

Delhi High Court

Ashutosh Dubey vs Netflix, Inc & Ors. on 5 May, 2020

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 27.04.2020

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Judgment delivered on: 05.05.2020

+ I.A. 3754/2020 in CS(05) 120/2020

ASHUTOSH DUBEY

..... Plaintiff

versus

NETFLIX, INC. & ORS.

.....Defendants

Advocates who appeared in this case:

For the Plaintiff: Mr. Ashutosh Dubey, Plaintiff in person.

For the Defendants:

Mr. Amit Sibal, Senior Advocate with Mr. Saikrishna Rajagopal, Mr. Thomas George, Ms. Tanvi Sinha, Mr. Manas Gaur, Advocates for the defendant Nos.1 & 2.

Mr. Hiren Kamod, Ms. Ami Desai, Ms. Surekha Srinivasan Advocates for defendant Nos. 3, 6 & 7.

Mr. Sandeep Sethi, Senior Advocate with Mr. Piyush Joshi, Ms. Anushree Rauta, Mr. Chirag Luthria Advocates for defendant No. 4.

Ms. Priyanka Khimani with Mr. Abhineet Pange, Ms. Chaitrika Patki and Ms. Preeti Panthaki, Advocate for defendant No. 5.

CORAM: -

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

IA No. 3754/2020 (under Order 39 Rule 1 & 2)

1. The hearing was conducted through video conferencing.
2. Plaintiff is an advocate by profession. Subject suit has been filed by the Plaintiff, inter alia seeking a decree of permanent injunction against the defendants further airing or streaming of the episodes of Web-Series (TV show) "Hasmukh" particularly Episode 4 of Season 1.
3. As per the Plaintiff, said episode contains derogatory remarks against the entire legal fraternity. It is contended that the intent of the plaintiff is not to highlight defamation of an individual but to restrain the defendants from webcasting, passing derogatory remarks, casting aspersions, making scandalous statements / comments on the Legal community.

4. It is submitted that the remarks are not humorous nor come across as a joke and are not even near to any satire nor within the boundaries of a critique. The dialogue with regard to which the subject suit has been filed is: "Aisa pehla shehar dekha hai humne jahan chor bhi bade ameer hote hain. Lekin yahan unka naam chor nahin 'vakeel' hota hai. Aapke Vakeel sabse bade kamine aur chor hote hain. Ye kanoon ke thekedar jo kabhi nahin honge giraftaar, kyunki ye kalam ke saath karte hain balatkaar. Are bhaiya, log kehte hain ki kanoon andha hota hai, main kehta hoon kanoon ganda hota hai, kyunki har vakeel ke haath mein chota sa itna danda hota hai."

". ""

"This is the first city I have seen where even the thieves are rich. But out here, they're called lawyers. Your lawyers are the biggest scoundrels and thieves. These so-called upholders of law will never be brought to justice because they rape you with their pen. People say the law is blind. But I say the law is dirty because every lawyer carries a little stick in his hand. "

5. It is contended by the plaintiff that the dialogue is highly disparaging, defamatory and bring disrepute to the legal profession and lawyers in the eyes of general public and are a constant stigma on the image of lawyers and a constant source of annoyance to the plaintiff and have lowered the image of lawyers and the plaintiff amongst the public at large.

6. Defendants entered appearance on an advance notice. The application was taken up for consideration at the request of the parties without calling for any formal reply.

7. It is contended by Learned Senior Counsels appearing for the Defendants that in view of the settled legal position, Plaintiff has failed to show any prima facie case and has not been able to even show any personal injury or violation of any right entitling him to grant of any injunction.

8. It is submitted on behalf of the Defendants that the theme/Plot of the web-series - 'Hasmukh' as described in the Written Submissions filed by Defendant No. 1 and 2 inter alia is:

(i) The Web-Series is a dark comedy about a small-town comedian namely 'Hasmukh' ('Protagonist') who arrives at Mumbai to pursue his career in stand-up comedy on television shows. In the said Web-Series, the Protagonist has been shown to have a unique trait whereby he can only successfully perform his stand-up comedy act, if he commits murders prior to his performances and makes satirical jokes in relation to his murder victims during such performances. As per the storyline of the said Series, in order to address his need to kill in a righteous way, the Protagonist therefore kills only evil and debauched persons from various fields and professions that he comes across in his life and then performs satirical jokes/remarks in relation to his experience with such victims in his stand-up comic act.

(ii) Accordingly, the Protagonist has been shown to commit murders in almost every episode of the Web-Series and later perform his stand-up comic act in relation to his victims who are unethical professionals belonging to various fields/professions. In this manner, the Protagonist has been portrayed to deal with evil in various walks of life and its impact on society.

(iii) In line with the central theme, in Episode 4 of the said Web-Series titled 'Bambai Mein Bambu', the Protagonist has been shown to have a harrowing experience with an aberrant lawyer named 'Shastri' ("said lawyer") upon his arrival in Mumbai. The character of the said lawyer in the Web-Series has been shown to be of an immoral, dishonest greedy, violent, threatening lawyer with underworld connections, who not only tries to dupe the Protagonist into executing an unfavorable contract but also quotes a very high professional fee for drafting the contract. The said lawyer also later tries to coerce the Protagonist into executing another contract at gunpoint to pay 50% of all his fee for comedy performance to Shastri on an ongoing basis, at which juncture the Protagonist murders him. Subsequent to this instance, in sync with the theme of the Web-Series and as would be expected by any viewer of the Web-Series, the Protagonist performs a stand-up comic act, wherein he makes reference to 'lawyers in Mumbai' (Time stamp 05:05 to 04:15).

9. It is submitted by Learned Senior Counsels appearing on behalf of the defendants that Lawyers cannot be defamed as a "class of persons", nor can the Plaintiff be defamed by a general reference to Lawyers. It is contended that a class of persons cannot be defamed as a class, nor can an individual be defamed by general reference to a class to which the individual belongs.

10. It is, further, without prejudice contended that the settled position of law is that howsoever reprehensible or morally unjustifiable the words complained of may be, for the words to be actionable, they must contain an imputation concerning some particular person or persons whose identity can be established i.e. in case of a defamatory imputation against a collection of persons, such collection of persons must be a definite and determinate body so that the imputation in question can be said to relate to its individual members or components.

11. It is contended that where there is a statement describing a very wide class of individuals such as the reference made to lawyers, without identifying individual members, it cannot be said that lawyers have been defamed as a class or that individual members such as the Plaintiff have been defamed for belonging to the class of lawyer.

Given the vast diversity in the class, the words used to describe a class would not reasonably lead persons acquainted with the Plaintiff to believe that he was the person referred to.

12. It is further contended that the Plaintiff has failed to disclose any cause of action to file the Suit or that he has suffered any irreparable loss or injury.

13. Reference may be had to the legal position, with regard to filing an action against making of defamatory or derogatory remarks about a class of individuals.

14. The Patna High Court in Asha Parekh and Ors. v. The State of Bihar and Ors. 1977 Cri L J 21 has held as under:

"13. It is well known that the essence of the offence of defamation consists in calling that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and those inconveniences to

which a person who is the object of such unfavourable sentiments is exposed. The words or visible representations, therefore, complained of must contain an imputation concerning some particular person or persons whose identity can be established. If they contain no reflection upon a particular individual or individuals, but equally apply to others although belonging to the same class, an action for defamation will not lie. It goes without saying that the word 'person' in Section 499 of the Code includes a company or an association or a collection of persons as well, as provided in explanation 2 of Section 499, but the class of person attributed to must be a small determinate body. It is interesting in this connection to consider the case in (1) *Government Advocate v. Gopa Babu Das* (A.I.R. 1922 Patna, 101) where a newspaper had published certain libellous matters against two constables of Begunia Police Station in the Puri district. No constable in particular was named in that publication and the entire publication was absolutely false. In an action for defamation by two constables of the said police station against the printer and publisher of the newspaper Dawson Miller, C.J. observed as follows:--

"However reprehensible and morally unjustifiable the words complained of may be they must to be, actionable, contain an imputation concerning some particular person or persons whose identity can be established. An Imputation against an association or collection of persons jointly may also amount to defamation within the meaning of the section but at the same time it must be an Imputation capable of being brought home to a particular individual or collection of individuals as such. The article in question is not directed against the constables of the Begunia thana collectively so that they, as a body, could assert that each and all of them had been libelled. Nor can it be said that two ascertained individuals have been the object of the attack. It is unnecessary that the person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed towards a particular person or persons who can be identified...."

15. The case of (2) *Eastwood v. Holmes* 1 F. & F. 347 (The English Reports, Volume CLXXV, Nisi Prius VI) completely supports my proposition that lawyers as a class are not capable of being defamed. In an action for defamation by innuendo where in the report of the proceedings of the British Archaeological Association it was mentioned in regard to certain antiquities that--

"these are figures reported to have been obtained from the Thames, and called 'pilgrims' signs.' They are being offered not only in London, but throughout the country, and antiquaries should be on their guard in the purchase of them. Mr. C. had inspected 800 of them, but the aggregate is stated to be not less than 2000. The whole are proved to be of recent fabrication. They appear to have been made in chalk moulds. They have been steeped in a strong acid and smeared over with Thames

mud."

16. It was held that action could not be maintained. The observation of Willes, J., quoted below, on this aspect of the law is interesting and at the same time illuminating.--

"Willes, J.-- The action cannot be maintained. Assuming the article to be libellous, it is not a libel on the plaintiff, it only reflects on a class of persons dealing in such objects, and it is immaterial in this view whether they are genuine or not. If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual, which [305] there is not here. There is nothing to show that the article was inserted with any special reference to the plaintiff."

18. The class of Advocates in general is a much more amorphous and indeterminate body than the conference alluded to in the Supreme Court case referred to above.

The law in respect of defamation of a class of persons as enunciated by Salmond is as follows:--

"In every case where the plaintiff is not named the test whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to. If the words can be regarded as capable of referring to the plaintiff, the jury still have to decide the question of fact--Do they lead reasonable people, who know him, to the conclusion that they do refer to him? (Knupffer v. London Express Newspaper[1944] A.C. 116, 121) "The reason why a libel published of a large or indeterminate number of persons described by some general name generally fails to be actionable is the difficulty of establishing that the plaintiff was, in fact, included in the defamatory statements, for the habit of making unfounded generalisation is ingrained in ill educated or vulgar minds, or the words are occasionally intended to be facetious exaggeration" (Ibid. at 112, per Lord Atkin). Thus no action would lie at the suit of anyone for saying that all mankind is vicious and depraved, or even for alleging that all clergymen are hypocrites or all lawyers dishonest. [Eastwood v. Holmes(1858) 1 F. & F. 347]. For charges so general in their nature are merely vulgar generalisation". Vide [Salmond on the Law of Torts, Fifteenth Edition, 187]."

19. In Halsbury's Laws of England (3rd Ed.: Edited by Viscount Simonds) Vol. 24, page 5, paragraph 6 it has been observed that "A class of persons cannot be defamed as a class, nor can an individual be defamed by general reference to the class to which he belongs. A similar view has been taken by Gatley in "Libel and Slander" where it has been observed that "where the words complained of reflect on a body or class of

persons generally, such as lawyers, clergymen, publicans or the like, no particular member of the body or class can maintain an action." The view of Mr. Justice Willes in *Eastwood v. Holmes* (Supra) was approved by Lord Justice Holmes and Lord Justice Cherry as laying the sound law and strictly applicable in the case of (4) *Brien v. Ason* [(1913) 47 Ir. Lt]."

(underlining supplied)

15. In *Narottamdas L. Shah Vs. Patel Maganbhai Revabhai & Ors.*

1984 Cri L J 1790, the Gujarat High Court while quashed defamation proceedings against the editors of a newspaper for publishing an editorial criticizing the prolonged strike by the lawyers and referring the lawyers as "kajia dalals" i.e. dispute brokers, held that the "writing published is relatable to the entire class of lawyers. The writing does not refer to any identifiable body of persons. So also the writing is not in respect to any group/class of persons as distinguished from the rest of the community of lawyers. To make out an offence of defamation the writing should be such that a person/persons to whom the writing is relatable can be identified. It is not even the case of the complainant that the writing is referable to particular group of persons as distinguished from the rest of the community of lawyers. Since the imputation, if any, is in respect of the lawyers' class as a whole and the same is not referable to a person or a group of persons who can be identified and can be distinguished from the rest of the members of the legal profession, there is no offence of defamation."

16. The Rajasthan High Court in *Shah Rukh Khan Vs. State of Rajasthan and Ors* RLW 2008 (1) Raj 809, held that "law requires that the defamatory statement, in order to be actionable, be made against a definite and an identifiable group. However, lawyers taken as a class cannot be identified with any particular individual-- indeterminate, indefinite, and unidentifiable as the members are: Firstly, the members of this class are too varied to be reduced to a few traits. Their is not a homogenous class, but a heterogeneous one, made up of wonderfully different individuals. Secondly, they are spread over the length and the breadth of the land. Thirdly, the class is always in flux, ever changing, as new lawyers enter and old ones depart the profession. The entire members of the class are clearly unidentifiable and indeterminable."

17. It may be noted that the stand of the defendants is that the web series is a work of fiction, the story thereof and statements made by the characters including the impugned content is only meant to be taken in the context of a figment of imagination and humour and not as a matter of truth.

18. Perusal of the impugned episode clearly shows that the impugned dialogue is spoken by the Protagonist while performing on stage as a stand-up comedian. The web series and specially the episode when looked at in its entirety shows that the protagonist performs on the stage as a stand-up at comedian after facing some adverse experience at the hand of a particular profession or professionals.

19. In the episode in question the protagonist makes the impugned comment after facing a personal experience with a dishonest greedy lawyer. Having experienced an immoral character, the protagonist thereafter, while performing on the stage as a stand-up comedian makes a satirical comment about the lawyers in general.

20. As noted above the impugned comment is a satirical comment with regard to the lawyers taken as a class and is not with regard to any determinate definite or identifiable group of lawyers.

21. The web-series when viewed shows that it is a dark satirical comedy, attempting to expose the ills of various professions. The protagonist makes a statement as a stand-up comedy about the ills of various profession.

22. It is a known fact that a stand-up comedian to highlight a particular point exaggerates the same to an extent that it becomes a satire and a comedy. People do not view the comments or jokes made by stand-up comedians as statements of truth but take them with a pinch of salt with the understanding that it is an exaggeration for the purposes of exposing certain ills or shortcomings.

23. When the impugned episode is viewed it, prima facie gives an impression that the protagonist, after having suffered at the hands of a member of the legal profession who has tried to exploit him, make comments about the profession. The protagonist prima facie appears to be exaggerating the issue for the purposes of highlighting the ills of the profession.

24. One of the satirical techniques to criticise a particular subject or character is to exaggerate it beyond normal bounds so that it becomes ridiculous and its faults can be seen. Satire is a work of art. It is a literary work that ridicules its subject through the use of techniques like as exaggeration. It is a witty, ironic and often exaggerated portrayal of a subject.

25. Further, if an ad interim injunction is granted, it would amount to interference in the freedom of speech and expression guaranteed by our Constitution to the defendants.

26. The very essence of democracy is that a creative artist is given the liberty to project the picture of the society in a manner he perceives. One of the prime forms of exposing the ills of the society is by portraying a satirical picture of the same. Stand-up comedians perform that very purpose. In their portrayal they use satire and exaggerate the ills to an extent that it becomes a ridicule. In the humorous portrayal of the ills of the society the stand-up comedians use satire.

27. Furthermore, plaintiff has not been able to show that the impugned comment in any manner refers to the plaintiff or refers to a definite group of individuals or lawyers out of the entire class of lawyers to which the plaintiff belongs.

28. Neither has the plaintiff been able to show that the impugned comment refers to the plaintiff nor has the plaintiff even in the plaint pleaded that the comment refers to the plaintiff. It is also not the case of the plaintiff that the dialogue in the episode in any manner refers to the Plaintiff or that any person acquainted with the plaintiff has any reason to believe that there is any reference to the

Plaintiff.

29. The basic principle for grant of an ad interim injunction under order 39 rule 1 and 2 Code of Civil Procedure is to prevent an injury to the plaintiff or to restrain the defendant from committing inter alia injury of any kind to the plaintiff.

30. As noted above it is not the case of the plaintiff that the impugned dialogue in any manner refers to the plaintiff or causes any injury to the plaintiff. On the other hand, the case set up by the plaintiff is that the impugned statement is derogatory to the reputation of lawyers as a class to which the plaintiff belongs.

31. As noticed above, neither has the plaintiff pleaded nor shown that the impugned dialogue in any manner refers to the plaintiff or refers to a definite group of individuals or lawyers out of the entire class of lawyers to which the plaintiff belongs. It is not even the case of the plaintiff that any person acquainted with the plaintiff has any reason to believe that there is any reference to the plaintiff by the impugned dialogue.

32. Plaintiff has not been able to show that there exists a prime facie case in favour of the plaintiff or that in case ad interim injunction is not granted plaintiff is liable to suffer any irreparable loss or injury.

33. The balance of convenience is not in favour of the plaintiff or in favour of grant of an ad interim injunction.

34. The application is accordingly dismissed. Parties are left to bear their own costs.

35. Copy of the judgment be uploaded on the website and be also forwarded to learned counsels through email.

MAY 05, 2020
HJ

SANJEEV SACHDEVA, J