

Gurjit Kaur vs Harpercollins Publishers India ... on 19 September, 2022

Author: Siddharth Mridul

Bench: Siddharth Mridul, Amit Sharma

\$~S-32

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) 107/2022

GURJIT KAUR

.....

Through: Ms. Shyel Trehan and Mr.
Poddar, Mr. Raghav Anan
Advocates.

versus

HARPERCOLLINS PUBLISHERS INDIA PRIVATE LIMITED
& ANR. Respondents

Through: Ms. Swathi Sukumar with
Ms. Ashima Obhan, Ms. H
Kapoor, Ms. Seerat Bhut
Mr. Naveen Nagarjuna, a
Mr. Pratyush Rao, Advoc
R-1.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% 19.09.2022 CM APPL. 41359/2022 (Exemption) Exemption allowed, subject to just exceptions.
The application stands disposed of.

FAO(OS) 107/2022 & CM APPL. 41358/2022 (Stay) By:ANITA BAITAL Signing Date:20.09.2022
12:53:08 Ms. Gurjit Kaur, the appellant, is admittedly a celebrated hockey player and one of the
India's leading goal scorers at national and international events. Amongst many achievements at
international events as set out in para 3 of the appeal, the appellant was part of the Indian squad
winning bronze medal at the Commonwealth Games 2022 held in Birmingham. Ms. Gurjit Kaur
assails an order dated 15.09.2022 passed by a learned Single Judge of this Court in a matter titled as

"Gurjit Kaur v. HarperCollins Publishers India Pvt. Ltd & Anr. in I.A. No. 15110/2022 in CS (OS) No. 573/2022"; whereby her, ad interim prayer, seeking inter alia an order of restraint against the yet to be released book titled „Will Power , authored by Mr. Sjoerd Marijne, respondent no.2 herein (hereinafter "the Author"), who was the coach of the Indian Hockey Team, at the relevant time, was declined.

In sum and substance, it is the case of Ms. Gurjit Kaur that, in the subject book, the Author proposes to divulge certain confidential information qua her medical condition; in gross violation inter alia of the code of confidentiality, by which the latter was bound as the coach of the Indian Hockey Team, as aforesaid. In this behalf, we observe that it is an admitted position that the medical condition that purportedly afflicts Ms. Gurjit Kaur, axiomatically, came to the knowledge of the Author during the period of his engagement as coach of the Indian Hockey Team.

Learned counsel appearing on behalf of Ms. Gurjit Kaur, places strong reliance on the celebrated judgment of the full bench of the Hon ble Supreme Court rendered in the case titled „K.S. Puttaswamy and Anr. Vs. Union of India & Ors' reported as (2017) 10 SCC 1 wherein it was held as under:

"307. The sphere of privacy stretches at one end to those intimate matters to which a reasonable expectation of privacy may attach. It expresses a right to be left alone. A broader connotation which has emerged in academic literature of a comparatively recent origin is related to the protection of one's identity."

It is, therefore, asseverated by Ms. Gurjit Kaur that the publication of the subject book disclosing confidential information about her medical condition; breaches her right to privacy; in addition to amounting to a flagrant breach and violation of the code of conduct of Hockey India by which the Author is legally bound; and that therefore, the release of the book ought to be injuncted.

Issue notice.

Ms. Swathi Sukumar, learned counsel appearing on behalf of respondent no.1, the Publisher, accepts notice.

Let notice now be issued to respondent no.2/ the Author, by all permissible modes, including dasti as well as through electronic mail.

It is urged on behalf of the Publisher that there cannot be any confidentiality or privacy in relation to the medical condition of a sports personality in so far as it relates to the game. It is also urged that there cannot be any reasonable expectation of privacy or confidentiality as regards any medical condition that may affect the sport; of which Ms. Gurjit Kaur is admittedly a celebrated player.

It is further urged that the medical information qua Ms. Gurjit Kaur is already in the public domain.

Ms. Swathi Sukumar, Learned counsel appearing on behalf of the Publisher, has invited our attention in support of her contentions, to the ratio enunciated in the following decisions:-

- (i) Spelman v. Express Newspapers reported as [2012] EWHC 355 (QB)
- (ii) Pushp Sharma v. D.B. Corp Ltd. & Ors. reported as 2018 SCC OnLine Del 11537.

The learned Single Judge, having heard learned counsel appearing on behalf of Ms. Gurjit Kaur as well as the Publisher, declined an ad interim order for the following reasons, as elucidated in para 23 which observe as follows:-

"Having heard the counsels for the parties, I am not inclined to pass an ad interim order staying the launch of the Book without giving the defendants an opportunity to place their stand on affidavit. My reasons for not passing an ad interim order are as follows:

- (i) The Plaintiff does not deny that she suffers from the medical condition.
- (ii) There cannot be any confidentiality or privacy with regard to a medical condition of a sports personality. On a regular basis, there are news reports about injuries and medical conditions of sports personalities. Reference may be made to compilation of such articles handed over by the counsel for the defendant in Court.
- (iii) If the plaintiff has been playing with this medical condition for many years, the medical condition cannot remain confidential.
- (iv) The manuscript of the Book reveals that the Plaintiff told all other team mates of this medical condition and they all rallied around her.
- (v) There are laudatory references to the plaintiff in the manuscript of the Book that despite the medical condition of the plaintiff, she has achieved success in the international field."

At this ad interim stage, what the Court is required to consider is, whether there exists a prima facie case warranting the grant of an injunction, in the present case. We are of the considered opinion that, withholding thereof, would in fact, cause a greater risk of injustice than granting it. In this behalf, we observe that Clause 20 of the Code of Conduct by which the author of the subject book is clearly and unequivocally bound, required him contractually not to disclose information entrusted to him in confidence, inter alia, for personal gain or benefit or to damage the reputation of any person.

At this juncture, it could also be pertinent to point out that Clauses 14 and 15 pressed into service on behalf of the Publisher do not come to their aid inasmuch as, they refer ex facie to statements that are constructive and reasonable in the public interest.

Furthermore, nothing establishing the fact that the medical information contained in the subject book, as of now, was in public domain has been placed on the record. The assertion that Ms. Gurjit Kaur's teammates were privy to her medical condition, also does not come to the aid of the Publisher inasmuch as they would, *prima facie*, be also bound by the code of conduct which would a fortiori preclude them as well from disclosing or divulging the said confidential information to third parties. In any case, it is also an admitted position that all the information relating to the plaintiff's medical condition was divulged to the Author during his tenure as her coach.

The decision in Pushp Sharma (*supra*) canvassed on behalf of the Publisher in our respectful view, has no application to the facts and circumstances, antecedent and attendant, to the present *lis*, inasmuch as, that case related to an alleged libel for defamation and not the protection of privacy of an individual's medical condition.

Furthermore, there can be, in our view, no quarrel with the dictum of the Hon'ble Supreme Court that the right to protection of data such as medical information is one that falls squarely within the domain of the reasonable expectation paradigm.

In this behalf we are fortified by the decision of the Court in Spelman (*supra*) relied upon strongly by the Publisher itself, to the effect that:-

" 91. Even without the Second Source's Information I would find myself unable to come to a finding that the information is likely to have been obtained by way of a breach of confidence. If the information could only have come from persons, such as employees of the school, who owe duties to the Claimant, then I would make that finding. But the "many of [the Claimant]'s contemporaries [who] know...' (in the words of Ms. Bond) have not been further described. It is not shown that they do owe him any duties. If a person does not owe to the Claimant contractual or other professional or social duties of confidentiality, a different duty of confidentiality can still arise from the nature of the information in question itself. And everyone is bound by the law of privacy.

92. But whether there has been a breach of a duty of confidentiality, or privacy, arising from the nature of the information in question (as opposed to a contractual, professional or other relationship of trust) depends upon whether there is a reasonable expectation of privacy, or a public interest in disclosure. That is the very question that I have to address in this judgment."

There is furthermore no gainsaying, the legal situation that obtains, pursuant to the decision in K.S. Puttaswamy (*supra*), "that privacy is the constitutional core of human dignity. At a normative level, privacy subserves those internal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlement and interest which lie at the foundation of order and liberty".

In view of the foregoing, we are also prima facie of the view that, the Author further owes a duty of care to Ms. Gurjit Kaur, who was in his charge as an International Hockey Player at all relevant times.

We accordingly direct that the Publisher as well as the Author arrayed as respondent no. 1 and respondent no.2 respectively, in the present appeal, are hereby restrained from publishing the book or any other matter incidental thereto or any other matter related to subject book, in so far as, it relates to Ms. Gurjit Kaur's medical condition.

Ms. Swathi Sukumar, learned counsel appearing on behalf of the Publisher, takes notice and prays for time to file reply.

Let the reply be filed within a period of one week from today, with an advance copy to learned counsel appearing on behalf of the appellant; who may file rejoinder thereto, if any, within one week thereafter.

List on 07.12.2022.

A copy of this order be provided to learned counsel appearing on behalf of the parties, electronically and be also uploaded on the website of this Court forthwith.

SIDDHARTH MRIDUL, J.

AMIT SHARMA, J.

SEPTEMBER 19, 2022/ab Click here to check corrigendum, if any