

MANU/DE/0069/2005

Equivalent Citation: AIR2005Delhi195, 117(2005)DLT272, 2005(80)DRJ74, 2005(30)PTC219(Del)

IN THE HIGH COURT OF DELHI

I.A. No. 8185/2003 in S. No. 1543/2003

Decided On: 24.01.2005

Appellants: **Mother Dairy Foods and Processing Ltd.**
Vs.

Respondent: **Zee Telefilms Ltd.**

Hon'ble Judges/Coram:

Manmohan Sarin, J.

Counsel:

For Appellant/Petitioner/plaintiff: R.K. Anand, Sr. Adv. and Munish Malhotra, Adv

For Respondents/Defendant: Rajiv Nayar, Sr. Adv., Pratibha M. Singh, Maninder Singh and Darpan Wadhwa, Advs.

Subject: Civil

Acts/Rules/Orders:

Code of Civil Procedure (CPC) - Section 151, Code of Civil Procedure (CPC) - Order 39 Rule 1, Code of Civil Procedure (CPC) - Order 39 Rule 2

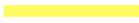
Cases Referred:

Hari Shankar v. Kailash Narayan and Ors., AIR 1982 MP 47; S. Guhan and Ors. v. Rukmini Devi Arundale and Ors., AIR 1988 Madras 1; Smt. Sunakka Gopalagowda Shanthaveri and Ors. v. U.R. Anantha Murthy and Ors., AIR 1988 Karnataka 255; Gulf Oil (GB) Ltd. v. Page and Ors., (1987) All ER 14; Lucas Box v. News Group Newspapers Ltd., (1986) 1 All ER 177; Rustom K. Karanjia and Anr. v. Krishnaraj M.D. Thackersey and Ors., AIR 1970 Bombay 424; Harijai Singh and Vijay Kumar's case, 1996 (6) SCC 466; Sardar Charanjit Singh v. Aroon Purie and Ors., 1983 (4) DRJ 80; Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana, AIR 1988 SC 1642; Fraser v. Evans and Ors., (1969) All E.R. 8; Bonnard and Anr. v. Perryman, (1891-4) All E.R. Rep. 965; Khushwant Singh and Anr. v. Maneka Gandhi, AIR 2002 Delhi 58

Disposition:

Application dismissed

Citing Reference:

Discussed		7
Mentioned		5

Case Note:

Media and Communication - Telecasting Programme - Restraining of - Order 39 Rules 1 and 2 and Section 151 of Code of Civil Procedure, 1908 (CPC) - Present application filed under Order 39 Rules 1 and 2 and Section 151 of CPC for restraining defendant from telecasting, publishing or showing on website, its programme titled Inside Story- Safed Doodh Ka Kala Karobar or any variant of said programme, in so far as it concerns name, goodwill and fame of plaintiff - Held, there is no plea of conspiracy, even plea of malafides as set-forth is lacking in material particulars - It appears that it is being done at behest of competitors - No name or particulars of competitors were mentioned - plaintiff has failed to make out even a prima facie case of mala fides, leave aside giving particulars of mala fides, as required or of any conspiracy to defame plaintiff - plaintiffs assertion about authenticity of samples as also possibility of change of samples and samples having not been kept in proper condition and thereby vitiating tests reports are matters which are to be decided during trial after recording of evidence - Program has already been telecast and prayer for restraint of its re-telecast is liable to be declined - Hence, application is dismissed

JUDGMENT

Manmohan Sarin, J.

manupatra 1. plaintiff by the application bearing I.A. No. 8185/2003 under Order 39 Rules 1 and 2 read with Section 151, Code of Civil Procedure, seeks a restraint on the defendant from telecasting, publishing or showing on the website, its programme titled "Inside Story- Safed Doodh Ka Kala Karobar" or any variant of the said programme, in so far as it concerns the name, goodwill and fame of the plaintiff.

2. The plaintiff filed the suit for permanent injunction and seeks a decree of damages of Rs. 1,05,00,000/- (Rupees One Crore Five lacs only). plaintiff claims that the impugned programme contains references to the plaintiff which are defamatory. Programme has immensely harmed the goodwill and reputation of the plaintiff.

3. plaintiff, Mother Dairy Food Processing Ltd. a Public Sector Enterprise is a major supplier of milk and milk products. It professes to supply quality milk in the National capital region, while offering remunerative prices to rural milk producers organized under a cooperative frame work, from whom supplies are obtained for processing of milk.

plaintiff claims to cater to one million households in the capital region with supply of 17 lacs liters milk per day. It has automated liquid milk booths from where approximately 8 lacs liters of milk is sold. It offers other milk products like flavored milk, curd, butter etc. plaintiff claims to have a share of 40% of the total liquid milk market in Delhi and around 60% of the branded liquid milk market.

4. plaintiff avers that it has a state of art microprocessor based intelligent automation system to indicate various level of milk processing. A high level of plant automation using inter-link and numerous quality checks, ensures the desired quality in processing the products. plaintiff has new refrigeration plant which is technologically advanced and energy efficient. plaintiff is the recipient of ISO-9002, IS-15000 HAT CC, IS-14001. plaintiff was conferred by the National Productivity Council in the year 1988-89 and consecutively for three years from 1995-96. plaintiff's turn over is Rs. 1000/- crores. It has two product divisions i.e. i) dairy products and ii) fruits and vegetables. The dairy products are marketed under the brand name "Mother Dairy" while the fruits and vegetables are marketed under the brand name "Safal" .

5. plaintiff claims that the milk received by it is a processed and subjected to stringent tests, sixteen in number and thereafter the processed milk which is ready for sale, is subjected to 21 tests enumerated in para 10 of the plaint.

6. plaintiff's grievance is that the defendant through one of its channels called "Zee News" telecast the programme called "Inside Story" on 3.8.2003 at 9.30 P.M. titled as "Safed Doodh ka Kala Karobar". The said programme purported to be an investigation into how synthetic milk was being manufactured. During the course of the said investigation, the defendant claims to have got synthetic milk prepared. The programme shows that a can of synthetic milk was left outside and picked up by the van of Parag Dairy in Aligarh, U.P., along with other milk. The plaintiff procures a substantial quantity of milk from Parag Dairy. A representative of the defendant as a Lab Analyst is stationed at Parag Dairy. The programme depicts that sample of synthetic milk as presented at Parag Dairy cleared six quality tests. Thereafter the analyst tested the sample through machine which was hardly used, when the synthetic milk failed to clear the quality tests.

7. The plaintiff also finds the depiction of the second instance in the telecast objectionable. The journalist is shown to have poured milk in two different bottles one alleged containing the milk of the plaintiff and the other containing milk of a local dairy. Both the bottles containing the milk were presented for test at the plaintiff's laboratory where it is claimed that both the samples failed the quality tests. In other words it is claimed that the plaintiff's own milk which it marketed failed to clear the quality tests.

plaintiff alleges that the programme had been created and aired so as to tarnish the image and reputation of the plaintiff company. It claims that the samples of either the synthetic milk or the dairy milk which were presented at Parag Dairy had not been taken in the presence of independent persons/witnesses or sealed. These have not even been tested by any independent laboratory. plaintiff claims that there was no evidence to show that the milk presented at Aligarh plant of the Parag Dairy was the same which was poured as synthetic milk in front of camera. plaintiff alleges that it appears that the sample of milk purported to be synthetic milk has been changed with the dairy milk, and presented as such. Similar is the position of the milk presented in two bottles for testing at plaintiff's laboratory. Here again neither the milk, claimed to be from the plaintiff's depot, was purchased or sealed in the presence of any independent person. Besides, there is nothing to show that the milk being a perishable item, had been properly stored. There was no evidence to show that the milk which was poured in the bottle from the pouch of Mother Dairy before camera, was the same which was presented for testing before the Depot Manager of the plaintiff company. plaintiff claims that the government agencies have been taking sample of the plaintiff's milk and at no point of time government reported any infirmity in the quality of the milk. The Health Minister while appearing on defendants own channel stated that they had tested all the samples including those from Mother Dairy and did not detect urea in any of the samples. The tests have been carried over samples taken from 40 tanks of the private parties and 14 tankers of Mother Dairy. plaintiff claims that the entire programme had been telecast and edited by the defendant with the sole object of sensationalism and to defame the plaintiff. plaintiff claims that the same has been done at the behest of competitors. Reference is also made to a hand-bill issued by the Delhi Milk Scheme (DMS) Concessionaires and Depot Staff Welfare Organization (Regd.). The said hand-bill while seeking a reduction in DMS milk prices recapitulates the Zee News programme, showing the manufacture of synthetic milk supplied to Parag Dairy, and claims Parag Dairy buys lacs of ton of milk which is supplied to Mother Dairy

8. plaintiff claims that programme has been deliberately re-telecast for defaming the plaintiff on 3.8.2003 and 4.8.2003 at 9.30 P.M. The motive of the defendant, it is alleged, is apparent from the fact that the news item was shown in their website inviting inputs in public opinion poll seeking options as to change of brand etc. The said story on the website, while mentioning that synthetic milk passed six quality tests at Parag Dairy also mentions that the Parag Dairy is supplying nearly 30,000 liters of milk to Mother Dairy. The story ends with the words "So think twice before you take that deadly sip...."

9. The defendant filed its reply to the application under Order 39 Rules 1 & 2 denying allegations of the malafides. The defendant denies the allegations in the suit of the programme being based on false and concocted facts. It denies that the sample of milk may have been changed or fabricated. Defendant avers that the entire suit of the plaintiff proceeds on the premise that the defendant had malafide intention. Nothing has been shown on record in support of the plea of malafides or the defendant having any bias or ill-will against the plaintiff. The suit was filed after the defendant had already telecast its programme. The whole purpose of the suit appears to be to save possible embarrassment. The prayer for grant of injunction against the telecasting would constitute a "gag order" which is not permissible at law, especially when the defendant has pleaded justification and stated that it completely justifies its programme. Besides the same also constitutes fair comment.

The defendant is a well known entertainment company having various channels. The Zee News Channel of the defendant telecast 24 hours news. It also runs a number of special programmes for the channel namely Inside Story, Zee Follow-up, Special Correspondent, Crime File, Pahal, Encounter etc. The programme "Inside Story" has completed almost three years since its inception. 150 Episodes of "Inside Story", have been telecast till date. The programme has covered wide range of issues including banned drugs, quack practices all over India, vulgarity in music videos, road rage-causes and cure etc. These programmes have raised issues of national importance concerning public health, public safety, morality etc. The programme for the Inside Story is prepared on in-puts from various bureaus spread all over the country. After the choice of the title, special research is done and inputs are taken from various bureaus. After receiving inputs from different teams, the same are collated, compiled and edited. The entire programme is produced in strict adherence with journalistic ethics and norms. The defendant's news channel over a period of time has established a place for itself, for its well researched programmes.

10. Defendant urges that the issue of production of synthetic and adulterated milk has all along been a subject of deep public concern. It was reported that the maximum quantity of synthetic adulterated milk was manufactured in U.P. One of the reporters was, Therefore, asked by defendants to shoot the process of preparation of synthetic/ adulterated milk. He was able to shoot the preparation of synthetic/adulterated milk, after a painstaking effort. The identity of the person was kept secret. It was only in the last week of July 2003, that defendant found that manufacture of synthetic/adulterated milk led to the plaintiff. The defendant, therefore, attempted to contact the plaintiff to permit a shooting of the process and the tests carried out in their laboratory, but the plaintiff was not willing. In the meanwhile, the defendant had managed to shoot the process of testing of the synthetic milk presented at Parag Dairy, where the plaintiffs had deputed one Mr. Vinay Kumar. The defendants in their programme had duly shown how synthetic milk passed six quality tests and ultimately when it was revealed to Mr. Vinay Kumar that this was synthetic milk, he put the same for testing in an unused machine, where the sample failed the quality tests. Having found the failure of the quality tests at Parag Dairy, defendants wanted to have the tests conducted at plaintiff's own laboratory and, Therefore, the reporter procured the sealed poly-pack of plaintiff's milk in two bottles and carried it with another bottle of local dairy milk and the same was given for testing at Mother Dairy's own lab. As noted earlier, the milk from the local dairy as well as the milk of Mother Dairy both failed the quality tests at the laboratory of plaintiff. Defendants aver that when the defendants commissioned the programme, they had no clue that it would lead to the plaintiff. The whole purpose of the programme was to expose the illegal trade in synthetic milk and the damage which it caused to the consumer and endangered the health of the masses. The programme was an expose on the inaction and failure of the Government agencies to curb the trade of synthetic milk and the device/ methods adopted by the manufacturers of the synthetic milk in supplying the said milk to the main stream of the producers of milk. The fact that the illegally manufactured synthetic milk had been able to enter and penetrate the supply chain of branded milk products as that of the plaintiff was indicative of the dangerous situation and the disastrous consequences it could lead to, if not curbed and controlled. The whole focus of the programme was that the manufacture, distribution and sale of synthetic milk was going un-checked and it was able to pass through various tests as well. The defendant claims that in the line of its public duty and to give a fair opportunity to the plaintiff to present their version it had also recorded the views of plaintiff's Deputy General Manager. The defendant in furtherance of the directions as given by the Court in its order dated 8.8.2003, gave an opportunity to the plaintiff's Managing Director to give his version and views which were also duly aired. The defendant, Therefore, avers that the suit as filed is wholly devoid of merit and the prayer for injunction is misconceived and cannot be granted.

11. The defendant, as noticed earlier, apart from producing the transcript of the programme and the write-up as it appeared on the website also produced on record the hand-bills circulated by the DMS Employees. The defendant has produced along with its reply the advertisement being taken out by the plaintiff on 7.8.2003 with regard to purity of the plaintiff's milk in national dailies and photocopy of the debate in the Parliament with

manupatra regard to synthetic milk as also a complaint and a notice issued by a consumer to the plaintiff. Defendant has also filed affidavit of its staff member who purchased the pack of half liter Mother Dairy Milk and transferred it to sample bottles. Defendant has also produced on record press clippings with regard to the manufacture of Synthetic Milk and the FIR lodged in respect thereof as far back as on 20.5.2003. Copies of various directions issued by government authorities have also been produced. The Court has also viewed the video cassettes of the programme. Written submissions were also filed by defendants.

12. Having noticed the factual matrix of the case and the version of events as put forward by the plaintiff and defendant and the out line of the legal pleas raised let me now notice the submissions made by the respective counsel in support of their case.

13. Learned Senior counsel Mr. R.K. Anand in support of grant of injunction submitted that the defendants failed to plead justification as required at law. The defendants simply averred in para 33 of the reply to the application, that they would justify the article completely, without dealing with each and every imputation set out in the plaint. The next submission of Mr.Anand is that the defendants while professing to produce a balanced programme have failed to do so. The defendants have jumbled and mixed up the various instances as recorded by them in such a manner as to project the plaintiff in bad light. It is claimed in the programme that the adulterated synthetic milk produced at Aligarh and kept out along with other drums, had been transported to Parag Dairy at Aligarh. It is not clear as to which van picked up the alleged synthetic milk and whether the same was put for testing at Parag Dairy at Aligarh or not. The interview is taken of a person who had been sent on training by Mother Dairy. Leaving that apart there was no link of the first story and what may be described as the second story of the defendant's claim of having purchased Mother Dairy milk and giving the same for testing along with other milk. Mr.Anand claims that two stories have been so jumbled up that it negates the very basis of a balanced programme. Referring to the comments of the anchor as given in the voice over transcript at page 61, he severely criticised the imputation:-

DOODH KE DHANDHE MEIN HO RAHI DHOKA-DHADI SE DESH KA KOI HISSA ACHHUTA NAHIN HAI. PRAYAS CHAHE SARKARI STER PER HO YA PHIR JAN-JAGRATI KE DWARA, DOODH KA DOODH OR PAANI KA PAANI HONA JARURI HAI VARNA DOODH KI PAVITRATA PER ASTHA RAKHNE WALE KRORO LOG GAFLAT MAIN YUN HI JAHAR PEETE RAHENGE.

The anchor further went on to say that there was no fool proof method of testing the purity of milk and even if it was there it has hardly been of any use. The government may give polio drops yet it cannot absolve itself of its responsibility for giving poison in milk drops.

14. The aforesaid statement was described as wholly irresponsible imputation and the comments therein, as highly sensational. Apart from causing damage to the plaintiff and its reputation, it had the tendency to cause panic amongst masses.

15. Mr.Anand also questioned the collection of samples. He submitted that there was no independent body before whom the samples had been sealed. It could not be said that the sample given for testing at Parag Dairy was that of synthetic milk. Again the milk said to have been purchased from Mother Dairy booth, it could not said under what conditions the sample had been collected and kept. Being a perishable commodity, its condition could have deteriorated and it would naturally fail the quality tests done by the plaintiff. Mr.Anand submitted that had the defendant been interested in publishing the programme in a balanced manner they could have collected the sample from the Mother Dairy itself and subjected it to quality tests at the plaintiff's end. Mr.Anand also severely criticised the comments made that there was no fool-proof method of testing the quality of milk supply. This was an absurd conclusion which was capable of doing immense damage to the country. Mr.Anand submitted that the contents of the publication, the manner in which the whole exercise had been undertaken left no doubt that the defendants had acted maliciously to cause injury to the plaintiff, perhaps at the behest of a competitor. He also referred to posters/ hand-bills issued by the DMS Union, where the defendant's programme had been quoted to cause injury to the plaintiff's reputation. He submitted that as per the plaintiff's information, reputed testing laboratories such as Sri Ram Centre of Research declined to accept the sample of the defendant on the ground that it was not properly sealed before independent person/witnesses. He submitted that the comments and inferences as drawn by the anchor were wholly unwarranted.

16. In support of his submissions, that an injunction restraining further telecast of the programme could be granted, he relied on the following authorities; i) Hari Shankar v. Kailash Narayan and Ors. MANU/MP/0015/1982 : AIR1982MP47 , ii) S. Guhan and Ors. v. Rukmini Devi Arundale and Ors. MANU/TN/0183/1988 : AIR1988Mad1 , iii) Smt. Sunakka Gopalagowda Shanthaveri and Ors. v. UR Anantha Murthy and Ors MANU/KA/0097/1988 : AIR1988Kant255 . Reliance was also placed on Gulf Oil (GB) Ltd. v. Page and Ors. (1987) All ER 14 and Lucas Box v. News Group Newspapers Ltd. (1986) 1 All ER 177.

17. Relying on the above authorities, Mr.Anand submitted that plaintiff had made out a prima facie case for the grant of injunction on re-telecast of the programme as apart from harming the reputation of the plaintiff without any just cause, it would result in causing panic and immense damage to the image of the country itself as the one where pure or unadulterated milk was not available. Mr.Anand further relied on Rustom K. Karanjia and Anr. v. Krishnaraj M.D. Thackeresey and Ors., MANU/MH/0073/1970 : AIR1970Bom424 , wherein the Court while upholding the grant of damages for defamation had laid emphasis on the duty of the journalist to ensure

manupatra that the facts on the basis of which the defamatory imputations were made are true, subject to this limitation the right to command on matters of public interest was recognised. Mr. Anand also relied on Harijai Singh and Vijay Kumar MANU/SC/2071/1996 : 1997CriLJ58, to submit that the Press or journalists enjoy no special right of freedom of expression and guarantee of freedom of press, was the same as is available to every citizen. This was in the context that Press did not enjoy any special privilege or immunity from law.

18. Mr. Rajiv Nayyar, Sr. Advocate, appearing for defendant in reply reiterated the averments and case of the defendants as noted earlier. He emphasised that the programme "Inside Story" was a reputed programme aired by the defendant's channel every Sunday at 9.30 P.M. Already 150 episodes on different issues of public importance have been aired. It was during one of the review meetings in July, 2003, that the idea and concept of doing a programme on the menace of synthetic milk was mooted. The defendant had assigned reporters in the second week of July to do a survey and report. Reporters who were commissioned, reported the highest instances of preparation of synthetic milk in UP. Other States were Haryana, Punjab, Chennai and Bangalore. Mr. Nayyar submitted that the defendant with a view to investigate the matter and find out the actual process of making the synthetic milk, commissioned a decoy milkman who prepared synthetic milk which was shot on TV. This aspect was subsequently clarified on instructions by stating that the defendants had actually persuaded one of the persons who was engaged in and was carrying on the trade of synthetic milk, to demonstrate the process, subject to his identity being kept secret.

19. A sample of the synthetic/adulterated milk prepared from urea was taken to the Parag Milk Dairy for testing. This had been done after the camera records the milk being poured into the containers. The container containing the synthetic milk and other containers being put into a van for transportation to Parag dairy. The milk was presented at the Parag dairy for testing. Mr. Nayyar mentions that the allegation of malafides of the plaintiff against the defendant was totally without any foundation. Till this stage, Mother Dairy had not come into picture at all. There was no reference made to Mother dairy or its products. It was only when the milk was presented for testing at the Parag dairy at Aligarh that it was learnt that Parag dairy, Aligarh was one of the suppliers of milk to Mother dairy. A representative, Mr. Vinay Kumar, of the Mother dairy was in charge of the Laboratory at Parag dairy. The sample of the synthetic milk was tested directly by him in the laboratory. The said synthetic milk as is shown in the program cleared six tests. It was only when for the seventh test, that a machine which had hitherto hardly been used was utilized, after removing dust there from, that the defect in the milk was discovered as per the telecast. Mr. Nayyar emphasized that defendants had acted in line of their public duty and following the tenets of investigative journalism, were only trying to ascertain the genuineness and efficacy of the testing mechanism to detect synthetic milk and assess quality.

20. The defendant after having found that the synthetic milk could not be detected by the Parag dairy's laboratory functioning under the personnel of Mother dairy, decided to investigate the testing process at the Mother dairy institution. Here two samples, one of Mother dairy milk and other of a local dairy were purchased. As shown in the programme the laboratory of Mother dairy failed the polypack of milk purchased from a Mother dairy booth. Mr. Nayyar submits that the defendants during trial would by evidence prove that it was synthetic milk, which was presented for testing at Parag Laboratory. Secondly, that it was milk purchased from Mother dairy which was put up for testing in the Mother dairy's Laboratory. These are questions of fact which the defendant would be required to duly prove by evidence during trial. Mr. Nayyar submitted that the defendants had acted bonafide and fairly and made bona fide fair comment on a matter of a wide public interest. The allegations of mala fides against Mother dairy are made in a very casual manner. At one stage, it was suggested that it is another public sector undertaking at the behest of whom this action had been taken, intending reference to Delhi Milk Scheme. During oral arguments, it was urged that it was at the instance of 'Amul' that the defamatory of telecast of Mother Dairy, was made and shown. Mr. Nayyar submitted that the defendant was committed to make known to public, the deficiencies that existed in the testing procedure for milk. Further, either the requisite testing procedure was not available or if so available, it was not effective. He dispelled the argument that the defendants were motivated only by sensationalism and had not acted in good faith.

21. Mr. Nayyar states that the bonafides of the defendant are apparent from the fact that even having found that synthetic milk sample could not be detected at the Parag dairy, nevertheless the defendants did not telecast or publish the program and waited for three weeks to complete the investigation at the end of Mother dairy also. Defendants had also provided opportunity to the plaintiffs to give its version.

22. Mr. Nayyar next submitted that the defendant's programme had been telecast first on 3.8.2004. It was re-telecast on 4th and 5th August, 2003. The suit was filed on 7.8.2003. The Court vide its order on 8.8.2003, made with consent of parties, gave a direction to defendants to provide a further opportunity to the plaintiff's Managing Director to air his views and give his version. The programme having been telecast and retelecast on different dates and opportunity having been given to the plaintiff to give its version under Court directions, the prayer for interim restraint on telecast of programme virtually rendered infructuous and no interim directions were called for. Counsel for parties urged that since the important legal issues/questions with regard to freedom of press and role of media were involved, the Court should decide the application.

23. Learned counsel next referred to an advertisement taken out by the plaintiff in the national dailies on 7.8.2003 itself recognizes the problem of synthetic milk, rather it seeks to caution the public in this regard. The advertisement brings forth the professed quality of pure milk of Mother Dairy. It also mentions the

manupatra precautions and measures taken to ensure quality and purity of the product. Till then the plaintiff did not allege any malafides or question the comments version as telecast, or claimed any falsity in the same. This suit was an attempt to simply cover its own deficiency and to preempt any action by the authorities on account of the lapse in qualitative checks.

24. Having noted the factual matrix and the legal pleas and submissions of both the parties, rather somewhat in detail, let us consider the questions which arise for decision of the I.A. in question. plaintiff is seeking a restraint on telecast of the programme "Inside Story-Safed Doodh Ka Kala Karobar", the same being claimed as defamatory, harmful and injurious to the reputation of the plaintiff. The defendant in its reply pleaded justification for the complete programme. Defendant seeks to prove, by evidence, facts regarding the authenticity of the samples collected which are questioned by the plaintiff. The position, thus, which emerges is that the defendant seeks to justify every part of the programme including the comments as made bonafide on a matter of public interest.

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.* MANU/DE/0163/1982 : 1983(4)DRJ86 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 negated 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.

26. Supreme Court in the case of *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana*, MANU/SC/0350/1988 : AIR1988SC1642 vacated the interim order of injunction of the film "Honi-Anhoni". The plaintiff had sought and obtained an injunction pleading that the film was likely to spread false or blind belief amongst members of the public which was not in public interest. The Supreme Court vacated injunction holding that the Serial was being telecast after following the prescribed procedure and taking necessary precautions and reservations. Reference may also be usefully made to *Fraser v. Evans and Ors.* (1969) All E.R. 8:-

"The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says that he intends to justify it or to make fair comment on a matter of public interest"

"There are some things which are of such public concern that the newspapers, the Press, and, indeed, everyone is entitled to make known the truth and to make fair comment on it. This is an integral part of the right of free speech and expression. It must not be whittled away."

27. Reference may also be made to *Bonnard and Another v. Perryman* 1891 (4) All E.R. 965 wherein it has been held as under:-

"The Court has jurisdiction in an action of libel to grant an injunction at any stage of the case restraining the publication of the libel, but this jurisdiction should be exercised with great caution. Although the publication, if untrue, would clearly be libelous, an interlocutory injunction will not be granted where the defendant pleads justification unless the Court can be sure that his defense cannot be sustained at the trial and that the plaintiff will receive more than nominal damages."

28. Lastly reference is invited to the Division Bench Decision of this Court in *Khushwant Singh and Anr. v. Maneka Gandhi* MANU/DE/1012/2001 : AIR2002Delhi58, 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 *Woodward 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."

manupatra 29. It could 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."

30. In the present case there is no plea of conspiracy, even the plea of malafides as set-forth is lacking in material particulars. It was averred in the plaint that it appears that it is being done at the behest of the competitors. No name or particulars of the competitors were mentioned. During the oral arguments reference was made to the poster/ hand-bills taken out by the employees of Delhi Milk Scheme. The plaintiff has failed to make out even a prima facie case of mala fides, leave aside giving particulars of mala fides, as required or of any conspiracy to defame the plaintiff.

31. The defendants have in the programme reproduced the views of the plaintiff's representative at Parag Dairy, as also of their Deputy General Manager and thereby claim to have followed the fairness doctrine. Pursuant to the orders passed by the Court, the Managing Director of the defendant was also given an opportunity to give plaintiff's version. In these circumstances, it cannot be prima facie said that the defendants acted mala fide or set about telecasting the programme with the intention of defaming the plaintiffs. Defendants case has been that till they had shot the sequence of making of synthetic milk, they did not know that it would lead them to supplier of the plaintiff namely Parag Dairy. In view of the foregoing discussion and the principles enunciated in the judicial pronouncements noted earlier, no case is made out for grant of interlocutory injunction and restraining the telecasting of the programme especially when the defendants' seek to justify the programme. plaintiffs assertion about the authenticity of the samples as also possibility of change of samples and the samples having not been kept in proper condition and thereby vitiating the tests reports are matters which are to be decided during trial after recording of evidence. The programme has already been telecast and the prayer for restraint of its re-telecast is liable to declined and is so declined in view of the foregoing discussion.

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".

33. This raises the issue of accountability and responsibility of media to its readers and the public in general. Reference in this context may be usefully made to the work " Media Ethics. A philosophical approach" edited by Mathew Kieran which contains articles authored by media professionals, academics and philosophers. It covers issues of impartiality, objectivity in reporting, role and responsibility of media. Mr. Andrew Belsey in his article on "Journalism and ethics can they co-exist"? notes that Journalists provide a vital service in the democratic set up. They act as distinctive facilitators for the democratic process to function without hindrance. Virtues associated with ethical journalism namely accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people are part of and required in the democratic process. Practical considerations, namely, pursuit of successful career, promotion to be obtained, compulsion of meeting deadlines and satisfying Media Managers by meeting growth targets, are recognised as factors for the temptation to print trivial stories salaciously presented. In the temptation to sell stories, what is presented is what "public is interested in" rather than "what is in public interest". Recent example of the above is prime space and headlines following an isolated gay murder for days together in National Dailies.

34. Unethical journalistic activity muckraking or deceit will undermine public trust in media and without that relationship of trust, democratic function of Journalism cannot be fulfilled.

Matthew Keiran in his article on "Objectivity, impartiality and good journalism" says that media is an unofficial fourth estate. It has the fundamental duty to be impartial and evaluate appropriately and report event that affects our lives as members of the society. While noting the divergence that may emerge while reporting on interpretation and evaluations of facts and events, he observes that the essence of the story in underlying causes or features which are salient ought to be noted while aiming to reach truth. Good journalism aims at discovering and promoting the understanding of an event via truth promoting events. A failure of impartiality in journalism is a failure to respect one of the methods required in order to fulfill the goal of journalism; getting at the truth of the matter. Where reporting turns away from the goal of truth and journalists treat events as open to many interpretations, according to their prejudices, assumption, news agenda or the commercial drive towards entertainment, the justification and self-confessed rationale of journalism threatens to disappear.

35. Let us consider the above aspect of adherence to journalistic norms, as noted above, qua the programme

The defendant's efforts in unearthing and bringing to the notice of public the menace of manufacturing of synthetic milk and its possible supply to leading manufacturers such as plaintiff was no doubt a laudable measure for public good. However, prima facie there does not appear to have been any serious effort of actually estimating the extent of synthetic milk produced. The defendants projected in the programme as if poison of synthetic milk was being supplied to crores of persons. During the hearing of the case, defendants were asked to indicate whether any data was collected or research done in support of above statement. Reference was made by defendants to clippings of news reports regarding making of synthetic milk and raids carried out. There was one report which mentioned the value of equipment involved in the illegal operation as being Rs. 10 to 12 lakhs. There was no mention of quantity of synthetic milk produced. No serious efforts or research appear to have been done to estimate the quantity of synthetic milk manufactured clandestinely in these operations. Undoubtedly, it is the author's prerogative to decide the contents of the programme. It has complete freedom regarding its composition or expression of views and opinions. It has the right to criticize in a scathing manner, lack of quality control tests or procedure and or ineffective processes and to bring out need for maintenance of standards to ensure quality. However, any exaggeration or sweeping comment on subjects concerning health and quality of commodities of human consumption can cause immense harm to the public and psyche of masses. Media has the onerous responsibility to ensure that facts are verified and the matter is thoroughly investigated and researched and salient and critical information is collected. The extent of operations and quality of synthetic milk being allegedly produced, was an essential element for programme's objectivity. This appeared to be missing. A sweeping comment that no part of country is free from adulterated and synthetic milk and crores of people will keep on consuming this poison or "think before you take the deadly sip" can effect the psyche of people. This can have wide ramifications with doubts being raised on the very availability of pure quality milk and food in this nation of 100 crores and above without actually fully knowing or fathoming the extent of malaise. It would, Therefore, appear that media as part of its responsibility and accountability to public and its readers should eschew sensationalism, exaggeration and sweeping comments, especially in matters of food and public health.

36. The observations made in this order are on a prima facie view of the matter and should not be taken as an expression of final opinion on the merits and the pleas raised which would be subject matter of trial.

is 8185/2003 is dismissed.