**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 27.07.2021

PRONOUNCED ON : 03.08.2021

CORAM:

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**W.P.(MD) No.12015 of 2021**

**and**

**WMP(MD).No.9466 of 2021**

**(Through Video Conference)**

Karthick Theodre .. Petitioner

.Vs.

1.The Registrar General,
Madras High Court,
Chennai.

2.The Additional Registrar General,
Madurai Bench of Madras High Court,
Madurai.

3.The Registrar (IT-statistics),
Madurai Bench of Madras High Court,
Madurai.

4.Ikanoon Software Development Pvt.Ltd.,
B205,N44/3B, KN0709,
ThuberaHalli,
Bangalore, Karnataka 560037. .. Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the Respondents No.1 to 3 to redact the name and other identities of the petitioner herein in the judgement dated 30.04.2014 in Crl.A(MD).No.321/2011 on the file of this Court and accordingly direct that Respondent No.4 to redact the same in their respective publication of the same.

For Petitioner : Mr.S.Jayavel

For Respondents: Mr..K.Samidurai
for R 1 to R 3

**ORDER**

The present case has raised an important question as to whether an accused person who on being charged for committing an offence and having undergone trial and ultimately been acquitted of all charges by a Court of competent jurisdiction, has the right to seek for destruction or erasure or redaction of their personal information from the public domain. The other important question that arises for consideration is if such a right is traceable to Article 21 of the Constitution of India ("the Constitution") as a right to privacy which is an intrinsic part of the right to life and personal liberty, and hence an enforceable right as held by the Hon'ble Supreme Court in***K.S.Puttaswamy and Another v. Union of India Others*** reported in ***(2017) 10 SCC 1***, and whether in light of the same, this Court can set out guidelines in exercise of its

jurisdiction under Article 226 of the Constitution?

2.The background of this case has been set out in the earlier Order passed by this Court on 16.07.2021 and it will be beneficial to extract the same hereunder:

> 1. Mr.K.Samidurai, learned counsel takes notice for the respondents 1 to 3.
>
> 2. The petitioner faced criminal proceedings for an offence under Sections 417 and 376 of I.P.C., and he was convicted and sentenced by the Trial Court by Judgment dated 29.09.2011. The petitioner took this Judgment on appeal before this Court and this Court after dealing with the merits of the case and exhaustively dealing with the law governing the case, acquitted the petitioner from all charges in a Judgment made in Crl.A.(MD).No.321 of 2011, dated 30.04.2014. By virtue of this Judgment, the petitioner has been acquitted from all charges and the petitioner can no more be identified as an accused in the eye of law.
>
> 3. Today, the world is literally under the grips of social media. The background of a person is assessed by everyone by entering into the Google search and collecting the information. There is no assurance that

the information that is secured from the Google is authentic. However, it creates the first impression and depending upon the data that is provided, it will make or mar the characteristics of a person in the eyes of the Society. Therefore, in today's world everyone is trying to portray himself or herself in the best possible way, when it comes to social media. This is a new challenge faced by the World and already everyone is grappling to deal with this harbinger of further complexities awaiting mankind.

4. The petitioner is now facing a very peculiar problem. Even though the petitioner had been acquitted from all the charges, his name gets reflected in the Judgment rendered by this Court and unfortunately, whoever types the name of the petitioner in Google search is able to access the Judgment of this Court. In the entire Judgment, the petitioner is identified as an accused even though he has been ultimately acquitted from all charges. According to the petitioner, this causes a serious impact on the reputation of the petitioner in the eyes of the Society and therefore, the petitioner wants his name to be redacted from the Judgment of this Court.

5. It is brought to the notice of this Court that the Central Government is in the process of finalising the Data Protection Bill 2019 and it is yet to come into

effect. This Act when brought into force will effectively protect the data and privacy of a person.

6. Till now, the Legislature has enacted laws protecting the identity of victims, who are women and children and their names are not reflected in any order passed by a Court. Therefore, automatically their names get redacted in the order and no one will be able to identify the person, who is a victim in a given case. This sufficiently protects the person and privacy of the person. This right has not been extended to an accused person, who ultimately is acquitted from all charges. Inspite of an order of acquittal, the name of the accused person gets reflected in the order. Therefore, for the first time, a person, who was acquitted of all charges has approached this Court and sought for redacting his name from the Judgment passed by this Court.

7. For the present, this Court can act upon the request made by the petitioner only by placing reliance upon Article 21 of the Constitution of India. After the historic Judgment of the Hon'ble Supreme Court in ***Puttasamy Vs. Union of India,*** the Right of Privacy has now been held to be a fundamental right, which is traceable to Article 21 of the Constitution of India. If the essence of this Judgment is applied to the case on hand, obviously even a person, who was accused of committing an offence and who has been subsequently

acquitted from all charges will be entitled for redacting his name from the order passed by the Court in order to protect his Right of Privacy. This Court finds that there is a *prima facie* case made out by the petitioner and he is entitled for redacting his name from the Judgment passed by this Court in Crl.A. (MD).No.321 of 2011. However, since the issue has come up for the first time before this Court, this Court wants to hear the learned counsel appearing on behalf of the respondents 1 to 3 and also the Members of the Bar and understand the various ramifications before writing a detailed Judgment on this issue.

8. It is also brought to the notice of this Court that when a similar issue came up before the Delhi High Court recently, interim orders were passed directing the concerned websites to redact the name of the petitioner therein. It is also informed to this Court that a new Right called as Right to be Forgotten is sought to be included in the list of Rights that are already available under Article 21 of the Constitution of India.



9. The learned counsel for the respondents 1 to 3 shall take necessary instructions and file written submissions after serving a copy to the learned counsel appearing for the petitioner.

10. Registry is directed to post this case for final arguments on 28.07.2021 at 2.15 P.M.. Registry is

further directed to publish this order in the Advocate Associations and Bar Associations both in the Principal Bench and Madurai Bench. The members of the Bar are requested to assist this Court in this issue.

3.The above order was circulated widely to all the Advocate Associations and Bar Associations and many advocates positively responded to the call made by this Court resulting in a five hour "marathon"hearing on 28.07.2021. Submissions were made from various perspectives and the effective submissions that emanated from a vibrant bar made it an enriching experience. This Court with all humility must acknowledge the fact that if not for the assistance of the members of the Bar, this Court could not have gained insight into the various facets of this issue to come to a fair conclusion.

4.This Court, apart from having the advantage of hearing the learned counsel for the petitioner and Mr.K.Samidurai, who appeared on behalf of the High Court Registry, also had the advantage of hearing the following counsel, either appearing on behalf of the Associations or as Amicus to assist the Court.

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|---|---|---|
| 1 | Mr.Gandhi | Madurai Bench of Madras High Court Bar Association. |
| 2 | Mr.V.S.Kanthi | Madras High Court Madurai Bench Advocates Association. |

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| 1 | Mr.Gandhi | Madurai Bench of Madras High Court Bar Association. |
| 3 | Mr.G.Mariappan | Madurai Bar Association. |
| 4 | Mr.Sanjay Pinto | |
| 5 | Mr.R.Thirumoorthy | |
| 6 | Mr.J.Anandhavalli and Mr.B.Saravanan | Women Advocate Association. |
| 7 | Mr.D.Selvam | |
| 8 | Mr.K.Samidurai | Respondent |
| 9 | Mr.Abudu Kumar | |
| 10 | Mr.G.Balasubramanian | |
| 11 | Mr.Duraipandian | |
| 12 | Mr.ArunAnbumani | |
| 13 | Mr.Sharath Chandran | |
| 14 | Mr.K.K.Ramakrishnan | |
| 15 | Mr.K.P.S.PalanivelRajan | |
| 16 | Mr.R.Suresh Kumar | |



5. Every counsel in unison reverberated the undisputable position of law that the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by

Part III of the Constitution. As a result of the same and by virtue of the authoritative pronouncement of the Hon'ble Supreme Court in ***K.S.Puttaswamy's case*** referred *supra*, the right to privacy is a fundamental right. It was also submitted that, the present issue involves a right to reputation which is inherent to the right to life protected under Article 21 of the Constitution. To add strength to this submission, Shakespeare's Othello was cited where in Act II, Scene iii, 167: Shakespeare would say "Good name in man and woman, dear my lord,Is the immediate jewel of their souls; Who steals my purse, steals trash; 'tis something, nothing; 'Twas mine, 'tis his, and has been slave to thousands: But he that filches from me my good name Robs me of that which not enriches him and makes me poor indeed."

6.It was also impressed upon this Court that under the Code of Criminal Procedure, 1973 ("the Code"),the Criminal Court after taking the evidence, examining the accused, hearing the prosecution and the defence, considers that there is no evidence that the accused committed the offence and finds the accused not guilty, records an order of acquittal. The language used under Section 232, 248 and 255 of the Code, was relied upon to add strength to this argument. To explain the phrase "The Judge shall record an order of acquittal", the judgment of the Hon'ble Supreme Court in ***Dilip Kumar***

***Sharma And Others v. State of Madhya Pradesh*** reported in ***(1976) 1 SCC 560***, was relied upon and the relevant portion is extracted hereunder:

> *"33.There is authority for the proposition that an order of acquittal particularly one passed on merits, wipes off the conviction and sentence for all purposes, and as effectively as if it had never been passed. An order of acquittal annulling or voiding a conviction operates from nativity. As Kelson puts it, "it is a true annulment, an annulment with retroactive force." So when the conviction of Rohit for Prabhu's murder, was quashed, the High Court-to borrow the felicitous words of Krishna Iyer J.-'Killed the conviction not then, but performed the formal obsequies of the order which had died at birth".*

7.It was further submitted that a judgment of acquittal gives the accused a right of getting an automatic expungement of his name from all records and particularly from those which are within public domain.

8.The peculiarity of seeking redaction of the name of an accused persons who have been acquitted, has essentially gained significance due to the development of science and technology that has virtually brought everything under the sky to the fingertips of any person who may have access to the internet. The search engines provide information about any person and

whatever information is available in the "Cloud" can be accessed by anyone. Therefore, since the orders and judgments are easily available on the public domain and can be conveniently accessed by the touch of a button, it is causing a serious impact on the reputation and privacy of a person. A person despite getting acquitted after facing criminal trial has their name reflected in the order or judgment as an accused which identity they want this world to forget.

9. At the outset, this Court came to a *prima facie* conclusion that an accused person is entitled to have their name redacted from the judgments or orders and more particularly the ones that are available in the public domain and which are accessible through search engines. However, this Court felt that there may be ramifications if such a generalised order is passed and directions are issued. In other words, this Court felt that there are certain finer aspects which have to be considered failing which, it may open up flood gates. The need for assistance from the Bar therefore seemed imperative. Initially, this Court was inclined towards right to privacy, right of reputation and right to live with dignity being read to have a wide scope. The Court felt that it had to come to the rescue until the legislature ultimately enacts the Data Protection Act. However, on a deeper review of the issue, this Court has taken cognisance of the fact that the same is not as simple and straight as it sounded.

10.There is no doubt with regard to the fact that the moment Judge records an order of acquittal, the identity of a person as an accused is completely wiped out. This effect takes place due to the operation of law. However, while undertaking the process of redaction, a Court is called upon to literally strike of the name of the person from the order or judgment which recorded the acquittal of the person from the criminal proceedings. In short, an identity which has already been wiped out by operation of law is sought to be wiped out at a gross level wherever there is reference to the name in the order or judgment. One other question that solicits the attention of this Court is at which level of jurisdiction should the process of redaction be done. Is it at the trial court stage or at the appellate stage or at the revisional stage and how should it be done in cases which have already concluded and become a part of record.

11.Mr.Arun Anbumani, who was one of the Amicus, brought to the attention of this Court a very important point for consideration. The learned counsel rightly argued that this Court is only looking at the end product of a criminal litigation, which is the final judgment or an order of acquittal which gets published. The learned counsel submitted that the damage to reputation or

dignity starts right from the day a complaint is given, a FIR is registered, an accused gets remanded and when they face trial. At every stage, there is a publication and while seeking for redaction, none of these publications will be touched. The learned counsel further submitted that it is only an order or judgment of acquittal which actually saves the honour of a person whose name has already been tarnished due to various publications that take place and which are also readily available on the search engines.

12.There is a lot of force in this submission made by Mr.Arun Anbumani. This country does not have a system like the one that is available in United States, where through a Court order there can be complete destruction of the entire records of an accused person, who is acquitted. Such person can start their life *tabula rasa* and lead a normal life with the rights provided by the Constitution, including the right to fill nil in the relevant employment application column for criminal records. In other words, the entire personal information gets expunged/destroyed and sealed from the public domain. If the system is looking for identifying an effective right for a person acquitted in a criminal proceeding, it must be a consummate relief and there is no use in just erasing the name in a final judgment or order. In fact, it may prove to be counterproductive for a person to get their name erased from a

judgment or order to prove their innocence, where there are other materials available in public domain, which pertains to damning their name when the criminal proceedings actually commenced.

13.There is only one enactment which provides for the complete destruction of the entire criminal record which ultimately removes the person from their identity as an accused person. The said enactment is "The Juvenile Justice [Care and Protection of Children] Act, 2015" and Rules thereunder, and the same are extracted hereunder:

> 1. Section 3(xiv) - Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.
>
> 2. 24. (1) Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law: Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply. **(2) The Board shall make an**

**order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:**

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court.

**99. (1) All reports related to the child and considered by the Committee or the Board shall be treated as confidential:** Provided that the Committee or the Board, as the case may be, may, if it so thinks fit, communicate the substance thereof to another Committee or Board or to the child or to the child's parent or guardian, and may give such Committee or the Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report.



(2) Notwithstanding anything contained in this Act, the victim shall not be denied access to their case record, orders and relevant papers.

The Rule on destruction of records is traceable to Section 110(1)(xiii)

**Rule 14 - Destruction of records** – The records of conviction in respect of a child in conflict with law shall be kept in safe custody till the expiry of the period of appeal or for a period of seven years, and no longer, and thereafter be destroyed by the Person-in-charge or Board or Children's Court, as the case may be:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19 of the Act, the relevant records of conviction of such child shall be retained by the Children's Court".

14.There is yet another issue with far reaching importance that arises in the present case that directly impacts one of the Central and universally acclaimed tenets of administration of justice viz., the principle of open justice.



15. The rationale for the indispensable principle that justice must be done in the open is best captured in the words of Jeremy Bentham who observed

"*In the darkness of secrecy sinister interest, and evil in every*

*shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity"*

Well over a century ago, this principle was firmly cemented as a fundamental facet of the system of administration of justice by the House of Lords in ***Scott v Scott*** [1913 A.C 417]. Viscount Haldane pointed out that the general principle is that Courts must administer justice in public. There were, however, some exceptions like matrimonial cases, cases relating to minors etc. which required a departure from this principle. The rationale for the exceptions were premised on a more fundamental principle that the chief object of courts of justice must be to do justice between parties. Therefore, in cases like minors and matrimonial disputes, where publicity may be harmful to the subject matter of the *lis*, the principle of open justice must yield to the still more paramount duty to do justice. After all, publicity is only a means to an end.



16.In ***R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court (Article 19 intervening)*** [2013 QB 618], Lord Toulson offered the rule of law justification in support of the principle of open justice.

The learned judge observed:

> *"Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. Quiscustodietipsoscustodes— who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse."*

17. In India the principle of open justice has been identified as a central tenet of the rule of law. The principle, however, is not monolithic, and encompasses various precepts. In ***Swapnil Tripathi v. the Supreme Court of India*** (2018 10 SCC 639), D.Y Chandrachud, J identified the following elements:

i. The entitlement of an interested person to attend Court as a spectator;

ii. The promotion of full, fair and accurate reporting of court proceedings;

iii. The duty of Judges to give reasoned decisions; and

iv. **Public access to judgments of Courts**.

The learned judge went on to observe thus:

> "*Public confidence in the judiciary and in the process of judicial decision making is crucial for preserving the rule of law and to maintain the stability of the social fabric. Peoples' access to the court signifies that the public is willing to have disputes resolved in court and to obey and accept judicial orders. Open courts effectively foster public confidence by allowing litigants and members of the public to view courtroom proceedings and ensure that the Judges apply the law in a fair and impartial manner.*"

It can, therefore, be taken as an established position of law that public access to judgments of Courts is an integral precept of the concept of open justice, promoting the rule of law.

18.The existence of the right to privacy as an enforceable fundamental right under Part III of the Constitution is no longer open to doubt in view of the authoritative pronouncement of a 9-judgeBench of the Hon'ble Supreme Court in ***K.S Puttaswamy's Case***, referred *supra*. The Supreme Court overruled its earlier decision in ***M.P Sharma v Satish Chandra*** [AIR 1954 SC 300] and the majority view in ***Kharak Singh v State of Uttar Pradesh*** [AIR 1963 SC 1295], and concluded as under:

> "*The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the*

*freedoms guaranteed by Part III of the Constitution."*

19. While there can be no dispute that a fundamental right of privacy exists at a general level in the light of the judgment of the Hon'ble Supreme Court in ***K.S Puttaswamy's case***, the question that has now cropped up is whether such a right exists in the context of judgments and orders of a Court. In ***R. Rajagopal v State of Tamil Nadu (1994 6 SCC 632),*** the Hon'ble Supreme Court held as under:

> *"**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 "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.***

*(3) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable*

*verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.*

*(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.*

*(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.*

*(6) There is no law empowering the State or its officials* to prohibit, or to impose a prior restraint upon the press/media."

20.The decision in ***R.Rajagopal*** has been affirmed by the 9-judge bench in ***K.S Puttaswamy's case***. In fact, the opinions of D.Y Chandrachud, J (for himself and Khehar, C.J, Agrawal and Nazeer, JJ) and R.F Nariman, J expressly cite and approve the aforesaid principles from ***R.Rajagopal's case***. It must, therefore, follow that judgments of courts being public records, the right to privacy cannot subsist. The concurring judgment of S.K Kaul, J also recognizes this position. At paragraph 636, the learned judge took note of what has now come to be termed as "*the right to be forgotten*" and has opined thus:

> "*If we were to recognise a similar right, it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant, or is incorrect and serves no legitimate interest. Such a right cannot be exercised where the information/data is necessary, for exercising the right of freedom of expression and information, for compliance with legal obligations,* ***for the performance of a task carried out in public interest****, on the grounds of public interest in the*

*area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. Such justifications would be valid in all cases of breach of privacy, including breaches of data privacy."*

21.There can be no two opinions that the administration of justice is a task carried out in public interest. In the context of judgments of Courts, Justice Mathew felicitously points out in ***Gurdit Singh v. State of Punjab*, (1974) 2 SCC 260:**

*"A judgment of a court is an affirmation, by the authorised societal agent of the state, speaking by warrant of law and in the name of the state, of the legal consequences attending a proved or admitted state of facts. Its declaratory, determinative and adjudicatory function is its distinctive characteristic."*



22.It would, therefore, follow that the "*right to be forgotten*" cannot exist in the sphere of administration of justice particularly in the context of judgments delivered by Courts. An exception to the aforesaid position can be seen in cases of victims of rape and other sexual offences where the Supreme Court itself has directed that the identity of victims cannot be disclosed [See

***Nipun Saxena v Union of India***, 2019 2 SCC 703]. Statutory prohibitions against the disclosure of the identity of the victim and witnesses are also found in provisions like Section 228-A IPC, Section 327(3) Cr.P.C, Section 23 of the POCSO Act, etc. Thus, unless a case falls within the ambit of the exceptions, the general principle must govern.

23. It may also be necessary to take note of the powers of the High Court under Article 226 for issuing suitable directions for non-disclosure during the course of trial if there is a real and substantial risk that disclosure would imperil fair trial. In such cases the High Court can pass "*postponement orders*" deferring publication and that too only for a short period during the trial. The principles in this regard are clear from the decision of the Constitution Bench of the Supreme Court in ***Sahara India Real Estate Corpn. Ltd. v. SEBI*, (2012) 10 SCC 603**:

> "*In the light of the law enunciated hereinabove, anyone, be he an accused or an aggrieved person, who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his/her rights under Article 21 to a fair trial and all that it comprehends, would be entitled to approach an appropriate writ court and seek an order of postponement of the offending publication/broadcast or postponement of reporting of*

*certain phases of the trial (including identity of the victim or the witness or the complainant), and that the court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the above mentioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. Such neutralising device (balancing test) would not be an unreasonable restriction and on the contrary would fall within the proper constitutional framework."*

24.The crux of the petitioner's case is that the continued reflection of his name as an accused in the judgment of this Court in Cr.A (MD) 321 of 2011 is a violation of his right to privacy under Article 21 of the Constitution or more specifically, its subset, the right to be forgotten. However, it is a settled position of law that a judicial order of a Court cannot violate fundamental rights under Part III of the Constitution. In ***Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388,** a Constitution Bench of the Supreme Court observed as under:

"*It is pointed out above that Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in*

*law that no judicial order passed by any superior court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. It may further be noted that the superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution."*

By virtue of this judgment also, the prayer in the writ petition cannot be acceded to.

25.There is yet another hurdle in the path of the petitioner. The direction sought by the petitioner is to redact his name from an order passed by a co-ordinate bench of this Court in a regular criminal appeal. In effect, the prayer is that a writ of mandamus must be issued against a judgment and order passed by this Court in exercise of its criminal appellate jurisdiction to alter the description of the petitioner in the cause title and the body of the judgment. In ***Naresh Sridhar Mirajkar v State of Maharashtra*** (AIR 1967 SC 1), it was conclusively held that a writ does not lie to an order of a Court placed on an equal footing in the matter of jurisdiction. Justice Hidayatullah observed thus:



"*It was suggested that the High Courts might issue writs to this Court and to other High Courts and one Judge or Bench in the High Court and the Supreme Court might issue a writ to another Judge or Bench in the same*

*Court. This is an erroneous assumption. To begin with the High Courts cannot issue a writ to the Supreme Court because the writ goes down and not up. Similarly, a High Court cannot issue a writ to another High Court. The writ does not go to a court placed on an equal footing in the matter of jurisdiction. Where the county court exercised the powers of the High Court, the writ was held to be wrongly issued to it (see New Par Consols Ltd., In re [(1898) 1 QB 669 : 67 LJQB 598 : 78 LT 312 (CA)] ).”*

26. The position was put beyond any pale of controversy in ***Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388***, wherein it was observed as follows:

*“Having carefully examined the historical background and the very nature of writ jurisdiction, which is a supervisory jurisdiction over inferior courts/tribunals, in our view, on principle a writ of certiorari cannot be issued to coordinate courts and a fortiori to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court.”*

27.The jurisdiction and powers of the Madras High Court flowing from

the Letters Patent of 1865 is channelled through different benches for the purposes of administrative convenience and orderly conduct of business. Thus, any judicial order, irrespective of the nature of jurisdiction and the strength of the Bench, is, in effect, the order of the High Court as one institution. The position is made clear by Clause 36 of the Letters Patent which runs as follows:

> "***36. Single Judges and Division Courts:*** *- And we do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose[in pursuance of Section 108 of the Government of India Act, 1915] and in such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided,[They shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it]"*

It is for this precise reason that any order, judgment summons, precepts etc.,

run in the name of the High Court as one institution. Clause 7 of the Letters Patent of 1865 states thus:

> "***7. Writs, etc., to issue in the name of the Crown, and under seal:*** *- And we do hereby further grant, ordain, and appoint that all writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at Madras, shall run and be in the name and style of Us, or of Our Heirs, and Successors and shall be sealed with the seal of the said High Court."*

The point here is that since the High Court is one indivisible institution, a writ cannot lie against a judgment or order passed by it for that would tantamount to the High Court issuing writs against itself.

28.The High Court is a Court of Record under Article 215 of the Constitution. As a superior Court of Record, it is entitled to preserve the original record in perpetuity. Thus, the sanctity of an original record cannot be altered or otherwise dealt with except in a manner prescribed by law. No judgment of any Court has been cited to show that the prerogative power of this Court under Article 226 extends to direct alteration of its own records. In fact, there exists a decision to the contrary in ***S. Tamilvanan v The State of***

***Tamil Nadu*** [1996 1 LW 577] where a judicial officer filed a writ petition and sought expunging of remarks from a judgment rendered by a single judge of this Court. The Division Bench took note of the judgment of the Hon'ble Supreme Court in ***Naresh Mirajkar***, cited *supra*, and ultimately concluded as under:

> "*Though we have held that the observations of the learned Judge made in the judgment are only administrative in character, in our opinion, it may not be judicial propriety to quash the same in as much as it is incorporated in a judicial order. Instead, it will be sufficient if we declare that the said observations made against the petitioner herein having been made without notice to him will not be binding on the concerned Administrative Committee or the Full Court and they cannot be used against the petitioner for any purpose in his career.*"

29.During the course of deliberation, the attention of this Court was drawn to various foreign judgments and also the relevant regulations and enactments of those countries which specifically provides for expunction, expungement, redaction or destruction of criminal records.

30. The Court is not unmindful of the decision of the Court of Justice for

the European Union (CJEU) in ***Google Spain SL v Agencia Española de Protección de Datos*** *(AEPD)* (Case C-131/12) [2014] QB 1022 where Google was directed to de-list information complained against from its servers. What cannot be lost sight of is the fact that there exists a General Data Protection Regulation (GDPR) for all European Union member states which has come into effect from 27th April 2016. Article 17 of this Regulation is titled "Right to erasure" and contains objective criteria which would guide a decision in erasure. No such rule or regulation exists in India for the present. In the absence of any statutory backing this Court cannot undertake the exercise of issuing directions when no judicially manageable standards exist in the first place.

31.There must be a proper policy formulated in this regard by means of specific rules. In other words, some basic criteria or parameters must be fixed, failing which, such an exercise will lead to utter confusion. This Court must take judicial notice of the fact that the criminal justice system that is prevalent in this country is far from satisfactory. In various cases involving heinous crimes, this Court helplessly passes orders and judgments of acquittal due to slipshod investigation, dishonest witnesses and lack of an effective witness protection system. This Court honestly feels that our criminal justice system is

yet to reach such standards where courts can venture to pass orders for redaction of name of an accused person on certain objective criteria prescribed by rules or regulations. It will be more appropriate to await the enactment of the Data Protection Act and Rules thereunder, which may provide an objective criterion while dealing with the plea of redaction of names of accused persons who are acquitted from criminal proceedings. If such uniform standards are not followed across the country, the constitutional courts will be riding an unruly horse which will prove to be counterproductive to the existing system.

32.In view of the above discussion, this Court is not inclined to grant the relief sought for in the writ petition and accordingly, the writ petition stands dismissed. Before drawing the curtains, this Court will be failing in its duty if it does not once again acknowledge the assistance rendered by the Bar in deciding this sensitive and knotty issue. No costs. Consequently, the connected miscellaneous petition is closed.

**03.08.2021**

Internet: Yes
Index : Yes
KP/PJL



**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may

be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Registrar General,
Madras High Court,
Chennai.

2.The Additional Registrar General,
Madurai Bench of Madras High Court,
Madurai.

3.The Registrar (IT-statistics),
Madurai Bench of Madras High Court,
Madurai.

**N. ANAND VENKATESH,. J.**

KP/PJL

**Order made in**
**W.P.(MD)No.12015 of 2021**



**Delivered on: 03.08.2021**