

St Xavier'S Education Trust vs Leena Dhankar & Ors on 22 January, 2021

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 51/2021

ST XAVIER'S EDUCATION TRUSTPlaintiff
Through: Mr.Rajeev K. Virmani, Senior Advocate
alongwith Mr.Sandeep Kapur, Mr.Yashvardhan
Bandi, Ms. Apoorva Pandey, Mr. Gudipati G.
Kashyap & Ms.Deveshi Madan, Advocates

Versus

LEENA DHANKAR & ORS. Defendants
Through: Mr. Amit Agrawal & Mr. Kushagra
Agrawal, Advocates for D-1
Mr. Satyajit Sarna, Advocate alongwith
Mr. Rahul Kukreja, Ms. Bhavini Srivastava,
Advocates for D-2
Ms. Savni D. Endlaw, Advocate for D-5
Ms. Shruti Das, Advocate for D-6

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% 22.01.2021 The present matter has been taken up for hearing in physical Court. I.A. 1134/2021 (Exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

CS(OS) 51/2021 & I.A. 1133/2021 (Under Order XXXIX Rules 1&2 read with Section 151 CPC filed by the plaintiff)

1. Complaint be registered as suit.

2. Issue summons in the suit and notice in the application to the defendants.

3. Learned counsels, as mentioned above, appear on advance notice and accept summons in the suit and notice in the application on behalf of defendants no. 1, 2, 5 and 6. The written statements shall be filed by the defendants no. 1, 2, 5 and 6 within thirty days from today along with reply affidavits and affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.

4. Summons in the suit and notice in the application shall now be issued to defendants no. 3 & 4 on the plaintiff taking steps through speed post, courier as well as through WhatsApp and E-mail returnable before the learned Joint Registrar on 18.03.2021 for completion of service, pleadings and admission/denial of documents.

5. The summons shall indicate that the written statements to the suit and reply affidavits to the applications must be filed by the defendants no. 3 & 4 within thirty days from the date of receipt of the summons. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.

6. The plaintiff is at liberty to file replication and rejoinder affidavit thereto within three weeks after filing of the written statements. The replication shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replication shall not be taken on record.

7. The plaintiff has sought an ad-interim restraining order against the defendants from publishing/releasing the book titled 'The Rxxx School Murder' with the catch line 'A seven-year-old is found dead in a bathroom. Who killed him?' (hereinafter referred to as 'Book') authored by defendant No. 1 and published by defendants No. 2 & 3. The Book is stated to be packed by Defendant no.4 and will be packaged and sold on their e-commerce websites by Defendants no.5 and 6.

8. Learned Senior Counsel for the plaintiff submits that the plaintiff is a trust which is responsible for managing the educational institution by the name of 'Rxxx International School' (hereinafter referred to as 'School') and has four decades of experience in providing quality education to its students.

9. The case set up by the plaintiff is that it came across information about release of the 'Book' on internet pursuant to which a 'cease & desist' notice dated 14.01.2021 was issued to the defendants no. 1 to 5. According to learned Senior Counsel for the plaintiff, as the title suggests, the 'Book' pertains to a tragic incident where a young student was found dead in a washroom of the 'School' in the year 2017. The title of the 'Book' is suggestive and sensational and its release will set in a panic reaction amongst the parents of the students and shall also cause catastrophic effect on the reputation of the 'School'.

10. It is submitted that before announcing the release of the 'Book', neither permission of the plaintiff was taken nor any excerpt/manuscript was shown to him. The plaintiff issued a 'cease and desist' notice dated 14.01.2021 to the defendants no. 1 to 5 to which a reply dated 20.01.2021 was received on behalf of defendant no.2, wherein it was stated that "no information is being published which could lead to an identification of the child in conflict with law".

11. It was next contended that in spite of the prohibitory order dated 08.01.2018 passed by the Court of learned ASJ, Gurugram to not to disclose the identity of the victim, the CCIL (Child in conflict with law) and the school, the defendants have chosen to publish the 'Book' with a title which by mentioning the name of the 'School' discloses the identity of the CCIL. Reference was also made to the charge sheet filed by the CBI where imaginary names were given to the victim, the CCIL and the 'School'.

12. In support of his submission that plaintiff has a right to protect his reputation from being unfairly harmed and such a right being inherent in Article 21 of the Constitution of India, learned Senior Counsel has placed reliance on the decision of the Supreme Court in K.S. Puttaswamy & Another v. Union of India & Others reported as (2017) 10 SCC 1 and the decision of a Coordinate Bench of this Court in Swami Ramdev v. Juggernaut Books Pvt. Ltd. & Ors reported as 2018 SCC OnLine Del 11549.

13. Per contra, learned counsel for defendant no.2, while appearing on advance notice, defended the impending release of the 'Book'. He submitted that the entire incident has been in public domain and in this regard, placed reliance on various news articles printed and available on the internet mentioning the identity of the victim, the CCIL and the 'School'. It was also submitted that the CCIL is not a child anymore and considering the offence, has been treated as an 'adult'. He also referred to the various orders passed by the High Court of Punjab and Haryana where identities were mentioned. It was strongly contended that the issue being in public domain is no longer an issue of privacy.

14. Learned counsel for defendant No.1 has supported the submissions advanced on behalf of defendant no.2. He submitted that a pre-publication injunction cannot be granted more so when the plaintiff is a commercial establishment. While contending that the decision in Swami Ramdev (Supra) related to post publication stage, he placed reliance on the decisions in Pushp Sharma v. D.B. Corp. Ltd. & Ors. reported as 2018 SCC OnLine Del 11537 and Khushwant Singh & Another v. Maneka Gandhi reported as 2001 SCC OnLine Del 1030 to buttress his submission for denial of pre-publication injunction. Lastly, it is submitted that where remedy by way of damages is available, the Court should be slow in granting any ad-interim injunction.

15. In rejoinder arguments, learned Senior Counsel for the plaintiff has drawn the attention of the Court to the news articles as well as the orders of the High Court of Punjab and Haryana, to submit that barring few exceptions, the news articles/orders relate to the year 2017 which was prior to the order dated 08.01.2018 passed by the Court of learned ASJ, Gurugram. He further informs that though an SLP has been preferred against the decision in Ramdev (Supra) but no stay has been granted.

16. Before proceeding further, I deem it apposite to refer to Section 74 of the Juvenile Justice Act (Care and Protection of Children) Act, 2015 which reads as under:

"74. Prohibition on disclosure of identity of children.

(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child. (2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of. (3) Any person contravening the provisions of sub-

section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both."

17. While dealing with the case of a child in conflict with law, the Supreme Court held that the name, address, school or other particulars which may lead to the identification of the child in conflict with law cannot be disclosed in the media. No picture of such child can be published. [Ref:

Nipun Saxena & Another v. Union of India and Others reported as (2019) 2 SCC 703].

18. Keeping in line with the law, it is apparent that the learned ASJ, Gurugram passed the following order on 08.01.2018 in Criminal Appeal No. 15 of 19.12.2017/22.12.2017 (CNR number-HRGR01-015916-2017) titled as 'Bholu' (an imaginary name as actual name/parentage/address withheld) v. CBI:

"02. Section 74 of the Act imposes a prohibition on disclosure of identity of children and makes the person contravening this provision liable for punishment of imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both. It postulates that no report in any newspaper, magazine, new- sheet or audio-visual media or other forms of communication regarding any enquiry or investigation or judicial procedure, which may lead to the identification of a „child in conflict with law or a „child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published. Therefore, to sensitize all the stakeholders regarding provisions of Section 74 of the Act and with

the objective of preventing social victimization of the victim, witnesses and the Appellant/ Child in conflict with Law , this court has chosen to describe them with some imaginary names in this judgment. Parties to the proceedings as well as the public at large including the media persons are hereby directed to use imaginary names given in this judgment wherever they have to refer the persons or facts of this case. Staff of the court is also directed to take care that henceforth present case has to be mentioned in the cause-list with the imaginary names given in this judgment."

19. While passing the abovesaid order, the learned ASJ referred to the child victim with an imaginary name 'Prince', the CCIL as 'Bholu' and the 'School' as 'Vidyalya'. In fact, the charge sheet filed by the CBI also refers to above mentioned imaginary names.

20. The 'Book' is slated to be released on 23.01.2021. The plaintiff, concededly, is not privy to its contents and is only alarmed and offended by its title where the name of the 'School' is prominently mentioned. At this stage, without commenting on the competing rights of the parties i.e., the right of the plaintiff to protect its reputation versus the defendant's right of free speech and expression under Article 19(1)(a) of the Constitution of India and despite the fact that the plaintiff has approached the Court at the eleventh hour seeking pre-publication injunction, I am persuaded by the fact that the Court of learned ASJ, Gurugram has already passed an order protecting the identity of the CCIL and restrained the reportage from disclosing the name of the 'School'- which has been directed to be referred to as 'Vidyalya'. In view of the above, this Court is of the view that reference to the name of the 'School' in the title of the 'Book' will compromise the aforementioned order. A reference to the name of the 'School' in the title of the 'Book' will reveal the identity of the CCIL. Accordingly, this Court is of the view that a prima facie case is made out. The balance of convenience is also in favour of the plaintiff and if no ad interim injunction is granted, irreparable loss would be caused.

21. Consequently, till further orders, the defendants No. 1 to 4, their associates, sister concerns, agents, representatives, correspondents, officers, employees and/or any other person entity are restrained from publishing, packaging, releasing, offering for sale, selling and displaying on their website the 'Book' or any portion thereof. Further, the defendants No. 5 & 6 are also restrained from accepting any purchase orders and/or executing any pending orders for sale of the 'Book'.

22. Learned counsel for defendant No. 5 has prayed that time of 48 hours be given to comply with the directions.

23. It is further directed that the defendants shall provide a copy of the 'Book' to the plaintiff subject to the copyright of the defendants therein for the plaintiff to have an informed view of the same and see if it violates its rights as alleged in the suit. The plaintiff shall ensure that the 'Book', its contents or any part thereof are not shared with any third party and the commercial rights of the defendant are not compromised in any manner.

24. List the I.A. 1133/2021 before the Court on 23.03.2021.

25. List the suit before the Court on 10.05.2021.

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