



2023/KER/81860

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 21ST DAY OF DECEMBER 2023 / 30TH AGRAHAYANA,

1945

WP(CRL.) NO. 318 OF 2022

CRIME NO.304/2021 OF MARADU POLICE STATION, Ernakulam

PETITIONER:

XXX

BY ADVS.
GEO PAUL
C.R.PRAMOD
RADHIKA RAJASEKHARAN P.
JACOB GEORGE PALLATH
NAVEEN T.U.
D.PREM KAMATH

RESPONDENTS:

- 1 UNION OF INDIA, MINISTRY OF LAW AND JUSTICE, 4TH FLOOR, A-WING, SHASTRI BHAWAN, NEW DELHI 110001
REPRESENTED BY ITS UNDER SECRETARY
- 2 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIATE,
THIRUVANANTHAPURAM 695001
- 3 THE NEW INDIAN EXPRESS
EXPRESS NETWORK PRIVATE LIMITED, EXPRESS GARDENS,
NO.29, 2ND MAIN ROAD, AMBATTUR INDUSTRIAL ESTATE,
CHENNAI, PIN - 600058 REP. BY ITS GROUP EDITOR
SRI.G.S.VASU
- 4 INDIAN KANOON
724, FIRST FLOOR, 9TH CROSS, 10TH MAIN ROAD,
INDIRA NAGAR, BANGALORE, PIN - 560038, KARNATAKA



2023/KER/81860

WP(Cr1) No.318/2022

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REPRESENTED BY ITS PROPRIETOR MR.SUSHANT SINHA
BY ADVS.
SRI.SUVIN R.MENON, CGC
SRI.C.N.PRABHAARAN, PP
SRI.V.KRISHNA MENON FOR R3
SRI.J.SURYA

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 21.12.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



"C.R."

J U D G M E N T

The petitioner is aggrieved by the publication of Exts. P2 and 4 by respondent Nos. 3 and 4, which, according to him, contain materials that violate his right to reputation, dignity, and privacy under Article 21 and the right to equality under Article 14 of the Constitution of India.

2. The petitioner is a chartered accountant by profession. He claims that he has more than twenty years of experience in the field and adorned various coveted positions, including that of CFO and CEO in different reputed companies in India and abroad, and that he was conferred with many awards and recognitions both in the US and India for his contributions in his field.

3. In 2021, Maradu Police Station, Ernakulam, registered a crime against the petitioner as Crime No.304/2021, alleging offences punishable under Sections 376(2)(l) and (n) of the Indian Penal Code (for short 'IPC'). The allegation is that the petitioner committed sexual assault and rape on the victim, who was his old



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classmate, after giving her a false promise of marriage. The petitioner denied those allegations. According to him, a false case has been foisted against him.

4. The petitioner was arrested on 12/10/2021 and remanded to judicial custody. He moved an application for regular bail at the Sessions Court, Ernakulam. The learned Additional Sessions Judge II dismissed the bail application on 29/10/2021 as per Ext. P3 order. Thereafter, an application for bail was moved before this court, which was allowed on 19/11/2021 as per Ext. P1 order. The petitioner was released from custody on the same day.

5. During the investigation, respondent No.3 (The New Indian Express) published an online write-up about the case of the petitioner titled "Man in Jail for 'rape' after Friends' Reunion". Its printout is marked as Ext. P2. The write-up, which identifies the petitioner by his name, provides the details of the alleged act, including the version of the police, victim, and defence, and the fact that the Sessions Court dismissed the bail application with its reasons.



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6. The respondent No.4 (India Kanoon) republished Ext. P1 bail order on their website and was indexed on search engines. A printout of the same is marked as Ext. P4.

7. It is alleged that Ext. P2 is a prejudicial publication containing sensitising, distorted and misleading facts which implicitly pronounce that the petitioner is guilty of rape, with a view to grab the attention of the people and Ext. P4 publication which exhibits his name, father's name and address is highly prejudicial to him especially since the case is in its preliminary investigation stage. It is further alleged that those publications violate the principles of presumption of innocence inasmuch as they tantamount to the pre-trial pronouncement of guilt of the petitioner that makes him and his family identifiable and thereby vulnerable. It is also alleged that apart from hampering the right to fair trial, Exts.P2 and P4 have also impacted his dignity, reputation, and privacy. According to the petitioner, as a direct result of the publishing of Exts. P2 and P4 online, he was terminated from his employment and is now jobless, and his wife, two minor daughters and aged parents are severely affected in



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various manners due to the publications. It is in this circumstance that the petitioner has approached this court invoking Article 226 of the Constitution of India seeking the following reliefs:

"i) Declare that printing or publishing in print, electronic, social media, etc., the name of the petitioner/accused or even in a remote manner disclose any facts which can lead to the petitioner/accused being identified and which should make petitioner/accused's identity known to the public at large, during investigation, pre-charge and pre-trial, as in Exts. P2 and P4 is violative of the fundamental rights guaranteed to the petitioner/accused under Arts.14, and 21 of the Constitution of India.

ii) Declare that printing or publishing in print, electronic, social media, etc., the name of any person accused of rape or an offence under Sections 376, 376A, 376B, 376C, 376D or 376E of I.P.C., or even in a remote manner disclose any facts which can lead to the accused being identified and which should make accused's identity known to the public at large, during investigation, pre-charge and pre-trial, is violative of the fundamental rights guaranteed to the petitioner/accused under Arts.14, and 21 of the Constitution of India.

iii) Declare that no person can print or publish in print, electronic, social media, etc., the name of the person accused of rape or of an offence under Sections 376, 376A, 376B, 376C, 376D or 376E of I.P.C., or even in a remote



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manner disclose any facts which can lead to the accused being identified and which should make accused's identity known to the public at large.

iv) Declare that in FIRs relating to offences under Sections 376, 376A, 376B, 376C, 376D or 376E of I.P.C., the name of the accused or even in a remote manner disclose any facts which can lead to the accused being identified and which should make accused's identity known to the public at large shall not be put in the public domain;

v) Declare that the police officials should keep all the documents in which the name of the person accused of rape or of an offence under Sections 376, 376A, 376B, 376C, 376D or 376E of I.P.C., is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the accused is removed in all records which may be scrutinized in the public domain;

vi) Declare that all the authorities to which the name of the person accused of rape or of an offence under Sections 376, 376A, 376B, 376C, 376D or 376E of I.P.C., is disclosed by the investigating agency of the court, are also duty bound to keep the name and identity of the accused secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency of the court.

vii) Declare, it would be appropriate that the judgment of every court relating to offences under Sections 376, 376A, 376B, 376C, 376D or 376E of I.P.C., should not disclose the name of the accused.



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viii) Issue a writ of mandamus or any other writ or order or direction, directing the respondents 1 and 2 to frame appropriate guidelines, orders or notifications to protect the dignity, reputation and privacy of the petitioner till the end of the trial and proven guilty, within a time frame fixed by this Hon'ble Court;

ix) Issue a writ of mandamus or any other writ, order or direction, by framing appropriate guidelines to protect the dignity, reputation and privacy of the petitioner till the end of the trial and proven guilty;

x) Issue a writ of mandamus or any other writ, or order or direction, directing respondents 3 and 4 to take down/remove Exts.P2 and P4 with urls - <https://www.newindianexpress.com/cities/kochi/2021/nov/12/man-in-jail-for-rape-after-friends-reunion-2382445.html> and <https://indiankanoon.org/doc/79819152/> forthwith from the worldwide web;

xi) Issue a writ of mandamus or any other appropriate writ or order or direction, directing respondents 3 and 4 to anonymize all such details of petitioner like his name, address, mention of family members and all such details prejudicial to petitioner from Exts.P2 and P4;

xii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing to address the petitioner/under trial as 'Alleged accused' instead of 'Accused';

xiii) To restrict the discussion, reports, articles, observations published on electronic/online media in a distorted or in any manner prejudicial to petitioner till the



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completion of trial and proven guilty;"

8. I have heard Sri.D.Prem Kamath, the learned counsel for the petitioner, Sri.Suvin R.Menon, the learned Central Government Counsel, Sri.Prabhakaran, the learned Public Prosecutor and Sri.V.Krishna Menon, the learned counsel for the respondent No.3. There is no appearance for the respondent No.4

9. The learned counsel for the petitioner, Sri. D.Prem Kamath, submitted that the pre-trial pronouncement of guilt through the publishing of Ext. P2 and the personal details of the petitioner by Ext. P4 had undoubtedly violated the fundamental rights guaranteed to the petitioner under Articles 14 and 21 of the Constitution of India. The learned counsel further submitted that when Article 14 guarantees equality before the law and equal protection of the law, a person accused of an offence, until proven guilty, is innocent and therefore enjoys the same rights as any other person and when he is treated unequally, it amounts to violation of the right to a fair trial. The right to privacy, reputation and dignity of a citizen that are integral parts of Article 21 of the Constitution of India are available to convicts, under trials,



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detenues and other prisoners in custody and cannot be allowed to be infringed in the name of the right to freedom of speech and expression. The counsel also submitted that the protection/restriction, which currently preserves the anonymity of victims of sexual offences, should be extended to persons accused of those offences, especially in the case of rape. Relying on sub-sections (2) and (3) of Section 327 of the Code of Criminal Procedure (for short 'Cr. P.C'), it was submitted that no person should be allowed to print or publish any matter in relation to proceedings involving the offence of rape, except with the previous permission of the court, that too maintaining the confidentiality of the name and address of the parties. The counsel prays to issue directions/guidelines to enforce the fundamental rights guaranteed to the petitioner under Articles 14 and 21 that have been allegedly infringed by Exts. P2 and P4 published by respondent Nos. 3 and 4. A draft guideline has been produced for reference. He also filed argument notes reiterating the points mentioned during the hearing and placing reliance on the following decisions: *Bloomberg L.P v. ZXC* [(2022) UKSC 5],



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Nilesh Navalakha v. Union of India [2021 SCC OnLine Bom.56],
Nipun Saxena and Another v. Union of India and Others [(2019) 2
SCC 703], *Swapnil Tripathi v. Supreme Court of India* [(2018) 10
SCC 639], *K.S.Puttaswamy and Another v. Union of India and
Others* [(2017) 10 SCC 1], *Sahara India Real Estate Corporation
Limited and Others v. Securities and Exchange Board of India and
Another* [(2012) 10 SCC 603], *Manu Sharma v. State (NCT) of
Delhi* [(2010) 6 SCC 1], *R.Rajagopal v. State of Tamil Nadu*
[(1994) 6 SCC 632], *Port of Bombay v. Dilipkumar
Raghavendranath Nadkarni and Others* [(1983) 1 SCC 124]
and *Francis Coralie Mullin v. Administratior, Union Territory of Delhi
and Others* [(1981) 1 SCC 608].

10. The learned counsel for the respondent No.3, Sri. V. Krishna Menon submitted that the press has every right to publish court proceedings, and Ext. P2 news item contains only verbatim reproduction of Ext. P3 bail order without any additions or exaggerations. The learned counsel further submitted that Article 19(1)(a) of the Constitution of India ensures freedom of speech and expression, which includes freedom of the press, and



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any restriction imposed on such freedom would be unconstitutional unless it can be justified under clause (2) thereof. Any attempt to suppress information from the notice of the public by seeking a direction to prevent publication will adversely affect the transparency and faith of the public at large in the judiciary. It is next submitted that the petition has been filed to curtail the freedom of the press enshrined under Article 19(1)(a) of the Constitution and seek a gag order against media from making any publications, which is impermissible in law.

11. The learned Central Government Counsel Sri. Suvin R. Menon submitted that the right to privacy is not absolute; it must bow down to compelling public interest, and if society collectively prosecutes an accused, each member of the society has a right to know his name and details as well as the allegations against him. The learned CGC further submitted that there are sufficient regulations in place to control and regulate media, both electronic and print, and any further restriction would amount to curtailing the freedom of the press. Specific reference was made to Information Technology (Intermediary Guidelines and Digital



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Media Ethics Code) Rules, 2021, which seeks to regulate social media intermediaries as well as digital media, including OTT and digital news platforms. It was contended that in the light of the decision of the Apex Court in *Sahara India* (supra), no guidelines could be framed, and if this Court were to lay down the guidelines, it would amount to legislating, which is against the very concept of separation of powers.

12. The learned Public Prosecutor Sri. Prabhakaran submitted that isolated instances of incorrect reporting do not justify the promulgation of guidelines, and the framing of guidelines is beyond the power and jurisdiction of this Court. It is submitted that a robust self-regulatory mechanism exists, apart from a statutory framework which, *inter alia*, would be sufficient to balance the freedom under Article 19(1)(a).

13. I will deal with the challenge against Exts. P2 and P4 separately taking into consideration the rival submissions made by the learned counsel appearing on either side.

On Ext.P2

14. The petitioner's case is that narrative in Ext. P2 is



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prejudicial to him as it negatively impacts his image in the minds of the reader by projecting him conclusively as a rapist, at a stage when investigation was going on and the charge had not been filed and thus threatens his right to a fair trial and violates the fundamental rights guaranteed under Articles 14 and 21 of the Constitution.

15. Media reporting on matters involving the commission of crimes involves several issues, such as the right of the media to disseminate news, views and information, the right of the citizens to know, the right to privacy, dignity and reputation of the accused and the victim and the right to fair trial.

16. For a country like ours, which is a parliamentary democracy, freedom of speech and expression is an essential right. The freedom of speech and expression, as envisaged under Article 19(1)(a) of the Constitution, means the right to free speech and to express opinions through various media. The right includes the freedom of the press. The freedom of the press is the fundamental tenet of the constitutional democracy in India. In



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Romesh Thappar v. State of Madras (AIR 1950 SC 124), while highlighting that freedom of speech is the foundation of all democratic organisations, the Apex Court held that said freedom would also include freedom of the press. Freedom of the press takes within its fold a number of rights; one such right is the freedom of publication. However, the expansive and sweeping ambit of such freedom notwithstanding, the right to freedom of speech and expression, like all other rights in the Constitution, is also not absolute; it is subject to the imposition of reasonable restrictions.

17. Reporting of the court proceedings increases transparency and faith of the public in the judiciary. The role of the media is that of a watchdog to disseminate truth to the knowledge of the public. A free and healthy press is indispensable to the functioning of a true democracy. Public has a right to know what is happening in courts. The right to know is a basic right which the citizen of a free country aspires. The concept of open justice permits fair and accurate reports of court proceedings to



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be published. As adjudication is not a private activity, the open court is the norm for legal proceedings. Indian law recognises open court justice. The language of S.327 of Cr.P.C indicates that the place where the Criminal Court is held for inquiry and trial of any offence shall be deemed an open court. Sub-section (2) of S.327 only creates an exception to the general rule and states that cases relating to sexual offences, i.e. Sections 376, 376A, 376B, 376C, 376D or 376E of IPC shall be conducted *in camera*. It is one of the salutary principles of the administration of justice that justice must not only be done but must also be seen to be done, and an 'open trial' reaffirms the said principle. If those who are present in the open court can hear it, the entire world is entitled to hear it through media. Recently, a Division Bench of this Court in ***Vysakh v. Union of India*** (2023(1) KLT 83) overruled the right to claim privacy in the public sphere in an open court system.

18. Though the press and media have every right to publish news and views, they cannot have unlimited and unfettered freedom to publish details of criminal cases pending



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their investigation and trial. There is a severe risk of prejudice if the media exercises such unrestricted and unregulated freedom. In the grab of the right to free speech and expression, the press and media cannot be permitted to publish reports in a manner hampering investigation and trial or prejudicing the right of defence of the accused in any manner or outrightly holding the suspect or the accused guilty even before the conclusion of the trial. The report should be truthful, fair, and objective. It should not be inaccurate or misleading, prejudicing the very concept of fair trial.

19. It is trite law that the right to dignity and reputation are facets of the right to life of a citizen under Article 21 of the Constitution [*Port of Bombay* (supra)]. The right to privacy, pursuant to declaring it to be a fundamental right by the Apex Court in *Puttaswamy*(supra), has also been woven into the fabric of Article 21. It is settled that a person's privacy, reputation and dignity cannot be infringed except by a restriction imposed by or under the authority of law, and such restriction should be reasonable, having nexus with the object sought to be achieved.



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It is also settled that the precious right guaranteed by Article 21 cannot be denied to accused, convicts, under trials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. [*Francis Coralie Mullin* (supra)]

20. As stated already, the main challenge to Ext. P2 is on the ground that it impinges on the petitioner's constitutionally guaranteed rights to dignity, reputation, and privacy. It is the case of the petitioner that the right to freedom of speech and expression available to the press and media under Article 19(1) (a) cannot trample on the right to reputation available to the citizen under Article 21. The learned counsel for the petitioner submits that in a conflict between freedom of speech and expression and the right to privacy, the latter must prevail. What would be the position if these two rights were in conflict?

21. The Apex Court has always struck a balance whenever it was found that the exercise of fundamental rights by one caused inroads into the space available for the exercise of fundamental rights by another. The competing claims arose in



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many of those cases, in the context of Article 19(1) (a) right of one person *qua* Article 21 right of another.

22. In *People's Union for Civil Liberties (PUCL) v. Union of India* [(2003) 4 SCC 399], the right to privacy of the spouse of the candidate contesting the election was declared as subordinate to the citizen's right to know under Article 19(1)(a). In *Sahara India* (supra), a balance was struck between the right of the media under Article 19(1)(a) and the right to fair trial under Article 21. The right to fair trial of the accused was balanced with the right to fair trial of the victim in *Asha Ranjan v. State of Bihar* [(2017) 4 SCC 397]. In *Puttaswamy* (supra), it was held that the Court should strike a balance wherever a conflict between two sets of fundamental rights is projected. In *R. Rajagopal* (supra), the rights pitted against one another were the freedom of expression under Article 19(1)(a) and the right to privacy of the officers of the Government under Article 21. This Court propounded thus:

"26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a



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"right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media."

23. After adverting to the series of decisions on the point including those discussed above, the Apex Court recently in ***Kaushal Kishor v. State of U.P. and Others*** [(2023) 4 SCC 1], while



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answering the question whether additional restrictions on the right to free speech can be imposed on grounds not found in Article 19(2) by invoking other fundamental rights, categorically held that under the guise of invoking other fundamental rights or under the guise of two fundamental rights staking a competing claim against each other, additional restrictions not found in Article 19(2), cannot be imposed on the exercise of the right conferred by Article 19(1)(a) upon any individual.

24. In *R. Rajagopal* (supra), it was categorically held that any publication concerning an individual's private affairs becomes unobjectionable if it is based on public records, including court records. It was observed that once a matter becomes a matter of public record, the right to privacy no longer subsists, and it becomes a legitimate subject for comment by the press and media, among others. However, an exception has been carved out against publishing the name and details of the female victim of a sexual assault, kidnapping, abduction, or a like offence in the interests of decency under Article 19(2). Ext.P2 write-up is based



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on Ext.P3 bail order, a public document. Ext.P2 only contains the prosecution version, the version of the victim, the defence version and the final verdict as described in Ext. P3. While the right of a fair trial and the right to privacy of the accused have to be zealously guarded, equally important is the right of the press/media to keep the public informed of matters of public interest. These could include reporting of court proceedings. The restrictions on the right to free speech and expression as envisaged under Article 19(1)(a) of the Constitution have to be in the interest of eight designated subject matters set out in Article 19(2), such as in the interest of the sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The petitioner does not have a case that the right of respondent No.3 under Article 19(1)(a) is in any way restricted under any of the subject matters set out in Article 19 (2). On the other hand, his case is that his right to privacy and reputation would override the right to free speech and expression of respondent No.3. As held in



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Kaushal Kishor (supra), under the guise of invoking other fundamental rights, additional restrictions, over and above those prescribed in Article 19(2), cannot be imposed upon the exercise of one's fundamental rights.

25. The petitioner has also sought to frame guidelines by this court with regard to the reporting of the details of his criminal case by the media pending the investigation and trial. The Constitution Bench of the Apex Court in *Sahara India* (supra) had dealt with the same issue regarding imposing restrictions on the right to report judicial proceedings and framing guidelines to the media in the matter of publication of news items which are *sub judice* in a court. Expressing the difficulty in finding an acceptable constitutional balance between the free press and the administration of justice, the Apex Court held that guidelines for reporting court proceedings could not be framed across the board. The Apex Court, however, recognised that aggrieved parties have either the option of moving for an order of prior restraint or an order of postponement. In *Sudin S. v. Union of*



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India (2015 (1) KHC 617), a Full Bench of this Court had occasion to consider the decision of the Apex Court in *Sahara India* (supra). The Full Bench was called upon to decide the question whether paragraph 23 of the norms of journalistic conduct framed by the Press Council of India can be read as containing any prohibition on the print media and whether writ restraining the media from publishing/broadcasting information regarding a call for harthal/strike can be issued. Following the dictum laid down in *Sahara India* (supra), the Full Bench concluded that this Court, in the exercise of writ jurisdiction, cannot issue any writ restraining media from publishing/broadcasting any information regarding the call of harthal/strike and that the norms framed by the Press Council are only in the nature of guidelines. Thereafter, another Full Bench of this Court considered a batch of writ petitions [WP(C) Nos.21108/2014, 24499/2016, and 25718/2016 decided on 24/5/2018] on the question whether the print and the electronic media have unlimited and unrestricted freedom to publish details of criminal cases pending their investigation and trial and whether any restriction should be put in place by this



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Court. Incidentally, the question whether this court can frame guidelines regarding reporting of criminal cases at the stage of investigation and trial was also considered. It was held that in view of the decision of a co-ordinate Bench (*Sudin*), it cannot take a different view and lay down guidelines for reporting of court proceedings. Though it was submitted that in the light of the decision of the Constitution Bench of the Apex Court in *Puttaswamy* (supra), the declaration of law in *Sudin* (supra) requires reconsideration, in view of the fact that a co-ordinate Bench decided *Sudin* (supra), the contention was not accepted and referred the cases to be heard by a Larger Bench for an authoritative pronouncement.

26. In the light of the above discussion, the challenge against Ext.P2 on the ground that it violates the right to reputation, dignity and privacy of the petitioner must fail.

27. The learned counsel next submitted that Ext.P2 publication is in violation of sub-clause (3) of Section 327 of Cr.P.C. I find considerable force in the said submission.

28. Section 327 of Cr. P.C deems the criminal court to be



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an open court. The Law Commission of India, in its 84th report on 'Rape and Allied Offences' in the year 1980, expressed the opinion that there is a need for legislation to preserve the anonymity of the victim and accused in the case of rape and allied offences. After that, the Parliament introduced sub-sections (2) and (3) to Section 327 of Cr. P.C along with Section 228A in IPC w.e.f. 25/12/1983. Sub-section (2) of Section 327 of Cr.P.C specifically says that the inquiry into and trial of rape or an offence under Sections 376, 376A, 376B, 376C, 376D or 376E of IPC shall be conducted *in camera*. Sub-section (3) to Section 327 provides that where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court. Sub-section (3) of Section 228A of IPC makes printing or publishing of any matter in relation to such proceedings before a Court an offence unless its publication is made with the previous permission of such Court. A proviso was introduced to sub-section (3) to Section 327 of Cr.P.C w.e.f. 31/12/2009 which says that the ban on printing or publication of



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trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties. Notably, the term used in the proviso is “parties” and not the “victim”. The introduction of the word “parties” through the proviso to sub-section (3) to Section 327 of Cr. P.C emphatically brings within its protection the obligation to maintain confidentiality of the names and addresses of the parties to the litigation, which includes the accused as well. Hence, the law as it stands now clearly provides that it shall not be lawful for a person to print and publish any matter in relation to the inquiry or trial of rape or an offence under Sections 376, 376A, 376B, 376C, 376D or 376E of IPC except with the previous permission of the Court, that too subject to maintaining confidentiality of name and address of the parties, both the victim and the accused.

29. The next question is whether the said prohibition extends to the proceedings where the bail application is heard and decided by the Magistrate or the Court. The term “any such proceedings” found in sub-section (3) to Section 327 of Cr.P.C refers to the term “inquiry into and trial of rape or offence under



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Sections 376, 376A, 376B, 376C, 376D, or 376E of IPC” stated in sub-section (2). The definition of “inquiry” in Section 2(g) in Cr.P.C is not exhaustive. The term “inquiry” under Section 2(g) of Cr.P.C has a very wide connotation and includes every step taken by the Magistrate other than the trial conducted under Cr.P.C. The proceedings by which the Magistrate or Court considers a bail application is judicial one and the Magistrate or Court acts in a judicial capacity. It is part of inquiry. Thus, the embargo under sub-section (3) of Section 327 of Cr.P.C against publication of any matter concerning the court proceedings also applies to bail proceedings. The protection accorded to the parties under sub-section (3) of Section 327 of Cr.P.C during trial or inquiry cannot be denied at the stage of consideration of bail application by the Magistrate or the Court. Respondent No.3 has no case that they have obtained any permission from the Court which passed Ext.P3 before publishing Ext.P2. Ext.P2 discloses the name of the petitioner. Thus, it violates sub-section (3) of Section 327 of Cr.P.C. As per the oral direction of this court, respondent No.3 has already removed the news content in Ext.P2 from their website.



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Hence, no further order is necessary. However, they shall not hereafter publish any matter in relation to the above crime except with the previous permission of the court, that too maintaining the confidentiality of the parties.

On Ext.P4

30. Ext.P4 published by respondent No.4 is nothing but an online copy of Ext.P1 bail order indexed on online search engines. In today's hyper-connected world, court judgments and orders in electronic forms are almost perpetually available. In open court proceedings, nobody, much less the petitioner, can have a grievance in uploading and publishing the judgments online. The grievance of the petitioner is against allowing his personal information to remain permanently in the digital public place, invading his right to privacy. The learned counsel for the petitioner submits that the digital immortality or perpetuity of the petitioner's sensitive personal information available online with Ext.P4 violates his right to privacy, reputation, dignity, and the principles of presumption of innocence.

31. All the judgments and orders of the High Court are



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available on its websites and in the Case Information System. The Case Information System software is a giant move under the initiative of the e-committee to make the Indian Judiciary more transparent and litigant-friendly. The whole idea of CIS, in a nutshell, is that the litigant should be able to view the daily status of his case, the orders of the case, hearing dates of his case, the progress of the case on any date, etc., online from any part of the world. Indian Kanoon obtains judgments from the Case Information System of Courts, which are accessible and free of cost. The Courts shall have no copyright claim over judgments as the same forms part of public records. Under the Copyright Act 1957, reproduction for judicial reporting, reproduction, or publication of judgments are not copyright infringements. Indian Kanoon provides free access to different statutes and case laws of various High Courts and the Supreme Court of India [See *Vysakh* (supra)]. The primary relief sought against Indian Kanoon (respondent No.4) is to remove Ext. P4, which discloses the petitioner's identity, from their website.



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32. In the light of the declaration of the right to privacy as a fundamental right by the Apex Court in *Puttaswamy* (supra), a Division Bench of the High Court of Kerala recently in *Vysakh* (supra) examined the right to privacy in the context of data made available by the parties to the litigation before the court. The Bench was dealing with a batch of petitions seeking the removal of identifiable information from judgments or orders published in various online portals and the High Court website, alleging that it is a violation of the right to privacy and right to be forgotten. It was contended that the publishers of judgments like Indian Kanoon and other law journals have no right to publish the details of the parties and allow them to be indexed, ignoring the privacy rights of the parties. After advertent to several issues, such as the right to privacy, the right to anonymity and the right to forget the past of parties in *lis*, the right of the public to know the details of the court proceedings, the right of the publishers and law journals to report and publish judgments, the need to maintain transparency in judicial records and the absence of a judicial policy regulating uploading judgments containing name and details of the parties,



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the Division Bench held that the claim for the protection of personal information based on the right to privacy could not coexist in an open court justice system, and a mere extension of an open court system in digital space cannot itself be called violative of privacy rights, in the absence of any law laid down in this regard by the Parliament. It was further held that the court cannot prevent the dissemination of case details in the public domain, citing the privacy of individual litigants and the Individual privacy rights must yield to the larger public interest of the court, making judicial function open to all to ensure public confidence. It was also held that reporting and publishing judgments are part of freedom of speech and expression protected under Article 19(1) (a) of our Constitution, and that cannot be taken away lightly without the aid of law. Ultimately, it was concluded that the right to be forgotten (a facet of the right to privacy) cannot be claimed in pending or concluded court proceedings. The Bench, however, permitted the masking of personal identities in matrimonial cases and in cases where the law does not recognize the open court system on the High Court website.



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33. In view of the dictum laid down in *Vysakh* (supra), the petitioner is not entitled to the relief sought to remove Ext.P4 from the website of respondent No.4 based on the right to privacy. However, the Division Bench has made it clear that in any family and matrimonial cases arising from the Family Court jurisdiction or otherwise and also in other cases where the law does not recognize the open court system (cases for rape and sexual offences where the trial is held *in camera*), the Registry of the Court shall not publish or shall not allow any form of publication containing the identity of the parties on the website or on any other information system maintained by the Court if the parties to such litigation so insist. As stated already, sub-sections (2) and (3) of Section 327 of Cr.P.C clearly stipulates that inquiry into and trial of an offence of rape under Sections 376 376A, 376B, 376C, 376D, and 376E of IPC shall be conducted *in camera* and no person shall print or publish any matter in relation to any such proceedings except with the previous permission of the Court, but subject to maintaining confidentiality of the name and address of the parties. The offences alleged against the petitioner



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are under Sections 376(2)(l) and (n) of IPC. Sub-section (1) to Section 228A of IPC provides that any person who makes known the name and identity of a person who is an alleged victim of an offence falling under sections 376, 376A, 376B, 376C, 376D or 376E of IPC commits a criminal offence and shall be punishable for a term which may extend to two years. Sub-section (3) to Section 228A of IPC provides that any person who publishes any matter in relation to the proceedings before a Court with respect to the offences mentioned in sub-section (1) without the previous permission of the Court shall be punished with imprisonment for a term which may extend to two years and fine. However, the Explanation to Section 228A clearly says that the printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of the said section. The Apex Court in *Bhupinder Sharma v. State of Himachal Pradesh* [(2003) 8 SCC 551] and *Nipun Saxena* (supra) has held that though the bar imposed under Section 228A of IPC did not in term apply to the printing or publication of the judgments of the High Court and the Supreme Court, in view of



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the Explanation to Section 228A, it would be appropriate that in the judgments of the High Court, Supreme Court or lower court, the name of the victim should not be indicated. In *Vysakh* (supra), the said protection is extended to all the parties of the litigation, making it clear that in cases where the law does not recognise the open court system, any form of publication containing the identity of the parties on the website or any other informative system maintained by the court shall not be allowed. Ext.P4 discloses the petitioner's name, address, and personal details. Hence, I am of the view that respondent No.4 is not at all justified in publishing Ext.P4 on their website disclosing the name and personal details of the petitioner. They should be directed to mask the name and address of the petitioner in Ext.P4.

34. In the wake of the above findings, this writ petition is disposed of with the following directions:

- i) The respondent No.3 is directed not to publish any matter in relation to Crime No.304/2021 of Maradu Pollice Station, Ernakulam District, hereafter except with the previous permission of the Court and subject



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to maintaining confidentiality of the name and address of the parties in terms of Section 327(3) of Cr.P.C.

- ii) The respondent No.4 is directed to anonymise the name and address of the petitioner in Ext.P4.

The rest of the reliefs sought in the writ petition, such as the declaratory relief and the prayer to frame guidelines, are declined.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp



APPENDIX OF WP (CRL.) 318/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE HIGH COURT ORDER DATED 19-11-2021 IN BA 8445/2021
- Exhibit P2 TRUE COPY OF ARTICLE TITLED " MAN IN JAIL FOR 'RAPE' AFTER FRIENDS' RE-UNION" PUBLISHED BY 3RD RESPONDENT
- Exhibit P3 TRUE COPY OF BAIL ORDER OF DISTRICT COURT IN CRLMC 2252/2021 IN CRIME 304/2021 OF MARADU POLICE STATION.
- Exhibit P4 TRUE COPY OF EXT.P1 BAIL ORDER WHICH WAS PUBLISHED BY THE 4TH RESPONDENT ON THEIR WEBSITE.