

Delhi High Court

Vinai Kumar Saxena vs Aam Aadmi Party & Ors. on 27 September, 2022

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
% Judgment Reserved on : 22nd September, 2022  
Judgment Delivered on : 27th September, 2022  
+ CS(OS) 593/2022

VINAI KUMAR SAXENA ..... Plaintiff  
Through: Mr. Maninder Singh, Senior Advocate with Mr. Mahesh Jethmalani, Ms. Bani Dikshit, Mr. Ravi Sharma, Mr. Uddhav Khanna, Mr. Ishaan Karki, Mr. Raghav Tewari, Mr. Ashita Chawla, Mr. Navneet R., Mr. Prabhas Bajaj, Mr. Kishan Kumar, Mr. Wed Khalo and Ms. Anjani Kumar RG, Advocates.

versus

AAM AADMI PARTY & ORS. .... Defendants  
Through: Mr. Rajeev Nayar, Senior Advocate with Mr. Anupam Srivastava, Mr. Vasuh Misra, Mr. Rishikesh Kumar, Mohd. Irsad, Mr. Rakesh Kumar Sinha and Mr. Rajneesh Bhaskar, Advocates for Defendants No.1 & Defendant No.6.  
Mr. Sandeep Sethi, Senior Advocate with Mr. Karn Bhardwaj, Mr. Udit Malik, Mr. Rishikesh Kumar, Mohd. Irsad and Mr. Rajneesh Bhaskar, Advocates for Defendants No.2 and 3.  
Mr. Arun Bhardwaj, Senior Advocate with Mr. Manish Sharma, Mr. Ninad Dogra, Mohd. Irsad and Mr. Rajneesh Bhaskar, Advocates for Defendant No.4.

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Mr. Karan Sharma (AOR) with Ms. Sheenu Priya and Mr. Aditya Raj, Advocates for Defendant No.5.  
Mr. Ajit Warriar, Mr. Angad Kochhar, Mr. Arbaaz Hussain, Mr. Sajal Mendiratta and Mr. Akash Deep Singh, Advocates for defendant No.7.

CORAM:  
HON'BLE MR. JUSTICE AMIT BANSAL  
JUDGMENT

AMIT BANSAL, J.

I.A. 15606/2022 (O-XXXIX R-1 & 2 of CPC)

1. The present suit has been filed on behalf of the plaintiff seeking relief of permanent injunction and damages against the defendants on account of defamatory statements made on behalf of the defendants no.1 to 6 on the social media platforms of the defendants no.7 and 8.

2. The plaintiff is the Lieutenant Governor (LG) of Delhi and is a Constitutional Authority. The defendant no.1 is a political party, Aam Aadmi Party. The defendants no.2 to 6 are office bearers of the defendant no.1 Party.

3. It is the case of the plaintiff that the defendants no.1 to 6 have launched a barrage of personal attacks against the plaintiff, making unsubstantiated and baseless allegations that the plaintiff has indulged in corruption and money laundering to the tune of Rs.1,400,00,00,000/- (rupees one thousand four hundred crores) at the time of demonetization in November, 2016, while the plaintiff was the Chairman of the Khadi and Village Industries Commission (KVIC).

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4. The defendants no.1 to 6 have created and circulated hashtags, which include "#LG\_Saxena\_Ko\_Giraftar\_Karo" and "#LG\_Saxena\_Chor\_Hai". Further, the defendants no.1 to 6 have posted various tweets and videos in the form of interviews and press conferences on social media platforms of the defendants no.7 and 8 in order to tarnish the reputation of the plaintiff.

5. The defendants no.1 to 6 have also conducted interviews in the news media towards defaming the plaintiff. The whole foundation of the libelous posts/tweets and slanderous statements of the defendants no.1 to 6 is based on extracts of the statements of two accused persons, being Mr. Sanjeev Malik and Mr. Pradeep Kumar Yadav, former employees of KVIC, recorded pursuant to the FIR dated 10th July, 2017 bearing no. RC-DAI-2017-A-0026 filed at page 606 of the documents of the plaintiff.

6. To illustrate, some of the posts of the defendants no.1 to 6 are set out below:

7. In the FIR, the aforesaid accused are stated to have siphoned off approximately Rs.17,00,000/-, which the defendants no.1 to 6 have alleged as having been done under the pressure of the plaintiff,

who was then the Chairman of KVIC.

8. Attention of the Court has been drawn to the screenshots of the Signature Not Verified Digitally Signed By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 3 of 13 tweets/re-tweets of the defendants filed at pages 58 and 60 of the documents filed by the plaintiff, wherein the defendants no.1 to 6 have tweeted that the plaintiff has assigned a contract worth Rs.80,00,00,000/- (rupees eighty crores) to his daughter, while he was the Chairman of KVIC. Photograph of the plaintiff along with his daughter has also been posted with these tweets.

9. Yet another allegation has been made against the plaintiff that in violation of the rules of KVIC, during the tenure of the plaintiff as Chairman, cash was distributed to the weavers in Baghalpur, Bihar. Reference in this regard is made to the tweets by the defendant no.1, screenshots of which are filed at page 31 of the documents of the plaintiff and the video of the press conference dated 7th September, 2022 conducted by the defendant no.6, which has been made available for public viewing on the social media platform of the defendant no.8.

10. A legal notice dated 5th September, 2022 was also issued on behalf of the plaintiff to the defendants no.1 to 6 calling upon the defendants no.1 to 6 to refrain from making defamatory statements against the plaintiff. However, no reply has been received by the plaintiff.

11. Senior counsels appearing on behalf of the plaintiff have made the following submissions:

(i) The alleged statements made by the accused persons pursuant to the aforesaid FIR are fabricated and are not part of the statements made before the Investigation Agencies.

(ii) Even otherwise, the statements of the accused are in the nature of hearsay and therefore, on the basis of the aforesaid statements, the defendants cannot tarnish the reputation of the plaintiff.

(iii) The daughter of the plaintiff had rendered her services as an interior Designer Not Verified Digitally Signed By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 4 of 13 designer to KVIC on a pro bono basis. In this regard, attention of the Court is drawn to a letter dated 2nd September, 2022, issued by KVIC and filed at page 991 of the documents of the plaintiff.

(iv) The defendants no.1 to 6 have a huge following on social media and therefore, the defamatory statements being made by them have a wide reach. Attention of the Court has been drawn to page 140 of the plaint, wherein the number of followers of the defendants no.1 to 6 are mentioned.

12. Reference is also made to the judgment of the Supreme Court in *Institute of Chartered Accountants v. L.K. Ratna*, (1986) 4 SCC 537 followed by a Co-ordinate Bench of this Court in *Lakshmi Murdeshwar Puri v. Saket Gokhale*, 2021 SCC OnLine Del 3675.

13. Per contra, senior counsels appearing on behalf of the defendants no.1 to 6 have justified the impugned statements on the basis of truth and fair comment. It is stated that three allegations have been made against the plaintiff, which are on the basis of materials already placed on record by the

plaintiff:

(i) The allegations of corruption on the part of the plaintiff during the demonetization in November, 2016 are based on the statements given by the accused persons, as extracted at pages 52 and 53 of the plaint.

(ii) The daughter of the plaintiff was assigned a contract from KVIC for designing a lounge, while the plaintiff was the Chairman of KVIC. This fact is admitted by the plaintiff in paragraph 105 of the plaint.

(iii) Cash payments to various weavers in Baghalpur, Bihar were made when the plaintiff was the Chairman of KVIC. Reliance in this regard is placed on the order dated 30th August, 2016 passed in Civil Writ Jurisdiction Case No.2918 of 2016 by the Patna High Court.

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14. It is further stated that there is sufficient material available with the defendants to justify the aforesaid statements and therefore, no ad interim injunction order may be passed. It is submitted that where even a semblance of material is found in support of an allegedly defamatory statement, injunction cannot be granted and the veracity of the allegations must be tested during the course of the trial. Reliance in this regard is placed on Prakash Jha Productions v. Bata India Limited & Ors., (2011) 8 SCC 372, Kailash Gehlot v. Vijender Gupta and Others, (2022) 290 DLT 92 and Tata Sons Limited v. Greenpeace International & Anr., (2011) 178 DLT

705.

15. Issue notice. Notice is accepted by the counsels appearing on behalf of the defendants no.1 to 7.

16. Notice be issued to the defendant no.8 through all modes.

17. Reply(ies) be filed within four weeks.

18. Rejoinder(s) thereto, if any, be filed before the next date of hearing.

19. I have heard the counsels for the parties and perused the averments in the plaint as well as the documents filed along with the plaint.

20. Before turning to the submissions of the parties, it is deemed apposite to spell out the contours of free speech, as provided in Article 19 of the Constitution of India. Article 19(1)(a) of the

Constitution afford the right of freedom of speech and expression to all persons. However, the same is subject to restrictions under Article 19(2), which includes defamation. Therefore, the right to freedom of speech and expression is not an unfettered right in the garb of which defamatory statements can be made to tarnish the reputation of a person. The fundamental right to freedom of speech has to be counterbalanced with the right of reputation of an individual, which has Signature Not Verified Digitally Signed By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 6 of 13 been held to be a basic element of the right to life consecrated in Article 21 of the Constitution of India. Reference in this regard may be made to the judgment in Umesh Kumar v. State of Andhra Pradesh and Another, (2013) 10 SCC 591.

21. At this prima facie stage, the Court has to adjudicate whether there is an element of truth in the impugned content and/or whether it qualifies for the defence of fair comment. In this backdrop, I will examine the three allegations made by the defendants no.1 to 6 against the plaintiff.

### I. ACTS OF CORRUPTION DURING DEMONETIZATION

22. The statements made by the defendants no.1 to 6, that the plaintiff was involved in any acts of corruption at the time of demonetization, are completely unsubstantiated. There is nothing to suggest that the statements extracted at pages 52 and 53 of the plaint and relied upon in the tweet of 29th August, 2022 are made by the accused persons before the Investigating Agency. Even if the aforesaid statements are taken to be correct, the said statements are completely based on hearsay, being premised solely on the accused persons being told by other individuals that the said acts were to be done at the behest of the Chairman. Further, the subject matter of the aforesaid statement is a sum of Rs.17,00,000/-, which has been exaggerated by the defendants many times over, to a fanciful sum of Rs. 1,400,00,00,000/- (rupees one thousand four hundred crores).

### II. CONTRACT ASSIGNED TO THE PLAINTIFF 'S DAUGHTER

23. The defendants no.1 to 6 have also made allegations in respect of a contract of Rs.80,00,00,000/- (rupees eighty crores) being assigned to the daughter of the plaintiff while the plaintiff was the Chairman of KVIC. Once Signature Not Verified Digitally Signed By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 7 of 13 again, the defendants have made unfounded allegations that an imaginary sum of Rs.80,00,00,000/- (rupees eighty crores) has been paid to the daughter of the plaintiff. There is no material on record to substantiate the aforesaid statement. Further, KVIC in its letter dated 2nd September, 2022 has clarified that no money was paid to the daughter of the plaintiff for the professional services rendered by her.

### III. CASH PAYMENTS MADE TO WEAVERS IN BIHAR

24. Counsels for the defendants have placed reliance on the order dated 30th August, 2016 passed in Civil Writ Jurisdiction Case No.2918 of 2016 by the Patna High Court in support of the statements made by the defendants that cash was distributed to the weavers in Bhagalpur, Bihar while the plaintiff was the Chairman of KVIC. I have perused the order of the Patna High Court. There is nothing in the said order that indicts the plaintiff in any manner. Even if some irregularities

occurred while the plaintiff was the Chairman of KVIC, the plaintiff cannot be made personally liable for the same. This cannot be the basis of a personal attack against the plaintiff.

25. On behalf of the defendants, it has also been vehemently contended that in cases of defamation, so long as some material has been placed on record, the veracity of the allegations can only be tested in trial and the adequate remedy would be damages, not interim injunction. I do not agree with the said submission. In appropriate cases where the Court is of the view that statements are unsubstantiated and have been made in a reckless manner without regard to the truth, in order to cause injury to the reputation of the plaintiff, the Court would be justified in granting an interim injunction. If the aforesaid submission of the defendants is accepted, it would give the Signature Not Verified Digitally Signed By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 8 of 13 defendant a free reign to continue making defamatory statements against the plaintiff and continue to tarnish his reputation. Therefore, the Court cannot be powerless in such a situation. After suffering the brunt of such defamatory content, it is difficult to contemplate a complete restitution through damages. Such cases demand immediate injunctive relief and the Court cannot wait for the defendants to place their response on record.

26. In the present case, the plaintiff, being a Constitutional Authority, cannot meet the personal attacks being made by the defendants against him by taking resort to social media platforms. The defendants have not even bothered to respond to the legal notice dated 5th September, 2022 sent on behalf of the plaintiff. Therefore, the only remedy available for the plaintiff to protect his reputation and prevent erosion of the same would be to approach the court of law and seek injunctive relief.

27. It has been submitted on behalf of the defendants that the plaintiff being a person in public life cannot claim right to privacy in the same manner as that as an ordinary individual. In R. Rajagopal alias R. R. Gopal and Another v. State of Tamil Nadu and Others, (1994) 6 SCC 632 cited on behalf of the defendants, the Supreme Court has observed that in matters not relevant to discharge of his duties, the public official enjoys the same protection as any other citizen. Relevant part of the judgment is set out below:

"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, Signature Not Verified Digitally Signed By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 9 of 13 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 Signature Not Verified Digitally Signed By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 10 of 13 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."

28. In Kailash Gehlot (supra) relied upon by the defendants, one of the factors that weighed with the Court in not granting interim injunction was that the defamatory comments were in respect of discharge of public functions by the plaintiff in his capacity as a minister. Admittedly, the allegations made in the present case do not pertain to the plaintiff discharging his official duties as Lieutenant Governor of Delhi.

29. Further, the reliance placed by the defendants on the judgments of Tata Sons (supra) and Prakash Jha Productions (supra) is misplaced, as the said judgments are in the context of defamation of a corporate entity, whereas the present case relates to defamation in respect of an individual.

30. On a prima facie view, the various statements/interviews/press conferences/tweets/re-tweets/hashtags made by the defendants are per se defamatory. The same have been made in a reckless manner, without any factual verification, in order to tarnish the reputation of the plaintiff. It cannot be gainsaid that reputation of a person is earned after years and the same cannot be tarnished by any other individual in a casual manner. The damage caused to the reputation of an individual is immediate and far-reaching on the internet. So long as the impugned content continues to be in circulation and visible on social media, it is likely to cause continuing damage to the reputation and image of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendants. Grave and irreparable Signature Not Verified Digitally Signed

By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 11 of 13 harm and injury would be caused to the reputation of the plaintiff if the aforesaid defamatory content continues to exist on the internet and the social media platforms of the defendants no.7 and 8 and/or if the defendants are permitted to continue making defamatory statements of this nature against the plaintiff.

31. In view of the aforesaid, an ad interim injunction is passed against the defendants no.1 to 6 in the following terms:

(i) The defendants no.1 to 6 are restrained from posting any defamatory or factually incorrect tweets, re-tweets, hashtags, videos of press conferences/interviews, comments, captions and taglines against the plaintiff and/or his daughter in any manner whatsoever, which are in the nature of the content set out in the plaint.

(ii) The defendants no.1 to 6 are directed to delete/remove all the defamatory or factually incorrect tweets, re-tweets, hashtags, videos of press conferences/interviews, comments, captions and taglines against the plaintiff and/or his daughter published on the social media platforms of the defendants no.7 and 8 respectively, as set out in documents 10 to 13 of the documents filed by the plaintiff, and any other allegations, hashtags, videos of press conferences/interviews, posts, tweets, re-tweets, comments, captions and taglines similar thereto.

32. In the event that the defendants no.1 to 6 fail to comply with the aforesaid direction within 48 hours of the pronouncement of this judgment, the defendants no. 7 and 8 are directed to take down the hashtags as set out in documents 12 and 13 and the tweets, re-tweets and videos published on the social media platforms of the defendants no.7 and 8 respectively as per the URLs set out in documents 10 and 11 of the documents filed by the Signature Not Verified Digitally Signed By:AMIT BANSAL CS(OS) 593/2022 Page12:26:21 Signing Date:27.09.2022 12 of 13 plaintiff as well as other allegations, hashtags, videos of press conferences/interviews, posts, tweets, re-tweets, comments, captions and taglines similar thereto, which appear in the plaint. In this regard, the plaintiff is at liberty to provide URLs to the defendants no.7 and 8 of any allegations, hashtags, videos of press conferences/interviews, posts, tweets, re-tweets, captions and taglines by the defendants which need to be taken down.

33. Since none appeared for the defendant no.8 when submissions on behalf of the parties were heard and judgment was reserved, a copy of this judgment be supplied to the defendant no.8 by the counsel for the plaintiff.

34. List before the Joint Registrar on 22nd November, 2022.

35. List before the Court on 6th February, 2023.

AMIT BANSAL, J.



SEPTEMBER 27, 2022 at Signature Not Verified Digitally Signed By:AMIT BANSAL CS(OS)  
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