

21st M. C. Chagla Memorial Government Law College National
Moot Court Competition, 2014

Mr. Kane v. Censor Board of India, Spike Mi Productions, & Ors.

Wolf 42x7 v. Union of India, Mr.Kane, & Ors.

1. On the night of 12th August, 2013, Mr. Rosenbund, a businessman of some repute was found murdered in his apartment in Bombay, India. Suspicion soon fell on Mr. C. Kane, his long time business partner and chairman of a large public listed company Dependence Industries Inc. having around 1,00,000 employees. Mr. Kane was greatly admired by the public and was also known as a philanthropist. The police suspected that business disputes between them were the motivation for the murder. The story of Mr. Kane's arrest broke on national television later that evening. It appeared from media reports that there seemed to be at least some personal animosity between the two ex-partners as well as circumstantial evidence linking Mr. Kane to the crime. The very next day saw a significant drop in the stock price of Dependence Industries Inc. Given the size of the said company, this also had a negative impact on both the BSE and NSE.

2. Two days later one Mr. Wells, a former employee of Mr. Rosenbund came forward and confessed to the said crime. He claimed that Mr. Rosenbund had wronged him on various occasions, and had fired him from his job. Mr. Wells was promptly arrested based on a narco-analysis and brain-fingerprinting tests obtained with his consent. After some more investigation into the matter, based on this new development, Mr. Kane was released and all charges against him were dropped.

3. Many 24x7 news channels, however, continued to demand an investigation into Mr. Kane's role in the crime, and claimed that Mr. Wells' confession was a ploy to protect Mr. Kane. The said reports pointed out various loopholes in Mr. Wells' story and also provided nightly coverage on various theories and reasons why Mr. Kane was responsible for the crime. These ranged from a business deal gone sour, jealousy, blackmail, as well as theories relating to the alleged romantic involvement of Mr.

Rosenbund and Mr. Kane's daughter. Many of these reports were self contradictory, and kept changing every few days.

4. The scale of the media attack on Mr. Kane was, however, heavily criticised by some legal experts and other commentators as being sensationalised, and based on conjecture rather than fact. One legal luminary went so far as to say that *"the media has been on a crusade against Mr. Kane. I don't know why, but they wish to see him in the dock"*. A few others (largely within journalistic circles), however, felt that pressure exerted by the media was required given the nature and amount of influence that a man of the stature of Mr. Kane could exert over legal proceedings.

5. During the course of the investigation, however, the police came to the conclusion that Mr. Wells did not in fact kill Mr. Rosenbund and that his confession was merely a ploy to shield Mr. Kane. Mr. Kane was then re-arrested for the murder of Mr. Rosenbund and proceedings were instituted against him. Mr. Wells was also charged with offences relating to destruction of evidence, giving false evidence, interfering with the administration of justice, and criminal conspiracy.

6. The majority of the media revelled in the fact that they were responsible for the arrest of Mr. Kane. One popular television anchor on the channel Wolf 42x7, Mr. Knowitall Swami, proudly proclaimed *"we brought Mr. Kane to justice by our dogged persistence. His arrest is due to the media and we have ensured that he will get what he deserves"*.

7. The trial of Mr. Kane was then expedited by the Hon'ble Supreme Court at his request and started in early 2014.

8. On 13th March, 2014, the Parliament amended the Press Council of India Act. According to the Minister for Information and Broadcasting, the said Act would usher in a *"second freedom – a freedom from the tyranny of the news media, that night after night pursues and subjects innocent people to tremendous indignities"*. By the said amendment, the following sections were added to the PCI Act:

“ The Press Council Amendment Act, 2014...

... 3A. National Media Authority: (1) There shall be constituted a National Media Authority. The composition shall be as follows – the chairman shall be a retired judge of the Supreme Court or a former Chief Justice of a High Court; 2 members from the Press Council who are working journalists; 1 member from the Press Council representing a television media network; and 1 government nominee.

(2) Appointment of members of the National Media Authority shall be made by the Press Council constituted under this Act by simple majority decision.

(3) Once Appointed members shall hold office for a fixed term of 2 years and shall only be removed form office by a 2/3 decision of the Press Council on the following grounds (i) moral turpitude (ii) inability to perform his duties

The Chairman shall hold office for a fixed term of 5 years, and can be removed from his office by the Government for: (i) moral turpitude (ii) inability to perform his duties

Notwithstanding anything contained above, the Government Nominee shall be appointed by the President and shall hold his office at the pleasure of the President.

3B. Powers of the Television News Media Authority: The Authority shall be empowered of its own motion or on a complaint;

(i) to pass directions in relation to the reporting of any news story in India on a Television Channel for a period of time not exceeding six months.

(ii) The Authority shall have the right to delay the broadcast of any television content for any period not exceeding one year.

Provided that a fair hearing will be granted to affected persons before passing any Order under this section.

3C. Scope of Authority: The powers under section 3B can only be exercised on the following grounds: (i) interests of the sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order, (v) decency or morality or in relation to contempt of court, (vi) defamation or (vii) incitement to an offence.

3D- Resolution of conflicts: In case of a conflict between sections 3A, 3B, and 3C and any other provision of the act the said sections will prevail.”

9. After giving a due hearing to the necessary parties, on 10th August, 2014, the *National Media Authority* passed an Order under Section 3B restraining media outlets from commenting about the validity or correctness of any judgment delivered in Mr. Kane's case for 4 weeks. It was clarified that they could report on the judgment but could not comment on the correctness of the same.

10. On 12th August, 2014 in a lengthy Judgment, and based solely on circumstantial evidence, Mr. Kane was convicted for the murder of Mr. Rosenbund. The motive attributed to him was that he felt betrayed by Mr. Rosenbund blackmailing him in relation to a business deal. Many legal experts expressed outrage with the judgment in the absence of any clear and tangible evidence against Mr. Kane. These persons were of the opinion that there had been a trial by media, and had it been any other case, Mr. Kane would not have been convicted. It may also be noted that the Judgment of the Trial court clearly debunked several of the rumours relating to the said case including the said romantic involvement of Mr. Rosenbund and Mr. Kane's daughter. Mr. Kane filed an appeal before the High Court. The trial of Mr. Wells has been scheduled, but has not yet started.

11. Fearing an adverse impact that his conviction could have on the financial markets, the regulatory authorities had suspended trading of the stock of Dependence Industries Inc. on the day that the judgment was to be delivered.

12. On 12th August, 2014, Mr. Spike Mi, a well known documentary filmmaker announced that he had already made a movie inspired by the events relating to Mr. Rosenbund's murder called 'Cain and Able'. The movie would be his first major commercial venture in the local 'MollyForest' film industry. The movie contained a disclaimer stating, *“any similarity between this film and real life characters and incidents, is purely coincidental”*. However, the director stated that, *“though the movie is inspired by the murder of Mr. Rosenbund, it is also a work of fiction. I have made the plot revolve around this basic story because the public has questions as to how people who are so close*

can act in these kind of situations- what their thoughts and feelings are. We have however ensured that the plot is a murder mystery and all the details of the same are fictional". Similarly, the actors in the said movie gave a number of interviews discussing how the movie was based on the said murder. The actor portraying Mr. Cain stated, *"I have derived a great inspiration from the famous murderer Mr. Kane. To kill someone who is close to you, like a brother, ... that is a state of mind that requires a lot of study. This movie explores the psyche of someone like Mr. Kane, and I found that quite challenging".*

13. The consensus among those who had watched the film at the preview screenings was that while it was loosely based on the murder of Mr. Rosenbund, the contents were fictional. However, some scenes did seem perilously close to the rumours that had abounded in the media about Mr. Kane's motives for killing Mr. Rosenbund including that the motive for the murder had been an illicit relationship between Mr. Able and the daughter of Mr. Cain.

14. Mr. Kane promptly filed a Writ before the Hon'ble Bombay High Court against the Censor Board seeking an injunction preventing the grant of a censorship certificate to the movie 'Cain and Able'. Mr. Spike Mi's company Spike Mi Productions was also made a party to the said proceedings.

15. The 24x7 news channel, Wolf 42x7 also filed a Writ in the Hon'ble Bombay High Court challenging the constitutionality of the sections introduced by the Press Council Amendment Act, 2014, and the order dated of 10th August, 2014 under section 3B of the said Act. Mr. Kane was added as a party to the said proceedings.

16. On 14th August, the Hon'ble Bombay High Court admitted the matters and clubbed them together. The Order dated 10th August, 2014 was not stayed. Both matters were then placed for hearing and final disposal on 27th September, 2014.