
CASE COMMENT - S. KHUSHBOO VS. KANNIAMMAL & ANR

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INTRODUCTION

The case of **S. Khushboo v. Kanniammal and Anr.** It brings into light various indispensable issues such as pre-marital sex, living in a relationship, freedom of speech, etc. Sharing your views on pre-marital sex, living relationship, etc., is not defaming a society or a gender. Discussion on these topics is paramount, but some people are uncomfortable with the discussion on this topic.

It is a judgment that emphasizes the issue of free speech and the criteria to check the obscenity of any statement. This judgment clarifies the criteria of the obscenity of a statement. Giving a prudent statement on social issues does not make you liable for Defamation. Saying open about pre-marital sex, living relationship, etc., is not a crime; instead, it is a crucial thing because fewer people can talk about this matter in public, and education about it is vital for the progress of the society in the case of **Government of Andhra Pradesh and others v. P. Laxmi Devi** court also observed that for the development of socio and economic conditions of society freedom of expression, freedom to speak, freedom to think, freedom to criticize and freedom to dissent are very important.

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In this case, S. Khushboo published an article in India Today and Dhina Thanthi, in which she supports pre-marital sex in the context of life in the relationship, which is opposed by a group of people because, according to them, is an obscene statement and case defamation was raised against her. Defamation is used when a person with the wrong intention tries to lower the image of another person by publishing a statement to a third party. The statement should lower the image of a person in the eyes of a prudent person; here, a prudent person does not mean a highly educated person; it means that a person is rational while making the decision and is not biased towards an issue. Inserting the topic SEX in the statement does not make your statement obscene; there is the mindset of some people that the topics such as sex, periods, live in relationships should not be discussed openly because it will create a wrong impact on the minds of the people.

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FACTS

- S Khushboo [hereinafter referred to as the “Appellant”] made some remarks regarding sensitive but essential topics such as pre-marital sex in the context of a live-in relationship. She made this remark in an interview given to India Today, and it was also published in Dhina Thanti but in a deform manner.
- In September 2005, India Today conducted a survey and survey aimed at finding the sexual habits of the persons residing in big cities. For that, they interviewed various persons, one of them being the Appellant. The Appellant called for acceptance of pre-martial sex in the context of a live-in relationship, and she also stated adequate precautions to avoid unwanted diseases.
- This remark was against the belief of other persons, and Kanniammal and others [hereinafter referred to as the “respondents”] started filing criminal cases in various courts, especially in the courts of Tamil Nadu. Cases were filed under sections 499, 500, 504, 505, and 509 of the Indian Penal Code (IPC) and sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986.
- Appellant went to Madras High, requesting to quash the proceedings through the “Inherent power of the High court” is mentioned in section 482 of the Code of Criminal Procedure (CrPC).
- Madras High Court on 30.4.2008 denied to quash the case and ruled it against the Appellant by exercising its inherent power, which is given under section 482 of the Code of Civil Procedure (CrPC).
- The case was not quashed based on the premise that, in this case, relevant considerations were factual issues that were best left to a trial judge to resolve. This issue was then brought to the Supreme court.

STATUTES/ PROVISION DISCUSSED

- Section 499 of the Indian Penal Code (IPC) is Defamation.
- Section 292 of the Indian Penal Code (IPC) is about obscenity.

ISSUES

- Whether the statements made by the Appellant are liable for Defamation under section 499 of the India Penal Code.
- Whether the remarks of the Appellant are obscene or not.

JUDGMENT

The Supreme Court comprising a bench of 3 judges, ruled the judgment in favor of the Appellant and said that there was no prima facie evidence to claim that the statements made by the Appellant were defamatory. The cases against the Appellant were with mala fide intention. As the case has no prima facie evidence, therefore, according to case **M/s Medical Chemicals & Pharma Ltd. Vs. M/s Biological E. Ltd. & Ors.** Court observed that a case could be quashed by a superior court only when there is no prima facie evidence or in exceptional circumstances. The case of Defamation put forward by the respondent has no hands and legs because the statement made by the Appellant is not defaming a particular or against group of people, community, or caste. The aim of the statements was not to defame someone; instead, they aimed to support the social issue and question the old stereotype mentality.

It concluded that filing numerous criminal complaints against Khushboo was done fraudulently because almost all of the complainants were affiliated with the PMK. In such cases, the Bench stated, the task of criminal law was not to punish individuals simply for expressing unpopular opinions. The bar for imposing reasonable restrictions on free speech and expression was very high, and there should be a presumption in favor of the accused in such cases. The initiation of a criminal trial was a process that carried an implicit degree of coercion, and it should not have been triggered by false and frivolous complaints that amounted to harassment and humiliation of the accused.

Reference of the word SEX cannot be said obscene, and even the context in which it was used was not obscene, and this can be concluded from the case **Ranjit D. Udeshi Vs. State of Maharashtra.** The obscenity of a statement should be measured based on rational thinking and current community standards. Mere reference to pre-marital sex or a live-in relationship cannot be stated as obscene because, due to this statement, they are not an increase in the sexual desire of a rational person. To understand the context of the statement, the judge should keep himself in the author's position and then try to know what his/her viewpoint would be; this

solution of finding whether a statement is obscene or not was stated in the case of **Samaresh Bose Vs. Amal Mitra**. According to clause 1 of section 292 of IPC, a statement is said to be obscene when the statement is lascivious or appeals to prurient interest. In this situation, the fulfillment of the requirement of the section is not fulfilled. Therefore, section 292 of the Indian Penal Code has no legs.

The Bench's observations on tolerating unpopular viewpoints in the sociocultural space are significant. While maintaining that the free exchange of ideas and opinions was necessary to sustain the collective life of the citizenry, the Bench advised people to keep their minds open to the possibility that some individuals or groups believed that sex outside of marriage was regular. The cases are mostly not based on bona fide intention; instead, they have based on mala fide intention because most cases are filed to put forward political intention. Considering all these facts, Supreme Court ruled the judgment in favor of the Appellant and overturned the judgment given by Madras High Court.

CASE ANALYSIS

This judgment is pivotal because it hits the three essential topics: freedom of speech, expressing your view is not Defamation, and obscenity of the statement. The judgment considers all the relevant points and gives a fair judgment. As stated in the **Union of India v. Naveen Jindal and another**, freedom of speech is an essential element for the functioning of democracy. This judgment put the light on the freedom to speak his/her views. Some people consider discussing topics like sex, live-in relationships, etc., awkward. For the development of the views of the people and also for changing the views of the people, freedom of speech is very pivotal. In the article, the Appellant also mentioned the precautions a woman should consider while live-in a relationship, which shows that freedom of speech is essential for spreading knowledge. In this case, the defamation claims have no legs, and they are put forward. The claims were just put forward to make political claims. Defamation means lowering the image of a particular person or a group of persons, and reputation is a natural right of a person, according to **Gian Kaur v. State of Punjab**. In this case, the Appellant made the statement based on a survey and stated her personal opinion, not targeting any particular person or group. The statements made by the Appellant were in good faith. It was not with mala fide intention. In such matters, the statements are judged from the viewpoint of a prudent person, who is not biased, and the statements should also be looked through a current scenario. The statement is said to be obscene when due to the statement there is an increase in the desire to do sex. The word sex in the statement does not

make the statement obscene. The statement made by the Appellant was not made to arouse sexual desire. Instead, the statement was made with bona fide intention.

The judgment given by Madras High Court was not according to me because the court should have dismissed the cases filed against the Appellant by using its inherent power. There were many cases filed under various sections, but all the other sections needed to be appropriately applied, and most of the sections were just applied for namesake, and they needed a base to prove it. Like, the Supreme Court noted that the Indecent Representation of Women.

(Prohibition) Act of 1986 was enacted to punish publishers and advertisers who knowingly disseminate materials depicting women indecently. Khushboo's statement, published by India Today and Dina Thanthi, only mentioned pre-marital sex. It would defy logic to use the Act against her when she was in no way an advertiser or publisher.

CONCLUSION

The Supreme Court's decision is based on the fact that the framers of the Constitution also recognized the importance of safeguarding free speech and expression because the free flow of opinions and ideas is necessary to sustain the citizenry's collective. Furthermore, an informed citizenry is a prerequisite for meaningful governance because it encourages open dialogue between the government and society. The impact of the judgment is enormous because it gives a message to society that freedom of speech is available and you can speak your view openly unless and until it is made to intentionally hurt someone with mala fide intent. It gives us confidence that we can speak about ourselves freely even though it is against the mindset of some groups of people. Through this judgment, two crucial points are conveyed, one is freedom of speech to say views, and the second thing is that expressing your views on topics like sex is not called obscene. The judgment gives a clear view of what statements will be considered obscene and what statements will be considered Defamation.