

**GAUTAM GAMBHIR V. D. A. P & CO. & ANR.**

**[CS(COMM) 395/2017]**

**COURT:** Delhi High Court

**DECIDED ON:** 13<sup>th</sup> December, 2017

**BENCH:** Justice S. P. Garg

**BACKGROUND TO THE CASE**

‘Personality Rights’ implies a privilege of an individual with their character. They can be secured under the Right to Protection or as a Property of an individual. This is the essential for the biggest names since usually individuals utilize a superstar’s name or a photo to publicize their exchange and impact their deals. Anybody can abuse a VIP’s name and/or photo effectively for their exchange. Therefore, it is significant for a superstar to enlist a trademark of their name to save their personality rights.

The concept of Personality Rights, is still new in India. It is not codified and protected by any statutory provisions of law. The closest, one can attempt to protect their Personality Rights is under Article 21 of the Indian Constitution. Personality Rights can be protected under Right to Privacy under Article 21.

Apart from protecting it as a Fundamental Right, the other provision that could broadly protect this right is the Intellectual Property Right, it could be a part of the Copyrights Act 1957, this Act primarily deals with the rights of actors, musicians and artists and helps them claim credit for their original work, and prevent others from using the same without their permission.

The Judiciary through some cases has also attempted to protect Personality Rights under section 14 of the Indian Trademark Act 1999. This section attempts at restricting one from using personal names. The position in the United States regarding Personality Rights or “Publicity Rights” as referred is quite similar to the position in India. There are no federal laws protecting the rights, but most of the states have laws that protect personality rights to some extent. The Supreme Court of the United States for the first time in the year 1977 heard a case regarding Personality Rights.

In the case of *Zacchini v. Scripps- Howard*<sup>1</sup>, the Supreme Court while delivering its judgement held “*Wherever the line in particular situations is to be drawn between media reports that are protected and those that are not we are quite sure that the first and the fourteen amendment do not immunize the media when they broadcast a performer’s entire act without his consent.*”

Similar is the position of personality rights in Europe, where they are referred to as “Image Rights”. Even Europe does not have any statutory provision that could protect personality rights per se. In Europe they are protected under tort law.

### **FACTS OF THE CASE**

The present case of “*Mr. Gautam Gambhir, v. D.A.P & CO. & Ors*”, involves the famous cricketer Mr. Gautam Gambhir who has become a household name through his exceptional performance in the field of cricket and representing India in International cricket for many years.

In the 2016, the plaintiff discovered that the defendant was using the plaintiff’s name to promote his restaurants. The defendant had a tagline which was ‘*By Gautam Gambhir*’.

The Plaintiff in his plaint mentioned that this tagline is associated with the restaurant chain that the defendant owned and it was being used by him without permission. Further, it was alleged that it was being capitalized on the Plaintiff’s name and was being misused as to the reputation and goodwill earned by the plaintiff for his personal gains.

The plaintiff filed for a temporary and permanent injunction seeking to restrict the defendant from using his name which is ‘*Gautam Gambhir*’ for his restaurant business.

### **PLAINTIFF’S CONTENTION**

The name ‘Gautam Gambhir’, after being referenced, promptly gets related with the Plaintiff only and nobody else. Mr. Gautam Gambhir is not only a known person in India, but also a person who is loved by people worldwide due to his contribution in the field of cricket. Thus, the name carries great reputation and goodwill along with it.

The tagline ‘By Gautam Gambhir’ as associated with the restaurant business of the defendant, make the people think that the restaurants are associated to the plaintiff and hence approach

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<sup>1</sup> *Zacchini v. Scripps- Howard Broadcasting Co* 433 US 562 (1977).

the plaintiff to enquire about his association with the restaurants in any way or does he own them.

Another contention by the plaintiff is that the tagline used for promoting the restaurants, misleads the general population into accepting that the restaurants are claimed by plaintiff.

The unauthorized utilization of the name of the plaintiff is creating real turmoil in the psyche of the buyers. One such incident was the pointed out by the plaintiff where a client on Zomato was deluded into accepting that restaurants were in fact owned by the plaintiff.

The fact that the many a time the clients had complained that the services and food offered by the restaurants were not up to the mark and thus, this was tarnishing the reputation of the plaintiff.

Indeed, even an honest portrayal of one's family name may persuade that the products/administration had a place with someone else.

### **DEFENDANT'S CONTENTION**

The defendant is the real owner of the restaurants that are mentioned by the plaintiff. The first restaurant of the defendant when he entered this business was 'Blu Wavs by Gautam Gambhir' and is located in Rajouri Garden, New Delhi. The said restaurant was started by the defendant in the year 2014.

The defendant then in the year 2015, inaugurated another restaurant by the name of 'Play Reloaded by Gautam Gambhir.' After the success of these two restaurants the defendant opened two more restaurants by the name of 'Ghungroo by Gautam Gambhir' and 'Hawalat by Gautam Gambhir.

The defendant has claimed that he had applied for the trademark for 'Hawalat Lounge and Bar by Gautam Gambhir' much before the plaintiff sought to take a legal action against him.

The defendant also claims that like applying for trademark for the above name he also applied for trademark for 'Ghungroo by Gautam Gambhir'.

The defendant at no time had associated or had attempted to associate himself or his restaurants with the plaintiff.

The counsel for the defendant also appealed to the court that the name Gautam Gambhir is a common name and thus it cannot be granted an exclusive right to the plaintiff.

### **JUDGEMENT DELIVERED BY THE COURT**

There is no material on record to gather that the defendant at any point spoke to the people associating himself or his restaurants to the plaintiff.

The defendant currently owns four restaurants which were opened in a period of 2-4 years. One of the restaurants was opened in the year 2014 and by no means, at all, were objected to by the plaintiff or the plaintiff took no efforts to restrict the defendant then. Until now, the current suit was filed by the plaintiff in May 2017.

The Court held, *“The law is that no one is entitled to carry on his business in such a way as to represent that it is the business of another, or is in any way connected with the business of another. Of course, an individual is entitled to carry on his business in his ‘own’ name so long as he does not do anything more to cause confusion with the business of another and if he does so honestly/bona fide.”*

The Court also found that *the plaintiff is in no manner associated with the said restaurant business. Nothing has come on record if any time, the plaintiff was invited for any inauguration or function of the restaurants in question. No overt act has been attributed to the defendant whereby he at any time attempted to make representation to any individual or the public at large that the restaurants were owned by the plaintiff.*

The defendants have given just one case of a person who had some disarray the said restaurant to be claimed by the plaintiff. No ‘disclaimer’ was ever given by the plaintiff to disperse the supposed confusion was created among the general population who associated the plaintiff with the sport of cricket.

The restaurants in question are carried on by the defendant after taking all the necessary permission from the respective authorities.

When the logo ‘Hawalat Lounge and Bar by Gautam Gambhir’ was enlisted by the Trademarks Registry in Class 43, under No. 3436616 on 20.12.2016 in regard to restaurant service, there was no objection raised in the registry.

It was completely asserted by the defendant that inside or outside the restaurants, he had never shown any image/photography/banner of the plaintiff to create any turmoil in the general population.

In all the websites/ pages online at all the stages and at all his presentation in any case, viz, writing material, divider, pictures, stocks and so on the defendant has noticeably put various of his 'own' photos to relate his 'own' personality with his 'own' restaurants business.

Nothing has developed on record if there was any misfortune to the altruism of the plaintiff in his field for example Cricket as a result of running of the restaurants by the defendants with the tagline in his 'own' name.

Thus, the Court found no merits to the suit filed by the plaintiff, thus disposing the suit off while not inclined to grant any relief to the plaintiff.

## **CONCLUSION**

It can thus, be concluded that only the illegal and the unrightfully usage of the Personality Rights with malafide intention should be held culpable under the law. The concept of Personality Rights as discussed above is a dynamic concept and is still in an evolving phase. Thus is not a codified concept and is not protected by any statutory provision. Over the years, the Judiciary through many different cases and judicial precedent has held that Personality Rights can be interpreted within the ambit of Article 21 of the Indian Constitution.

Referring to the case of "*K.S. Puttaswamy (Retd) v. Union of India*<sup>2</sup>" it can have inferred that Right to Publicity has been constitutionally recognised under the ambit of Right to Privacy, but since the above case is not referring to the rights of celebrity per se, the judiciary can simply overlook this issue as obiter.

All things considered, this branch of Intellectual Property Rights is still evolving, indeed even judicial interpretation has been very restrictive in nature, and the judiciary is of the belief that instead of giving constitutional status to Personality Rights, it should be protected by provisions governing the Intellectual Property Rights.

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<sup>2</sup> (2017) 10 SCC 1

Further India, being a democratic country, a country where everyone is entitled to Freedom of Speech and Expression, giving importance to the rights of one famous person would dilute the meaning of the rights that are guaranteed to the citizens of India, by the Constitution.

The Judiciary plays a pivotal role in such manner as it helps in creating a balance between the rights of certain high profile personalities as it understands the amount of hard work that goes in to create a certain amount of goodwill and reputation in the society, while doing so it also has to keep in mind the rights of the public at large.

In the age of globalization, it has become a trend for celebrities in western countries to start registering their names and possible marks associated with their names as trademark thus eliminating the chance of any possible infringement and also restring any other person from using their names without their authorization. The Legislature of India, acknowledges the fact that in a world where people are rapidly using online platforms and social media to promote their brand, it is getting difficult for the celebrities to protect their personalities and identities from being commercially misused or being used to endorse certain protect without their authorization. The legislature is also of the opinion that to stop the possible infringement it is important for it to protect Personality Rights under certain provisions of law or insert a provision to the existing law through an Amendment.

JudicateMe