against any such person, she muster the courage to also inform the law enforcing authority as what actually happened with her. She submits that this herd like mentality cannot be faulted.

(iii) Ld. Senior Advocate further submits that in such a scenario, the woman victim feels or has the inner strength to say that "she too has been sexually harassed "or say me too". The Defendant no. 5 as such intended to join the proceedings and depose in reference to the stand taken by the plaintiff in a criminal case which is permissible by virtue of the Section 14 of the Indian Evidence Act, so that the falsity of the defence of the plaintiff which he was propounding may be exposed. But she was not allowed. Adding to insult what proved to be the last proverbial nail in the coffin was the fact that notwithstanding the pendency of the criminal case against the plaintiff, still, he was promoted and this impelled the defendant no. 5 to go on television and inform the public as to her travails.

(iv) Ms. Rebecca M. John, ld. Senior Advocate further contended that the woman's perspective or view cannot be brushed aside merely on the altar of delay and her voice gagged by way of injunctions as sought for by the plaintiff. Ending her arguments, she forcefully made a statement which I am producing in verbatim "*that every woman standing in the Court at this point of time has been in her life predated upon many a times may be in the DTC bus, college or any other public place.*"

22. Now coming to the arguments on behalf of the media houses, Sh. Ashish Verma, ld. Counsel on behalf of defendant no. 1 Bennett Coleman & Company contended that test evaluated in the judgment of **Frazer v/s Evan's and others reported in (1969) 1 All India Reporter** still holds good which has been followed in India consistently i.e., the truth being the ultimate defence and fair comment, similarly being protected by the freedom of speech and expression, even if the publication is expected to prejudice the reputation, the same cannot be injuncted from being published, if the publisher claims that it is the reporting of facts or is based on facts.

(ii) He further argued that freedom of press is sacrosanct and intrinsic to our Constitution and in a way as the Constitutional provision is being targeted upon – gag order is being sought so as to prevent the media to report facts which implies restricting or preventing the public the right to know, moreso, when the plaintiff himself contends that he is a distinct luminary or a public personality or figure. Ld. Counsel further submitted that the defendant no. 1 has reported the news in an un-prejudiced, fair manner and there was no violation of any code of ethics. He has relied upon the following judgments :-

(a) Fraser v. Evans & Others, Court of Appeal [1969] 1 All E R 8;
(b) Mother Diary Foods & Processing Ltd. v. Zee telefilms;
(c) Tata sons Ltd v/s Greenpeace International, 178 (2011) DLT 705;
(d) R.J.Rajagopal v/s State of Tamil Nadu, AIR 1995 SC 264;
(e) Khushwant Singh v/s Maneka Gandhi, AIR 2002 Delhi 58;
(f) R.Rajagopal v/s Jayalalitha, AIR 2006 Mad 312;
(g) His Holiness Shamar Rimpoche v/s Lea

Terhune, AIR 2005 Delhi 167;
(h) FIIT JEE v/s Nitin Jain, FAO OS No. 294/2010, Delhi High Court.

23. Same line of reasoning was articulated on behalf of defendant no. 2 – there cannot be any restraint either against pre-publication as well as telecast and secondly, it was contended that if the tenor of the transcripts are taken into consideration in each and every programme, there was a neutral reporting/ disclaimer on the part of the NDTV and NDTV had in a very unbiased manner reported/ projected the matter. In so far as the act of the anchor Nidhi Rajdan in reference to the defendant no. 4 – use of the word "yesterday", the same was on account of the fact that day before 10.02.2016, there was another programme which was telecasted in which defendant no. 4 had appeared as a panelist. The apprehension as to the fact that the plaintiff may not get a fair trial are misplaced. In fact, even in the case of **Sahara India (supra)**, the Court had formulated a test of there being a real and risk of prejudice, fairness of trial or the proper administration of justice which is absent in the given facts. It was further argued that freedom of press is important and same flows from freedom of speech and expression and has to be unrestricted/ cannot be in a manner curtailed.

24. In so far as the defendant no. 3 is concerned, the contentions taken are similar to that of defendants no. 1 and 2, however, it was additionally stated that in the entire plaint, there was no material on record, warranting their being impleaded as a party.

25. On behalf of defendant no. 6 – Union of India, reliance on the written statement was made and it was stated that notwithstanding the regulatory mechanism which is there, the plaintiff never had complained or

made any grievance of any kind with reference to the programme which was telecasted. The plaintiff had directly approached the Court which was also not permissible on account of the provisions of the Cable Television Networks (Regulation) Act 1995.

26. Rebutting the arguments in rejoinder, Sh. Manik Dogra, ld. Counsel for plaintiff has argued that in so far as the contention of defendant no. 4 are concerned that she acted as a mouthpiece of her client/ she is entitled to privilege on account of being Counsel, he submits that the privilege cannot extend to acts which are even remotely connected with any case or pending proceedings. In fact on 10.02.2016, there was no proceeding pending at all and she has casted allegations against the plaintiff. She submits that repetition of libel is also libelious and even an Advocate cannot claim immunity if the allegations are made, unconnected with any Court proceedings.

27. Ld. Counsel further argued that in so far as the contentions that the Defendant no. 5 was remediless or was unable to lodge any complaint, all such averments are after thought and concocted. The alleged incident was more than a decade old and at no point of time, defendant no. 5 had alleged anything against the plaintiff and in so far as the foreign national, the incredulity or falsity of the allegations is apparent, as at no point of time any foreign woman worked with the plaintiff. He further submits that under Section 16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, there is a mandate that not only the name of victim shall be kept as secret, the name of the respondent should also be kept under wraps till the inquiry is over – the said yardstick has to be followed by defendants, however, in utter violation of the said obligations

casted by the section, defendant deliberately chosen to cast defamatory imputations against the plaintiff.

(ii) Ld. Counsel further argued that in so far as availing the remedy before the appropriate authority under The Cable Television Networks (Regulation) Ordinance, 1995, it is not that the plaintiff could not have approached the Court and in this regard, he has relied upon judgment titled as **GMR v/s Associated Broadcasters Company decided by the Hon'ble High Court on 29.01.2018**. Ld. Counsel further argues that if as per the version of the Black's Law Dictionary, the definition of the public person has been defined as a sovereign government, or a body or a person delegated authority under it, from the said yardstick the plaintiff can not be said to be a public person upon whom they could have commented.

28. I have noted the submissions made at bar at length. Each side has propounded his own version. Plaintiff had claimed that there was no basis of the false and defamatory allegations which have been casted upon him / published in the media. Falsity of the same is apparent – instead of approaching to any authority seeking redressal of the alleged grievance, defendants no. 4 and 5 resorted to what is now commonly called / referred to as “media trial”. Plaintiff relies heavily on the case of ***Swatanter Kumar v/s The Indian Express & Ors, reported as 207 (2010) DLT 221 (supra).*** On the other hand defendants have claimed that they have right to publish such articles being in public interest or in which public interest is involved, there cannot be any gag order on the media or press as it would defeat the constitutional guarantee of freedom of speech and expression. Apart whereof Defendant nos. 4 and 5 have also pleaded justification of truth as well as privilege.

29. All the said issues have to be dealt taking only a *prima facie* view and keeping in mind the consideration of balance of convenience and irreparable loss and injury – the three principles which have to be only considered at this juncture. I shall deal with each aspect in a point wise manner so that the discussion is kept in proper perspective.

30. Dealing with the first contention that the suit of the plaintiff is not maintainable inasmuch as he ought to have approached the authorities which are formed under the Cable Television Network's Regulation Act, 1995 suffice to note the pertinent observations in the case of ***GMR Infrastructure Ltd. V/s Associated Braodcasting Company Pvt. Ltd & Ors, IA 4351/2016 (u/s: XXXIX R 1 & 2 CPC) in CS (OS) 165/2016***, it has been observed as under:

> "*23. In Procter & Gamble Home Products Private Ltd vs Hindustan Unilever Ltd., (2017) 238 DLT 585 question arose before this Court regarding maintainability of a suit in which Hindustan Unilever Ltd (in short 'HUL') alleged defamation in one of Procter & Gamble Home Products' (in short 'P&G') advertisements. P&G contended that since HUL had first approached the Advertising Standards Council of Inida (ASCI) which had rejected HUL's petition, the suit was not maintainable in the Civil Court. This Court rejecting P&G's contention held that HUL was not barred from approaching the Civil Court. It was held :*
> *"15. The Cable Television Networks (Regulation) Act, 1995 (CTN Act) enacted to regulate the operation of cable television networks and for matters connected therewith, in Section 6 titled "Advertisement Code" prohibits transmitting or re-transmitting through a cable service of any advertisement unless such advertisement is in conformity with the prescribed Advertisement Code. Section 11 of the CTN Act provides for seizure of the equipment of any cable operator found violating inter alia Section 6 of the Act and Section 19 of the CTN Act empowers the Government to prohibit the cable operator from transmitting or re-transmitting any advertisement not in*

conformity with the prescribed Advertisement Code. Section 22 of the CTN Act empowers the Central Government to by notification in the Official Gazette make rules inter alia for the Advertisement Code. The Cable Television Networks Rules, 1994 (CTN Rules) framed in exercise of said power, under Rule 7 titled "Advertising Code", while providing that advertisements carried in cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers, vide sub-rule (9) thereof provides that no advertisement which violates The Code for self regulation in Advertising, as adopted by the ASCI from time to time for public exhibition in India, shall be carried in the cable service.

16. However the aforesaid statutory flavour given to The Code would also in my view not bar the jurisdiction of the Civil Court to entertain CS (OS) No. 463/2016 as filed by HUL, even after HUL approached ASCI and ASCI did not find any merit in the complaint of HUL. I say so because the remedy available before ASCI is distinct from that available before the Civil Court, ASCI, if finds any merit in the complaint with respect to any advertisement, can only make a recommendation for rectification thereof and if the recommendation remains uncomplied, forward the same to the Authorised Officer under the CTN Act and which Officer is empowered to then prohibit the broadcast of the subject advertisement. The said route though may be also available will not bar a person aggrieved from the advertisement, from approaching the Civil Court and similarly the dismissal of complaint by ASCI, though may be a relevant fact in the proceeding before the Civil Court with respect to the same advertisement, but would not bar the Court from independently looking at the grievance."

In view of the categoric and direct pronouncement on this point, same does not detain me any further and as such is decided accordingly.

31. Now coming to the second contention as to the prejudice or likelihood of prejudice being caused or as to whether there was any reasonable apprehension inasmuch as the defendant(s) had published a torrent of articles carrying or repeating the allegations / statements, at a very

short span of time and at crucial stage, when the petition for cancellation of bail of the plaintiff was listed before the Hon'ble High Court on 11.02.2016 and just hours before the same the allegations / statements were made before media by defendant nos. 4 and 5 i.e. on 10.02.2016. In this regard, I may only note the fact that the petition seeking cancellation of bail was admittedly disposed of on 04.03.2016 and the present suit has been filed much later - on 04.04.2016. Thus, on this aspect, the said 'overhang', if I may use the said word did not exist at the date of filing of the suit as the petition before the Hon'ble High Court was already disposed of. This by itself is a very strong reason to reject the contention that the said “media trial” or outpourings before the media was affecting or likely to affect the case of the plaintiff – prejudice him in any manner whatsoever.

32. Further on this aspect strong reliance was placed on the judgment of **Sahara India Realestate Corporation Ltd and ors vs. Securities and Exchange Board of India and anr reported in 2012 (8) Scale 541**. In the said case particularly observed in paragraph(s) no. 31, 33 and 43 it was observed as under :

> *“In the case of Naresh Shridhar Mirajkar v. State of Maharashtra [AIR 1967 SC 1], this Court dealt with the power of a court to conduct court proceedings in camera under its inherent powers and also to incidentally prohibit publication of the court proceedings or evidence of the cases outside the court by the media. It may be stated that “open Justice” is the cornerstone of our judicial system. It instills faith in the judicial and legal system. However, the right to open justice is not absolute. It can be restricted by the court in its inherent jurisdiction as done in Mirajkar’s case if the necessities of administration of justice so demand [see Kehar Singh v. State (Delhi Administration), AIR 1988 SC 1883]. Even in US, the said principle of open justice yields to the said necessities of administration of justice [see: Globe Newspaper Co. v. Superior Court, 457 US 596]. The entire*

law has been reiterated once again in the judgment of this Court in Mohd. Shahabuddin v. State of Bihar [(2010) 4 SCC 653], affirming judgment of this Court in Mirajkar's case.

33. .....Presumption of innocence is held to be a human right. [See : Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294]. If in a given case the appropriate Court finds infringement of such presumption by excessive prejudicial publicity by the newspapers (in general), then under inherent powers, the Courts of Record suo motu or on being approached or on report being filed before it by subordinate court can under its inherent powers under Article 129 or Article 215 pass orders of postponement of publication for a limited period if the applicant is able to demonstrate substantial risk of prejudice to the pending trial and provided he is able to displace the presumption of open Justice and to that extent the burden will be on the applicant who seeks such postponement of offending publication.

43. In the light of the law enunciated hereinabove, anyone, be he an accused or an aggrieved person, who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his/ her rights under Article 21 to a fair trial and all that it comprehends, would be entitled to approach an appropriate writ court and seek an order of postponement of the offending publication/ broadcast or postponement of reporting of certain phases of the trial (including identity of the victim or the witness or the complainant), and that the court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the abovementioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. Such neutralizing device (balancing test) would not be an unreasonable restriction and on the contrary would fall within the proper constitutional framework."

33. Viewing from the principles as enunciated herein above, it is but apparent that any injunction order or a postponement order can be passed only if there is a *real and substantial risk* or *prejudice* or when it *impairs the*

administration of justice. In the case of ***Naresh Shridhar Mirajkar*** and ***Sahara India,*** injunction orders or postponement orders were in reference to pending proceedings. Here, it is evident that the defendant no. 5 or the foreign woman victim who was being represented by defendant no. 4 advocate – none of them was a party or even a witness in the case FIR no. 18/2015, PS Lodhi Colony. Further, it has also come on record that their statements were also not recorded by the police in the said FIR despite the fact that the defendant no. 4 / Ld. counsel on their behalf was repeatedly requesting the investigating agency as well as their higher ups to do so. Secondly the complaint which was filed by defendant no. 5 before the ICC of TERI was also rejected as being time barred. Thus, in a manner it can be said that viz a viz the pending criminal case the defendant no. 5 as well as the foreign woman victim remained strangers or were unconnected to it - they did not even had the required *locus* to agitate or participate in the said case. As such, their outburst or media outpouring by itself could not have any rational connection with the proceedings which were pending then - emanating from the said FIR.

34. To put it otherwise, filing of the present case rather presented or gave an opportunity to defendant no.4 and 5 to reply as well as agitate which opportunity, they did not had earlier or wanted to avail. As such, in my opinion in view of the principles as propounded in ***Sahara's case*** there was no real or substantial risk of prejudice or any impairment qua the fairness of trial and the plaintiff's apprehension about the same that is his trial is being impaired is completely unfounded and untenable.

35. Coming to the next argument that plaintiff is entitled to an injunction on account of the principles laid down in **Swantanter Kumar's**

case (supra) qua the same, firstly I may note that the said order was only an interim order / directions were passed pending the final disposal of the application U/o 39 Rule 1 & 2 CPC - the probable defence of the defendant intern could not see the light of the day or barely even considered or least to say adjudicated upon.

36. Secondly, the said case was distinguished in the case of **Naveen Jindal vs. Zee Media Corporation Limited (2014) 209 DLT 267**, particularly reliance is made on paragraph no. 26 :

> *"26. I am cognizant of the fact that it is not unusal in a given case where a pre-publication restraint order has been passed by this court although both the parties have not cited the judgment of Swatanter Kumar v. The Indian Express Ltd passed by this court in C.S (OS) No. 102/2014 on 16.01.2014 in which a pre-publication restraint order was passed against reporting his name or photograph and without giving his side of the story but the facts of that case were slightly different than the facts of the present case. In the said case, the plaintiff was a former Judge of the Supreme Court and present holder of a position of Chairman of an important tribunal. Further, by virtue of his holding of a past office and the present one, he was under an obligation not to have publically refuted the allegations made against him which is unlike in the case of a person who has been a sitting MP on two occasions and is aspiring to get elected for the third time where he has ample opportunity to address the public, hold a press conference, give his side of the story despite the fact that the guidelines of NBSA also laid down that in such cases where they are reporting about the accusations, televising agency must give the views by the aggrieved party also. Therefore, so far as the judgment of former judge Mr. Justice Kumar is concerned, that is totally distinguishable from the facts of the present case."*

37. Thirdly, merely by contending that there was an undue delay on the part of the defendant no. 5 to report the said alleged incident, same *per se* does not lead to the conclusion as to the fact that the statements of

defendant no.5 were either false or a motivated one. Further the issue of delay in lodging the complaint, particularly in matters pertaining to sexual harassment has to be viewed and appreciated in the context of the reasons afforded for not doing so at the earliest available point of time. On the said score, the contention of Ld Sr. Counsel Ms. Rebecca M. John that the delayed statutory recognition – passing of the S.H.W Act in year 2013 notwithstanding the judgment of 'Vishakha' case having being passed much earlier in year 1997, itself shows that the legal structure for enforcement of such like grievances was not existing or complete - same to my mind is quite relevant and a forceful submission which cannot be brushed away. Statutory recognition empowers and embolden the affected ones to seek redressal of the wrongs perpetrated. Needless to state that on the date of the coming into force of the S.H.W. Act, the offences were crystalized/defined – the Act prescribes measures as to the enquiry on the complaint, the interim measures to be granted during the pendency of enquiry besides protecting her identity as well as determination of compensation etc. All such aspects do give a reassurance or empowers victims or complainants to seek redressal. Further, the defendant no.5 has also claimed that she had informed one Commodore Joshi at the relevant point of time who instead of assisting her and was holding a responsible position then dissuaded her from filing any complaint. The defendant no.5 has further stated that even at TERI at that relevant point of time there was no committee constituted to investigate such cases. All such factors cannot be discounted and the version of the defendant no.4 cannot be stated to be an incredulous one or unworthy of any credit. Again at the cost of repetition it is only the plaintiff who has brought the instant litigation, renewing or reviving the life / vigour of such allegations requiring an adjudication as to the correctness.

38. Lastly, the point which has to be considered or more relevant at this juncture is that whether on account of delay or non filing of the complaint, can it be held that the allegations or statements were *ex-facie* false. Qua the same or reach to the said conclusion, there is nothing on record whatsoever. There is no documentary evidence or any material of unimpeachable nature brought on record by the plaintiff. Thus, not much assistance can be taken from the judgment which was passed in **Swatanter Kumar's (supra)** *case* to press for a relief of injunction.

39. Now I had purposively quoted the relief(s) sought by plaintiff in paragraph no. 10(xv) of the present order. A perusal of the same reveals that no injunction is sought viz a viz defendant no. 4 and 5 and qua them only damages has been sought for. In contradistinction an injunction is sought for against defendant no. 1, 2 and 3. Thus, in such a scenario when an injunction is sought against media or publication houses, the question as to whether the same affronts the guarantee under Article 19(1) of the Constitution is also to be seen. The defendant no. 1, 2 and 3 have contended that there cannot be an injunction insofar as any pre-publication or pre-telecast is concerned and the remedy of the plaintiff is only to seek damages which he is not even seeking against them – which implies that their reporting has been fair. Secondly, there was no malice or ill-will on their behalf and if the media / television reports are scrutinized/evaluated they are well balanced and version of both the parties was sought for.

40. Now on the said aspect I am relying upon judgment titled as ***Martha Greene v/s Associates Newspaper Ltd. [2004] EWCA Civ 1462*** wherein pertinent observations have been made. I am quoting the same as here under:

"*51. It is necessary to refer only to five modern cases in which the rule in Bonnard v Perryman was authoritatively restated. In Fraser v Evans [1969] 1 QB 349 Lord Denning MR said at pp 360-I :*
"The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intend 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. The reason sometimes given is that the defences of the 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.... There is no wrong done if it is true, or if [the alleged libe] is fair comment on a matter of pubilc interest. The court will not prejudice the issue by granting an injunction in advance of publication."

52. In Herbage v Pressdam Ltd [1984] 1 WLR 1160 Griffiths LJ restated the effect of the rule and then said (at p 1162H):
"These principles have evolved because of the value the court has placed on freedom of speech and I think also on the freedom of the press, when balancing it against the reputation of a single individual who, if wrong, can be compensated in damages"

56. In Holley v Smyth [1998] QB 726, where the potency of the rule was reaffirmed, Sir Christopher Slade, another experienced Chancery judge, said at p. 749;
"I accept that the court may be left with a residual discretion to decline to apply the rule in Bonnard v. Perryman in exceptional circumstances. One exception, recognised in that decision itself, is the case where the Court is satisfied that the defamatory statement is clearly untrue. In my judgment, however, that is a discretion which must be exercised in accordance with established principles."

10. The Law of Prior Restraint in Defamation Actions : the Rationale of the Rule

57. This survey of the caselaw shows that in an action for defamation a court will not impose a prior restraint on

publication unless it is clear that no defence will succeed at the trial. This is partly due to the importance the court attaches to freedom of speech. It is partly because a judge must not usurp the constitutional function of the jury unless he is satisfied that there is no case to go to a jury. The rule is also partly founded on the pragmatic grounds that until there has been disclosure of documents and cross examination at the trial a court cannot safely proceed on the basis that what the defendants wish to say is not true. And if it is or might be true the court has no business to stop them saying it. This is another way of putting the point made by Sir John Donaldson MR in Khashoggi, to the effect that a court cannot know whether the plaintiff has a right to his/ her reputation until the trial process has shown where the truth lies. And if the defence fails, the defendants will have to pay damages (which in an appropriate case may includes aggravated and/ or exemplary damages as well)."

41. The said principles have been consistently repeated and followed in a number of judgments. For the sake of brevity, I am relying on one i.e. ***Mother Diary Foods and Processing vs. Zee Telefilms 117 (2005) DLT 272***, paragraph no. 25, 28, 29 and 32 which is as under:

"25. On the question of restraint on telecast or publication, the legal position is fairly well settled. This Court in Sardar Charanjit Singh v. Aroon Purie and Ors. declined to stay the publication of an article in the magazine "India Today" on the plaintiff's submissions that the questionnaire sent to him was per-se defamatory and the article which was proposed to be written based on the per-se defamatory questionnaire would also be defamatory. This Court had negatived allegation of malice and animosity. Taking note of defendant's plea that it would justify the article, that would be published, the Court declined interim injunction holding:-

"But as the defendants state that they would plead justification and fair comment for publishing the article pertaining to the plaintiff, I am of the opinion that injunction should not issue."

The Supreme Court also dismissed the SLP preferred against the judgment of the learned Single Judge of this Court.

28. Lastly reference is invited to the Division Bench Decision of this Court in Khushwant Singh and Anr. v. Maneka Gandhi , where the Court vacated the injunction granted against the defendants from publishing, circulating or selling the autobiography pertaining to the respondent and her family. The Division Bench vacated the injunction upholding the observations of Lord Denning in Woodword V. Hutch Inc.:-

"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."

29. It would be seen from the foregoing judgments, that the settled legal position is that where truth, justification and fair comment are pleaded, there is to be no prior restraint on publication unless the Court can find it to be a case of malafides. This was the situation in the case of Hari Shankar (Supra) where repeatedly false and defamatory imputations were being maliciously published. The Gulf Oil case (Supra) relied on by the plaintiff would also not advance its case. In Gulf Oil (Supra) the Court held that:-

"The principle that an interlocutory injunction would not be granted to restrain publication of defamatory material where the defendant intended to plead justification did not apply where the material was being published in pursuance of a conspiracy which had the sole or dominant purpose of injuring the plaintiff."

32. Ordinarily, the publication of any defamatory news item

or any falsehood can be and is dealt with by the aggrieved party by availing of legal remedies to safeguard its rights and reputation by instituting an action for libel or a criminal complaint for defamation. The media has been a zealous guardian of freedom of expression and speech. It has a right to comment vigorously and fearlessly especially on matters of public interest. Recent times witnessed a tendency to make news sensational and full of hype, following the edit "News is what Sells".

42. Further, in this regard I am also relying on the observations in the case titled as **R Rajagopal Vs. J Jayalalitha reported in AIR 2006 Madras 312** paragraph no. 28, 29 which are as under :

"28. The right to publish and the freedom of press as enshrined in Article 19(1)(a) of the Constitution of India are sacrosanct. The only parameters of restriction are provided in Article 19(2) of the Constitution. As observed by Mudholkar, J. in Sakal Papers (P) Ltd. Vs. Union of India (AIR 1962 SC 305) the courts must be ever vigilant in guarding perhaps this most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved. The interim order granted by the learned single Judge is a blanket injunction. The order virtually amounts to a gag order or censorship of press. Such censorship cannot be countenanced in the scheme of our constitutional framework. Even assuming that the articles published by the appellants amount to character assassination of the respondents, there is no justification for granting a blanket injunction restraining the appellants from publishing any articles, in future. It would not be appropriate for us to examine the articles at this stage on the touchstone of defamation, but what we do observe is that they are not of such a nature warranting a restraint order, especially when the appellants are willing to face the consequences in a trial in case the same are held

to be defamatory, and the plea of the appellants of truth is yet to be analysed by the Court.

29. The fundamental right of freedom of speech is involved in these proceedings and not merely the right of liberty of the press. If this action can be maintained against a newspaper, it can be maintained against every private citizen who ventures to criticise the ministers who are temporarily conducting the affairs of the government. In a free democratic society those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. As observed in Kartar Singhs Case (supra) the persons holding public offices must not be thin-skinned with 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 criticisms and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same. In the instant case, the respondents have already chosen to claim damages and their claim is yet to be adjudicated upon. They will have remedy if the statements are held to be defamatory or false and actuated by malice or personal animosity."

43. Now that being the position of law, the injunction as sought for falls foul to the said explicit proposition of law. Such restraints as sought for not only amounts to enforcing a gag order upon the media but at the same time prevents a right of the public to be kept updated about the developments – their right to know is infracted or trampled upon.

44. A line of argument was advanced on behalf of plaintiff side that plaintiff was not holding any public office and hence viz a viz him or in relation to his affairs the defendant no.1,2 and 3 also could not contend that they were

writing or commenting about a public figure or the same was in the larger public interest. Now to my mind this is only a trifle or inconsequent argument – it is not merely that media can make fair comment only in respect of public persons holding public office. The plaintiff himself had stated that he is a recipient of various awards/well decorated and also claims himself to be a leading luminary in his field having national and international stature. Thus, he has a public persona or is a public figure and has to be under public gaze.

45. Furthermore, in the case of **Naveen Jindal vs. Zee Media Corporation (2014) 209 DLT 267**, it was also held that money can be adequate compensation in such circumstances and the injunction should not be granted notwithstanding the fact that such allegations at the trial may not be proved or stand the scrutiny of Court. The relevant observations are as under :

> "*There is another aspect of the matter or in other words, there is another fundamental rule which has to be observed by the court while granting a stay of this nature. Sector 38 of the Specific Relief Act clearly lays down that while granting temporary injunction if there is a method of quantifying damages which a person may suffer because of non-grant of such an injunction then injunction ought not to be granted. In other words, as a matter of rule anything which is complained of which can be measured in terms of money and for which money can be adequate compensation by way of a final relief, can never be injuncted. In the instant case, the plaintiff is complaining that he is being defamed while as the defendants are taking the plea of justification which is a valid defence and a fair comment meaning thereby they stand by the allegations made by them against the plaintiff necessarily meaning that this requires adjudication by the court to arrive at a finding whether if they are held to be not defamatory then the suit is liable to be dismissed if the accusation against the plaintiff are held to be defamatory then he is certainly entitled to damages which he can quantify and show to the*

Court."

46. Now, the defendants have sought to justify their stand by claiming that the statements made are true and correct. Defendant no. 4 in addition thereto has sought to defend her act/statements on the premise that being the advocate/legal practitioner she is entitled to espouse the cause of defendant no. 5, her acts have to be so construed to give effective legal representation to defendant no 5. She is entitled to claim privilege and that privilege extents to all acts during the Court in relation to the case and also extends to acts/statements made outside the Court provided there is nexus between the statements, acts and the case. Furthermore, if is she is gagged or injuncted or in a manner deterred by way of suit for damages there would be a chilling effect and the S.H.W. Act would be rendered completely toothless.

47. Now at this juncture I am not enquire into the correctness or genuineness of allegations/statements made as a trial is going on rather is at the mid way. The defendant no.4 has been arrayed as a party. She admittedly claims herself to be a women activist – she has not confined herself to be mere counsel of the defendant no.5 but has also putforth her case claiming herself to be a zealous activist. Thus, at this point of time, the question of privilege or as to the fact that her acts /statements fall within the domain / mantle of being a counsel or legal practitioner alone, same cannot be outrightly decided.

48. Delving further on the legal proposition, useful reference can be made to the judgment titled as **Ram Jethmalani v/s Subramaniam Swamy, 126 (2006) Delhi Law Times 535**, wherein the Hon'ble High Court had culled out the defences in a suit for defamation, the pertinent observations are as

under:

> "*95. Traditional defences to an action for defamation have now become fairly crystallized and can be compartmentalized in 3 compartments; truth, fair comment and privilege. Truth or justification, is a complete defence. The standard of proof of truth is not absolute but is limited to establishing that what was spoken was 'substantially correct'. Fair comment offer protection for the expression of opinions. Standard of proof is not that the Court has to agree with the opinion, but is limited to determine whether the views could honestly have been held by a fair minded person on facts known at the time. Unlike defence of truth, defence based on fair comment can be defeated if the plaintiff proves that the defamer acted with malice. Similar is the situation where the defence is of qualified privilege. Privilege is designed to protect expression made for the public good. Protection of qualified privilege is lost if aual malice is established. In public interest, absolute privilege is a complete defence. Rationale of absolute privilege being restricted to Court proceedings or proceedings before Tribunals which have all the trappings of a Civil Court and Parliamentary proceedings is that if threat of defamation suits loom large over the heads of lawyers, litigants, witnesses, Judges and Parliamentarians it would prohibit them from speaking freely and public interest would suffer.*"

49. The defendants have claimed the truth or justification which is a complete defence. Furthermore, defendants no.1 to 3 have also claimed that they had published the articles without malice or ill-will. In such a scenario, the version of defendants *per se* disentitles the plaintiff to the relief of injunction, as prayed for.

50. Now on this aspect I also rely on the observations in the case of **Shreya Singhal vs. State (2015) 5 SCC 1** in which section 66 A of the IT Act was held to be unconstitutional. The discussions therein also dealt with

freedom of speech and expression and annoyance u/s 66 A of IT Act. I am relying on paragraph no. 11, 12 and 13 of the judgment relevant for the purpose of present discussion. The same are as under :

> *“11. This last judgment is important in that it refers to the "market place of ideas" concept that has permeated American Law. This was put in the felicitous words of Justice Holmes in his famous dissent in Abrams v. United States, 250 US 616 (1919), thus:*
>
> *"But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas-that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution."*
>
> *12. Justice Brandeis in his famous concurring judgment in Whitney v. California, 71 L. Ed. 1095 said:*
>
> *"Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to*

discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; 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. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law-the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of lawbreaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated."

13. This leads us to a discussion of what is the content of

> *the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.[3] It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most of the arguments of both petitioners and respondents tended to veer around the expression "public order".*

51. Even viewing from the prism / concepts enumerated in paragraph no. 13 of the said judgment once the discourse leads to the stage of incitement, Article 19(2) or the restrictions carved out therein kicks in. In the case in hand, the nature of allegations/statements were no doubt pricking or the pitch of the same was shrilled/annoying and it could also be said that the statements were challenging/provoking in nature but it cannot be said that they had cross over the threshold to qualify them of being of such a nature which would lead to disturbance of public order or any other like serious-clear and present danger was revealed or manifested. Though a protest was also there at the office of the plaintiff on 12.02.2016 however, the same may have been done in the zest of being noticed or to cause annoyance and discomfort to the plaintiff or even to raise awareness about the issue of sexual harassment or even may be to elicit the response of the plaintiff. However, the said statements were not of such a nature which would fall within the category of 'incitement'.

52. Now the order which was passed by my Predecessor on 25.02.2017 wherein interim directions were passed, which I had quoted in the fact narration also needs to be re-visited. The directions were that the incident can be reported with certain disclaimers or caveats. Now if the media cannot be restrained by way of any injunction - no gag order can be passed against the media, by adopting the same principle or analogy the media/defendant no. 1,2 and 3 also cannot be compelled to report or published the matter in any particular way or laced with condition so that the innocence of the plaintiff is prominently highlighted or displayed. As a matter of fact, if a person cannot be gagged then also he cannot be coerced to speak in a particular manner. Both affronts the Constitutional guarantee of freedom of speech and expression. Thus, the interim orders/ directions which were passed on 25.02.2017 are also uncalled for and by way of this order I specify that the said directions stands vacated.

53. Now, having discussed the issue from the perspective of a restraint order over the media I may add that even defendant no. 1, 2 and 3 all have contended that their reporting was fair, unbiased and the views of both the parties affected were sought for. Defendants no.1, 2 and 3 also state that they had complied with the media code and guidelines and there was also general disclaimer on their behalf evident in the reporting itself.

54. On the said issue of role and responsibility of media in reporting such incidents, it is but obvious that media has to play a very balanced role in reporting such incidents, which have a wide repercussions and affects the dignity and infract into the privacy of individuals involved/named therein besides has bearing on the functioning as well as reputations of the

institutions involved which includes the stake holders - employees, shareholders or persons holding responsible position, they too are affected or impacted by such news or reportings.

55. Now on this I may also note that in today's world media wields considerable clout and influence *moreso* now it has become a 24 x 7 affair, not restricted only to print media and the reach having increased manifold with the advent of electronic and now social media. Social media also gives an additional opportunity to the viewer/reader to be interactive or even participate in the discussion. It won't be any misnomer or palpably wrong to say that it has the potential to make or mar a person's reputation and career. Thus, with such a wide encompassing power a corresponding duty also lies upon the media to report such matter in a neutral, impartial and objective manner. However, there is no gain saying that an endeavour is always made by media to somehow or the other to catch the eyeballs or the attention of the viewers/readers. In the said race many a times the stories which are presented contains exaggeration, sweeping statements are made, element of sensationalization is inserted - a sort of jingoistic or aggressive narrative or undertone is adopted, same is done to create a hype or a buzz or even a sort of a hysteria around the news and sometimes even a sort of crusader approach is adopted while reporting of the news. In this regard I may usefully quote from the judgment of ***Mother Diary foods vs. Zee Telefilms (supra)*** case as what is being presented to the public is “what public is interested in” rather than “what is in public interest”. Reason for the said approach may be manifold - cut throat competition in media, reaching the growth targets, to be different from others, create a dedicated following etc., etc. Thus, in such a scenario the duty to report responsibly – in a neutral, objective manner and

free from any bias cannot be but underscored / emphasized.

56. To that score even the defendant no.1, 2 and 3 are not in conflict. They have also argued that they had reported / covered the news in an unpartisan manner and had also sought the comments / views of the plaintiff as well. Thus, all the defendants – media houses are at one page that the reporting has to be in consonance with an objective manner and taking into account the views/comments of both the parties. To that extent defendant no, 1, 2, and 3 also realizes the onerous duty and responsibility which has been casted upon them.

57. Concluding the discussion by using a phrase – the media by its reporting should throw more '*light rather than generate heat*' on the subject or issue as the same would not only enlighten the viewers/readers, commensurate with their right to know and being informed rather than stoking the passions or stirring the emotions. Said observations to my mind sums up the discussion.

58. That being the situation in my opinion in the entire fitness of things the application in hand can be disposed of by passing the following directions, which should be complied scrupulously by defendant no. 1,2 & 3 and other media houses :

(i) that while publishing or telecasting of any news/reports/articles with regard to the subject as involved in the present suit, they shall take into consideration the views/comments of the plaintiff or his authorized representative on the said subject. In the event if such views or comments are not given by them then a

statement as to the fact that an effort was made to ascertain their views should also be made in the news, articles of programmes, as the case may be. That would project the stand of both the parties on the issue and also would be in consonance with guidelines in this regard.

ii) Secondly since the matter is still pending in the Court - the rights of the parties have still not been decided the following line should be added to denote the said fact "*that the matter is still subjudice or the matter is still pending in the Court or final decision in the case is still awaited*." Such a direction is only in reference to the fact that the litigation is pending.

59. With the aforesaid directions, the application of the plaintiff stands disposed of as indicated hereinabove.

60. The usual caveat at the end – nothing stated herein shall tantamount to any expression of opinion on the merits of the case. The discussion is only for the purpose of disposal of the application u/o 39 rules 1 and 2 of CPC.

Pronounced in open Court
on 13.02.2018

(Sumit Dass)
Additional District Judge-01,
NDD/PHC/New Delhi/13.02.2018