

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
LAW DIVISION - CIVIL PART
DOCKET NO.: MON-L-2533-08

x- - - - - x
INDIAN NATIONAL OVERSEAS :
CONGRESS, :
 : TRANSCRIPT
Plaintiffs, :
 : OF
-vs- :
 : MOTION
SATYANARAYANA DOSAPATI, :
et al., :
 :
Defendants. :
x- - - - - x

Held at: Monmouth County Courthouse
71 Monument Park
Freehold, New Jersey

Heard on: August 15, 2008

B E F O R E:

THE HONORABLE PATRICIA DEL BUENO CLEARY, J.S.C.

TRANSCRIPT ORDERED BY

NICOLE B. DORY, ESQ.,
(Connell Foley)

A P P E A R A N C E S:

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THE COURT: This is the matter of Indian National Overseas Congress Inc., v. Satyanara Dosapati et al., it's docket number L-2533-08. May I have your appearances please, let me take the plaintiff first then the moving party.

MR. MILLER: Andrew Miller, Your Honor, for the plaintiff Indian National Overseas Congress Incorporated.

THE COURT: I'm sorry, how do you spell your last name?

MR. MILLER: Miller, M I L L E R.

MR. HAEFNER: Marc Haefner, H A E F N E R, Connell Foley on behalf of all defendants.

THE COURT: All right, it's your motion so I'll hear from you.

MR. HAEFNER: Thank you, Your Honor. You know as a young lawyer I was warned not to engage in hyperbole but this is a case that actually allows for retreat to first principles, namely the First Amendment of the United States Constitution.

I should add for Your Honor's benefit that I have with me today, Ms. Sunanda Thali, who is an individual defendant, Mr. Satyanara Dosapati who is an individual defendant and Mr. Ben Chadre (phonetic) who is the president of the Hindu International Council against Defamation.

1 THE COURT: Thank you, you can be seated.
2 Thank you very much.

3 MR. HAEFNER: So as I was saying, Your Honor,
4 this is a case that allows us to examine first principles
5 namely the First Amendment of the United States
6 Constitution and questions of free speech and chilling
7 free speech. In here, plaintiff's goal has been to chill
8 free speech through the filing of this lawsuit and now
9 clearly through, as evidence by their opposition brief
10 the desire to let discovery hang around so that they can
11 attempt to make out their claim at great expense to my
12 clients, whose offense, Your Honor, notably is publishing
13 a political ad in the New York Times that people in India
14 apparently found offensive.

15 Now, I would first like to take a moment to
16 examine the applicable standard by looking at four cases
17 very quickly for Your Honor, which I couldn't extensively
18 quote in the brief. And first I would like to address
19 Printing Mart a case I am sure Your Honor is very
20 familiar with. But that case, at 116, New Jersey at,
21 pinpoint site, 767 through 768 says that in addition to
22 alleging defamatory statements the complaint must allege,
23 not somewhere down the road, but the complaint must
24 allege facts sufficient to identify the defamer, the
25 circumstances of publication, also the circumstances must

1 show the statements are of or concerning the plaintiff.
2 It must appear to a third person understood the
3 statements to relate to the plaintiff. Again, this is a
4 reference to what the complaint must contain, not a
5 reference to what must be proved in order to avoid
6 summary judgment or proceed to trial.

7 The Supreme Court states that --

8 THE COURT: You know, what about the fact, do
9 we have the right parties here?

10 MR. HAEFNER: No, Your Honor, we don't.

11 THE COURT: I'm really concerned about that.

12 MR. HAEFNER: No we do not have the right
13 parties here, Your Honor. And it's clear from Printing
14 Mart that the Supreme Court thinks having the right
15 parties here is something that must be set out with
16 specific facts in the complaint. You have to establish
17 with factual contentions, your right to bring a
18 defamation lawsuit, especially in a case like this, where
19 it's a question of people commenting on the political
20 actions of others, people who are clearly public figures.

21 And this organization, this Indian National
22 Overseas Congress is nowhere mentioned in the ad which is
23 attached as Exhibit A to the complaint. None of the
24 alleged defamatory statements refer to the Indian
25 National Overseas Congress. That there is some

1 relationship alleged between the Indian National Overseas
2 Congress, a New York Corporation and the Indian Congress
3 Party which is a political party, the largest political
4 party in India and there is then some further
5 relationship between the Indian Congress Party and Sonia
6 Gandhi is not sufficient to state a case of action for
7 defamation.

8 And the second case is that, not sufficient to
9 have standing to state a claim for defamation. There's a
10 set of cases that very clearly go to that. The Appellate
11 Division -- I wish there were more to brief, from New
12 Jersey law, but there are simply not a lot of cases.
13 However, the Appellate Division did summarily note and
14 then throw out the claims that have been brought by
15 wives, whose husbands have been defamed, and said,
16 clearly you know these wives, it's not of or about them,
17 and even though they may be upset, even though they may
18 have suffered damages, that's not the test. You know --
19 and if you accept INOC's -- excuse me, Indian National
20 Overseas Congress' argument about this sort of -- well
21 we'll prove that we lost something, because something bad
22 was said about something of someone else?

23 I query, am I going to be back in this Court
24 when the caterer for the Indian National Overseas
25 Congress Party says oh well, Indian National Overseas

1 Congress, they cancelled all the events that they had
2 scheduled and I had, I was going to be the one to cater
3 those events, now I can't because of this ad that ran.

4 That's not a crazy hypothetical that I've
5 offered Your Honor, that's just one more step removed
6 from the claim of defamation that's being offered here.
7 And it's not a valid claim of defamation. The statements
8 --

9 THE COURT: Let me hear from Mr. Miller.

10 MR. HAEFNER: Certainly, Your Honor.

11 MR. MILLER: Your Honor, --

12 THE COURT: And I'm really concerned about
13 whether we have the right parties here. I think that's
14 the first issue, do we have the right parties?

15 MR. HAEFNER: Understood, Your Honor, and --

16 THE COURT: I don't know what to hear about,
17 you know, about defamation and -- I want to hear about
18 whether or not we have the right parties here.

19 MR. MILLER: Well it's certainly the case that
20 my client the Corporation is not named per se in the
21 advertisement. If the Court would make a ruling, -- the
22 Corporation that is the plaintiff in this case must be
23 named per se and that's it, that's the end that would be
24 the end of the issue we should bring someone else in.
25 But there is not authority cited.

1 What we said in our complaint and what we said
2 in our opposing papers is that we intend to prove
3 something very specific here. We intend to answer the
4 question why was this advertisement published in the New
5 York Times. Why in America --

6 THE COURT: You still haven't answered my
7 question. Why are, why should I allow this case to go
8 on? This is not, you don't have the right parties here.
9 I don't think so --

10 MR. MILLER: Well we do, Your Honor, because we
11 intend to prove, we believe unquestionably that the
12 reason this advertisement was published was not to attack
13 any entity in India per se but to attack specifically the
14 Indian National Congress Party of America here. It's
15 operations here, because it was published here. If you
16 want to attack the aspect of the party that's operating
17 in India you publish there, you know publish here.

18 Their purpose was to attack the arm of the
19 party, that operates here in the United States and
20 specifically our affidavit from our clients specifically
21 says they achieved that. And they cost them at least
22 \$200,000 in lost donations and support to his party
23 because of this. And this is why they did it. They were
24 very successful in doing it, they used the prestige and
25 the power of the New York Times, specifically to go after

1 the parties attempt to generate support here in the
2 United States and they achieved there. We intend to prove
3 that. We agree that if at the end of discovery there's
4 insufficient evidence to prove that that's what they were
5 doing, some other party should be here. But we are very
6 comfortable and confident that this can and will be done.

7 THE COURT: Thank you.

8 Now this matter comes before the Court on
9 motion by the defendants to dismiss the complaint
10 pursuant to Rule 4:6-2. The plaintiff the Indian
11 National Overseas Congress, hereinafter INOC has filed an
12 action alleging that an advertisement placed in the New
13 York Times on October 6th, 2007 was defamatory and seeks
14 damages.

15 The plaintiff alleges that the advertisement
16 defames Sonia Gandhi and her son. Now Sonia Gandhi is
17 the Chairwoman of the Indian National Congress Party
18 which appears -- and that's the INCP, which appears to be
19 a political party situated in India, which to me is a
20 separate and distinct entity, different than the
21 plaintiff.

22 The plaintiff is not mentioned in the
23 advertisement which is alleged to be defamatory. The
24 plaintiff contends that it is a New York domestic not for
25 profit corporation which is a wholly owned subsidiary of

1 Ms. Gandhi's party, the Indian National Congress Party.

2 Rule 4:26-1 requires every action instituted in
3 New Jersey to be prosecuted in the name of the real party
4 in interest. Generally speaking the litigate must have a
5 sufficient stake in the matter with a substantial
6 potential for real harm flowing from the outcome of the
7 case. See In Re: New Jersey Board of Public Utilities
8 200 New Jersey Super 544, (App Div 1985).

9 An examination of the contents of the alleged
10 libelous statement fails to disclose any reference to the
11 plaintiff. The advertisement attacks Ms. Gandhi
12 personally. There were references to her political
13 party, but that political party is not the plaintiff. It
14 is clear to the Court that the plaintiff has no real
15 interest in the outcome of the case since it is not the
16 one who is being libel. It is impossible for the Court
17 to determine how references to Ms. Gandhi relate to the
18 plaintiff.

19 So since the Court has determined that the
20 plaintiff is not the real party in interest, no further
21 analysis is necessary and the complaint will be
22 dismissed.

23 MR. MILLER: Thank you, Judge.

24 MR. HAEFNER: Thank you.

25 MR. MILLER: Your Honor, I assume that's

1 without prejudice so that Sonia Gandhi may be brought in
2 as --

3 THE COURT: Of course.

4 MR. MILLER: -- a party.

5 MR. HAEFNER: Your Honor, I would think that
6 that dismissal would be with prejudice because now there
7 is no pending plaintiff. Ms. Gandhi is still within the
8 statute of limitations.

9 THE COURT: They can bring another action with
10 somebody else. Can't they bring another -- they can
11 bring another action if they have the right party.

12 MR. HAEFNER: That's my point, she is still
13 within the statute of limitations. If Ms. Gandhi wants
14 to come to New Jersey to --

15 THE COURT: Then she'll have to.

16 MR. HAEFNER: -- she can do that, but there's
17 no reason to keep this case open.

18 THE COURT: No, this case isn't open. Okay,
19 thank you.

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C E R T I F I C A T I O N

I, TRACY GRIBBEN, Certified Agency Director/Transcriber, do hereby certify that the foregoing transcript of proceedings on CD PDC105-08, Time 9:13 TO 9:24 a.m., is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded in the matter of Indian National Overseas Congress Inc., versus Dosapati, et al., heard by the Monmouth County Superior Court, on August 15, 2008.

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TRACY GRIBBEN

AOC Number

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