

**(2010) 04 MAD CK 0345**

**Madras High Court**

**Case No:** O.A. No. 385 of 2010 and A. No. 2027 of 2010 in C.S. No. 346 of 2010

Dhyanapeta Charitable Trust

APPELLANT

Vs

Nakkheeran Publications

RESPONDENT

**Date of Decision:** April 21, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 9, 11
- Constitution of India, 1950 - Article 104, 105, 19(1)(a), 19(2), 21
- Penal Code, 1860 (IPC) - Section 124A, 153A, 171G, 292, 499
- Press Council Act, 1978 - Section 14

**Citation:** (2010) 5 CTC 283

**Hon'ble Judges:** G. Rajasuria, J

**Bench:** Single Bench

**Advocate:** Veera Kathiravan, for the Appellant;

**Final Decision:** Dismissed

### **Judgement**

G. Rajasuria, J.

Compendiously and concisely the relevant facts absolutely necessary and germane for the disposal of these Applications would run thus:

(a) The Plaintiff filed the Suit seeking the following relief:

to grant permanent injunction, restraining the Defendants, their men, agents, servants, representatives or anybody acting on their behalf in any manner publishing any material, articles, photographs, in their magazines, websites whatsoever either by direct or indirect reference against the Plaintiff or any of their Trustees and devotees, personally or individually or in the capacity of a Trustee or such Trustees.

(b) The same Plaintiff filed the following Application with the following prayer:

O.A. No. 385 of 2010: to grant ad-interim injunction restraining the Defendants, their men, agents, servants, representatives, anybody acting on their behalf in any manner publishing defamatory material, articles, photographs, in their magazines, websites whatsoever either by direct or indirect reference against the Plaintiff or any of their Trustees and devotees, personally or individually or in the capacity of a Trustee or such Trustees.

(c) Whereupon the Defendant filed the following Application with the following prayer:

A. No. 2027 of 2010: to pass an order rejecting the Plaintiff in C.S. No. 346 of 2010 on the file of this Honourable Court.

Counters have been filed.

2. The parties are referred to hereunder according to their litigative status and ranking in the Suit.

3. Heard both sides.

4. Tour d"horizon of the learned Counsel for the Plaintiff would run thus:

(i) The Plaintiff-Trust is doing service to the community at large; there are lot of devotees all over the world for it; in addition to huge number of inmates being in the Ashram run by the Trust. While so, based on certain morphed video clippings, the media started indulging in vilification campaign as against the Trust and the then Managing Trustee as though he was indulging in sexual activities, etc., with one cine actress.

(ii) The Plaintiff is not indulging in any such nefarious or licentious activities, but some persons are bent upon defaming and disparaging the reputation of the Plaintiff-Trust, its Trustees; its inmates in the Ashram and its devotees.

(iii) The Plaintiff-Trust has more than 40 lakh devotees all over the world and if the Defendants are allowed to make publications through its Magazine and website defaming the said Trust and the Trustees, then certainly the welfare of those people would be affected.

(iv) The Trustees as well as the Plaintiff-Trust are having a right not to be defamed or disparaged in the eye of the public.

(v) Even before any concrete finding is given by the Court that the Plaintiff-Trust and its Trustees are indulging in illegalities and criminal activities, the Defendants are not justified in projecting before the public as though the Plaintiff-Trust and its Trustees are indulging in such activities.

(vi) Citing various decisions in support of the Plaintiff's case, the learned Counsel for the Plaintiff prayed for granting injunctions as prayed for.

5. By way of torpedoing and pulverising the arguments as put forth on the side of the Plaintiff, the learned Counsel for the Defendants would advance his arguments, the gist and kernel, the warp and woof of them would run thus:

- (a) The Defendants have not committed any offence or anything with the intention to over reach themselves in the process of giving information to the public by making publication of their magazine "NAKKEERAN".
- (b) One Lenin Karuppan, who was with the founder Trustee of the Plaintiff-Trust, namely, Swami Nithyanandaji Maharaj (hereinafter referred to as "Nithyananda" for short), handed over the video clipping, exposing the illegalities and profligacies of Nithyananda. The Defendants, after getting themselves satisfied about the genuineness of the said video clipping, made publications purely for the purpose of informing the public that they should not suffer from gullibility and allow themselves to be cheated, etc., and in such a case, the Defendants have not over-stepped their function as media personnel.
- (c) The Plaintiff-Trust is having no locus standi to file this Suit because the Defendants" have not defamed or disparaged the reputation of the Trust, but only they exposed the nefarious and licentious activities committed by Nithyananda.
- (d) When Nithyananda himself has not come forward to file this Suit, it is not open for the Plaintiff-Trust to file the same.
- (e) Over and above the news items, in one of the newspapers, namely, "Dina Malar" it was published as though Nithyananda had resigned from his managing Trusteeship and that was not contradicted by the other side also. In such a case, as of now, the said Nithyananda is not part of the Plaintiff-Trust and consequently, the Plaintiff-Trust is having no locus standi to seek injunction, so as to protect the alleged rights of Nithyananda.
- (f) The said Nithyananda has projected himself before the public as though he is a Brahmachari and based on that alone he has attracted huge number of devotees towards him and has also collected money from them and amassed wealth within a short time.
- (g) Nithyananda was only 32 years old and within a few years of his projection as though he is a Brhamachari and that he is capable of doing some miracles, he attracted huge number of devotees and amassed wealth, but quite antithetical to his projection as Brahmachari, he had extra marital sexual relationship with some ladies and that alone came to the knowledge of the Defendants through the said Lenin Karuppan and in such a case, absolutely the Defendants have not over-stepped their function as press people.
- (h) On the one hand Nithyananda projected himself as a Brahmachari and made the people to believe him so, but quite antithetical to it, he indulged in sexual acts and thereby cheated the public.

(i) Nithyananda cannot claim privacy and thereby prevent the media from exposing his misdeeds.

(j) The Defendants have been making publications by virtue of the qualified privilege accorded to it by law.

(k) Earlier one other Suit O.S. No. 2321 of 2010 was filed allegedly by Nithyananda seeking similar injunction. However, when the Defendants therein raised doubt about the very genuineness of the Plaintiff signed by Nithyananda, all of a sudden, the Counsel who appeared for Nithyananda, simply endorsed the Plaintiff as not pressed and got it dismissed behind the back of the Defendants' Counsel.

(l) As such the present Suit is barred by res judicata and a fresh Suit cannot be brought without obtaining leave from the said Court, namely, City Civil Court.

(m) The Plaintiff is bad for non-specification of the alleged defamatory statements as found printed in the Defendants' publications.

Citing several precedents in support of his contention, the learned Counsel for the Defendants would pray for rejection of the Plaintiff as well as for the dismissal of the Application for injunction.

6. The points for consideration are as under:

(i) Whether the Plaintiff has to be rejected as prayed for by the Defendants on the following grounds:

(a) Res judicata

(b) Plaintiff-Trust is having no locus standi; and

(c) Plaintiff is bereft of specification of the alleged defamatory statements ?

(ii) Whether the Plaintiff is entitled to get ad-interim injunction, so as to restrain the Defendants from in any manner publishing defamatory material, articles, photographs, in their magazines, websites whatsoever either by direct or indirect reference against the Plaintiff or any of their Trustees and devotees, personally or individually or in the capacity of a Trustee or such Trustees ?

Point No.(i)

7. The learned Counsel for the Defendants would advance his argument to the effect that the Defendants have not made any publications with any intention to defame or disparage the reputation of the Plaintiff-Trust, which is a legal person. But the Defendants exposed profligacies and licentious activities of the then Managing Trustee-Nithyananda and in such a case, when Nithyananda himself is not before this Court seeking injunction so as to protect his alleged right, the Trust cannot take up his cause and file this Suit.

8. By way of contradicting and refuting the argument as put forth on the side of the Defendants, the learned Counsel for the Plaintiff would submit precisely that the Trust includes the Trustees and also lakhs and lakhs of devotees and any defamation of the Trustees or its devotees would tantamount to defaming and disparaging the Trust and the Trust can readily file the Suit.

9. At this juncture I would like to point out that it is a trite proposition of law that the Trust is a legal person which is having no physical existence of its own and in such a case, the Trust itself cannot indulge in any sexual activities or similar such activities. But on the other hand, the Trust is duty bound to see that if there are false publications alleging that under the name of the Trust, or under the umbrage of the Trust, in the Trust Ashram itself the Trustees or devotees indulge in extra-marital or promiscuous sexual activities or licentious activities or profligacies, then the Trust has got the right to move the Court seeking redressal.

10. I would like to agree with the submission made by the learned Counsel for the Plaintiff that the Trust is having no physical existence of its own, as the law contemplates that the Trust is only a legal person, which can sue or be sued; the Doctrine of Lifting the Veil could rightly be pressed into service, in matters of this nature. The activities of the Trust could only be performed by the human beings connected with the Trust and if there are allegations made as against the Trustees or the devotees or the inmates of the Ashram run by the Trust in the discharge of their duties as such, then the Trust would correspondingly be affected and as a sequel the Trust would have the right to move the Court in order to vindicate its cause.

11. No doubt, in the Defendants' publications, the major focus was on Nithyananda-the Managing Trustee of the Plaintiff-Trust, in addition to finding fault with the Ashram run by the Trust and the alleged illegalities going on there.

12. In view of the ratiocination adhered to by me above, it is not a sine qua non that the defamatory or disparaging statement should have been focussed only as against the legal person, namely, the Plaintiff-Trust to file the Suit and if the defamatory or disparaging statements are focussed as against the Ashram run by the Trust or the inmates of it or as against the Trustees of it, then the Trust should be taken as the one having cause of action to move the Court to vindicate the cause of the Ashram or its devotees or its inmates and one cannot separate the two. Those are two sides of a coin and any distinction sought to be made would amount to distinguishing between tweedledum and tweedledee or rock and hard place and it cannot be taken as one between chalk and cheese.

13. The learned Counsel for the Defendants also cited the unreported decision of the Delhi High Court dated 3.7.2006 in RBEF v. Ashok Kumar, C.S.(OS). 1063/2005.

14. This decision is relating to the Suit filed by RBEF Foundation by raising its accusative finger as against the publications made defaming and disparaging the

reputation of one of its Directors as though he swindled the money of the Foundation. Whereupon, the Delhi High Court gave its verdict that only the director had got the cause of action and not the foundation. Here I could distinguish and differentiate the facts involved in that case with that of this case.

15. Here the very Plaintiff-Trust is responsible for running the Ashram and also for projecting to the public about the activities of the said Nithyananda and thereby attracting more and more devotees and also obtaining money, in addition to doing other activities. Once touching upon the said Nithyananda's conduct and the style of functioning of the Ashram run by the Trust and also the obvious Trust's involvement in it, there are publications, then it cannot be stated that the Trust is having no interest at all in filing the Suit. The nature of the accusations are inextricably linking together the Trust and the Trustees.

16. At this juncture, I would like to refer to the very defence of the Defendants. In my opinion, the defence as put forth by the learned Counsel on behalf of the Defendants would go against the locus standi theory. The learned Counsel for the Defendant, by way of defending the Defendants' right to expose Nithyananda of his alleged illegal activities, would submit that it is because Nithyananda projected himself falsely as though he is a Brahmachari and capable of doing some miraculous cure, he attracted devotees and gathered huge wealth for the Trust as the founder Trustee as well as the kingpin of the Trust. In such a case, I am of the considered view that Nithyananda's activities and the activities of the Ashram and the Trust so far this case is concerned cannot be separated from one another and viewed as though the Trust is only a legal person and Nithyananda is a different person from the Trust. Furthermore it is also the appropriate contention of the Defendants that Nithyananda cannot plead as though he has got a private life than his public life as the Managing Trustee of the Trust and that too after projecting himself as the Brahmachari founder Trustee before the public.

17. The Delhi High Court in the cited judgment had the occasion to deal with an entirely different set of facts. It appears, the said RBEF foundation was having some money dealings and publications were made as though one of the Directors was indulging in mal-practice concerning finance. So the facts involved in that case cannot be equated with the facts involved in this case and if done so it would amount to false analogy. A fortiori, I am of the considered view that the plea based on locus standi of the Trust to file the Suit fails to carry conviction with this Court.

18. The learned Counsel for the Defendants would submit that the very dismissal of the Suit O.S. 2321 of 2010 by the City Civil Court would be fatal to the filing of the present Suit.

19. I would like to point out that the Principle of res judicata as found embodied in Section 11 of C.P.C. is based on the following maxims:

1. Res judicata pro veritate accipitur.

2. Nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa.

The gist and kernel of those maxims as well as the provisions of Section 11 of C.P.C. is that if a case has been decided by the Court taking into consideration the issues involved in it, then certainly once again a fresh Suit would not lie, of course, that is subject to various conditions, which I need not detail and delineate here. It is quite obvious and axiomatic that the previous Suit filed by the said Nithyananda, in C.S. No. 2321 of 2010 was dismissed because the Plaintiff did not prosecute it further. As such the principle of res judicata as found embodied in Section 11 of C.P.C. cannot be pressed into service and for that matter, even the jurisprudential concepts as set out supra also cannot be relied on by the Defendants to get this suit dismissed.

20. I would like to observe that Order 9, Rule 9 of C.P.C. would contemplate that if a Suit is wholly or partially dismissed owing to the default on the part of the Plaintiff in prosecuting the same, then no fresh Suit on the same cause of action can be filed. Perhaps I am of the view that the Defendants intended to invoke Order 9, Rule 9 of C.P.C. only.

21. In respect of it, the learned Counsel for the Plaintiff would submit that the present Suit is not for the purpose of once again racking up the issues involved in the previous Suit filed by Nithyananda himself, but this Suit is focussed based on the subsequently arisal of the cause of action, as found set out in the cause of action paragraph of this Plaintiff. As such, it is just and necessary to extract hereunder the cause of action paragraph in the present Suit:

The Plaintiff states that the cause of action for the present Suit arose at Chennai as the Defendants are running their business and having publishing offices within the jurisdiction of this Honourable Court.

The Plaintiff is filing this Suit to safeguard the interest of the Trustees, devotees and the Founder-Trustee Swami Nithyanandaji Maharaj, who are all involved in the charitable objectives of the Trust.

The Plaintiff submits that the Respondent is a registered bi-weekly publication and he is bound by statutory rules and the norms and guidelines issued by the Press Council of India. But, in order to keep the circulation the Respondent had violated the above norms and obligations by publishing defamatory and malicious articles damaging the reputation of the Plaintiff and its devotees. The usage of the photographs, names of the Trustees and devotee without proper permission is in total violation of the statutory rules and the norms prescribed by the Press Council of India.

The Plaintiff submits that, earlier O.S. No. 2321/2010 was filed before the XV City Civil Court, Chennai, for permanent injunction against several Respondent including the Respondent herein. The same was withdrawn on 19.3.2010 in which it was ordered that "Counsel for Plaintiff endorsed as in view of the undertaking given by

the Defendants in W.P.(MD). No. 3015/2010 before the Honourable High Court of Madras, Madurai Bench. The above Suit at present dismissed as not pressed.

The Plaintiff submits that even after 19.3.2010 the Respondents has not chosen to stop publishing the malicious, untruthful articles in their magazines. Hence, the Plaintiff is forced to approach this Honourable Court appropriate justice.

The Plaintiff submits that, the above facts stated above would clearly establish a *prima facie* case in favour of the Plaintiff and balance of convenience also rests with the Plaintiff. In view of the continuous publication of irrelevant, malicious, false articles affecting the goodwill, reputation of the Plaintiff, the Plaintiff has suffered irreparable loss.

The Plaintiff submits that, the action of the Respondent creates a continuous cause of action as of today and hence this Original Suit is not barred by *res judicata*.

22. Placing reliance on the cause of action paragraph and for that matter the entire Plaintiff, the learned Counsel for the Plaintiff would develop his argument that when the connected matter was pending before the Madurai Bench of the Madras High Court, the Advocates appearing for some of the Respondents therein, though not the Counsel for the Defendants herein, made certain undertakings that henceforth there would not be any such publications and believing it for gospel truth, the learned Counsel for Nithyananda, who appeared before the City Civil Court endorsed the Suit as not pressed. However, there is some controversy existing relating to the fact of not pressing the said Suit as pointed out by the learned Counsel for the Defendants.

23. Be that as it may, now the learned Counsel for the Plaintiff would stress upon the fact that subsequent to such dismissal of the Suit, the Defendants have been continuing in publishing similar defamatory and disparaging statements as against the Plaintiff-Trust, its Trustees and devotees and thereupon alone this Suit was come to be filed and as such, the dismissal of the previous Suit was not an embargo for the Plaintiff to file this fresh Suit.

24. I would like to agree with the view expressed by the learned Counsel for the Plaintiff that if the present Suit is for the very same reliefs as found set out in the earlier Suit based on the same cause of action, then certainly this Suit would be hit by Order 9, Rule 9 of C.P.C., as set out supra.

25. But the Plaintiff averments herein, including the averments in the cause of action paragraph, would demonstrate and display that subsequent to such dismissal, the cause of action has arisen for the Plaintiff to file the present Suit. For the purpose of cogency, the Plaintiff was constrained to refer to what had happened before the filing of the earlier Suit also. As such, I am of the considered view that this Suit is not barred by *res judicata* or by virtue of Order 9, Rule 9 of C.P.C.

26. The next contention raised by the learned Counsel for the Defendants is that the defamatory statement ipsissima verba are not printed or detailed or delineated in the Plaintiff and that it is fatal to the Plaintiff.

27. I would like to disagree with such a view for the simple reason that there is no law to the effect that the defamatory versions should be reproduced verbatim in the Plaintiff relating to all cases without exception what so ever. Here the alleged defamatory statements run to several pages, in various publications of the Defendants and those publications are also found enclosed in the typed set of papers. Wherefore in such a case, in case of this nature, in proprio vigore the alleged rule that the defamatory statements should be reproduced verbatim cannot be countenanced as correct. In a hypothetical case, if the Plaintiff comes to the Court by pointing out that the Defendants called him so and so names and also used blankety-blank words then certainly the Plaintiff is expected to set out those words, so as to enable the Defendants to repudiate them. But on the other hand, here it is an admitted case of the Defendants that the Defendants are authors of those publications, but the precise contention on the part of the Defendants is that they are justified in publishing them. When such is the position I do not think that the non-specification of the specific portions of the defamatory statements is fatal to this case.

28. At this juncture, two English decisions, namely, (i) D.D.S.A. v. Times Newspapers, 1972 (3) All ER 417(419) CA and (ii) S & K Holdings v. Throgmorton Publications, 1972 (3) All ER 497 (500) CA could virtually be referred to and the pith and marrow of those decisions are found exemplified in the following excerpts extracted from the famous treatise Durga Das Basu: Law of the Press (Fourth Edition 2002):

2. In a suit for defamation the Plaintiff should abide by the following general principles:

I. If the article or other publication alleged to be defamatory is a long one, some parts of which are not defamatory at all or if they are defamatory, they concern persons other than the Plaintiff, the Plaintiff must specify in the Plaintiff the particular parts which are defamatory of them instead of throwing the embarrassing burden at the Defendant.

There is, however, a limitation to this rule, namely, that such pick and choose may not be possible where the writing is not severable into distinct parts.

(emphasis supplied)

29. In view of the said decisions also it is clear that in matters of this nature extracting the relevant portion of the defamatory statements would not be fatal to the Plaintiff. Accordingly, the Point No.(i) is decided as against the Defendants.

Point No.(ii):

30. Before venturing to proceed with the ex facie and prima facie case placed before this Court, I would like to consider the decisions cited on both sides.

(a) The learned Counsel for the Plaintiff cited the following decisions:

- (i) [R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others,](#)
- (ii) Sidhartha Vashishat @ Manu Sharma v. State (NCT of Delhi), C.A. No. 179 of 2007;
- (iii) [R. Sukanya Vs. R. Sridhar and Others,](#)
- (iv) [R.R. Gopal Alias Rajagopal and others Vs. Inspector of Police, Cb Cid, Madras,](#)
- (v) A. Raja and another v. I.P. Srinivasan, Vasan Publications Private Limited and others, 2010 (1) MWN (Civil) 285 (DB);
- (vi) R. Rajagopal alias R.R. Gopal alias Nakkheeran Gopal and anr. v. J. Jayalalitha and another, O.S.A. No. 86 of 2006;
- (vii) A. Raja and another v. I.P. Srinivasan, Vasan Publications Private Limited and others, O.A. No. 420 of 2009 dated 20.7.2009;
- (b) The learned Counsel for the Defendants cited as many as 22 decisions including certain decisions cited on the Plaintiff's side, which are as follows:
- (i) [Dalpat Kumar and Another Vs. Prahlad Singh and Others,](#)
- (ii) [Shanmugavel Vs. Associated Publishers \(Madras\) Limited and Others,](#)
- (iii) [Odyssey Communications Pvt. Ltd. Vs. Lokvidayan Sanghatana and Others,](#)
- (iv) [Nawab Mir Barkat Ali Khan Vs. Nawab Zulfiqar Jah Bahadur and Others,](#)
- (v) [Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others,](#)
- (vi) [National Sugar Mills Ltd. Vs. Ashutosh Mukherjee,](#)
- (vii) Fraser case; 1969 (I) All E.R.;
- (viii) [Abdul Wahab Galadari Vs. Indian Express Newspaper \(Bombay\) Ltd. and others,](#)
- (ix) Hara Kas case; 1982 (2) All ER;
- (x) AIR 1941 125 (Nagpur)
- (xi) AIR 1956 264 (Nagpur)
- (xii) [W. Hay and Others Vs. Aswini Kumar Samanta,](#)
- (xiii) [Purshottam Lal Sayal Vs. Prem Shanker,](#)
- (xiv) DDSA Pharmaceuticals Ltd. case, 1972 (2) ALL ER 417;

(xv) [S. Rangarajan Vs. P. Jagjevan Ram and Others,](#)

(xvi) [Union of India \(UOI\) Vs. Association for Democratic Reforms and Another,](#)

(xvii) Woodward case, 1977 (2) All ER;

(xviii) Hunt case, 1908 (2) KB 309;

(xix) Lyle Samuel case, 1920 (1) KB 135;

(xx) [Purushottam Vijay Vs. The State,](#)

(xxi) [R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others,](#)

(xxii) [R. Rajagopal @ R.R. Gopal @ Nakkheeran Gopal, Editor, Printer and Publisher of Nakkheeran \(Bi-weekly\), Nakkheeran Publications, Nakkheeran Printers and Binders and A. Kamaraj, Associate Editor, Nakkheeran \(Bi-weekly\), Nakkheeran Publications Vs. J. Jayalalitha and Mrs. N. Sassikala,](#)

31. The learned Counsel for the Plaintiff, by referring to one of the decisions cited above reported in [R. Sukanya Vs. R. Sridhar and Others,](#) would point out that "right to be let alone" has been recognised as a right, which flows from the right to liberty.

32. The said judgment is relating to a matrimonial matter and reporting of the same, which, in my considered opinion, is having no relevance to this case, as the facts involved in this case are entirely different.

33. The learned Counsel for the Defendants would refer to [Bobby Art International, etc. Vs. Om Pal Singh Hoon and others,](#) in which the Honourable Apex Court observed thus:

25. It is not a pretty story. There are no syrupy songs or pirouetting round trees. It is the serious and sad story of a worm turning: a village-born female child becoming a dreaded dacoit. An innocent who turns into a vicious criminal because lust and brutality have affected her psyche so. The film levels an accusing finger at members of society who had tormented Phoolan Devi and driven her to become a dreaded dacoit filled with the desire to revenge.

26. It is in this light that the individual scenes have to be viewed.

27. First, the scene where she is humiliated, stripped naked, paraded, made to draw water from the well, within the circle of a hundred men. The exposure of her breasts and genitalia to those men is intended by those who strip her to demean her. The effect of so doing upon her could hardly have been better conveyed than by explicitly showing the scene. The object of doing so was not to titillate the cinemagoer's lust but to arouse in him sympathy for the victim and disgust for the perpetrators. The revulsion that the Tribunal referred to was not at Phoolan Devi's nudity but at the sadism and heartlessness of those who had stripped her naked to rob her of every shred of dignity. Nakedness does not always arouse the baser

instinct. The reference by the Tribunal to the film "Schindler's List" was apt. There is a scene in it of rows of naked men and women, shown frontally, being led into the gas chambers of a Nazi concentration camp. Not only are they about to die but they have been stripped in their last moments of the basic dignity of human beings. Tears are a likely reaction; pity, horror and a fellow-feeling of shame are certain, except in the pervert who might be aroused. We do not censor to protect the pervert or to assuage the susceptibilities of the over-sensitive. "Bandit Queen" tells a powerful human story and to that story the scene of Phoolan Devi's enforced naked parade is central. It helps to explain why Phoolan Devi became what she did: her rage and vendetta against the society that had heaped indignities upon her.

28. The rape scene also helps to explain why Phoolan Devi became what she did. Rape is crude and its crudity is what the rapist's bouncing bare posterior is meant to illustrate. Rape and sex are not being glorified in the film. Quite the contrary. It shows what a terrible, and terrifying, effect rape and lust can have upon the victim. It focuses on the trauma and emotional turmoil of the victim to evoke sympathy for her and disgust for the rapist.

29. Too much need not, we think, be made of a few swear words the like of which can be heard everyday in every city, town and village street. No adult would be tempted to use them because they are used in this film.

30. In sum, we should recognise the message of a serious film and apply this test to the individual scenes thereof: do they advance the message ? If they do they should be left alone, with only the caution of an "A" certificate. Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene.

31. A film that illustrates the consequences of a social evil necessarily must show that social evil. The guidelines must be interpreted in that light. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. At the same time, the depiction must be just sufficient for the purpose of the film. The drawing of the line is best left to the sensibilities of the expert Tribunal. The Tribunal is a multi-member body. It is comprised of persons who gauge public reactions to films and, except in cases of stark breach of guidelines, should be permitted to go about its task.

34. The aforesaid excerpts from the judgment of the Honourable Apex Court cannot be pressed into service out of context. The Honourable Apex Court in that case took into account the fact that the projections in the said film were not relating to a pretty story and there is no syrupy songs or pirouetting round trees, but the story was a sad one and in that context the Honourable Apex Court held as above. But here, absolutely there is nothing to indicate and exemplify as to what was the necessity for the Defendants to print in detail the still photos of the said male and

female in such a fashion with titillating comments among those photos. As such, the judgment of the Honourable Apex Court cannot be relied on by the Defendants for justifying such publications in their magazine.

36. Out of the precedents cited by the learned Counsel for the Plaintiff the decision of the Honourable Apex Court in R. Rajagopal alias R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, would contain the following excerpts:

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

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

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

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

Court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

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

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

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

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

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

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

36. The learned Counsel for the Defendants would place reliance specifically on the judgement of the Honourable Apex Court in Shri Chandrakant Kalyandas Kakodkar Vs. The State of Maharashtra and Others, certain excerpts from it would run thus:

5. What is obscenity has not been defined either in Section 292, I.P.C. or in any of the statutes prohibiting and penalising mailing, importing, exporting, publishing and selling of obscene matters. The test that has been generally applied in this country was that laid down by Cockborn, C.J., in Hicklin case, (1868) LR 3 QB 360 and even after the inauguration of the Constitution and considered in relation to the fundamental rights of freedom of speech and expression this test, it has been held, should not be discarded. In Hicklin case while construing Statutes 20 and 21, Victoria, a measure enacted against obscene books, Cockborn, C.J., formulated the test in these words:

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands publication of this sort may fall.... It is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of most impure and libidinous character.

This Court has in [Ranjit D. Udeshi Vs. State of Maharashtra](#), considered the above test and also the test laid down in certain other American cases. Hidayatullah, J., as he then was, at the outset pointed out that it is not easy to lay down a true test because "art has such varied facets and such individualistic Appeals that in the same object the insensitive sees only obscenity because his attention is arrested, not by the general or artistic Appeal or message which he cannot comprehend, but by what he can see, and the intellectual sees beauty and art but nothing gross". It was also pointed out in that decision at p. 74:

None has so far attempted a definition of obscenity because the meaning can be laid bare without attempting a definition by describing what must be looked for. It may, however, be said at once that treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. It is not necessary that the angels and saints of Michaelangelo should be made to wear breeches before they can be viewed. If the rigid test of treating with sex as the minimum ingredient were accepted hardly any writer of fiction today would escape the fate Lawrence had in his days. Half the book shops would close and the other half would deal in nothing but moral and religious books which Lord Campbell boasted was the effect of his Act.

It is, therefore, the duty of the Court to consider the obscene matter by taking an overall view of the entire work and to determine whether the obscene passages are so likely to deprave and corrupt those whose minds are open to such influences and in whose hands the book is likely to fall and in doing so one must not overlook the influence of the book on the social morality of our contemporary society. We can do no better than to refer to this aspect in the language of Hidayatullah, J., at p. 76:

An overall view of the obscene matter in the setting of the whole work would, of course, be necessary, but the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall.

Referring to the attempt which our national and regional languages are making to strengthen themselves by new literary standards after a deadening period under the impact of English, it was further observed at p. 77--

that where obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. In other words, treating with sex in a manner

offensive to public decency and morality (and these are the words of our Fundamental Law), judged of by our national standards and considered likely to pander to lascivious, prurient or sexually precocious minds, must determine the result. We need not attempt to bowdlerize all literature and thus rob speech and expression of freedom. A balance should be maintained between freedom of speech and expression and public decency and morality but when the latter is substantially transgressed the former must give way.

Bearing in mind these observations and the tests laid down in [Ranjit D. Udeshi Vs. State of Maharashtra](#), we propose to examine, having regard to our national standards, the passages in Shama to ascertain in the light of the work as a whole whether they treat with sex in such a way as to be offensive to public decency and morality as can be considered likely to pander to lascivious, prurient or sexually precocious minds.

The second Appellant writes about the life of a poet Nishikant who left school in the days of freedom struggle, wrote revolutionary poems, but as the freedom struggle waned he did not join school as others had done notwithstanding his brother's advice that he should pass the matric so that he could be employed in service. As he was mostly unemployed, he was living on his brother and on the bounty of his sister-in-law who was kind and considerate to him. Nishikant, it will appear, is emotional, sensitive and has the power to discern right from wrong. The story starts with his being employed as a teacher and his meeting Shama, the music teacher in the school. His attraction for her and the opportunity she gives him to meet her alone in her room fills him with a sense of foreboding lest he may have to endure the pangs of suffering which he had to undergo in his two earlier affairs with Neela and Vanita. The poet recalls these two affairs individually and we get the impression that the pain which he underwent should not be repeated. It is more as a repellent to any further involvement with Shama that these experiences are related.

12. The concept of obscenity would differ from country to country depending on the standards of morals of contemporary society. What is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country. But to insist that the standard should always be for the writer to see that the adolescent ought not to be brought into contact with sex or that if they read any references to sex in what is written whether that is the dominant theme or not they would be affected, would be to require authors to write books only for the adolescent and not for the adults. In early English writings authors wrote only with unmarried girls in view but society has changed since then to allow litterateurs and artists to give expression to their ideas, and emotions and objective with full freedom except that it should not fall within the definition of "obscene" having regard to the standards of contemporary society in which it is read. The standards of contemporary society in India are also fast changing. The adults and adolescents

have available to them a large number of classics, novels, stories and pieces of literature which have a content of sex, love and romance. As observed in Udeshi case, if a reference to sex by itself is considered obscene, no books can be sold except those which are purely religious. In the field of art and cinema also the adolescent is shown situations which even a quarter of a century ago would be considered derogatory to public morality, but having regard to changed conditions are more taken for granted without in anyway tending to debase or debauch the mind. What we have to see is that whether a class, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds. The charge of obscenity must, therefore, be judged from this aspect.

37. I would like to point out that the comments offered by me above in respect of the non-applicability of the decision of the Honourable Apex Court in Bobby Art International case to this case, would be applicable to this decision also.

38. Both sides argued elaborately on the Law relating to the Freedom of the Press in publishing materials as the ones involved in this case. On perusal of the aforesaid decisions, I am of the considered view that the decision of the Hon"ble Apex Court reported in R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, is of utmost importance for the purpose of deciding this case. It is also quite axiomatic and pellucidly clear that in the said decision, the Hon"ble Apex Court elaborately analysed the Law relating to the Freedom of Press and also stipulated the terms and conditions under which the print media could make publications, even in respect of matters touching upon the privacy of certain individuals.

39. I would like to point out that the Hon"ble Apex Court in the judgement cited supra clearly and categorically highlighted and spot lighted that it was quite impossible for the Court to detail and delineate item wise in respect of what are all cases the Press should refrain from publishing and what are all the cases they should publish with certain conditions. Case by case development of the law relating to the Press freedom alone would be feasible.

40. Now the learned Counsel for the Defendants would correctly submit that the facts involved in this case are having some peculiarities and, therefore, this Court has to give a specific verdict over on them.

41. The learned Counsel for the Defendants would point out that indubitably and indisputably, unarguably and unassailably the said Nithyanandha was preaching Brahmacharya and also claimed to have been practising Brahmacharya; on that count he attracted huge number of devotees and also gathered wealth within a few years, but he had a volte face and quite contrary to his preaching, he had illicit connection with a cine actress and that was videographed by somebody and the same was obtained by Lenin Karuppan and he in turn gave a copy of that video clippings to the Defendants, who got themselves satisfied about the genuineness of

the video clippings and thereafter published them in the Defendant's journal "Nakkeeran", so as to inform the public and to save the public from allowing themselves to be deceived by Nithyananda and not for any other purpose; no personal interest, at all, of the Defendants according to him is involved in such publications. He would also stress upon the fact that strictly within the parameters of the law laid down by the Honourable Apex Court in *R. Rajagopal alias [R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others](#)*, such publications were made. The question of getting clarification from Nithyananda did not arise at all, as at that time, the Defendants were not aware of the whereabouts of him. Over and above that in matters of this nature, as per him, such getting clarifications also not contemplated as per the Honourable Apex Court's judgment.

42. The learned Counsel for the Defendants would elaborate his argument that Nithyananda cannot invoke the Concept of "privacy" as contemplated in the judgement of the Supreme Court, so as to prevent the Defendants from publishing such materials.

43. Whereupon, the learned Counsel for the Plaintiff would submit that Nithyananda also is very much a human being and he is having privacy of his own and no one is having any right to intrude into his privacy and that too, into his bed room and take videograph of his alleged activities. According to the learned Counsel for the Plaintiff, the said video clippings were morphed ones; Nithyananda is practising Brahmacharya; he is preaching the same and he has not indulged in any licentious or illegal activities as found projected in those video clippings.

44. To the risk of repetition and pleonasm but without being tautologous I would like to point out that the Honourable Apex Court in the said judgement clearly distinguished a person's public life from that of his private life. The Honourable Apex Court, without mincing words plainly and pellucidly gave the mandate to the effect that the media people should not intrude into the private life of a public personnel, when his private life is having nothing to do with his public life.

45. Here, without finally deciding this issue, 1 would like to point out that the persons like Nithyananda, who is projecting himself as a sage, cannot claim that much of privacy as an ordinary person in India could claim. A Brahmachari sage, in public life cannot have privacy as that of a married man. A married man is entitled to have sexual relationship with his wife and procreate children and those activities should not be commented upon or photographed or videographed or in any way meddled with by anybody in the world and that is what the Supreme Court clearly highlighted in the said judgement. Here, the position is somewhat different. Invoking the concept "investigating journalism" or under the banner of "muckraking", certain persons have ventured to expose allegedly Nithyananda of his alleged profligacies.

46. The question arises as to whether information derived from such sources could be published or not.

47. Once again I would like to point out that if an ordinary married man's sexual life with his wife is photographed or videographed, then certainly that would be condemned in unmistakable terms and it cannot form part of news publication in any magazine or newspaper. But, according to the media personnel, Nithyananda projected himself as a "Brahmachari" and after preaching Brahmachariya, he acted otherwise. As such media people's right to inform the public cannot be throttled by Court and that is what exactly mandated by the Supreme Court.

48. At this juncture, I call up and recollect the following maxim:

"Qui vult decipi, decipiatur" - Let one who wishes to be deceived, be deceived.

But that maxim cannot be extended ad nauseam and ad infinitum and thereby applied to prevent the media people from making publications. In order to prevent the public from being cheated by false prophets and false sages, such publications could be allowed to be made and the Court cannot look askance at it.

49. The question as to whether Nithyananda is a false preacher or a real preacher, a false sage or a real sage is a matter to be decided later at the appropriate stage. But the Honourable Supreme Court mandates that the Freedom of the Press could not be curtailed so to prevent it from muckraking or exposing profligacies going at the higher echelons of society.

50. Here virtually the media people, with the help of Lenin Karuppan are attempting to muckrake or expose the activities of Nithyananda and according to the media people what they do is perfectly in accordance with truth and within their parametres. A poring over of the judgements cited on the side of the Plaintiff and the Defendants, would reveal that print media could inform the public of the alleged profligacies of a sage.

51. The question might arise as to what would happen if at a later stage the publications made by the Defendants are turned to be false, then certainly the Trust as well as Nithyananda would be having the right to claim damages from the media concerned. But if those publications are found to be true then the Defendants would not be liable for any damages and that is precisely the law relating to defamation.

52. My discussion supra would reveal that so far this case is concerned the right of Trust and the right of Nithyananda cannot be separated from each other, as they got intermixed and interlinked, interconnected and entwined with each other.

53. The learned Counsel for the Defendants, by inviting the attention of this Court to the fact that earlier the Defendants in their magazine made publication about Nithyananda that he was hugging girls in Coimbatore in a function, whereupon, on Nithyananda's side it was replied and also published to the effect that he was like

Vivekananda and other renowned sages. Whereupon Nithyananda thrusted himself into the controversy and in such a case he cannot contend that his privacy was violated.

54. I would like to point out that in view of the ratiocination adhered to by me in deciding, so far this case is concerned that the right of the Defendants to give information to the public about Nithyananda concerned cannot be throttled, further elaboration in this regard is not required.

55. The learned Counsel for the Plaintiff would submit that in the typed set of papers filed by the Defendants they claimed to have allegedly obtained expert opinion from one P. Chandra Sekharan the Professor of Forensic Sciences, but the said opinion was obtained only after the publication and furthermore, the said opinion was not authentic one and it was only relating to Nithyananda not about the cine actress.

56. Be that as it may, while deciding this matter I need not delve deep into those aspects and those issues will be considered at the time of trial.

57. The most crucial aspect of the discussion, in my opinion, is concerning the fact as in what manner such information should be given to the public by the Media; whether the Media people are justified in picturesquely projecting the alleged profligacies of a sage without any restriction and even ignoring Section 292 of IPC as well as the provisions as found embodied in the Indecent Representation of Women (Prohibition) Rules, 1987 and also Sections 499 and 500 of IPC.

58. Before venturing to discuss further, I would like to give a hypothetical example. The term "rape" connotes a bundle of facts. Media has got a right to publish without disclosing the identities of the persons involved in an incident of rape. The media cannot detail the act of rape punctiliously in a touchy feely manner and if done so, certainly no right thinking person would cherish it and he would look askance at the media. I believe that my view would amply sensitize the media in this regard.

59. Indulging in vilification campaign or using scurrilous, vituperative, disparaging, degrading words, including blankety-blank words in order to describe certain incidents, should be avoided by the media.

60. At this juncture I would like to extract hereunder certain excerpts from the famous Treatise "Durga Das Basu: Law of the Press (Chapter-4) (Fourth Edition 2002) at page Nos. 65, 66, 69, 70, 71, 72 and 73.

Privacy as a limitation on freedom of the Press. 1. Since privacy is a recent development in the realm of law and the stream of its development is still flowing, it is difficult to give an exhaustive definition of what "privacy" means in law. Loosely, it has been described as the right of a person "to be let alone", or his right of repose in his private life and home.

.... It is a sad fact about human nature that men find pleasure from prying into others; affairs, even though they may have no bearing on public issues or causes. The problem has been accentuated by the availability of information relating to private matters through the medium of the expanding coverage of newspapers, in response to a popular demand for "lusty journalism"; and it has called for legislative and judicial intervention through newer avenues, to meet this serious problem of intrusion into privacy.

.... confusing his sins not to a priest - but to the world; and it is not the green and gold Perseus that Cellini wrought that shows the moon the terror that once turned a life to stone that gives pleasure to the world, but his autobiography in which "that rascal of the Renaissance" tells the story of his glory and his shame. Mankind always took a sadistic pleasure when men and women are pulled down from the pedestal. The fault may not be that of the Press but of the reading public, which wants a juicy anecdote about exalted personages.

... In the U.S.A. a reconciliation of the need for Freedom of the Press and the need for the protection of privacy has been made through the following propositions:

I. Under the guarantee of freedom of expression, every individual has the right to be informed (or the right "to know") about matters of public interest. The freedom of the Press, therefore, extends to all public issues and events, and matters of "Public interest", so that political and social changes desired by the people may be obtained by lawful means.

Hence, once it is shown that the person whose privacy is alleged to have been infringed was a public official, or a "public figure", or the report related to a matter of "public interest", then, consistently with the guarantee of freedom of expression, the report (even though it related to the family affairs of the Plaintiff) could not be punished unless--

(a) it was false; (b) the Defendant published it with knowledge of its falsity or in reckless disregard of the truth.

While "calculated falsehood" falls outside "the fruitful exercise of the right of free speech", the Press could not be punished for "innocent error" or mere "falsity" without doing violence to the freedom of the Press:

We create grave risk of serious impairment of the indispensable services of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in a news article with a person's name, picture or portrait, particularly as related to a non-defamatory matter. These guarantees (freedom of the press) are not for the benefit of the press so much as for the benefit of all of us. A broadly defined freedom of the press assures the maintenance of our political system and an open society....

That books, newspapers and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguard.

II. In the case of a private person who has no public importance or is not a "public figure", there being no question of public importance (e.g. obscenity) involved, the plea of freedom of expression diminishes, as against the need for protection of privacy.

Thus, even though a section of the reading public may be interested in sordid stories of adultery in a divorce proceeding, a wife, suing for divorce, cannot be said to have become a "public figure\* by reason of such litigation nor does the report of the matrimonial proceedings assume a "public interest", so as to shield a journal from libel proceedings for making incorrect reports.

It has, therefore, been assumed that the State may legitimately prohibit the publication of news which intrude upon the privacy of private individuals, without any public interest being involved in the disclosure. It would, thus, be permissible for a State to make it unlawful to use "for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person.

But it would not be punishable if the person photographed was a "public figure".

... The Court observed that even though a single instance of taking a photograph would not be actionable as a nuisance, if this was repeated occasionally to harass the Plaintiff in the occupation of his premises, it might constitute actionable nuisance:

But if the circumstances were such that a Plaintiff was subjected to the harassment of constant surveillance of his house from the air, accompanied by the photographing of his every activity, I am far from saying that the Court would not regard such a monstrous invasion of his privacy as an actionable nuisance for which they would give relief.

The conclusions which emerged out of the foregoing decision are that--

(a) Invasion of privacy is not an independent wrong under the existing law of torts in England or in India.

(b) If aerial surveillance is repeated, it may give rise to an action for nuisance, but the Plaintiff would be helpless if the Defendant takes a photograph of the Plaintiff's house without interfering with his enjoyment of the premises and even publishes such a photograph so as to aid a terrorist that was the apprehension of the Plaintiff in the cited case or to publicise the activities of Plaintiff's private household.

10. The question is whether the taking of a photograph of one's premises or household without his permission should not be constituted a statutory wrong, and, if necessary, to add privacy as an additional limitation, in Article 19(2) of our

Constitution, in order to uphold such legislation.

Some guides for legislation on privacy. Though literature on the subject is not yet sufficient, some broad propositions may be formulated for consideration of the Legislature in case any legislation on privacy is contemplated:

I. A person who has a public life cannot claim privacy to the same extent as a person who has no public status: It has been rightly observed-

.....those who seek and welcome publicity of every kind bearing on their private lives so long as it shows them in a favourable light are in no position to complain of an invasion of their privacy by publicity which shows them in an unfavourable light.....

(emphasis supplied)

In Dixion's Stores case the right to privacy and its unauthorised invasion, in a clandestine manner, came up for consideration before Lord WOOLF, M.R.B.B.C had secretly filmed some transactions in Dixon's stores as part of an investigation into the selling of second hand goods as new. Dixon's complained to BSC (Broadcasting Standards Commission) claiming that the filming was an unwarranted infringement of its privacy. BSC upheld the Complaint, against which BBC applied for judicial review of its decision. The judge considered that the European Convention on Human Rights, 1950, Article 8, could not be construed so as to protect the Broadcasting Act, 1996 and quashed the decision. The Appeal filed by the BBC was allowed and it was held:

The secret filming in a place to which the public had free access could amount to an infringement, even there was no private element to the events filmed. Art. 8 related to the right to respect for private life and was incompatible with the protection afforded under the 1996 Act BSC had the jurisdiction to determine Dixon's Complaint and its approach was that the secret filming required some form of jurisdiction for the filming. The secret filming was considered objectionable as it was not open to those who were being filmed from taking any action to prevent it and the Complaint was held.

61. I would also like to refer to the Press Council Act, 1978 including Section 14, which is extracted hereunder for ready reference:

"14. Power to Censure-- (1) Where, on receipt of a Complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct, the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under this Act and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct

of the editor or the journalist, as the case may be:

(emphasis supplied)

62. As such Section 14 of the Act would clearly contemplate that a newspaper or news agency should not offend against the standards of Journalistic ethics or public taste and that an editor should not commit any professional misconduct.

63. I would like to refer to the following legislative mandates governing publications:

(i) INDIAN PENAL CODE, 1960:

Section 124-A. Whoever by words, either spoken or otherwise, brings or attempts to bring into visible representation, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Section 153-A. (1) Whoever-- (a) by words, either spoken or written, or by signs or by visible representations or otherwise promotes or attempts to promote, or grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

Section 171-G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

(ii) The Young Persons (Harmful Publications) Act, 1956;

(iii) The Indecent Representation of Women (Prohibition ) Rules, 1987;

(iv) The Protection of Human Rights Act, 1993;

(v) The Newspapers (Incitement to Offences) Act, 1908.

64. At this juncture, I would like to refer to the mandates of the Honourable Apex Court, as found set out in the recent decision in Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (hereinafter referred to as "Jessica Lal's case" for short), dated 19.4.2010:

151. Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too

when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution [Anukul Chandra Pradhan Vs. Union of India \(UOI\) and Others,](#) It is essential for the maintenance of dignity of Courts and is one of the cardinal principles of rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice.

153.....

11. Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible.

65. As such, the Defendants are ordered to adhere to the mandates as contemplated in the aforesaid provisions of law and the Honourable Apex Court's decision referred to supra.

66. Concerning the plea of locus standi as raised by the Defendants, I would like to refer to the verdicts as found exemplified in the following four English decisions, namely:

- (i) Morris v. Perrott, 1945 All ER 567 (CA);
- (ii) South Hetton Coal Co. v. N.E. News Asson., 1894 (1) QB 133(CA);
- (iii) Company of Selby Bridge v. Sunday Telegraph, 1966 CLY 6973; and
- (iv) Lewis v. Daily Telegraph, 1963 (2) All ER 151 CLY 6973;

the gist and kernal of those decisions as found exemplified in the famous treatise "Durga Das Basu: Law of the Press" (Fourth Edition 2002) at page Nos. 318 and 319 would run thus:

2. But a corporation can sue for defamation when it affects its business and property, and that even though the charge is levelled against individual members. In order that a corporation may sue for a defamation two conditions must exist: (a) The statement must be of such a nature that it would be defamatory if directed against an individual. (b) It must also be of such a nature that its tendency is to cause actual damage to the corporation in respect of its property and business- Thus, a libel charging a trading corporation with insolvency or with dishonest or incompetent management is actionable at the Suit of the corporation.

3. If it is shown that the libel has a tendency to damage the trading reputation of the Plaintiff corporation, it is not required further to prove actual loss. In other words, it is entitled to be compensated for inquiry to its "goodwill" though there may not

have been any actual loss of income.

(emphasis supplied)

67. In view of the above, a question might arise as in what manner the Defendants violated or over stepped their freedom in publishing those materials.

68. The learned Counsel for the Defendants" would submit that by any standard, the publications so far made by the Defendants cannot be found fault with and those publications do not fall foul of any of the penal provisions or any journalistic norms.

69. Whereas, the learned Counsel for the Plaintiff would invite the attention of this Court to the typed set of papers, more specifically to the Page Nos. 1 to 18 which contain copies of the NAKKEERAN magazine dated 06.03.2010 and 10.03.2010, including the various photographs published in the said magazine dated 06.03.2010 and submit that the Defendants did not simply publish the news item but indulged in virtual vilification campaign as against the said Nithyananda, as though he is a proven Criminal, etc.

70. According to the learned Counsel for the Plaintiff, those photos should not have been published to the detriment of the public taste and to spoil the younger generation. It is also the contention of the learned Counsel for the Plaintiff that for example de hors other defamatory statements, while publishing the said photos, comments were printed amidst them as under:

71. Placing reliance on those comments amidst the photos which are depicting the alleged compromising position of Nithyananda and the cine actress, the learned Counsel for the Plaintiff would correctly submit that those comments were totally unwarranted for publishing the news items.

72. I would like to agree with the learned Counsel for the Plaintiff that the Press, while informing the public about certain events, more specifically matters relating to sexual activities, should have some self-restraint, as otherwise, the mind of the youngsters would get polluted and instead of the publications having good effect on the public to save themselves from being cheated, their minds would get polluted and titillated and the consequences would be much the worst. In such publications gestalt factor is involved and that is why criminologists are very particular that in media, crime scenes and scenes connected with sexual activities should not be published in a magnified way manner. In a minimalist fashion news has to be purveyed or disseminated. A printed magazine, it is quite axiomatic, like Nakeeran, other than various other electronic device, could easily and permanently be kept by susceptible youngsters if it contains objectionable and titillating photos with objectionable comments.

73. The learned Counsel for the Plaintiff would submit that the entire publication is highly defamatory. At this stage, the Court need not go sentence by sentence and analyse the entire publications, but by and large, as pointed out by the learned

Counsel for the Plaintiff, there should be self restraint on the part of the Defendants in purveying or conveying or disseminating the news item to the public.

74. Regarding publications of photos are concerned, I would like to point out that even though those photos might not be as obscene as obscenity could be or they may not be as obscene as some of the scenes which are occurring in the censored films themselves, nevertheless and nonetheless when certain photos are published as the ones depicting the real acts occurred in real life, they would have a virulent effect on public mind than the photos which are projected as part of art and entertainment. While observing so, not even for a moment, I hesitate to find fault with such censored films containing obscene scenes and objectionable materials. I would like to point out that under the caption of reality, if photos, evincing the compromising positions of male and female are projected, they would have far worse effect in the mind of the public, especially the younger generation than the photos which are published under the caption of entertainment. Once again I would like to point out that I am not in any way condoning the entertainment industry indulging in such sort of activities but I condemn them in unmistakable terms.

75. Wherefore, I order that the Defendants shall refrain from making derogatory, unparliamentary, vilifying, scurrilous, and vituperative statements, which are not necessary for the purveying or dissemination of the news item. Touchy feely descriptions or use of blankety-blank words also, in making publications should be avoided. In connection with this matter, photos containing male and female in compromising position also shall not be published. Except to this limited extent, there is no other mandate as against the Defendants and accordingly A. No. 2027 of 2010 for rejection of the Plaintiff is dismissed and O.A. No. 385 of 2010 is ordered to the limited extent as above.

76. At this juncture, the learned Counsel for the Defendants would submit that if there is a blanket injunction restraining the Defendants not to publish any photo of male and female in compromising position, it would account to gagging the Press, for which, I would like to observe that my ratiocination in passing the aforesaid order relating to Nithyananda and the cine actress would also be applicable to others that in an identifiable manner if any such photos in compromising position are published, it would be deleterious to the younger generation and the public. Such photos evincing compromising postures of male and female should not be published is my firm opinion.

77. However, the learned Counsel for the Defendants would submit that unless such photos are published, news item will not reach the public, for which, I would hold that if the Defendants at their own risk feels that such publication is absolutely necessary from their point of view, then not only the faces should be blurred, but the photos concerning the objectionable acts also should be blurred, as otherwise, the purpose of injunction would be futile. As such, injunction is granted only to the extent indicated above and concerning the rest of the prayer, no injunction is

granted. The Defendants are at liberty to publish any news item in pari materia with the views expressed in this order and they shall also adhere to the mandates as contained in the judgment of the Hon"ble Apex Court in Jessica Lal"s case.