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

+ CS(OS) 436/2022 & I.As. 11897-900/2022

SMRITI ZUBIN IRANI Plaintiff

Through: Mr. Rajiv Nayar, Mr. N.K. Kaul, Ms. Pinky Anand, Sr. Advocates with Mr. Kirat Singh Nagra, Mr. Kartik Yadav, Mr. Pranav Vyas, Mr. Manhar S. Saini, Mr. Hardik Jain, Ms. Sumedha Chadha, Mr. Saurabh Seth, Mr. Dhruv Sharma, Mr. Anil Soni, Advocates.

versus

PAWAN KHERA & ORS. Defendants

Through: Counsel for D-1, 2 3 (appearance not given). Mr. Dayan Krishnan, Sr. Advocate with Mr. Saransh Jain, Mr. Ankit Agarwal, Ms. Shloka N., Mr. Shaurya Rai, Mr. Sanjeevi, Mr. Sukrit, Advocates for D-6/Twitter, Inc.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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29.07.2022

I.A. 11898/2022 (u/S 151 of CPC for exemption from filing legible and clear copies of the documents)

1. This is an application on behalf of the plaintiff under Section 151 of CPC for exemption from filing legible and clear copies of the documents.

2. The plaintiff is allowed to file the clear copies and typed versions of the hand written documents, if any, within four weeks.
3. Application is disposed of.

I.A. 11899/2022 (u/S 151 of CPC seeking leave to file on record videographic evidence by way of compact disks.)

4. This is an application under Section 151 of CPC seeking leave to file on record videographic evidence by way of compact disks.
5. I am informed that the videographic evidence by way of compact disk along with an affidavit under Section 65B of the Indian Evidence Act, 1872 has already been filed. Let the same be taken on record.
6. Application is disposed of accordingly.

I.A. 11900/2022 (u/S 148 read with 149 of the CPC for enlargement of the time period for filing the court fee)

7. This is an application under Section 148 read with 149 of the CPC seeking enlargement of time period for filing the court fee.
8. It is informed that court fee has already been paid amounting to Rs.2,10,000/- (Rupees Two Lakh Ten Thousand Only) and the proof of the same has been shown to the court. In view thereof, the present application is disposed of.

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9. Let the plaint be registered as a suit.
10. At the outset, Id. Senior Counsel appearing for the defendant Nos. 6 submits that the name of defendant No.6 as reflected in the memo of parties is incorrect and that it should be substituted with

Twitter, Inc. with the following address: 1355, Market Street, San Francisco, Suite 900, CA-94103, United States of America, Email: grievance-officer-in@twitter.com.

11. At oral request of the ld. Senior Counsels for the plaintiff, the name of the defendant No.6 may be substituted as Twitter, Inc. with the following address: 1355, Market Street, San Francisco, Suite 900, CA-94103, United States of America, Email: grievance-officer-in@twitter.com. Amended memo of parties may be filed within one week.

12. Issue summons to the defendants through all modes upon filing of process fee. Summons is accepted by ld. Counsel for the defendants.

13. The summons to the defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from the date of receipt of summons. Along with the written statement, the defendant shall also file an affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.

14. Liberty is given to the plaintiff to file a replication within 15 days of receipt of the written statement. Along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of the documents of the defendants, be filed by the plaintiff, without which the replication shall not be taken on record.

15. List before the Joint Registrar for marking of exhibits on 18th August, 2022.

16. List before this Court on 15.11.2022.

I.A. 11897/2022 (u/O XXXIX Rules 1 & 2 read with Section 151 CPC)

17. This is an application on behalf of the plaintiff seeking ad-interim injunction under Order XXXIX Rules 1 & 2 read with Section 151 CPC.

18. The plaintiff is a highly respected citizen of the country and a Minister in the Union Cabinet of India, currently administrating the Ministry of Women and Child Development and Ministry of Minority Affairs. By virtue of the nature of the public office occupied by the plaintiff with the Government of India she is a highly reputed member of the society.

19. It is the case of the plaintiff that the defendant Nos. 1, 2 & 3 with a pre-planned conspiracy and guided by oblique motive of defaming, belittling, maligning the credibility, repute and goodwill as well as character and standing of the plaintiff, organised a Press Conference on 23.07.2022 from New Delhi. During the course of the Press Conference, various wild and defamatory allegations were made against the plaintiff without any substance, pertaining to a statutory license in respect of food and beverages operations at a restaurant, named, Silly Souls Cafe and Bar, located at House No.452, Bouda Waddo, Assagao, Goa -403507.

20. The Press Conference was telecast live on the publicly accessible platforms such as the video streaming platforms such as www.Youtube.com, etc. There was concerted endeavour and motive to malign, defame and injure the reputation of the plaintiff and her family. False and grossly distorted statements were made in front of

full public view. Thereafter, various false and defamatory contents of the utterances of the defendant Nos. 1, 2, 3 in the Press Conference were used and continued to be used by the defendant Nos. 1, 2, 3 and various other individuals and entities, directly and indirectly disseminating such and similar misrepresentation on various social media websites such as Facebook, Instagram and Twitter.

21. It has been contended that such defamatory posts, tweets and re-tweets apart from spreading the defamatory content further on the social media platforms are also being used as an opportunity to spread morphed and extrapolated pictures of the plaintiff and her family members in a very derogatory and demeaning manner with various libellous taglines and captions.

22. The learned Senior Counsels appearing for the plaintiff have taken me extensively through the various documents and excerpts from the contents of the press conference dated 23.07.2022 carried out by defendant Nos.1 to 3. Attention of this Court has also been drawn to the positive averments made in the plaint supported by an affidavit as follows:

(a) The Plaintiff or her daughter are not the owners of the Restaurant or the property upon which it is situated;

(b) The Plaintiff or her daughter are neither running, nor operating the Restaurant or any bar in Goa;

(c) No license for the Restaurant has ever been applied for or granted to the Plaintiff or the Plaintiffs daughter;

(d) No show cause notice has ever been received by

either the Plaintiff or her daughter, till date.

23. The plaintiff also served legal notice dated 24.07.2022. However, no reply was given by the defendant Nos. 1, 2, 3 nor any documents with respect to various allegations made by the defendant Nos. 1, 2, 3 during the Press Conference were ever produced in order to substantiate their allegations against the plaintiff and her family members.

24. It is submitted that the defendant Nos. 1, 2, 3 have indulged in character assassination of the plaintiff and her family at the highest level.

25. It has been averred that all documents and information pertaining to the ownership of the restaurant and the property upon which it is situated; the licenses applied and granted for the restaurant are in public domain. The defendant Nos. 1, 2, 3 have purposefully not verified the purported information available with them before making the defamatory allegations against the plaintiff and her family members. Defendant Nos. 1 to 3 never sought any clarification from the plaintiff, regarding the true ownership of the said property on which the said restaurant is located and whether the plaintiff's daughter has applied for a liquor license for the said restaurant.

26. It is, thus, contended that defendant Nos. 1, 2, 3 have wilfully peddled the falsities despite knowing the facts and information, which information is available in the public domain.

27. During the course of the hearing I have been shown the various documents which are available on the social platforms which portray

the plaintiff and her family members in a very defamatory sense.

28. Since the plaintiff commands an esteemed position as a Minister in the Government of India and considering the nature of her public office, there is immense public glare and scrutiny of any information about the plaintiff in public domain. Defendant Nos.1 to 3 have conspired with each other and other individuals and organisations to launch a tirade of false, scathing and belligerent personal attacks on the plaintiff and her daughter with a common motive to malign, defame and injure the reputation, moral character and public image of the plaintiff and her daughter.

29. After having seen the various documents which have been filed by the plaintiff and also the excerpts from the Press Conference carried out by the defendant Nos. 1, 2, 3, I am of *prima facie* view that slanderous and libellous allegations have been made against the plaintiff without verifying the actual facts. Great injury has been caused to the reputation of the plaintiff and her family in view of the various tweets and re-tweets which have followed the Press Conference carried out by the defendant Nos. 1, 2 & 3.

30. After perusing the various documents and after hearing the Id. Senior Counsels for the plaintiff, I am of the considerate view that statements made by the defendant Nos. 1, 2, & 3 are in the nature of slander and seem to be bogus with malicious intent, only to garner highest amount of viewership thereby intentionally subjecting the plaintiff to a great public ridicule. This is especially in view of the fact that despite legal notice dated 24.07.2022 issued on behalf of the plaintiff, the defendant Nos. 1 to 3 neither replied to the said legal

notice nor produced any documents in support of their allegations.

31. Attention of this Court has been drawn to the judgment in the case of *Subramanian Swamy Vs. Union of India And Others.*, (2016) 7 SCC 221, wherein the Hon'ble Supreme Court has held that reputation cannot be allowed to be crucified at the altar of others right to free speech. Reference is made from following paragraphs:

“144. ... We are in respectful agreement with the aforesaid enunciation of law. Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable consequence which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to court and state that he has been wronged and abused. He can take recourse to a procedure recognised and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. “Reputation” of one cannot be allowed to be crucified at the altar of the other's right of free speech. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate.”

32. Further it may also be useful to note the other observations of the Hon'ble Supreme Court in the aforesaid judgment of *Subramanian Swamy Vs. Union of India And Others*, wherein it has categorically been held that protection of individual right is imperative for social stability in a body polity, and when harm is caused to an individual, the society as a whole is affected. Hon'ble Supreme Court held as follows:

“80. ... The law relating to defamation protects the reputation of each individual in the perception of the public at large. It matters to an individual in the eyes of the society. Protection of individual right is imperative for social stability in a body polity and that is why the State makes laws relating to crimes. A crime affects the society. It causes harm and creates a dent in social harmony. When we talk of society, it is not an abstract idea or a thought in abstraction. There is a link and connect between individual rights and the society; and this connection gives rise to community interest at large. It is a concrete and visible phenomenon. Therefore, when harm is caused to an individual, the society as a whole is affected and the danger is perceived.”

33. It may also be useful, at this stage, to refer to the judgment of *Umesh Kumar Vs. State of Andhra Pradesh And Another*, reported as (2013) 10 SCC 591, wherein the Hon’ble Supreme Court has held as under:

“18. Allegations against any person if found to be false or made forging someone else's signature may affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, scandal and defamation are injurious to reputation. Reputation has been defined in dictionary as “to have a good name; the credit, honour, or character which is derived from a favourable public opinion or esteem and character by report”. Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to

right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is “not only a salt of life but the purest treasure and the most precious perfume of life”. (Vide Kiran Bedi v. Committee of Inquiry [(1989) 1 SCC 494 : AIR 1989 SC 714] , Port of Bombay v. Dilipkumar Raghavendranath Nadkarni [(1983) 1 SCC 124 : 1983 SCC (L&S) 61 : AIR 1983 SC 109] , Nilgiris Bar Assn. v. T.K. Mahalingam [(1998) 1 SCC 550 : 1998 SCC (Cri) 450] , Mehmood Nayyar Azam v. State of Chhattisgarh [(2012) 8 SCC 1 : (2012) 4 SCC (Civ) 34 : (2012) 3 SCC (Cri) 733 : (2012) 2 SCC (L&S) 449 : AIR 2012 SC 2573] , Vishwanath Agrawal v. Sarla Vishwanath Agrawal [(2012) 7 SCC 288 : (2012) 4 SCC (Civ) 224 : (2012) 3 SCC (Cri) 347 : AIR 2012 SC 2586] and Kishore Samrite v. State of U.P. [(2013) 2 SCC 398 : (2013) 2 SCC (Cri) 655])”

34. Perusal of the aforesaid categorically shows that reputation of an individual has been placed at the highest altar and has been considered as akin to Right to Life of a citizen under Article 21 of the Constitution of India. Thus, there is imperative need to protect reputation of an individual, least to say, that of the plaintiff who is a respected member of the society and esteemed member of the Union Ministry.

35. Further, it may also be useful to refer to the judgment of *Ram Jethmalani Vs. Subramaniam Swamy*, (2006) 87 DRJ 603, wherein this Court has held in categorical terms that a person making the statement must establish that the statement was a comment and not a

fact. Reference may be made to the following observations made by this Court in the said judgment:

“90. To succeed in a plea of fair comment, the defendant must establish that the statement was a comment and not a fact. Thereafter, the defendant must establish that the comment had a sufficient factual basis (i.e. the comment must be based on facts which are themselves sufficiently true). He must additionally establish that the comment was one which an honest person could hold (this is an objective test, not to be confused with reasonableness). And finally, that the subject matter of the comment was in public interest.”

36. Attention of this Court has also been drawn to the judgment in the case of *Ajay Aggarwal Vs. Vinod Mehta & Ors.*, (2003) 66 DRJ 183, wherein it has been held as follows:

“15. There is room for doubt that in a democratic set up press is The Fourth Estate and it is its legitimate function to bring to the notice of the general public all that happens around and make reports specially in regard to the lapses in the administration and misconduct of public servants. While making a report about the court proceedings or judicial orders, however, the press like any other person is under an obligation to ensure that the publication is a substantially true report and is being made in good faith and for public good. Mere belief of the printer/publisher that the report is correct would not be a defence unless it is shown that they had acted with due care and caution. A coloured account of judicial proceedings mixed with reporters own observations so as to create an impression as if those observations were also the observations of the Court cannot be protected by the plea of good faith as in the absence of any motive even it falls short of

duty of due care and caution. In the present case, as discussed in the foregoing paras, the news item Ex. P-1, was carrying certain remarks directly attributed to the Chief Metropolitan Magistrate whereas in fact the Chief Metropolitan Magistrate had said nothing in respect thereof. The word 'intervention' used in para 2 of the judgment by the Court while stating the prosecution case was converted into 'instruction' so as to fully nail the plaintiff as a black sheep in the police force who had helped a criminal escape in a dowry death case. This reporting, therefore, was neither true nor in good faith nor in public interest. It was a totally untrue and irresponsible reporting aimed at sensationalising the issue."

37. I have perused the various documents on record, particularly, the Show Cause Notice dated 21.07.2022 issued by the Government of Goa, office of Commissioner of Excise, which has been addressed to one Shri Anthony Dgama, and not to the plaintiff or her family members.

38. Considering the documents on record it is clearly seen that there was no license which was ever issued in favour of the plaintiff or her daughter. The plaintiff or her daughter are not the owners of the restaurant. It has also been established by the plaintiff *prima facie* that the plaintiff or her daughter never applied for license. Neither the restaurant nor the land on which the restaurant exists is owned by the plaintiff or her daughter even the show cause notice issued by the Government of Goa is not in the name of the plaintiff or her daughter. All these facts have also been affirmed in affidavit by the plaintiff.

39. The plaintiff has been able to make out a *prima facie* case.

Balance of convenience also lies in favour of the plaintiff and against the defendants. I am satisfied that if the defamatory allegations and contents linked to it, is allowed to remain on the internet and social media platforms, then the extent of damage to the plaintiff could be of immense magnitude and injurious to the reputation of the plaintiff and her family.

40. In view of the aforesaid, I deem it expedient to pass an *ad-interim* injunction directing defendant Nos. 1, 2 & 3 to delete and remove the allegations, video of impugned Press Conference dated 23.07.2022 and the contents linked to the same as set out in document 2 and 3 of the plaint, published against the plaintiff from all the social media platforms, namely, Youtube, Facebook, Instagram and Twitter. Further, the defendant Nos. 4 to 6 are also directed to remove the allegations, videos, posts, tweets, re-tweets, captions, taglines along with the morphed pictures of the plaintiff and her daughter along with the underlined material with such defamatory content or anything similar thereto including recirculation on their respective platforms.

41. In the event defendant Nos. 1, 2 & 3 fail to comply with the directions as hereinabove within 24 hours of pronouncement of this order, defendant Nos. 4 to 6 are directed to take down the tweets and other materials on the URLs as well as other tweets which may appear in the plaint thereof. In addition to contents as contained in Document 2 and 3 attached with the plaint, the plaintiff is at the liberty to inform the defendant Nos. 4 to 6 about any tweets or any other social media content etc. which needs to be taken off.

42. Compliance affidavit under Order XXXIX Rule 3 CPC be filed within a week.
43. Reply to the application be filed within four weeks from the service of the present order along with paper book.
44. List before the Court on 15.11.2022.
45. Order *dasti* under the signature of the Court Master.

MINI PUSHKARNA, J

JULY 29, 2022

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