

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 1461 of 2016

[Mohsin Abbas versus Air Waves Media (Pvt) Ltd and Others]

Plaintiff : Mohsin Abbas through M/s. Muhammad Umar Lakhani and Syed Ali Ahmed Zaidi, Advocates.

Defendants 1-2 : Air Waves Media (Pvt.) Ltd. and 1 other through M/s. Mehmood Ali and Gohar Mehmood, Advocates.

Defendant 3 : None

Defendant 4 : Qadir Khan Mandokhail in person.

Defendant 5 : Pakistan Electric Media Regulatory Authority through Mr. Faqir Liaquat Ali, Advocate.

Dates of hearing : 02-04-2019, 16-04-2019 & 29-04-2019

ORDER

Adnan Iqbal Chaudhry J. - This is a suit for defamation. By CMA No. 9684/2016, the plaintiff prays for a temporary injunction as follows:

"It is prayed on behalf of the Plaintiff that this Hon'ble Court be pleased to grant this application and restrain the Defendants No.1, 2 and 3 from airing, posting on any media portal, exhibiting etc. any news of any nature whatsoever against the Plaintiff, and the Defendant No.4 from making any statement of any nature whatsoever against the Plaintiff."

2. Mr. Mehmood Ali, learned counsel for the defendants 1 and 2 had objected to the maintainability of the suit on the ground that before filing suit, the plaintiff did not give the notice requisite under section 8 of the Defamation Ordinance, 2002. Suffice to say that this is not a suit under the Defamation Ordinance, 2002, but a suit against a tort under section 9 CPC. That distinction has been highlighted by the Honorable Supreme Court in *Zulfiqar Ali Cheema*

v. Farhan Arshad Mir (PLD 2015 SC 134) by observing that: “It may also be pertinent to mention here that from the reading of the Ordinance as a whole (the Defamation Ordinance, 2002) it does not again preclude a person from initiating an action for damages under the general law of the land i.e. under the law of Torts by filing a suit for damages under CPC.”

3. The alleged defamation is a news report broadcast as ‘breaking news’ on 21-05-2016 by the defendant 1 to 3 on their television channel. The defendant No.1 is the owner and broadcaster of the television channel, while the defendant No.3 was the reporter of the said news. A transcript of the impugned news is Annexure P/4 to the plaint and is reproduced as follows:

نیوز کاسٹر: اہم خبر آپ کو دیں جسٹس نظام قتل کیس کے سہولت کار کا پاسپورٹ اور شناختی کارڈ کی تحویل سے متعلق درخواست۔ کراچی سے اہم خبر دے رہے ہیں ATC نے سہولت کار سابق جیلر محسن عباس کو نوٹس جاری کر دیئے ہیں مزید جانیں گے نیوز وں کے نمائندے شوکت کورائی سے۔ شوکت کورائی آپ ڈیٹ کیجئے گا۔

نیوز رپورٹر شوکت کورائی: دیکھیں جسٹس نظام قتل کیس جو ہے اس کی سماعت ہوئی ہے۔ اس میں جسٹس نظام قتل کیس کے جو وکیل ہیں قادر خان انہوں نے ایک ایپلیکیشن دی ہے عدالت کے اندر کہ اس کیس کے اندر جو سہولت کار ہیں جنہوں نے حملہ کیا تھا جسٹس نظام پر، اس کا ہمیں خدشہ ہے کہ ملک سے باہر چلے جائیں گے۔ اس لیے اس کا پاسپورٹ اور شناختی کارڈ تحویل میں لیا جائے تاکہ اس بات کا یقین ہوسکے کہ وہ ملک سے باہر فرار نہیں ہو سکیں گے۔ جسٹس نظام کو 2006 میں قتل کیا گیا تھا جو اب تک اس کا فیصلہ نہیں ہوسکا اور انسداد دہشت گردی عدالت میں یہ کیس زیر سماعت ہے۔ آج عدالت نے نوٹس جاری کرنے کا فیصلہ کیا ہے جسٹس نظام قتل کیس میں، سابق جیلر ہیں اسے، اس پر الزام ہے کہ انہوں نے جسٹس نظام کے قتل میں سہولت کاری کا، سہولت پیش کی تھی ان قاتلوں کو جس کے بعد اٹیک ہوا تھا اور جسٹس نظام قتل ہو گئے تھے۔ جی۔۔۔

نیوز کاسٹر: ٹھیک ہے بہت شکریہ شوکت کورائی آپ ڈیٹ کرنے کے لئے۔

4. The Justice Nizam murder case has been in the news since 1996 when a sitting Judge of the High Court of Sindh and his son were gunned down in front of their residence. The person named in

the first para of the transcript as the alleged facilitator in the Justice Nizam murder case, namely Mohsin Abbas, is the plaintiff. The Advocate named in the second para of the transcript as the counsel in the Justice Nizam murder case, namely Qadir Khan, is the defendant No.4. The said transcript is not denied by the defendants, thus the content of the impugned news is admitted.

5. During the hearing of this application, and on the basis of that part of the record which is undisputed¹, the following emerged as undisputed facts:

- (a) That the plaintiff was not an accused in the Justice Nizam murder case;
- (b) That the defendant No.4 was not a counsel in the Justice Nizam murder case, though the impugned news had reported that he was;
- (c) That the application moved by the defendant No.4 to the Anti-Terrorism Court, Karachi, for impounding the passport and CNIC of the plaintiff, was moved in Special Case No. A-194/2015 emanating from FIR No.300/2014, which was not the Justice Nizam murder case as averred in the impugned news, but a case alleging abduction, in which case the plaintiff was subsequently (after the impugned news) released under section 169 Cr. P.C. for want of evidence;
- (d) That the Justice Nizam murder cases was not fixed in Court on 21-05-2016 when the impugned news was broadcast;
- (e) That the impugned news report was factually incorrect.

6. It is the plaintiff's case that the impugned news report had falsely portrayed him as an accused in the Justice Nizam murder case; and that such news was broadcast with malice at the instance of and in collusion with the defendant No.4. Mr. Umer Lakhani, learned counsel for the plaintiff submitted that the plaintiff and the

¹ The undisputed record includes the case diary of Special Case No. A-194/2015 to show that the application for impounding the passport and CNIC of the plaintiff was moved in that case which was not the Justice Nizam murder case.

defendant No.4 have been at loggerheads over a financial matter; that to pressurize the plaintiff to submit to demands, the defendant No.4 is on a blackmail and vilification campaign against the plaintiff; that the malice that the defendant No.4 holds against the plaintiff is demonstrated by a transcript of a phone call and text messages said to be between the plaintiff and the defendant No.4, and by a list of false criminal cases lodged against the plaintiff in which the defendant No.4 is either the complainants' Advocate or the complainant himself, one such case being Special Case No. A-194/2015 wherein the defendant No.4, as the complainant's Advocate, had moved an application for impounding the plaintiff's passport and CNIC which was falsely reported as an application in the Justice Nizam murder case.

To allege that the defendant No.4 was behind the impugned news, Mr. Umer Lakhani submitted that the defendant No.4 was mentioned in the impugned news as the Advocate of the case and the information therein could have only come from him; that a photograph on the record shows the defendant No.4 standing in the High Court providing information to a court-reporter said to be the defendant No.3; that both in this suit and in other proceedings the defendant No.4 is on record alleging that the plaintiff is the facilitator of an accused in the Justice Nizam murder case; and that in his written statement the defendant No.4 has made only an evasive denial of being the originator of the impugned news.

7. As against the defendants 1 to 3, Mr. Umer Lakhani submitted that before broadcasting the impugned news the defendants 1 to 3 did not undertake any due diligence for its verification, nor did they seek the version of the plaintiff, and thus the impugned news report was also in breach of the Electronic Media Code of Conduct-2015, in particular clause 22(1) of the said Code.

8. To pray for a temporary injunction Mr. Umer Lakhani submitted that given the actions of the defendants 1 to 4 (as alleged

above), it is likely that they will continue to defame the plaintiff; that the Fundamental Right of the said defendants to free speech provided by Article 19 of the Constitution of Pakistan has to be balanced with the plaintiff's Fundamental Right to dignity provided by Article 14 of the Constitution. He relied on the cases of *Sultan Ali Lakhani v. Mir Shakil-ur-Rehman* (PLD 1997 Kar 41) and *Raes Ghulam Sarwar v. Mansoor Sadiq Zaidi* (PLD 2008 Karachi 458) to submit that though in the facts of those cases a temporary injunction was declined, but it was observed that a temporary injunction to restrain publication can be granted in a fit case.

9. Mr. Mehmood Ali, learned counsel for the defendants 1 and 2 submitted that the impugned news was broadcast in good faith without any malice; that it was protected by the doctrine of 'qualified privilege'; and that an injunction would infringe the Fundamental Right of the defendants 1 and 2 to the freedom of speech and press. Mr. Mehmood Ali submitted that the impugned news was provided by the court-correspondent of the defendants 1 and 2 who had received it from a reliable source, not the defendant No.4; that since the impugned broadcast was of 'news' and not 'opinion', Code 22(1) of the Electronic Media Code of Conduct-2015 was not attracted and the seeking of the plaintiff's version was not mandatory. Regards the photograph of the defendant No.4 with the defendant No.3 (court-reporter), Mr. Mehmood Ali submitted that the defendant No.4 was both an Advocate and a politician, and it is common for Advocates and politicians to exchange news with reporters. He submitted that the defendants 1 to 3 have been unnecessarily dragged into a dispute between the plaintiff and the defendant No.4. He submitted that once the plaintiff had quantified his damages against the alleged defamation, he was not entitled to a temporary injunction.

The defendant No.3, who is said to be the reporter of the impugned news, has not entered appearance. Though the written statement of the defendants 1 and 2 reads that it is also on behalf of

the defendant No.3, it is neither signed by the defendant No.3 nor is there any authorization on his behalf for such written statement.

10. The defendant No.4 is an Advocate by profession. He pointed to the cause title of a Suit No.86/2007 and to a Power of Attorney to submit that the plaintiff was the Attorney of a party in the said suit, which party was an accused in the Justice Nizam murder case. The defendant No.4 acknowledged that he was not a counsel in the Justice Nizam murder case, but counsel for the complainant in Special Case No. A-194/2015, in which he had made an application for impounding the passport and CNIC of the plaintiff. Though the defendant No.4 did not deny that he was at loggerheads with the plaintiff over another dispute, he denied involvement in the broadcast of the impugned news and denied that he was the originator/source of such news. He submitted that the injunction sought would infringe his Fundamental Right to free speech. Adverting to the photograph relied upon by Mr. Lakhani, the defendant No.4 submitted that apart from being an Advocate, he was the Patron-in-Chief of a Railway Workers Union and the Deputy Secretary General of a political party, and therefore the exchange of news with court-reporters was nothing out of the ordinary.

11. In rebuttal, Mr. Umer Lakhani submitted that though the plaintiff had also prayed for damages, such prayer was in addition to the relief for injunction; therefore the quantification of damages cannot be a ground to refuse a temporary injunction.

12. I advert first to the last submission of Mr. Mehmood Ali, viz. that once the plaintiff had quantified his damages, he is not entitled to a temporary injunction. The plaintiff has pleaded damages as follows:

- "a. damages for defamation Rs. 10 billion*
- b. damages for mental stress Rs. 10 billion"*

Section 53 of the Specific Relief Act, 1877 states that temporary injunctions are regulated by the CPC. Rule 2 of Order XXXIX CPC provides that:

“Injunction to restrain repetition or continuance of breach. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.”

Therefore, when Rule 2 of Order XXXIX CPC permits a plaintiff to apply for a temporary injunction notwithstanding his claim for compensation, it is a misconception to say that the quantification of damages in the pleadings will oust a temporary injunction. In fact, when a plaintiff quantifies his damages, that is not taken by the Court as a ground by itself to deny a temporary injunction, but it is taken as a factor in assessing whether the denial of a temporary injunction would result in an irreparable harm or injury to the plaintiff. Here it is also important to distinguish cases falling under section 56 of the Specific Relief Act, 1877, for in those cases a temporary injunction may also be refused on the ground that when a perpetual injunction cannot be granted, a temporary injunction should not be granted.

The case of *Raees Ghulam Sarwar v. Mansoor Sadiq Zaidi* (PLD 2008 Kar 458) relied upon by Mr. Mehmood Ali to argue that no temporary injunction can follow when damages are quantified, is in fact for the proposition that despite quantification of damages, a plaintiff may still be able to obtain a temporary injunction. As regards the other case cited by Mr. Mehmood Ali, viz., *Muhammad Kashan v. Coca Cola Export Corporation* (2015 CLD 1513), that was a case alleging loss by infringement of copyright, and quantification of damages was seen only as one of the factors to assess the question of irreparable loss. There the primary ground for denying a temporary

injunction was that the plaintiff did not have a *prima facie* case. Therefore, none of the said cases support the argument that a temporary injunction can be refused solely on the ground that damages are quantified.

13. Regards the temporary injunction sought against the defendant No.4, that matter is fairly simple. Admittedly, the defendant No.4 was not the one who had broadcast the impugned news, nor the one who had reported the same during the broadcast. The allegation against him is that he (defendant No.4) was the originator/source of the impugned news and the same was broadcast at his behest with malice. That is denied by the defendants 1 and 2 and by the defendant No.4. Though the defendant No.4 is mentioned in the impugned news as the Advocate in the case, it does not say that he is the source of such news. No doubt the defendant No.4 is on record alleging that the plaintiff is the facilitator of an accused in the Justice Nizam murder case, but that is completely different from alleging that the Anti-Terrorism Court had implicated the plaintiff in the Justice Nizam murder case. Therefore, even assuming that the impugned news was defamatory of the plaintiff, and assuming that the defendant No.4 had motive to defame the plaintiff, the fact of the matter remains that once the defendant No.4 denies involvement in the impugned news, the allegation that he was the originator/source of the impugned news and that the same had been broadcast at his behest, requires to be proved by way of evidence, and till such time the plaintiff does not have a *prima facie* case for imposing a prior restraint on the freedom of speech of the defendant No.4.

14. Coming now to the temporary injunction sought against the defendants 1 to 3; as stated above, the sting of the impugned news report was that the Anti-Terrorism Court trying the Justice Nizam murder case had implicated the plaintiff as a facilitator of an accused in that case. Such a statement would "*tend to lower the plaintiff in the*

estimation of right-thinking members of society generally"², and on a *prima facie* view of the matter, it was libelous. As discussed in para 5 above, it is not disputed that the impugned news broadcast by the defendants 1 to 3 was factually incorrect as the plaintiff was not implicated in the Justice Nizam murder case; therefore, 'justification' (truth), which is otherwise a complete defense to an action for defamation, is not available to the defendants 1 to 3. The defense of 'fair comment' has not been pleaded by the defendants 1 and 2 nor was it brought up by Mr. Mehmood Ali during his submissions, presumably for the reason that the impugned news does not appear to be a 'comment', but an imputation of fact to which the defense of 'fair comment' does not attract³. However, the defendants 1 and 2 have pleaded the defenses of free speech and 'qualified privilege', and therefore before proceeding further it will be expedient to briefly discuss the import of these defenses.

15. The freedom of speech and press, and by now it is settled that the latter including the electronic media, is a Fundamental Right enshrined in Article 19 of the Constitution of Pakistan. However, the said freedom is not an absolute right. It is subject to certain reasonable restrictions specified in Article 19 itself. The right to have access to information in matters of public importance under Article 19A of the Constitution is also subject to regulation and reasonable restrictions imposed by law. The defense of Article 19 of the Constitution to an action for defamation was discussed by the Supreme Court of Pakistan in the case of *Sheikh Muhammad Rashid v. Majid Nizami* (PLD 2002 SC 514) as follows:

"In the original Article word 'defamation' was available which was substituted by the word 'commission of' vide section 4 of the Constitution (Fourth Amendment) Act, 1975 (LXXI of 1975). Although the scope of freedom of press has been enlarged after the omission of the word 'defamation' from Article 19, yet it does not licentiate the press to publish such material which may harm or cause damage to the reputation, honour and prestige of a person.

² The test laid down by Lord Atkin in *Sim v. Stretch*, (1936) 2 All ER 1237.

³ *Reynolds v. Times Newspaper Ltd.*, [1999] 4 All ER 609

The Article provides the freedom of press subject to any reasonable restrictions which may be imposed by law in the public interest and glory of Islam, therefore, the press is not free to publish anything they desire. The press is bound to take full care and caution before publishing any material in press and to keep themselves within the bounds and ambit of the provisions of the Article.”

It follows that the defense of Article 19 of the Constitution is not a complete defense to an action for defamation, and on a case-to-case-basis the Fundamental Right to free speech is to be balanced against the right to reputation.

16. Regards the defense of ‘qualified privilege’, a privileged occasion is one where the person who makes the communication has an interest or duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it, such reciprocity being essential⁴. This is called the ‘duty-interest test’ of the defense qualified privilege, and traditionally, where such test was satisfied, i.e., where the publication of the matter was in the public interest, then the publication was protected notwithstanding that it was defamatory/untrue. This defense is available to the press and electronic media on the principle that on matters of public importance they are under a duty to report the same to the public who have a corresponding interest to know the same. The defense of qualified privilege can be defeated if the plaintiff proves that the defendant was actuated by malice, or that the maker did not believe the statement to be true, or that he made the statement with reckless indifference to its truth or falsity⁵.

17. However, the case of *Reynolds v. Times Newspaper Ltd.*, [1999] 4 All ER 609, brought about a sea change in the traditional duty-interest test to the defense of qualified privilege. There, Lord Nicholls of Birkenhead held that qualified privilege should not be

⁴ Lord Atkin in *Adam v. Ward*, [1917] AC 309.

⁵ Carter-Ruck on Libel and Privacy, 6th Edition.

applied to give a blanket or generic protection to a widely stated category of matters of public interest, but in order to determine whether the public was entitled to know a particular information, the duty-interest test, absent the proof of malice, should be to see whether that particular publication should be protected by qualified privilege, and in doing so, the Court may also consider, among other matters, the following :

“Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only. (1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. (2) The nature of the information, and the extent to which the subject matter is a matter of public concern. (3) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories. (4) The steps taken to verify the information. (5) The status of investigation which commands respect. (6) The urgency of the matter. News is often a perishable commodity. (7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. (8) Whether the article contained the gist of the plaintiff’s side of the story. (9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. (10) The circumstances of the publication, including the timing.”

That aforesaid feature of the defense of qualified privilege has come to be called the ‘*Reynolds* defense’.

18. In *Jameel v. Wall Street Journal Europe*, [2006] 4 All ER 1279, the House of Lords held that assuming the matter to be of public interest, the *Reynold’s* case had essentially developed the test of ‘responsible journalism’. It was held by Lord Bingham of Cornhill that the rationale of this test is that there is no duty to publish and the public has no interest to read material which the publisher has not taken reasonable steps to verify; that no public interest is served by publishing or communicating misinformation; but the publisher is protected if he has taken such steps as a responsible journalist

would take to try and ensure that what is published is accurate and fit for publication; but keeping in mind that the common law does not seek to set a higher standard than that of responsible journalism. As explained by Lord Hoffmann in *Jameel*:

“If the publication, including the defamatory statement, passes the public interest test, the inquiry then shifts to whether the steps taken to gather and publish the information were responsible and fair. As Lord Nicholls said in *Bonnick v Morris* [2003] 1 AC 300, 309:

“Stated shortly, the Reynolds privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputations of individuals. Maintenance of the standard is in the public interest and in the interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege.”

Lord Nicholls was speaking in the context of a publication in a newspaper but the defense is of course available to anyone who publishes material of public interest in any medium. The question in each case is whether the defendant behaved fairly and responsibly in gathering and publishing the information. But I shall for convenience continue to describe this as ‘responsible journalism’.

19. Similar to the test of ‘responsible journalism’ developed by the House of Lords in *Reynolds* and *Jameel*, the Supreme Court of Pakistan in *Suo Moto Action Regarding Allegation of Business Deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar Attempting to Influence the Judicial Process* (PLD 2012 SC 664), also called for ‘appropriate levels of due diligence’. There, the Supreme Court while observing that journalists should conduct due diligence before reporting news so that rumours and insinuations are filtered out, also recognized that the thoroughness of journalistic inquiry should commensurate with the magnitude of disclosures.

20. Subsequently, to the extent of the electronic media, Code 22(1) of The Electronic Media Code of Conduct⁶ - 2015, made under

⁶ SRO No. 1(2)/2012-PEMRA-COC, dated 19-08-2015.

section 19(5) of the PEMRA Ordinance, 2002, had set a test of due diligence requiring that:

“22. Airing of any allegations etc:- (1) Licensee shall not air any allegation against any person or organization unless the licensee has credible information justifying such allegation and a fair opportunity to defend such allegation has been provided to the person or organization against whom allegation is being leveled.”

Recently, in *Suo Moto Case Regarding Discussion in TV Talk-Show with regard to Sub-judice Matters* (PLD 2019 SC 1), the Supreme Court of Pakistan has called for responsible journalism by the electronic media by adhering to The Electronic Media Code of Conduct-2015 while discussing and opining on *sub-judice* matters.

21. Though the impugned news was untrue, the news with regards to the Justice Nizam murder case was *prima facie* a matter in the public interest. But as laid down in the *Reynolds* case, that does not by itself accord the impugned news the protection of qualified privilege and the defendants 1 to 3 will have to meet the test of ‘responsible journalism’, or stated differently, the test of ‘appropriate level of due diligence’. Given the nature of the impugned news, where the imputation or allegation was that the plaintiff was implicated by a Court in a murder case, the defendants 1 to 3 had, in the very least, to meet the standard of responsible journalism or due diligence set by the second part of Code 22(1) of the Electronic Media Code of Conduct-2015 to which the defendants 1 and 2 were subject under section 20(f) of the PEMRA Ordinance, 2002, viz., that they had to provide the plaintiff with a fair opportunity to defend such allegation before broadcasting the same. Here, to my mind, Code 22(1) is not to say that no news can be broadcast until the version of the person likely to be defamed is obtained, but that before broadcasting such news some attempt is made to obtain his version unless the maker of the impugned statement can demonstrate that in the circumstances of the case the making of such attempt was inconceivable or would have been

futile, in which case the statement would be taken to have been broadcast at their risk. But in the instant case it is conceded by Mr. Mehmood Ali, learned counsel for the defendants 1 and 2, that no attempt was made to obtain the version of the plaintiff. It was his contention that that Code 22(1) was attracted only to 'talk-shows' and not to the impugned broadcast which was 'news'.

Indeed it is important to distinguish between 'news' and 'opinion'. That distinction is also manifest in Code 4 of the Electronic Media Code of Conduct-2015. While Article 19 of the Constitution protects the right to hold and propagate any 'opinion', no matter how antagonistic, controversial, lacking in substance or reason, so long as it do not come under reasonable restrictions permitted by Article 19, 'news' stands on a different footing. It is generally not a search for the truth, but the reporting of happenings around us. Such reporting may cease to be 'news' if delayed. Therefore, the degree of due diligence may vary with the nature of content to be aired. In fact, Code 22 along with Codes 18 and 19 of the Electronic Media Code of Conduct-2015 recognize varying degrees of due diligence for different types of 'content' which may manifest in a talk-show or a news programme. Content that is generally classified as 'news' may be a mix of news, opinion, and statements of fact, events and happenings, which may or may not relate to a person. However, when such a mix contains a serious allegation against a person as in the instant case, that part of the news will have to satisfy, in the very least, the test of due diligence laid down by Code 22(1). Therefore, the argument that Code 22(1) is not attracted to news content, is misconceived.

22. When it comes to a temporary injunction against speech in an action for defamation, the rule laid down in *Bonnard v. Perryman*, [1891] 2 Ch. 269, still appears to hold the field. That rule is that :

“Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing

most cautiously and warily with the granting of interim injunctions (Lord Coleridge CJ).”

In *Bonnard v. Perryman* though the libelous character of the publication was beyond dispute, but the defendants had raised the defense of justification and it was observed that such defense was not such which a jury may find wholly unfounded.

The rule in *Bonnard v. Perryman* was applied by a learned Single Judge of this Court in *Sultan Ali Lakhani v. Mir Shakil-ur-Rehman* (PLD 1997 Kar 41) to deny an application for temporary injunction to restrain publication. There also, the defendants had taken the defense of justification and there was nothing to show that such defense would ultimately fail. It was however observed that a temporary injunction to restrain publication can follow in a clear case.

In *Greene v. Associated Newspapers Ltd.*, [2005] 1 All ER 30, a judgment by the England and Wales Court of Appeal, it was held that the rule laid down in *Bonnard v. Perryman* against prior restraint to the extent of defamation actions was still good law. Again, a prior restraint on speech by way of a temporary injunction was refused on the ground that the defense of justification had yet to be tested. However, it was clarified that cases seeking injunction against disclosure of confidential or private information, or cases involving national security were on a different footing.

In *Raees Ghulam Sarwar v. Mansoor Sadiq Zaidi* (PLD 2008 Kar 458), though on the facts of the case a temporary injunction to restrain speech was declined, it was again observed by a learned Single Judge of this Court that while the Courts are reluctant in granting a temporary injunction against publication, but in a fit case, where for example the publication is undue or has been made to blackmail the plaintiff, a temporary injunction can be granted.

23. It follows that while exercising discretion to grant or not to grant a temporary injunction against libel or slander, the Court will also consider, within the settled tests for a temporary injunction,

whether the recognized defenses to an action for defamation, if so taken by the defendant, are not likely to succeed.

24. As already discussed above, in the case at hand, the impugned news report is *prima facie* libelous. It is not disputed that the imputation of fact made therein is untrue and therefore the defense of justification is not available to the defendants 1 to 3. The defense of fair comment has not been taken by the said defendants. Given the nature of the allegation in the impugned news, the second part of Code 22(1) of the Electronic Media Code of Conduct-2015 (the giving of a fair opportunity to defend) was attracted. Admittedly, the defendants 1 to 3 did not comply with that second part of Code 22(1). Apart from Code 22(1), if the defendant No.4 was not the source of the news, then there is no explanation why an attempt was not made to verify the facts from the defendant No.4 when it was being reported that he was the one who had made the alleged application in the Justice Nizam murder case. Even a copy of the reported application would have revealed that it had nothing to do with the Justice Nizam murder case. Thus in the circumstances of the case, the defendants 1 to 3 fail to meet that minimum test of responsible journalism or due diligence which is the price for the defense of qualified privilege. By the said, the plaintiff has also established a *prima facie* case, balance of convenience and a case of irreparable harm should the impugned news be repeated. As already discussed in para 12 above, the quantification of damages is not by itself an impediment to the exercise of interlocutory discretionary relief. In other words, to the extent *infra*, this is one of those 'clear' cases that *Bonnard v. Perryman* had recognized as an exception to its rule. The question that now needs to be considered is of the extent of the temporary injunction. The plaintiff prays for a complete gag-order, i.e, not only an injunction against the repetition of the impugned news, but also a prior restraint on all and any news relating to him. The latter, in my view is unfounded. There is nothing to show that the defendants 1 to 3 intend to broadcast any

further news regards the plaintiff, and that if they did, such news will be defamatory of the plaintiff. Therefore, this CMA No. 9684/2016 is dismissed against the defendant No.4 but allowed against the defendants 1 to 3 to the extent that pending suit the defendants 1 to 3 are restrained from repeating the impugned news.

JUDGE

Karachi

Dated: 15-10-2019