



**DECODING THE MODUS VIVENDI
BETWEEN SPEECH AND
REPUTATION THROUGH SANDHYA
RAVI SHANKAR CASE**

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I. INTRODUCTION

Indian judiciary has dealt with the co-existence of conflicting fundamental rights enshrined in our constitution quite a few time now. The courts in India have actively dealt with antagonistic fundamental rights like Right to Equality v Right to equal opportunity among equals; Right to Life with Dignity v Right to Freedom of Speech and Expression; Right to Speedy Trial v Right to fair Trial etc. and much more such conflicting rights.

The Right to Freedom of Speech and Expression guaranteed under article 19[1][a] is not an absolute right unlike under American Constitution with vast and strong safeguard under infamous First Amendment. The restrictions for the freedom of speech and expression in the Indian Constitution are mentioned under the following grounds, “in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.” The Freedom of Speech and Expression has underwent some real threats in the 21st century at the ends of powerful leaders, large corporates and other big private and government magnates. The right to Free Speech and Expression which has been touted as mother of all other fundamental rights is very often seems huddled with

erroneous and hefty punishments for violation of any of its sister rights.

Right to Reputation of an individual has been held by the Hon’ble Supreme Court as a fundamental right guaranteed under article 21 of the Constitution and is actionable in the form of initiation of Defamation proceedings upon any violation of the same. Defamation has been held as a safe ground for restricting freedom of speech and expression under article 19[2]. Defamation unlike other restrictions has been present in the scheme of restrictions since the first draft of the sub-committee of Fundamental Rights. Defamation has also traversed from its objects with the change in times and is now used as a weapon by individuals and corporations in positions of power and might to suffocate the free speech.

The judgement by the Madras High Court seeks to set an epitome in the constitutional jurisprudence of “the theory of balancing fundamental rights” with rightful emphasis on Freedom of Speech and Expression as the norm and Restrictions as the exceptions.

II. FACTUAL BACKGROUND

The respondent, V.V. Minerals lodged a case of defamation against the petitioners Grievances Redressal Officer, the Editor, a reporter of the Economic Times and the husband of the reporter. The content claimed to be defamatory by the respondent was titled, “Scam on the Shores” on the issue of Economic Times Magazine of 1-7 February 2015. The article was published by Sandhya Ravishankar, 3rd petitioner was called on for court of law by a Public Interest Litigation [PIL] filed by Victor Rajamanickam. The



report on which the article was published claimed that the Tamil Nadu government had authorized the respondent to mine and export monazite. The report had further claimed that the local villagers were exposed to chronic health hazards, due to enormous illegal mining.

The respondent had alleged that the husband of the 3rd petitioner, Sandhya Ravishankar had applied for a job in the news channel that was an asset under the respondent and had been rejected and therefore, the article published by the Sandhya Ravishankar was defamatory conjoined with element of malice. The respondent lodged a complaint with the Judicial Magistrate Thirunelveli, under section 500 [Punishment for Defamation] read with the section 109 [Punishment for Abetment] of the Penal Code. Thereafter, the judicial magistrate of the Thirunelveli issued summons to the petitioner. The petitioners approached the High Court under section 482 Cr.PC which deals with inherent powers of High Court.

III. MAJOR ISSUES RAISED

- A. Whether the issue of journalistic freedom of the petitioner qualifies as exceptions under section 499 of the IPC dealing with defamation initiated by the respondent?
- B. The validity of legal route taken by the respondent under section 482 CrPC for protection of violation of her fundamental right.

IV. CRITICAL ANALYSIS

A. APPROPRIATENESS OF THE JUDGEMENT:

The case dealt by the High Court was a general case dealing with the judicial protection to journalist [the petitioner] and at the same time looking at the nuances of reputation of the mining giant, V.V. Minerals limited [the defendant]. The judgment by the bench of the Madras High Court with brevity touched upon all the major dimensions of jurisprudence like procedural law, modus vivendi between two fundamental rights, judiciary and its duty to protect the fundamental right. The case references judicial precedents dealing with fairly similar contentions but also marks a milestone for providing a holistic approach towards the upholding of journalistic freedom. The judgment is also well-conditioned on duly attending the facts of the matter before delivering the judgment. The judgment may also be seen from the point of view of ascendancy of an era in the Constitutional Jurisprudence in the Indian judiciary for duly attending the fundamental rights of the journalist for speech and expression with holding the due sanctity towards procedural and substantive law.

B. IN-COMPARISON WITH PREVIOUS CASES:

The Right to Reputation actionable through the civil and criminal defamation in India which is broadly held as reasonable restriction to the Freedom of Speech and Expression under article 19[2] has a bleak history to be upheld by the Supreme Court and High Courts as an exception. The courts historically had an indecisive and ambivalent attitude towards championing the Right to Speech with the treatment meted out to the same as that of exception. The judgment drenches a glimmer of hope for the ascendancy of a newer era in the jurisprudence with a clear stand over



strengthening the freedom of speech and expression as a 'Right' and not as an exception.

In the past few years, the apex court has dealt with such similar contentions, however it was Right to Free Speech which have been compromised at the hands of conflict with any of the other fundamental rights. The *Shreya Singhal v Union of India*¹ seems to align with this judgment, whereby the apex court struck down the section 66A of the Information Technology Act, 2000. The judgment reminded of a new-found emphasis on the importance and strengthening the much needed pro-speech jurisprudence authenticating the idea of Speech as a 'norm' and Restrictions to the same be judicially endorsed as 'exceptions'.

However, aligning with its historical trend the Supreme Court in *Devidas Rama Chandra Tuljapurkar*² case raised curtains for speech on some vague and airy grounds of morality under the compulsion of respecting historically respectable figures. Then came the opportunity before the apex court for setting a precedent once for the history in *Subramaniam Swamy and others v Union of India*³ where for the first time the constitutionality of Criminal Defamation faced a direct upbraid before the Supreme Court. The judgment withheld the criminal defamation as a safe ground under article 19[2] for restricting freedom of speech and expression despite the proportionality of restriction and the goal sought to be achieved stands mis-matched. The judgment underpinned its historical trend with the vague statements like; 'Right to Speech can

not be crucified at the altars of free speech' lacking duly conditioned reasoning to embolden the same.

The judgment by the Madras High Court seems appropriate with clear and articulate reasoning strongly advocating the Right to Speech and may prove to be setting forth a good ground for the need to the deletion of criminality of an offence that in itself is a private wrong like Defamation. The Right to Freedom of Speech and Expression needs judicial acceptance at the cross-fire of ever-widened scope of article 21. The huge panoply of rights guaranteed under article 21 thanks to the initiation of PIL over the past few decades introduced as an impetus to embolden various facets of Right to Life is gradually leading the horizon of other fundamental rights. It also requires due elaboration that the article 21 protects the individual's life and liberty at the state's interference according to the description of the same.

C. SCARS AND OMISSIONS IN REASONING:

The judgment by the Madras High Court seems to be a departure from the conventional outlook for deciding such conflict of fundamental rights. The key remarks by the bench was:

"The bench is clearly of the view that there is no point in merely singing paeans to freedom of press, if one cannot go to its rescue when the said right is faced with a serious threat." However, the judgment requires critical appraisal in areas of its oddities and misfits. Particularly, the reasoning of the judgment is an echo of the juristic opinions in *New York Times v Sullivan*. The historic judgment of

¹ *Shreya Singhal v Union of India* (2013) 12 SCC 73.

² *Devidas Ramchandra Tuljapurkar v State of Maharashtra* Cri App 1179 of 2010.

³ *Supra* note 4.



New York Times v Sullivan was delivered in a country that championed Right to Express oneself through its First Amendment with no stated restrictions unlike Indian constitutional set-up. Moreover, the judgment was delivered during the tumultuous civil rights movement in the state of Alabama, where New York Times was such a last pendulum that flag beared the Civil Rights' Movement. The judgment [due to the large amount of compensation raised against New York Times, that would have crippled the newspaper to the closure] sheltered the journalistic freedom even with small inaccuracies to serve the larger societal interest by indirectly not hurting the public endeavor to seek equality through Civil Rights movement. The New York Times judgment and the judgments further quoted by the bench to decide the matter at hand are also critiqued for their rationale to be par extremity. The critics considered the judgment to be lacking the premise of reasonable grounds for drawing an informed and well-conceived middle ground between two such contrasting rights.

The lack of clarity with respect to the perimeter to balance the Right to Reputation of an individual and the Right to Express oneself has been receiving a historical overlook by the previous precedents in the Indian judiciary. This judgment is also one such judgment which fails to acknowledge the dire need for such vague or even clear objective grounds for deciding such matters of clash of fundamental rights. It is agreeable that there cannot be a straight-jacket rule for such complex question of fact like defamation. However, it is to be taken into consideration that England decriminalized the defamation through a newer Defamation Act, 2013 and laid down a procedure for the

plaintiff to prove "serious harm" to his reputation to claim punishment for the offender with a public interest exception.

V. CONCLUSION

The Supreme Court had always dealt with the cross-roads of Freedom of Speech and Right to Reputation of an individual with a protectionist attitude towards the latter. The court that upheld the constitutionality of Criminal Defamation in Subramaniam Swamy case is the same court that upheld the pre-censorship on Lady Chatterley's Lover by DH Lawrence due to insignificant grounds. The same court dictated the content on cinematic choice of movie-makers on grounds of 'surrealism' and its telepathic and far-fetch assumption on soft and impressionable minds of Indian audience. It is the same court that upheld the ban on 'Satanic Verses' by Salman Rushdie due to its attempt to initiate the evils crept in a particular society/religion and the bogies justifying the same that the religion of the author and that elaborated in the book were different and henceforth, seemed conspiracy.

The judgment by the Madras High Court may seem like ascendancy of an era which is speech-protective and equating what exactly must be envisioned to be incorporated under the ever-widened scope of article 21. Moreover, the elephant in the room is do we really need criminal defamation for upholding one's right to reputation. The test of reasonableness of any restriction is the proportionality of the restriction and objectives sought to be achieved. Well, both of which can be substantially and duly attended through the defamation law under torts and liability under Criminal law appears to be severally outweighed towards Right to Reputation. England, the country that was the



birthplace of such a law repealed the criminal defamation in 2013 with such a step being furthered by other countries as well such as Zimbabwe.

The Sandhya Ravishankar judgment if not panacea is definitely a score in the ointment of much needed and debated journalistic breathing space for the matter of reporting and investigating. The judgment cocoons a foreground for the legal fraternity to shed the unfortunate history of exception treatment to Freedom of Speech and Expression when in conflict with Right to live with dignity of other individual.

