

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 2nd May, 2019**
10th April, 2019

+ **CS(OS) No.1717/2007**

INDIAN POTASH LTD.

..... Plaintiff

Through: Mr. Sudhir K. Makkar, Sr. Adv. with
Ms. Meenakshi Singh, Ms. Saumya
Gupta & Mr. Abhishek Chaudhary,
Advs.

Versus

MEDIA CONTENTS AND COMMUNICATION SERVICES

(INDIA) PVT. LTD. & ANR.

...Respondents

Through: Mr. Ajay Kapur, Sr. Adv. with Mr.
Saurabh Seth, Mr. Davesh Bhatia &
Mr. Kamal Taneja, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has sued the defendants Media Contents & Communication Services (India) Pvt. Ltd and The Editor, Star News for recovery of damages of Rs.11 crores for defamation, pleading that (i) the plaintiff is a joint sector company under the administrative control of the Department of Fertilizers, Union Ministry of Chemicals & Fertilizers; (ii) over 90% of the equity of the plaintiff company is held by government funded State Cooperative ventures and Public Sector Companies; (iii) the plaintiff is primarily engaged in the business of marketing and sale promotion of Potassic and Non-Potassic fertilizers and their distribution, besides owning a dairy division and cattle feed plant; (iv) the defendants telecast on Star News channel, on 27th April, 2007 and 28th April, 2007 regarding sale of adulterated / synthetic milk in western UP; in the said

telecast the name of the plaintiff was sought to be linked with the sale of adulterated / synthetic milk in Western UP; (v) the news feature imputed that officers of the plaintiff were associated with sale of adulterated / synthetic milk; (vi) only a fleeting appearance of Mr. A.K. Shrivastav, a non-executive level employee of the plaintiff in the Quality Control Department of the plaintiff was shown in the programme; (vii) though none of the senior management of the plaintiff saw the telecast but the same was brought to the notice of the plaintiff company through friends and well wishers of senior management of the plaintiff company; (viii) the telecast by the defendants is a glaring example of irresponsible journalism oriented to sensationalize issues without verifying the authenticity of the report; (ix) “the news feature appears to be motivated with extraneous considerations”; (x) in the telecast, no presence of any chemical substance, in the production plant of the plaintiff at Sikandrabad, UP or the packaging section of the plaintiff in Kundli, Haryana where the milk is actually packed, is shown; (xi) there was no material whatsoever to link the plaintiff or to prove association of the plaintiff with the production or sale of adulterated / synthetic milk; (xii) the plaintiff does not source any milk either from Hapur or Meerut, which were the places mentioned in the story telecast by the defendants as the centres for production and sale of adulterated / synthetic milk; (xiii) the telecast imputes sale by the plaintiff of adulterated / synthetic milk in Karol Bagh, Rajouri Garden and in other areas of West Delhi; (xiv) the plaintiff does not sell any milk in retail at all and supplies milk only to top institutions of the country who have their own independent quality checks and control in respect of packaged milk; (xv) no verification of the imputations made against the plaintiff was made from

the plaintiff; (xv) no person has made any complaint in respect of the milk produced by the plaintiff since no person gets the milk produced by the plaintiff or consumes the same; (xvi) the telecast “has had the effect of lowering the esteem of the plaintiff in the eyes of the general public. The loss to the reputation of the plaintiff and constituents of the plaintiff most of whom are Multi-State Co-operatives is incalculable as the plaintiff built the said reputation over decades of undaunted efforts in the field of agriculture and fertilizers and by observing and upholding the high business standards and commercial practices in its dealings”; (xvii) “the programme telecast by the defendants has caused the irreversible damage to the reputation of the plaintiff and has adversely effected the business prospects of the plaintiff as the reputation of the plaintiff has definitely been lowered in the eyes of general public and it may take several years for the plaintiff to salvage the damage to its reputation and redeem the faith of the general public”; (xviii) “the plaintiff submits that in the story telecast by the defendants which was of 45 minutes of duration less than one minute was devoted to the conversation with Mr. A.K. Shrivastav, the employee of the plaintiff company and the fleeting appearance of the junior level employee does not in any manner reveal the involvement of the plaintiff company or show that it had any role to play in the production or sale of adulterated / synthetic milk in western U.P.”; (xix) “the programme run by the defendants was stage managed in order to tarnish the reputation of the plaintiff company and lower its esteem in the eyes of the general public”; and, (xx) the Managing Director of the plaintiff, vide e-mail dated 28th April, 2007 and communication dated 1st May, 2007 informed the defendants that the plaintiff had no role in the production or sale of adulterated/synthetic milk

and was ready and willing to work with the defendants to prevent the production and sale of adulterated / synthetic milk.

2. The suit was entertained and summons thereof ordered to be issued.
3. The defendants have defended the suit pleading that, (a) on receipt of information, the defendants verify the version of both sides and cover the same fairly in their news report; (b) for a case of defamation to be made out qua defendants engaged in the business of reporting news items and features, the plaintiff must make specific averments that the defendants have failed in the test applicable to them; (c) the pleadings in paras 'B' and 'C' of the Preliminary Submissions are as under:

"B. That the plaintiff has failed to take note of the fact that the news story sought to be impugned by the Plaintiff was based upon the version given by Mr. A.K. Srivastava working at the Plaintiff company's Quality Control Department who had revealed that chemicals were being added as preservatives to the outsourced milk at the Plaintiff's Sikandrabad unit. That the Plaintiff's said employee further went on to state that urea, synthetic powder, detergents and like substances were also mixed to "adulterate" the milk. That further, two of the Plaintiff's employees categorically make statements in the CD supplied by the Plaintiff as regards the irregularities in the procurement process of milk as also qua the irregularities during the time when the tankers filled with milk are cleared and by their own admission they have permitted and perpetuated milk adulteration.

C. That interestingly, the CD provided by the Plaintiff itself shows one Mr. Balakrishna who, at the time of the story was working as a Laboratory Assistant with the Plaintiff and categorically stated that there are no checks done for the detection of synthetic milk. He further goes on to state that in case the milk crosses permissible levels of adulteration, hydrogen and caustic is put in to cover the same so that it is not caught in the sample testing. Mr. Balakrishna further goes on to state in the meeting with him that the milk tankers received by the Plaintiff Company come with prior clearance due to the illegal nexus between them and the suppliers and no further checking is carried out by the Plaintiff Company. He also stated that the GM as also the other officers were involved in the nexus and took percentages. Mr. Balakrishana and a Mr. Dhiraj and Mr. Ranvir, further went on to state that milk never goes waste even if it is spoilt, sour or curdled since it is mixed with fresh milk and chilled, after which chemicals are added to it, so that the spoilt milk is not detected. It was also their own version that fertilizers, grass-fodder, urea, chemicals, synthetics, dalda, oil, maltose, alcohol, water, essence, tasla and safedi are mixed with milk in order to pass off spoilt and rotten milk as good milk. It was further stated that the said spoilt milk is then sold to known dairies like 'Mother Diary' and in case the milk is so spoilt that it cannot pass off there, then it is sold to brands like 'Parag'. It was further stated that even spoilt and spurious milk when mixed with chemicals becomes fresh milk. It has further been stated that

accordingly, if the spoilt milk is so bad that it cannot be sold as A Grade milk, it is then disposed off as D Grade milk from which milk powder is made. It was also stated that spoilt milk, sour milk, tarter milk and non-consumable synthetic milk is easily passed off for making milk powder. Interestingly, they go on to state that stocks are not rejected at all and milk has not been rejected anywhere till date, no matter how bad the stock is, firstly due to the nexus and secondly, due to the chemicals used which turn completely sour and rotten milk to look like fresh milk. The justification for the same was stated to be that since the demand for the milk is much more than the supply, the shortage is met by purchasing rotten milk and mixing it with good milk as also safedi whereby the volume and the gravity of the milk is artificially increased. It was stated that by adding safedi to one litre of good milk, 15 litres of milk are produced which is then sold in the market without any such knowledge thereof to the consumers who unsuspectingly purchase it as and for the price of fresh milk”,

(d) the story was telecast not with the specific intention to defame the plaintiff but to bring to the scrutiny of the public at large the malpractices and lapses on the part of the Quality Control Departments of the whole dairy industry in the region; (e) the story cannot be termed as defamatory as it was carried in good faith and for public good and is covered & protected by First, Second, Third and Ninth exception to Section 500 of Indian Penal Code, 1860; (f) the defendants rely upon fair comment and truth as a

defence; (g) the suit interferes with the media's rights under Articles 19(1)(a) and 19(1)(g) and Article 21 of the Constitution of India and the right to information of the people; reliance is placed on *Jawaharlal Darda Vs. Manoharrao Ganpatrao Kapsikar* (1998) 4 SCC 112, *Mother Dairy Foods & Processing Ltd. Vs. Zee Telefilms Ltd.* AIR 2005 Del 195 and *Khushwant Singh Vs. Menaka Gandhi* AIR 2002 Del 58; (h) the defendants carry news stories on their channel "Star News", only after satisfying themselves regarding the authenticity and credibility of the reportage and the same is carried out in good faith, for the information of the public at large and is not motivated in any manner; (i) the entire telecast and its transcript has to be seen as a whole to see whether a case for defamation is made out; (j) the telecast was not intended to defame any particular individual; (k) the defendants, vide their letter dated 18th September, 2007 in response to the letter dated 24th May, 2007 of the plaintiff had informed the plaintiff so but the plaintiff has still brought the present suit; (l) after clear interrogations and getting authentic report from the field officers of the plaintiff company, the defendants were under no obligation to discuss or verify them with the higher officials or senior management of the plaintiff company who would have merely denied the same and attempted to destroy all evidence of adulteration from the company premises before the telecast; (m) it was the plaintiff's own officials who gave information, explained and showed the process of large scale adulteration to the reporters of the defendants; and, (n) the plaintiff has not given any particulars of the damage suffered.

4. Though a replication is found to have been filed by the plaintiff but only of denial of averments in the written statement and reiteration of contents of the plaint. It may however be mentioned that in response to para C of preliminary submissions in written statement of the defendants naming Balakrishna, Dhiraj and Ranvir, employees of the plaintiff, the plaintiff stated “It is denied as incorrect that any person by the name of Balakrishna was employed with the plaintiff as Laboratory Assistant, as alleged” and there was no specific denial or response with respect to Dhiraj and Ranvir.

5. On the pleadings of the parties, on 20th July, 2009, the following issues were framed:

- (i) Was the news item concerning the plaintiff telecast on Star News on 27th / 28th April, 2009, defamatory to the plaintiff? OPP
- (ii) If the answer to issue (i) is in the affirmative, is the plaintiff entitled to damages and if so, to what extent? OPP
- (ii) Relief.

and the parties relegated to trial.

6. The plaintiff in its evidence has examined three witnesses including A.K. Shrivastav featured in the telecast and the defendants in their evidence have examined two witnesses and closed their evidence on 8th February, 2019.

7. The counsels were heard on 6th March, 2019, 13th March, 2019, 8th April, 2019 as well as today and though the file was sent to the Chamber for
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dictating judgment on the same day but on request, liberty was also given to the counsels to file written submissions if so desire and the counsels have also submitted their written submissions / arguments on 12th April, 2010 which are taken on record.

8. During the hearing on the earlier dates, attempts for amicable settlement were also made but did not fructify. Suffice it is to state, the contention of the senior counsel for the plaintiff during the hearing is, that (i) though the telecast of the defendants imputed adulteration of milk to the plaintiff but the defendants have failed to prove the truth thereof and the witnesses of the defendants, though claimed milk from the plaintiff to have been got tested, failed to produce before this Court the reports of the tests claimed to have been got done; (ii) though the defendants in the telecast, besides A.K. Shrivastav showed two other employees of the plaintiff but have failed to prove that they are indeed the employees of the plaintiff and the plaintiff has denied that they were the employees of the plaintiff; (iii) A.K. Shrivastav of the plaintiff though shown in the telecast is not shown speaking and only in the voiceover statements are attributed to him; (iv) the impugned telecast was outsourced by the defendants and the defendants did not verify the correctness thereof before telecast and washed their hands of authenticity of what was reported.

9. During the hearing, I enquired from the senior counsel for the plaintiff, whether the plaintiff has proved any loss / damage suffered.

10. The senior counsel for the plaintiff candidly admitted that the plaintiff has not proved any loss/damage suffered.

11. The senior counsel for the defendants, during the hearing pointed out that (i) the plaintiff in its evidence has admitted that sale of milk constitutes only a very small i.e. 0.15% of the business of the plaintiff; (ii) there was no need for the defendants to prove the truth since the telecast was of the statements of the employees of the plaintiff's itself; and, (iii) the Managing Director of the plaintiff appearing as PW1, in cross-examination on 31st May, 2012 admitted that he visits the Packaging Sections only once a year and the Dairy Division about three or four times a year and was not involved in day-to-day functioning of the plants at Kundli and Sikandrabad; he also admitted that the practice of adulterating milk was prevalent in India in the unorganized sector and A.K. Shrivastav shown in the telecast was the Head Chemist of the plaintiff at Sikandrabad and that Balakrishna shown in the telecast had falsely represented to be the employee of the plaintiff; on being asked the basis of the claim of Rs.11 crores, he stated that the same was "based on the cost which the plaintiff company will have to bear to release statements and advertisements if the plaintiff company wins the case to restore our image."

12. I also enquired from the senior counsel for the plaintiff, whether the plaintiff, statutorily required to maintain a list of its employees, has produced the list of its employees or the employees register and whether any witness of the plaintiff denied the telecast being shot in the premises of the plaintiff.

13. The senior counsel for the plaintiff again candidly admitted that it is not so but drew attention to the affidavit by way of examination-in-chief of PW2 Sudesh Rana, deposing that no person by the name of Balakrishna

was employed with the plaintiff as a Laboratory Assistant. On further enquiry that the same did not amount to denial of employment of Balakrishna, the senior counsel for the plaintiff drew attention to the cross-examination recorded on 31st May, 2012 of PW1 Managing Director of the plaintiff to the effect that no person by the name of Balakrishna was employed with the plaintiff company and that the person shown, falsely represented to be employed with the plaintiff company.

14. The senior counsel for the plaintiff, in his written submission has referred to:

(i) ***South Hetton Coal Co. Vs. North-Eastern News Association Ltd.*** [1894] 1 Q.B. 133 and ***Jameel (Mohammad) Vs. Wall Street Journal Europe*** [2007] 1 A.C. 359, relied upon in ***Hindustan Unilever Ltd. Vs. Rackitt Benckiser India Ltd.*** 207 [2014] DLT 713 to contend that a corporation's right to damages at large i.e. without pleading or proving actual loss, in cases of defamation has been consistently recognized and the same rests on the principle that the law presumes that some damage must flow from a defamatory statement irrespective of whether defamed person is a natural person or a legal person.

(ii) ***Union Benefit Guarantee Co. Ltd. Vs. Thakorlal P. Thakor*** AIR 1936 Bom 114 holding that defence of fair comment is available only when the underlying fact on which the comment is made is true and qualified privilege available to journalists is subject to the test that the defamatory imputation must be the product of fair and reasonable journalism.

(iii) **Rookes Vs. Barnard** [1964] A.C. 1129 *inter alia* holding that exemplary damages may be awarded in cases where defendant's conduct is calculated to make a profit for himself which may exceed the compensation payable to the plaintiff.

(iv) **Rustom K. Karanjia Vs. Krishnaraj M.D. Thackersey** AIR 1970 Bom 424 relying on **Broadway Approvals Vs. Odhams Press** [1965] 1 W.L.R. 805, holding that a more direct pecuniary benefit would have to be shown to make a newspaper or any other defendant liable for punitive damages.

15. The senior counsel for the defendants in his written statement has referred to: (a) **Jawahar Lal Darda** supra; (b) **Pushp Sharma Vs. D.B. Corp. Ltd.** 2018 SCC OnLine Del 11537; (c) **Mother Dairy Foods & Processing Ltd.** supra; (d) **S. Rangarajan Vs. P. Jagajivan Ram** 1989 (2) SCC 574; and, (e) **Khushwant Singh** supra.

16. There is on record in Part-I file at pages 134 to 148, a transcript of the telecast filed by the plaintiff. Though the same has not been admitted into evidence, but both the senior counsels having proceeded on the premise of the same being an accurate transcript, I have perused the same and have also watched the telecast, compact disk whereof is filed along with the plaintiff's documents.

17. The transcript of the telecast of the programme "Satyamev Jayate" shows the same to be directed at exposing adulteration in milk, and the part concerning the plaintiff at pages no.137, 142 and 144 is as under:

“Reporter: Milk of synthetic powder is durable

Srivastav: Yes we add powder

Reporter: You never know what ingredients are mixed in this synthetic product like urea etc.

Srivastav: It is all fair in this trade chalta hai.

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These are small fishes of duplicate milk trade, let us now see Mr. A.K. Sriivastav who is head chemist in Indian Potash Limited at Sikanderabad, UP adjoining Bulandshahar. And here is Balkrishan, who is Lab assistant in IPL and a refrigeration mechanic. This IPL is a unit under union chemical and fertilizer ministry. Milk producers, farmers and Dairy owners collect their milk in this factory to load further in big tankers for transportation to different destinations.

The assignment for IPL is to stop duplicate milk supply, but a few greedy staff member are involved in malafide setting.

Reporter: Tell me this setting is with GM or all the three?

Balkirsh: It is only with GM.

Reporter: Any rough idea, what monthly he will take?

Balkrishan:- Only GM can tell this.”

XXXX

“We are restricted yet to western UP and hence not named big brands. We have only tried to reveal the state of affair in Western UP, where lot of careless attitude is visible even in IPL a government owned unit.

This is IPL means Indian Potash Limited under union Chemical and fertilizers Ministry to arrange and provide feretiliser and seeds to local farmers. It is responsible to transport milk for marketing from small dairies to big towns. A milk collection centre is also established here, where 50 to 60 thousand litres is collected everyday and further transported for marketing in Delhi after its quality testing.”

18. There is no mention in the transcript of any employee of the plaintiff named Ranvir. Though conversation with one Dhiraj is recorded but he is described as an employee of Pal Dairy and not of the plaintiff. Neither counsel also referred to the said two persons.

19. A viewing of the actual telecast from the compact disk filed by the plaintiff shows the aforesaid transcript to be authentic, save that the telecast, for some length of time, also has a scroll reporting “IPL ke kuch karamchari shamil”, “IPL mein jaanch pe laparwahi”, “IPL ke chemist ka khulasa”, “Indian Potash Ltd. ke karamchari shamil” and “IPL se dairyon ko supply”.

20. Though the senior counsel for the plaintiff argued that there is no conversation recorded but not only is the said argument contrary to the transcript but also to the plaint admitting such conversation. Reading and seeing the transcript also shows that the telecast having video and audio recording of conversation with A.K. Shrivastav, though evidently from a hidden camera.

21. It is quite evident on watching the telecast that the persons shown in the telecast, including A.K. Shrivastav, were not aware that they were being

recorded and the telecast, insofar as in this respect, is in the nature of a sting operation.

22. Else, the segment of the telecast qua plaintiff forms a minuscule portion of the telecast, which could even be missed on batting an eyelid, save for the scroll aforesaid.

23. On watching the telecast and reading its transcript, the imputation therein qua the plaintiff is, that though the plaintiff has been set up by the Government of India to help the farmers / dairy owners find a market for their milk, but the employees of the plaintiff are either indulging in adulteration or are negligent in testing. No blame is put in the telecast on the plaintiff as a juristic person in itself. The averments in the plaint show the plaintiff also to have so understood the telecast.

24. What immediately strikes one in the face is, that the management of the plaintiff, even though itself did not watch the telecast, after being informed of it by friends and well wishers as is pleaded, instead of investigating whether what was attributed in the telecast to the employees of the plaintiff, was correct or not, rushed to write to the defendant. It is quite obvious from the e-mail dated 28th April, 2007 claimed to have been sent by the plaintiff to the defendant and copy of which has been filed by the plaintiff with its documents, though again not proved, that the same was sent without even watching the telecast. The said e-mail *inter alia* states:

“We have been given to understand that on 28th of April,07, you have done a story on sale of adulterated / synthetic milk in Western U.P. and further you have linked it with our Company namely Indian Potash Ltd. (IPL). The Senior

Management personnel of the Company were busy with the Annual Managers Meeting and none of us, therefore, has seen the telecast but based on information received from our friends and families, we would like to make the following observations so as to prove that your story suffers from many material and factual flaws:

1.
2.
3. *The story done by your correspondents alleges 20 IPL officers association with this sale of adulterated / synthetic milk. While some photographs were shown, please note that only one of them, namely Mr. A.K. Shrivastav is non-Executive level employee of the Company in the Quality Control Department.*
4.
5.
6.
7. *In this so called sting operation, association of IPL officers with such unscrupulous elements has not been captured on camera. None of our people have been shown compromising their integrity or the interest of the Organization against any allurements.*

Having said that which as stated above is based on hear-say reports, may we request you to kindly provide us with a tape of the said story at a cost which may be indicated. We are very keen ourselves that should there be any truth in your expose, we will be glad to associate your people with a transparent inquiry and the guilty persons will be given severest punishment promptly. Please respond at your earliest convenience at our following address and contact numbers since we believe in best ethics of public accountability.”

25. In subsequent letter dated 1st May, 2007, served by the plaintiff on the defendant and proved as Exhibit P-1, the plaintiff *inter alia* stated:

“A reconstruction of this story from all available accounts clearly gives us the impression that your so-called expose was done solely with the objective of harming the reputation or our company. In a programme lasting 45 minutes, less than one minute has been devoted to a conversation with Mr. A.K. Srivastava of our plant and the fleeting appearance of this junior employee of the company does not in any way prove his involvement with anything sinister that has been attributed to him repeatedly in the scroll.”

26. The plaintiff followed up the aforesaid communication with the legal notice dated 24th May, 2007 proved as Exhibit P2 and thereafter instituted this suit on 11th September, 2007.

27. There is no pleading or evidence of the plaintiff having conducted any investigation into negligence and guilt of its employees imputed in the telecast and though the plaintiff claimed that A.K. Shrivastav, conversation with whom admittedly is shown in the telecast, was a junior employee but the senior management of the plaintiff, did not enquire into his conduct even.

28. Though A.K. Shrivastav, in his affidavit by way of examination-in-chief deposed that he saw the telecast on 28th April, 2007, it is not the case that A.K. Shrivastav brought the same to the notice of the management of plaintiff, as he in ordinary course of human conduct was expected to do. The only inference is that A.K. Shrivastav, inspite of seeing the telecast on 28th April, 2007, chose to keep quiet and not dispute.

29. All this leads to the conclusion that the plaintiff, though initially in e-mail dated 28th April, 2007 expressed intent to associate with defendants to enquire and punish its guilty employees, rather than being interested in

finding out whether any of its junior employees handling the milk business at the spot, at least one of whom figured in the telecast, understood by the plaintiff also as a sting operation, were involved in adulteration, was more interested in spending money on this litigation, paying court fees of Rs.10,76,000/- besides lawyers fees and other expenses.

30. As far as the emphasis, in the arguments of the senior counsel for the plaintiff, of the defendants having not proved employment of Balakrishna with the plaintiff, a perusal of the plaint as set out hereinbelow shows that the plaintiff, while instituting the suit, did not dispute employment of Balakrishna. In para no.12 of the plaint, it was pleaded as under:

“12) The Plaintiff submits that in the story telecast by the Defendants which was of 45 minutes of duration less than 1 minute was devoted to the conversation with Mr. A.K. Shrivastav, the employee of the Plaintiff company and the fleeting appearance of the junior level employee does not in any manner reveal the involvement of the Plaintiff company or show that it had any role to play in the production or sale of adulterated / synthetic milk in western UP. The programme run by the Defendants was stage managed in order to tarnish the reputation of the Plaintiff company and lower its esteem in the eyes of the general public.”

The plaintiff, in the aforesaid paragraph referred to A.K. Shrivastav as employee of plaintiff as well as to a junior level employee, obviously referring to Balakrishna. In any case, there is no plea that Balakrishna was not an employee of plaintiff. As aforesaid, even in replication there was no specific denial of employment of Balakrishna and it was only stated that there was no Laboratory Assistant by the name of Balakrishna. The plaintiff however during the trial appears to have slowly built up the case of denial

of employment of Balakrishna, without however providing the employees register, statutorily required to be maintained.

31. Plaintiff is a large, board managed company, the Directors and Managing Director at the helm whereof cannot be expected to personally conduct each and every affair of the businesses of the plaintiff. The plaintiff, as a prudent, honest and *bona fide* governmental business entity engaged in business of food products, on being presented with the expose of the negligence and guilt of its employees, ought to have immediately been put to enquiry and determined whether there was any truth in it. It is nowhere denied that the person shown in the telecast as A.K. Shrivastav of plaintiff at least is indeed A.K. Shrivastav, employee of plaintiff and as aforesaid, it is evident from watching the telecast that A.K. Shrivastav was unaware of the conversation with him being video-graphed and recorded. A.K. Shrivastav has not denied that the voice audible on the telecast and shown to be emanating from him is not his voice. The conduct of A.K. Shrivastav, of inspite of seeing the telecast on 28th April, 2007, not bringing it to the notice of senior management of the plaintiff, which claims to have learnt thereof from their friends and family, also should have put the senior management of the plaintiff to enquiry. Once it was so, ordinarily the management of the plaintiff should have, before rushing to the Court, satisfied itself by conducting a proper enquiry into what was attributed in the telecast to the employees of the plaintiff.

32. I reiterate, there is no plea or evidence, of the plaintiff having conducted any such investigation or enquiry or outcome thereof. There is

no averment of any questions having been put to A.K. Shrivastav, admittedly figuring in the sting operation.

33. The conduct of the management of the plaintiff though initially expressed desire to investigate and put its house in order, of having ultimately not done so and having instead opted to make the matter subjudice, to avoid any further questions being raised, specially by the Ministry of Chemicals & Fertilizers, does not behove well, considering its status and rather shows a tendency of brushing dirt under the carpet and protecting its employees, instead of acting in public interest. Though the impugned telecast was directed against the employees of the plaintiff, as distinct from the plaintiff and its management but the plaintiff and its management, without enquiring, chose to totally identify itself with the employees, not maintaining the essential difference between a company and its employees.

34. Though undoubtedly the defendants also have not proved the truth of the telecast, in so far as against the plaintiff and on which I had questioned the senior counsel for the defendants but on further consideration am of the view that there were no means available to the defendants to prove the truth against the plaintiff. The defendants, in the said telecast cautioned the viewers of the rampant practice of adulteration of milk by suppliers thereof, the methodologies adopted therefor and the various items/elements/goods mixed with the milk, to lengthen its life, to cure the milk which has turned bad, and the harmful effects thereof, by interviewing and secretly recording the conversations with the people involved, admitting so. Two of the persons so shown are A.K. Shrivastav and Balakrishna of the plaintiff. A.K.

Shrivastav is shown sitting in some office and since immediately before showing him, the premises with board of plaintiff are shown, what is conveyed is that A.K. Shrivastav is sitting in his office in the premises of plaintiff. I have wondered, how the defendants could have entered the premises of the plaintiff and collected evidence, after the plaintiff and its officers and employees had already been cautioned by becoming subject matter of the sting operation. Similarly, the defendants are right in pleading that no purpose would have been served by seeking comments of the senior management of the plaintiff.

35. Sting operations, possible in the recent past, are an outcome of advancement in technology which permits video and audio recording, without the target person coming to know. Such sting operations occupy a place of their own and are today an important part of the society. Misdeeds are always clandestine, shrouded in secrecy and rarely proved owing to complexity of all involved therein, and with hardly any evidence. None indulging in such misdeeds, admits thereto, least to journalists and media persons. The true picture is presented, by laying a trap. In the subject telecast also, the persons depicted have been recorded, by the journalists/media persons portraying themselves to be engaged in the business of milk and interested in availing services by adulterators or wanting tips therefor. The only way to bring the same in the public glare is through such sting operations which even though may not result in punishing the guilty but at least has the effect of stopping or suspending the misdeeds, even if for a short time. A.K. Shrivastav and Balakrishna were also so approached and conversations with them recorded. A.K. Shrivastav

can be heard confirming that synthetic powder and urea is mixed in the milk. Balakrishna or the person representing to be Balakrishna is heard saying that “setting for such adulteration is done with the GM” and “only the GM can tell what he charges therefor”. Courts, while dealing with claims for defamation from such sting operations, cannot be unmindful of the purpose they serve in the society. Awarding compensation / damages for defamation against persons, who at their own cost, inconvenience and risk of being beaten up on their cover being blown, carry out such sting operations, will act as a deterrent and ultimately result in the society being deprived of the benefit thereof.

36. The five Judge Bench of the Supreme Court, in ***Raja Ram Pal Vs. Hon’ble Speaker, Lok Sabha*** (2007) 3 SCC 184, concerned with the sting operation showing Members of the Parliament accepting money directly or through middleman, as consideration for raising certain questions in the House or for otherwise espousing certain other causes, from those offering the lucre, held that it was not concerned with what kind of gains, financial or otherwise, were made by those persons who had conceived or engineered the sting operations leading to the material being brought into public domain through electronic media and the only question for adjudication was the misconduct attributed to the Members bringing the House in disrepute, and rejected the contention to the said effect. Again, in ***R.K. Anand Vs. Registrar, Delhi High Court*** (2009) 8 SCC 106, dealing with a sting operation to show the nexus between a witness for the prosecution, public prosecutor and the defence counsel, it was held that the sting telecast served a larger public interest and public cause rather than allowing the attempt to

suborn a witness with the object to undermine a criminal trial, lie quietly behind the veil of secrecy. The sting telecast was held to be in no way interfering with or obstructing the due course of judicial proceeding and was held to be rather intended to prevent the attempt to interfere with or obstruct the due course of law in the trial. It was further held that considering the important public issue which the sting telecast served, there was no need to go into the question whether the telecast tended to influence the trial. Though certain faults were found in the sting telecast but it was still held that the sting telecast rendered valuable service to the important public cause to protect and salvage the purity of the course of justice and only an advisory was issued to the television channels to be free from biases and prejudices and to not trivialise highly serious issues and to maintain the requisite standards. It was however recorded that it was not the intent of the Court to control and regulate the media from outside and which was held to be likely to cause more harm than good. The Division Bench of this Court, in *Court on its Own Motion Vs. State* (2008) 146 DLT 429, dealing with a sting operation showing a teacher with a Delhi Government school purportedly forcing a girl student into prostitution, though held that giving inducement to a person to commit an offence which he is otherwise not likely and inclined to commit, so as to make the same part of the sting operation is deplorable, held that sting operations showing acts and facts as they are truly and actually happening may be necessary in public interest and as a tool for justice, but a hidden camera cannot be allowed to depict something which is not true, correct and is not happening but has happened because of inducement by entrapping a person. It was further observed that media is well within its rightful domain when it seeks

to use tools of investigative journalism to bring us face to face with the ugly underbelly of the society; however it is not permissible for the media to entice and try to actively induce an individual into committing an offence which otherwise he is not known and likely to commit. It was held that the media is not to test individuals by infringing upon the individual's right of privacy. Though proposed guidelines for sting operations were also recorded in the judgment, but the Division Bench refrained from binding the media therewith.

37. It is not the case of the plaintiff or of Mr. A.K. Shrivastav in his evidence, that the sting recording of A.K. Shrivastav or the conversation recorded with him, was on any inducement.

38. Else, freedom of speech and press has always been upheld. Reference if any required can be made to *Romesh Thappar Vs. State of Madras* AIR 1950 SC 124, *Brij Bhushan Vs. State of Delhi* AIR 1950 SC 129 and *Sakal Papers (P) Ltd. Vs. The Union of India* AIR 1962 SC 305. In *Indian Express Newspapers (Bombay) Private Ltd. Vs. Union of India* (1985) 1 SCC 641, it was held that in today's free world freedom of press is the heart of social and political intercourse; the press has now assumed the role of the public educator; the purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments; the authors have to be critical of the actions of the government in order to expose its weaknesses; that such publications become an irritant or even a threat to power and the Governments naturally take recourse to suppress such publications in different ways but it is the primary duty of all the national courts to uphold

the said freedom and invalidate all laws or administrative actions which interfere with it, contrary to the constitutional mandate. It was held that the Court represents the conscience of the community and exercises the power to keep alive and vital the higher values and goals towards which our society imperfectly strives. In *Printers (Mysore) Ltd. Vs. Asstt. Commercial Tax Officer* (1994) 2 SCC 434, dealing with the aspect of taxation on the press also, it was held that though press is not immune from taxation but there is prohibition upon imposition of any restriction directly relatable to the right to publish, to the right to disseminate information and to the circulation of newspapers.

39. Though the press and the media are not exempt or always protected from the general law relating to defamation but it is to be kept in mind that defamation law is not to be used to gag, silence, suppress and subjugate press and the media. It cannot be forgotten that the law of defamation has potential to be an unreasonable restriction on the freedom of speech and expression guaranteed by the Constitution of India and the Courts owe a duty to ensure that the law of defamation is not so exploited. Recently in *Subramanian Swamy Vs. Union of India* (2016) 7 SCC 221, dealing with the constitutional validity of Section 499 and 500 of the Indian Penal Code, 1860 constituting defamation as an offence, it was held that though right to freedom of speech and expression is a highly valued and cherished right but the Constitution itself conceives of reasonable restrictions and Sections 499 and 500 of the IPC cannot be characterized as disproportionate restriction on free speech. Right to free speech was held to be not meaning that a citizen can defame others. Protection of reputation was also held to be a

human and fundamental right, serving a social interest. To constitute the offence of defamation, it was held that there must not only be an imputation but it must have been made with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. It was further held that criticism and commentary on policies, enactments or opinions do not remotely constitute defamation. It was further held that the Courts are required to balance the right of reputation with the freedom of speech and expression.

40. A perusal of the plaint shows that though compensation in Rs.11 crores is claimed, but without a whisper that the esteem in which the plaintiff is held has fallen in any manner whatsoever in the eyes of any person dealing with the plaintiff or that any person dealing with the plaintiff has refused to deal with the plaintiff or has enquired from the plaintiff of what was attributed to it or doubted the plaintiff. Rather, the plaintiff has expressly pleaded that “no person has made any complaint in respect of the milk produced by the plaintiff.....” Pleas in para no.11 of the plaint, of the telecast having the effect of lowering the esteem of the plaintiff in the eyes of general public and causing loss of reputation of the plaintiff and the constituents of the plaintiff who are Multi-State Cooperatives, are in a vacuum and hypothetical. There can be no claim for compensation for defamation without defamation. For a claim for compensation on account of defamation being made, it is essential, even if actual loss cannot be pleaded, to state particulars of the difficulties which the plaintiff has had to face in its dealings on account of others suspecting the plaintiff. Here, on the contrary, it is expressly stated that none is suspecting the plaintiff. This

is also obvious from the statement of the senior counsel for the plaintiff that no loss of business suffered by the plaintiff has been proved, implying that no loss has been suffered. Without defamation as aforesaid and without loss, even if not capable of computation, there can be no claim on account of defamation. On the contrary the Managing Director of the plaintiff, when asked in cross-examination, the basis of damages claimed of Rs.11 crores, answered that the same was expected to be the expenditure which the plaintiff will have to incur in releasing statements and advertisements in the event of the plaintiff winning the case, to restore its image. However there is no pleading or evidence, how the image has been dented, which needs to be restored. Imputation against junior level employees of the plaintiff, as the telecast has been understood by the plaintiff also, is not imputation against the plaintiff. Such imputations are only intended to make the plaintiff and its management enquire.

41. The plaintiff has not examined a single witness who understood the impugned telecast as defamatory of the plaintiff or in whose esteem the plaintiff fell or who refused to deal with or doubted the plaintiff after seeing the telecast. Admittedly, the plaintiff, after the telecast did not receive any enquiries or complaints and none refused to buy milk from the plaintiff. All the three witnesses examined are employees/officers of the plaintiff. In face thereof, certainly no case of defamation is made out, for the plaintiff to be awarded even general or nominal damages, for which the senior counsel for the plaintiff presses.

42. I may add, just like in the context of advertising of goods, specially comparative advertisements, it has been held that the consumers understand

the advertiser as puffing up its goods, so is it in case of such telecasts. In today's day and time of, "paid news and news features" and "Breaking News", with each publisher/T.V./News channel vying to increase its 'TRPs' i.e. Target Rating Point/viewership, the consumers thereof take such telecasts with puffing or a pinch or bag of salt. A viewer of such telecast of reasonable intellect would understand the telecast qua the plaintiff as bringing to the attention of the management of the plaintiff, the misdeeds of its employees, and expect corrective action.

43. Alas, such corrective action has not been taken.

44. It cannot also be lost sight of that the plaintiff is a company under the administrative control of Department of Fertilizers, Union Ministry of Chemicals & Fertilizers, with 90% of its equity held by Government funded State Cooperative ventures and Public Sector companies. What has been imputed in the telecast as aforesaid, is to the lower level employees of the plaintiff. The plaintiff, as per its own averments is performing a public function of marketing and sale promotion of potassic and non-potassic fertilizers and their distribution and of assisting the dairy owners market their milk produce. However the plaintiff, in instituting the suit as aforesaid, has identified itself with its employees. As far back as in ***R. Rajagopal Vs. State of T.N.*** (1994) 6 SCC 632, it was held that in the case of public officials, the 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 and this is so even when the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made with reckless disregard

for truth. It was further held that in such a case it is enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts and it is not necessary for him to prove that what he has written is true; only where the publication is proved to be false and actuated by malice or personal animosity was the defendant held to be having no defence and liable for damages. It was further held that the Government, local authority and other organs and institutions exercising governmental power cannot maintain a suit for damages for defaming them.

45. Mention in this context may also be made to the dicta of the House of Lords in *Derbyshire County Council Vs. Times Newspapers Ltd.* [1993] 1 All ER 1011 citing with approval the earlier judgment in *City of Chicago Vs. Tribune Co.* (1923) 307 III 595, holding that a civil action for defamation is as great if not a greater restriction than a criminal prosecution on fundamental right of freedom of speech and expression and right to criticize the government, and that all civil and criminal actions for criticizing the government, which is a privilege, are forbidden. Such actions, it was held, would prevent the publication of material which it is very desirable to make public. It was held that a government cannot stifle opposition by a series of civil actions and criminal prosecutions for defamation. Right to criticize an inefficient or corrupt government, without fear of civil as well as criminal prosecution, was held to be a right of every citizen. It was held that a number of departments of government are statutorily created corporations and there is no public interest favouring such organs of government to sue for libel, because the same places undesirable fetters on freedom of speech. It was further held that there is

no public interest favouring the right of organs of government, whether central or local, to sue for libel and it is contrary to the public interest that they should have such a right.

46. The position of the plaintiff, on the averments in the plaint itself, though a company incorporated under the Companies Act, is akin to that of a governmental department or a body exercising government functions. Thus, what has been held in judgments immediately aforesaid, applies to the plaintiff and in accordance with which the suit did not lie and was misconceived in its inception.

47. The balancing, which the Courts are required to do between the Fundamental Rights of Freedom of Speech and Expression particularly of the press / media, and of reputation, has to be with the objective of ensuring that there is no chilling effect. If a person or press or media were put under a fear of being sued, they will not express himself / themselves freely on public issues and this would chill public debate and enquiry. It is not for the government to sue for defamation of its employees. If at all anybody had a right to sue for defamation, it was A.K. Shrivastav and not the plaintiff. The plaintiff, in its zeal to protect its employees including A.K. Shrivastav from any enquiry, has chosen to spend public monies running into lacs of rupees in filing and pursuing this suit for defamation and which as aforesaid does not behave a governmental company. The standard of proof, in the defence taken of truth, has been held to be limited to determine whether the view alleged to be defamatory could honestly be held by a fair minded person on facts known at that time. In the absence of any plea on the part of the plaintiff, of malice on the part of the defendants, in my

opinion, there could be no iota of doubt in the mind of a fair minded person, now as well as at the time of alleged defamation, on the basis of the material telecast, of the complicity of the employees of the defendants in the rampant adulteration of milk. Adulteration of milk, a vital food product which is widely valued in our society as an essential ingredient especially for children, has always been a subject of public interest and public concern since it effects the health and well being. Courts of foreign jurisdiction have been evolving the defence, of responsible communication on matters of public interest, to the claims for defamation. Reference in this regard can be made to *Grant Vs. Torstar Corp.* MANU/SCCN/0058/2009 and to *Edward Taihakurei Durie Vs. Heta Gardiner* [2018] NZCA 278. The telecast qualifies as a responsible communication on a matter of public interest.

48. We are today living in an era of 'Right to Information' with matters hitherto before inaccessible to the public becoming accessible to the public and ultimately leading to good governance. Recently, in *Yashwant Sinha Vs. Central Bureau of Investigation* 2019 SCC OnLine SC 517, the Supreme Court has gone to the extent of holding that the right to information prevails even over the Official Secrets Act, 1923 and / or that the Official Secrets Act has to be read harmoniously with the right to information. In this state of law, without the plaintiff pleading or proving to have suffered any defamation or consequence thereof, I would not be inclined to return a finding of defamation or even award nominal damages to the plaintiff against the defendants.

49. As far as the judgments referred to in the written arguments of the senior counsel for the plaintiff are concerned, *Hindustan Unilever Ltd.* supra which in turn refers to *South Hetton Coal Co.* and *Jameel (Mohammad)* supra, was a case of disparaging advertising. After holding the advertisement of the defendant therein to be disparaging the same class of goods of the plaintiff, the Division Bench dealt with the aspect of damages to be awarded. It was held that the reputation of a corporate body is capable of being and will not simply be something in which its Directors and shareholders may take pride, but an asset of positive value to it. It was found on the basis of evidence recorded, that the plaintiff's advertisements of the defendant therein conveyed that the plaintiff's product "DETTOL" caused damage to the skin and the same was beyond permissible puffing. It was thus held that though it will not be possible for a successful plaintiff in a disparagement or slander of goods action to quantify the extent of loss, there would necessary be an element of dynamism in this because of the nature of the product, the season it is sold in, the possible future or long term impact that may arise on account of the advertisement. However, this is not the position here. Not only has defamation of the plaintiff not been established but no loss or damage is pleaded or proved to have been caused to the plaintiff by the telecast. Moreover, the plaintiff as aforesaid is a government company and what has been held qua private company, would not apply to the plaintiff. For the same reason, *Union Benefit Guarantee Co. Ltd.*, *Rookes*, *Broadway Approvals* and *Rustom K. Karanjia* supra, also do not apply. It is neither the plea nor the evidence that the impugned telecast was for the defendants to earn profit at the cost of the plaintiff. The defendants are not in the business of marketing or sale of milk, to, by

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claiming the milk of the plaintiff to be adulterated, benefit in sales of their own milk.

50. In *Jawahar Lal Darda* supra referred to in the written arguments of the senior counsel for the defendants, the accused in the prosecution for the offence of defamation, believing the version of the Minister to be true had published the news report thereof. It was held that if the accused under bona fide belief of the version of the Minister to be true, published the report in good faith, it could not be said that they intended to harm the reputation of the complainant. It was further held that the report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good, was in public interest and the prosecution quashed. In *S. Rangarajan* supra also referred to in the written arguments of the senior counsel for the defendants, it was held i) freedom of speech under Article 19(1)(a) means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner, and would thus include the freedom of communication and the right to propagate or publish opinion; ii) the communication of ideas could be made through any medium, newspaper, magazine or movie; iii) but this right is subject to reasonable restrictions on grounds set out under Article 19(2); iv) these restrictions intended to strike a proper balance between the liberty guaranteed and the social interest; v) there should be a compromise between the interest of freedom of expression and social interests; Court cannot simply balance the two interests as if they are of equal weight; Courts commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are

pressing and the community interest is endangered; the anticipated danger should not be remote, conjectural or far fetched – it should have proximate and direct nexus with the expression; and, vi) democracy is a government by the people via open discussion; the democratic form of government demands from its citizens an active and intelligent participation in the affairs of the community; the public discussion with people participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. Applying the said logic, in the absence of the plaintiff leading any evidence whatsoever of any person in whose eyes or esteem the plaintiff fell, it can by no means be said that there has been any proximate or direct nexus between the esteem in which the plaintiff is held by its patrons and the impugned telecast. The averments in the plaint, of defamation of the plaintiff, are mere conjectures of the plaintiff.

51. This Court in *Mother Dairy Foods & Processing Ltd.* supra was concerned with an application for interim injunction restraining telecast, publication and showing on the website, of the programme titled "Inside Story- Safed Doodh Ka Kala Karobar" and for recovery of damages for defamation. The plaintiff Mother Dairy Foods & Processing Ltd., also a public sector enterprise engaged in the business of supply of milk and milk products, was aggrieved from the telecast investigating into how synthetic milk was being manufactured. While denying interim injunction restraining the telecast, it was *inter alia* held i) that the defendant's efforts in unearthing and bringing to the notice of public the menace of manufacturing of synthetic milk and its possible supply to leading

manufacturers such as plaintiff was a laudable measure for public good; ii) though the requisite particulars were not given in the programme and no serious efforts or research appeared to have been undertaken, but it was the author's prerogative to decide the contents of the programme and the author has complete freedom regarding its composition; iii) the author has right to criticize in a scathing manner, lack of quality control tests or procedure and or ineffective processes and to bring out need for maintenance of standards to ensure quality; iv) media has the onerous responsibility to ensure that facts are verified and the matter is thoroughly investigated and researched; though this appeared to be missing in the impugned telecast but still keeping in view the larger interest, the interim injunction was denied. I find the suit to have been ultimately compromised.

52. As far as the other judgments referred to in the written arguments of the senior counsel for the defendants are concerned, (i) in *Pushp Sharma* supra aforesaid, it was held a) public figures and public institutions have to fulfil a very high threshold to seek injunctive relief in respect of alleged libel or defamation; b) those who fill public positions must not be too thin skinned in respect of references made upon them; c) the members of the public and citizens of this country expect news and fair comment as to whether a public institution functions properly; d) unless it is demonstrated at the threshold that the offending content is malicious or palpably false, an injunction should not be given; e) democracy presupposes robustness in debates, which often turns the spotlight on public figures and public institutions; f) if Courts are to routinely stifle debate, what cannot be done by law by the State can be achieved indirectly without satisfying exacting

constitutional standards that permit infractions on the valuable right to freedom of speech; and, (ii) *Khushwant Singh* supra was concerned with consideration of two competing interest, of a well known author to publish his autobiography where references were made to personal lives of public figures and the public figures claim for protection against such publications. It was held, a) freedom of the press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events; b) once a matter is of public interest, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media; c) in the case of public officials, the 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 with reckless disregard for truth; d) 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 what he has written is true; e) of course, where the publication is proved to have been actuated by malice or personal animosity, the defendant would have no defense and would be liable for damages; f) government, local authority and other organs and institutions exercising governmental cannot maintain a suit for damages for defaming them; and, g) people have a right to hold a particular view and express freely on the matter of public interest.

53. No case of defamation of plaintiff having been made out, the question of plaintiff being entitled to recover any amount as damages, does not arise.

54. Both issues are thus decided against the plaintiff and in favour of the defendants.

55. Resultantly, the suit is dismissed. I however refrain from burdening plaintiff with costs of suit incurred by defendant.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

MAY 2, 2019
APRIL 10, 2019
'gsr'/pp..

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