

Karnataka High Court

Sonakka Gopalagowda Shanthaveri ... vs U.R. Anantha Murthy And Ors. on 2 December, 1987

Equivalent citations: AIR 1988 Kant 255

Bench: P Bopanna

JUDGMENT

1. This appeal is directed against the interlocutory order made by the learned Civil Judge in O.S. No. 4029 of 1987 dismissing the application filed by the plaintiffs (who are appellants herein and who are hereinafter referred to as the plaintiffs) under the provisions of 0. 39 Rr. 1 and 2 of C.P.C. (in short the Code).

2. Interim reliefs sought for by the plaintiffs in the suit were to restrain defendants-1, 2 and 3 from re-publishing the Kannada novel written by defendant-1 under the title "Avasthe" and to restrain defendants 4 to 8 from exhibiting and screening the picture based on the aforesaid novel going by the name "Avasthe". It is common ground that the book was published earlier in the year 1978 and it has reached the stage of second reprint obviously because the book must have been in good demand by the lovers of Kannada -Literature in this State. Defendant-1 who has written the book is a well-known litterateur and he has got to his credit some other works in Kannada language. It is also on record that his novel 'Samskara' was considered to be a 'classic' in Kannada literature and it has been translated in various foreign languages. The fact that he is a person of very high attainments is established by the fact that he is now the Vice-Chancellor of Gandhi University, Kottayam, Kerala State: It is also not in dispute that defendant-1 was a close friend of one late Gopala Gowda who between the years 1950 and 1970 had made a mark as a politician of unquestionable integrity and strong political convictions. He appears to have taken a very active part in the social and political life in this State and participated in a Satyagraha known as 'Kagodu Satyagraha' in his native village to champion the cause of tenants in Shimoga District as against the landlords who according to him were coming in the way of the betterment of the conditions of tenants. He was also a member of the then Mysore Legislative Assembly in the year 1952 and a leader of the opposition in the then Mysore Legislative Assembly. He was the President of the socialist party, Karnataka Unit between 1965 and 1967 and he became the Chairman of the All India Parliamentary Board of the Socialist Party in the year 1967. He was returned to the Mysore Legislative Assembly both in the years 1962 and 1967 from the Thirthahalli Constituency. In 1970-71 he was the President of the Karnataka Samyuktha Vidhayaka Dal which was a federation of all the opposition parties in the State. It is mentioned in the plaint that late Gopala Gowda was a well-known freedom fighter and he was the unquestioned leader of the working class in Karnataka and he was instrumental in bringing about revolutionary changes to secure ownership fights to the actual cultivators of the land; that he was a 'fire brand' opposition leader who led an uncompromising life and was especially feared by the Treasury Benches in the Karnataka Legislative Assembly. He was widely respected by one and all and especially those who were at the helm of affairs during his public life; that he was a firm believer in Socialist ideals and was close associate of late. Dr. Ram Manohar Lohia who championed the cause of the down-trodden in this country.

3. According to the plaintiffs, late Gopala Gowda had led a very clean life and was an affectionate husband to the 1st plaintiff and never violated the sanctity of the matrimonial life. His life and character were above reproach both as the head of the family and also a politician and his relationship with his wife and children was not strained at any point of time. He also had a healthy and peaceful life till he suffered a paralytic stroke in about the second week of January 1972 at Victoria Hospital and passed away very soon thereafter. The 1st defendant who had admitted in the written statement that he was a close associate of late Gopala Gowda authored a novel, as noticed earlier in the year 1978 called "Avasthe" which has given rise to this dispute between the parties. In that book according to the plaintiffs, the 1st defendant had depicted this leader of the socialist movement in not very edifying term, that he was shown as a person whose ideals were very confused, that he did not have the courage, of the convictions to face life as it should have been faced; that his personal life was not very clean in that he had extra-marital relationship with more than one woman other than his wife, that his treatment of his wife was not on equal terms since she was found to be intellectually incompatible to his outlook on life and his ideals and she did not even care to meet ordinary whims and requirements of her husband as she was a miser with no inclination to spend any money for him. It cannot be disputed that the

novel is based on the life of late Gopala Gowda but defendant I has taken the contention in his written statement that the book is not a biography of late Gopala Gowda. On the material on record there is a prima facie case to show that the book is based on the life , Gopala Gowda. Certain documents produced before the Trial Court and which came into existence before the suit was filed clearly show that this book was based on the life of late ,Gopala Gowda. Fhe relevant documents in this regard should be noticed at this stage since the main controversy between the parties appears to be that the novel and the subsequent motion picture based on that novel is not the biography of Gopala Gowda. In the plaint, the plaintiffs have referred to as many as 10 specific incidents where the characters mentioned in the book bear a close resemblance to the events and incidents in the life of Gopala Gowda and those of his family members, They are:-

"The characters of Krishnappagowda. Seetha and Gowri of the novel are said to be unmistakably those of late Gopala Gowda, plaintiff-1, his wife and plaintiff-2 his daughter. Instead of Gopala Gowda by his narne, defendant-1 is called Krishnappagowda throughout in the novel, as it is a well known fact that Gopala is another name of Krishna. The other illustrations in similarities to Gopala Gowda and his family members to the characters in the book are that late Gopala Gowda was born in Araga village of Thirthahalli Taluk which is in the heart of Malanad region and in the novel the birth place of Krishnappagowda is shown as Malanad and the topographical description completely coincides with the description of Araga and Thirthahalli surroundings; that late Gopala Gowda was an excellent swimmer as is Krishnappagowda of the novel; that late Gopala Gowda was tethering cattle before he went to School as is Krishnappagowda of the novel, that late Gopala Gowda was a good singer and used to sing, as is Krishnappagowda of the novel; that late Gopala Gowda was a short tempered man like the KrishnappaGowda of the novel; that Gopala Gowda had become a vegetarian like the Krishnappagowda of the novel; that Gppala Gowda was a highly reputed leader of the opposition parties like Krishnappagowda of the novel; that Gopala Gowda did his intermediate at Shimoga at the Government Intermediate College and was at that timea boarder in VokkaligaraSangha Hostel ' like Krishnappagowda of the novel; ,that Gopala Gowda had suffered a paralyticstroke as earlier as did Krishnappagowda of the novel; that Gopala Gowda had protested against the Governor's speech on the Floor of the Legislative Assembly by tearing off a copy of the speech and putting it under his feet like Krishnappagowda of the novel. The various other similarities in the life of Gopala Gowda and Krishnappagowda are brought out in para-10 of the plaint. These facts are not seriously disputed in the, written statement of defendant-1.

4. In para-11 of the plaint, the plaintiffs have taken the characters in the novel in the life of Krishnappagowda and compared them to the life of Gopala Gowda. They should be referred to in detail in order to resolve the main controversy between the parties and that the book in question though not a biography of late Gopala Gowda, at any rate it is based on the life of Gopala Gowda. and it is not purely a fiction. The plaintiffs have alleged that the characters of Krishnappa Gowda as Gopala Gowda, Seetha as the Ist plaintiff and Gowri as the 2nd plaintiff is also established by the fact that the following characters that appear in the novel are all characters from the real life of late Gopala Gowda who were at one time or the other associated with him and each character in the novel approximately fits into the real life characters :

These are according to the plaintiffs , "illustrative instances" where the characters portrayed in the novel are drawn from the real life of late Gopala Gowda and conclusively establish the identity of Krishnappagowda and his family of the novel as Gopala Gowda and his family members.

Characters in the Novel.

Characters in the real life

Maheshwaraiah Basavaraja Sastry who he lped Gopala Gowda to resume his

education after he had droppe

d out and stood by him in the

hour of need.

Appaji: Anna Deshpande alias R . B. Hemadri. He was a knowledgeable

person with whom Gopala Gowda used to have lengthy

discussions on the merits and demerits of various political ideologies.

Channaveeraiah: Late Y. R. Pararneshwa rappa. A senior associate of - late

Gopala Gowda who was a Municipal Councillor of Shimoga Municipality and its President during 1960s who was also an Advocate and M. L. C. between 1968 and 1974.

Uma: Mrs. Parameshwarappa.P rof.

Nagaraj: M. D. Nanjundaswamy, s on of a famous trial lawyer Sri

M. N. Mahanta Devaru of Mysore. He was an active office bearer of the Karnataka Socialist Party and the Secretary of Samaja Vadhi Yuvajana Sabha during the days of Gop'alw Gowda. Presently he is the Principal of Dr. Rarn Manofiar Lohia College of Law, Bangalore and~ the Governor of Kamataka Rajya Raita Sangha.

Gopala Reddy: Late B. V. Narayana Re ddy who was returned to Mysore

Legislative Assembly from Bagepally consfituency of Kolar District and he was a close associate of Gopala Gowda. He was a big landlord.

Veeranna: Contractor Nagappa, wh o is a Class-I P. W. D. Contractor and

who had leased out one of his residential flats to late Gopala Gowda at Sadashivanagar. The plaintiffs continue to be in occupation of the said premises even to this day.

Abdul Rahman: Azeez Sait, who was re turned to the Mysore Legislative

Assembly from Narasimharaja Constituency in Mysore

and was a close associate of late Gopala Gowda during his-lifetime. He was also the President of Socialist Party during Gopala Gowda's lifetime. He later became a transport Minister. Presently he is a Member of Lok Sabha representing Dharwar South constituency.

Hanuma Naika: Thudki Purushotharnma Gowda who was a childho6d friend of

late Gop'ala Gowda and now lives at Thirthahalli.

Bairagi Kalingayyana Raghavendra Rayaru.

Chief Minister Veera- Veerendra Patil, former Chief Minister of Karnataka, who was

bhadrapa : P. W. D. Minister in Shri Nijalingappa' s Ministry.-

5. Apart from the above characters and other facts stated, the plaintiffs have alleged that the following incidents referred to in the novel are also drawn from the real life of late Gopala Gowda and conclusively established the fact that Krishnappagowda portrayed in the novel is none other than the late Gopala Gowda.

(a) Late Gopala Gowda after visiting Chikmagalur during a communal riot had publicly criticised the Hindus and held them guilty for the riotous conduct. This is the very incident which has been referred to as Chikmagalur Communal riots.

(b) From the rent control house late Gopala Gowda shifted his family to a Sadashivanagar residential flat given on lease by contractor Nagappa. This incident has been described in the novel as Krishnappagowda shifting from his rent control house to the Sadashivanagar flat of Veeranna.

(c) Move to form the Government in the State of Karnataka after the resignation of Veerendra Patil Ministry, referred to earlier.

(d) The incident referred to at page 12 of the novel involving Krishnappagowda and Hostel Warden is also drawn from the real life of Gopalagowda where Gopalagowda had threatened one late M. G. Chinnappa Gowda who was the then warden of the Hostel of Thirthahalli where Gopala Gowda was a boarder.

(e) Protesting against the Governor's address referred to above.

(f) Huliyyur Satyagraha referred to in the novel is the famous Kagodu Satyagrafia of 1951 which -was spearheaded by late Gopalagowda. The Mutt referred to in the novel is the Bheemanakatte Mutt near Thirthahalli.

The above narration of plaint averments clearly establish to any reader of the novel that Krishnappagowda referred to in the novel is none other than Gopalagowda and the novel is a substantial political life sketch of late Gopalagowda with certain other characters thrown in for good measure to make it a readable fiction.

6. So, from these averments which are also supported by four affidavits of persons who were close to Gopala Gowda, the point for consideration by the Trial Court was whether the book prima facie is a biography of Gopalagowda or whether it was based on the life of Gopalagowda. The four persons who had filed their affidavits in support of interlocutory application are :-

(i) Prof. M. D. Nanjundaswamy, who is now working as a Principal of Dr. Ram Manahar Lohia College of Law, Bangalore and is also a person who had taken a keen interest in bringing about social reforms in this State. He was also an Office bearer in the Samajavadi Yuvajana, Sabha and the Karnataka Unit of the Socialist Party during the lifetime of Gopalagowda. He has said that on account of his membership of the political party and participation in the movements in which Gopala Gowda had participated he had occasion to be very intimately associated with Gopalagowda at crucial moments. On account of the close friendship, he had also occasion to know his personal life and he was aware of his activities not only in public life but also in his social life. He has further averred that he had gone through the novel of defendant-1 and according to him, the characters portrayed in the novel are the characters in the real life of late Gopala Gowda; that the characters of Seetha and Gowri in the novel are none other than the wife and daughter of Gopalagowda, i.e., plaintiffs-1 and 2; that the character of Nagaraj is none other than himself (M. D. Nanjundaswamy) and the nature of conversation attributed to Nagaraj and Krishnappagowda in the novel is drawn from the real life conversation he used to have with late Gopalagowda though the conversation is a highly distorted version; and that the entire novel is based on real life story of late Gopala Gowda. He has also referred to the other incidents involving the life of late Gopala Gowda which find a reference in the novel in question. He has spoken about the matrimonial and social life of Gopala Gowda and he has said that he was an affectionate husband to the Ist plaintiff and their matrimonial life was a perfectly harmonious one; that at no point of time he ill-treated his wife much less did he beat her or torture her; that likewise the Ist plaintiff also was a

considerate housewife who cooperated with him in all his ventures and supported him in his public activities; that he maintained perfect matrimonial discipline and never violated the fidelity towards his wife; that he was known for his integrity and character; that he never gave himself to worldly pleasures, much less did he indulge himself in women; that he never had any extra-marital sex much less pre-marital sex; that he treated women with utmost respect and maintained the same outlook throughout his life. According to him, this novel is highly defamatory of late Gopala Gowda and his family i.e., plaintiffs- 1 to 3.

7. The second affidavit is filed by one Sri Swami Rao who is a Member of the Legislative Assembly-representing Hosanagara Assembly Constituency, Shimoga District. He has averred that he was a close associate of late Gopala Gowda till his death; that on account of his political and social association with late Gopala. Gowda he has personal knowledge about his political. and social life. He has averred more or less on the same lines as deposed by Prof. Nanjundaswamy about the exemplary life of Gopala Gowda both as a Politician and also as a man of the world. Regarding the treatment of his wife, plaintiff1, he has said that his wife was never illtreated by late Gopala Gowda and he was very affectionate towards her and he always looked after his family with utmost affection and care; that he was a very lovable husband to the 1st plaintiff; that the matrimonial life of late Gopala Gowda was quite peaceful and a model to others and was at no point of time under any strain; that he was contented .and pleased with his married life and was not dissatisfied or frustrated either in his married life or in his political life. He has averred that in the novel, defendant-1 has deliberately distorted the facts to defame the plaintiffs and a film based on the same is bound to cause injury to the reputation of the plaintiffs and expose them to ridicule, hatred and annoyance; that the right thinking people of the society may be persuaded by the film even to refuse to keep company with them and it is therefore injurious if screened in public. He has also expressed the same views about the book in question.

8. The third deponent H. M. Munivenkataramana, Advocate of Bangalore was also an active worker of the Karnataka Socialist Party holding various positions in the party at different times. He was the President of the City unit of the party between 1967 and 1971. He has sworn to the fact that he was a close associate of late Gopala Gowda since 1957 till his death; that he had extended his professional service as an Advocate to late Gopala Gowda as and when he sought for the same; that the relationship between his wife and children was good and in political life he had perfect clarity about the socialist ideology and was himself a true Gandhian and a true follower of late Dr. Ram Manobar Lohia.

9. The fourth deponent is one Puttaswamy, a Journalist residing in Bangalore and he has also deposed about the personal life of late Gopala Gowda and has said that the plot in the novel is the real life story of late Gopala Gowda. In Para-4 of his affidavit he has averred as follows :

"The novel has falsely painted the first plaintiff suggesting unchastity and adultery and painting the third plaintiff as an illegitimate child; the first plaintiff has been portrayed as a highly self-centered jealous and petty minded character who made her husband's life miserable driving him to a state of frustration, drinking womanising ultimately leading to his incapacity resulting from a paralytic stroke. Late Gopala Gowda has been portrayed as a chronic womaniser and notorious debauch and that he even indulged in visiting prostitutes, that he was always beating and torturing the first plaintiff herein; that he had no ideological clarity and was a thorough failure in his political career. This picture painted in the novel is totally false and has been deliberately done by the first defendant with the intention of harming the reputation of the plaintiffs and spoiling the memory of late .Gopala Gowda."

He has said that the novel as well as the film would have the diabolic effect of permanently etching in the memory of posterity the life and activities of late Gopala Gowda and the character of the plaintiffs in a false and disrespectful manner exposing the plaintiffs to contempt, ridicule and hatred. Especially on plaintiffs-2 and 3 the consequences would be disastrous and are bound to ruin their social life, their marriage career and matrimonial prospects. He also asserted that the two works are published maliciously by the 1st defendant. and they are , works of such a low taste that they are going to destroy for ever the laudable contribution of late Gopala Gowda to the social and political life of this State and permanently depicting the plaintiffs as evil

characters who should be avoided from the company of right thinking people in the society.

10. The other deponent was the physician to late Gopala Gowda who should have known more intimately about his personal life. He has stated that late Gopala Gowda led an exemplary married life. He and the 1st plaintiff lived in perfect harmony and at no point of time he ill-treated his wife, the 1st plaintiff, much less did he physically assault her at any point during their married life; that he also lived a chaste married life with utmost fidelity and discipline'. At no point of time he had any extra marital relationship with any one. According to him, the book in question is on the political life of late Gopala Gowda and borders on systematic character assassination. He appears to have re-read this novel after 'reading a cine report in Sudha Weekly (issue of Aug. 9th, 1987). After reading the novel he was shocked to see the scurrilous attack made on the political life of late Gopala Gowda and a systematic 'character assassination in respect of his family life and social life. He was also of the view that the novel has portrayed the 1st plaintiff in the suit as a woman of low profile contrary to the actual facts as narrated earlier in his affidavit. According to him, the celluloid version of the novel is bound to be a systematic character assassination of late Gopala Gowda and his family members and if the same is allowed to be screened, it would wound the feelings and sentiments of millions of followers of late Gopala Gowda and would result in incalculable harm and damage to his personality and reputation.

11. It should be noticed at this stage that the averments of the plaintiffs in the plaint both as regards the book and the picture in question were supported by the verbatim quotations from the novel and also certain quotations from the dialogue in the picture. Plaintiffs have quoted extensively from the various portions in the book which have a bearing on the character of Krishnappagowda both in his political life and also in his personal life. A reference to a couple of those passages, which have been quoted verbatim from the book, should be noticed at this stage. As regards his personal life, in para-15(1)(b) of the plaint the plaintiffs have referred to an incident between Krishnappagowda and the other woman Gowri Deshpande which took place when he was lying disabled in a wheel chair after a paralytic stroke. Despite his entreaty, that he is not able to perform the sex act, she seduces him, takes him to his room in the Guest house where he was staying, puts him in the bath tub in the water, massages him and has intercourse with him. The relevant portions are found in pages-43 to 45 of the paper book which corresponds to pages 177 to 179 of the novel. They have also referred to another incident in the personal life of Krishnappagowda. The relevant imputation against the character of Krishnappagowda is found in pages-46 to 48 of the paper book and they correspond to pages-120 and 121 of the novel. It supports the plaint allegation that in the novel late Gopala Gowda has been described as having 'become a chronic womaniser in the company of S. V. Narayana Reddy. Wine and women has become an order of the day and that he had resorted to indiscriminate drinking and womanising to the extent that he used to even forget as to with whom he had slept on the previous day and that he had an illicit relationship with one Luciana and that this state of debauchery continued till the death of Narayana Reddy and it was only thereafter that he married the first plaintiff. Even bigamous thoughts are attributed to him. They have also extracted from pages 134 to 137 of the novel about the relationship between Krishnappagowda with other women. These references have been made by the plaintiffs obviously with a view to highlight the fact that this character of Krishnappa gowda in the novel is a complete distortion of the life of late Gopala Gowda; that late Gopala Gowda was a man of sterling character but he has been depicted in the novel in the form of Krishnappagowda as a person who had no respect for the sanctity of the married life and man of loose character and no principles.

12. The plaintiffs have also quoted 2 more passages from the novel which, according to them are defamatory of Plaintiff-1. They have alleged that, though the relationship between Gopalagowda and his wife was perfect and cordial, in the book it is alleged that Krishnappagowda without getting himself intoxicated by alcoholic drinks was unable to approach his wife and to have any sort of physical relationship with her. It is further alleged in the novel that Krishnappagowda had ceased to have any physical relationship with his wife after the birth of the first child, i.e., Plaintiff-2. But the actual fact is that

Gopalagowda had a son who is Plaintiff-3 and thereby a plausible inference could be drawn from the characters as made out in the book that Plaintiff-2 was born out of wedlock and a further inference that

Plaintiff-I was not a chaste woman having given birth to Plaintiff-3 despite the fact that her husband had ceased to have any physical relationship with her after the birth of the first child, i.e., Plaintiff-2.

13. So, on these allegations in the plaint duly supported by uncontroverted passages from the novel in question, the plaintiffs have based their cause of action against the defendants for the various reliefs claimed in the plaint as also for the interim reliefs.

14. The defence of Defendant-I should be noticed at this stage. The first defence is that the suit is barred by time. The further defences are that the plaintiffs are estopped from making any grievance against the novel at this distance of time; that the novel is not a biography of Gopalagowda and the allegation that he has chosen the life of late Gopalagowda and the people centred around him as a plot for his novel is denied; that the allegation that he has chosen to put the life of Gopalagowda, the people around him, especially the plaintiffs to ridicule, character assassination resulting in their defamation is false and is denied specifically, that it is false to say that he has deliberately and maliciously with the avowed objective of defaming the plaintiffs has written the book that the book is a fiction and not based on the life of Gopalagowda and it being a work of art has been considered a classic in Kannada literature, that he had written other novels and they have also been considered as classics in Kannada and the novel 'Samskara' has been translated into various foreign languages that it is a fiction and he had no intention of character assassination of Gopalagowda or to defame his near and dear ones; that it is purely a work of art and fiction and not biography and any remote resemblance of characters or persons in real life cannot be a ground to say that it was intended to be the biography of Gopalagowda or was intended to sketch the character of Gopalagowda. According to him, the book is pure fiction and nothing more and the characters in the book are all fictitious characters and there is no resemblance to the personal life of Gopalagowda or to any other person in real life: that no reader will get the impression that the book was meant to defame the members of the family of Gopalagowda; that it is false to say that the identity of Krishnappa Gowda, Seetha and Gowri in the book is unmistakably that of Gopalagowda, Plaintiff-1 and Plaintiff-2 respectively; that he had no knowledge of some of the, traits in the personal life of Gopalagowda and, if some of the facts found in the novel have some relevance to the personal life of Gopalagowda, those facts are not within his knowledge and, therefore, they are mere coincidence. Regarding the allegations in para 10 of the plaint, he has stated that there are any number of other aspects which completely indicate that Krishnappa Gowda in the book is a fictitious person who never resembled the character of Gopalagowda; that any similarities of characters are only a matter of coincidence and therefore the allegations of defamation and character assassination are unfounded and that these allegations are not made-by the members of the family of Gopalagowda with whom he had cordial relations but by certain other persons who are in public life and who are inimically disposed towards him for various personal reasons.

15. Regarding the grievance of the plaintiffs that he had sketched plaintiff- I as a woman of low profile, he submitted that these allegations against him are false and the further allegation that Plaintiff-I has been painted as a stingy woman who was always worried about her own security and future rather than the well-being of her husband is false; that ,Seetha's character in the book is only a fictitious character and for the purpose of the novel and she has nothing to do with the life of Plaintiff-1. Likewise he has denied the allegation against him by Plaintiff-I on the ground that Seetha in the novel is a fictitious character and the incidents around her life either in the book or in the picture did not relate to the realities in the life of Plaintiff-1. He has also referred to other characters in the book which, according to him, are, fictitious, i.e., Gopala Reddy in the novel. He says that Gopala Reddy in the novel has nothing to do with Narayana Reddy in real life, that the other characters found in para 11 of the plaint and the allegations made in para 13 of the plaint, according to him, are imagination of the plaintiffs and did not fit into the real life of the husband of Plaintiff-1, i.e., Gopalagowda. He has also denied the allegations that Gopalagowda is shown as chronic womaniser in the company of Narayana Reddy; that the assumptions made in para 15(1) to (3) of the plaint that the characters in the novel are relatable to Gopalagowda and the plaintiffs is not correct and that the novel does not portray Gopalagowda or the members of his family and, therefore, the statements made in the book cannot be assumed to be relatable to Gopalagowda and the members of his family. Without prejudice to the above contentions, he has submitted that the statements made in the novel do not amount to defamation and are not intended to bring

down the character of Gopalagowda. So, the sum and substance of the defence is that the novel is purely a work of art and fiction, that is to say, some of the incidents in the novel are just coincidence touching the life of Gopalagowda.

16. The defence of Defendant-8 who is the distributor of the film in question is that whatever found in the book is the responsibility of Defendant- 1 and they cannot be made a scapegoat for what he has written in the book. In para 7 of the written statement they have stated that this defendant is a leaving the allegations and counter allegations regarding the contents of the novel to be met by Defendant-1. Having said so, it is not necessary for this Court to consider their contentions in so far they relate to the novel. However, regarding the picture they have stated that the passages in the novel set out by the plaintiffs are not defamatory of them and they have not been reproduced in the film and therefore the charge of libel against this defendant is wholly without cause of action; that the film does not show any scene in which the wife of Krishnappa Gowda is depicted in a defamatory manner; that the film does not at all show any incident relating to the fidelity of or unchastity of the wife and as a matter of fact the film does not show that a second child was born and there is nothing which is likely to bring the plaintiffs to ridicule, contempt and annoyance that no ordinary prudent person can by any stretch of imagination on viewing the film think ill of the wife of the hero Krishnappa Gowda; that the incidents regarding the relationship between the hero and his wife are universal and common in every family; that the psychological incompatibility between the hero and his wife is shown only to highlight the nobility of the character of Krishnappa Gowda; that the film has not shown any incidents in which Krishnappa had any extramarital connections; that the character of Gowri Deshpande is purely a fictitious character who is very rare to find in real life; that the unnatural portrayal of that character is considered as one of the defects and flaws in this otherwise fine literary work, that the picture also does not show any indecent or immoral connection between Krishnappa and Gowri Deshpande; in any case the plaintiffs cannot make a grievance of that relationship from the two characters; that similarly any incidents pertaining to the political, social or other aspects of life of Krishnappa Gowda cannot be complained of by the plaintiffs; that there is nothing in the film which shows that "the Hero is a characterless person"; that there is nothing scurrilous or obscene in the novel and much less in the film; that the novel has been highly appreciated and to call it 'a text book illustration of pornography' is itself irresponsible and devoid of any taste for art and literature; that in any case the film has been certified by the Board of Censor and given 'U' Certificate. In sum and substance, the novel by itself is not defamatory that in any case the film is not the exact reproduction of the novel; that there is no identity between Gopalagowda and the hero in the film; that the defendants have invested Rs. 20 lakhs for the production of the film and if the exhibiting of the film is restrained they will be economically ruined. They have also taken other technical pleas as is generally available in civil suits such as misjoinder of cause of action against them, limitation, etc.

17. On these pleadings of the parties and the application filed by the plaintiffs and the counter affidavits filed by the defendants opposing the grant of interim relief, the trial Court framed the following points for its consideration:

- (i) Whether there is a prima facie case in favour of the plaintiffs;
- (ii) Whether the allegations made in the plaint make out a case for defamation against the defendants;
- (iii) Whether any irreparable injury would be caused to the plaintiffs by the reprint of the book as also by exhibiting the film in question;
- (iv) In whose favour the balance of convenience lies.

18. The trial Court answered all these points against the plaintiffs. On the first point the trial Court while considering whether there was no prima facie case against the defendants held against the plaintiffs on the ground of acquiescence and estoppels by conduct. In paras 11 and 12 of its order, the trial Court found that Plaintiff-1- had slept over the matter for 8 years after the publication of the book in the year 1978 and,

therefore, by her own conduct she is not entitled to any interim relief. Though it was contended before the trial Court that Plaintiffs 2 and 3, who were minors at the time the book was published, cannot be said to have acquiesced in the conduct of Defendant-1 in bringing out the publication and in the conduct of other defendants in bringing out the distribution and screening of the picture in question and that whatever may be the allegations against Plaintiff- 1, Plaintiffs 2 and 3 who were minors till the year 1978 when the book was published cannot be said to have acquiesced in the actions of the defendants, the trial Court held against them also on the ground that they were under the care and custody of Plaintiff- 1 till they attained majority and so their rights should have been taken care of by Plaintiff- 1. It is well settled that the Courts and the provisions of 0 always very vigilantly guard the rights of minors. 32 Rr. 2, 3, 4 and 5 C.P.C. are ample indication of the fact that the Courts should always be vigilant in protecting the rights of the minors. In the circumstances, the finding of the trial Court that all because Plaintiffs 2 and 3 were under the care and custody of Plaintiff-1, they too had acquiesced in the conduct of the defendants required serious consideration and on that ground alone, the trial Court was in error in coming to the conclusion that ' the application is vitiated by laches and acquiescence on the part of Plaintiffs 2 and 3.

19. On the question whether there was a prima facie case against the defendants the trial Court posed itself the following question :

Whether the suit (sic) is a biography of Gopalagowda?

20. It found that there were only 2 or 3 similar characters in the life of Gopala Gowda and of Krishnappa Gowda in the novel. But, these characters which are incorporated in the novel are not sufficient to characterise the novel as the biography of Gopala Gowda; that these 4 defendants who had supported the case of the plaintiffs by filing affidavits did not make up even after reading the book and only when the plaintiffs rushed to the Court they had thought of supporting the case by filing their affidavits and, therefore, no importance could be given to the statements in their affidavits. In regard to the affidavit of Dr. Vishnumurthy, the physician of Gopalagowda, the trial Court came to the conclusion that on his own admission that he had re-read the book which shows that he had read the novel earlier and having read it he did not find anything obscene in the novel and only when he heard about the production of the picture in question in some magazines and newspapers, he re-read the novel and understood the contents of the novel and, therefore, no importance could be attached to what he had stated in the affidavit in support of the plaintiffs' case though he was the personal physician of Gopalagowda. The trial Court also found that no material had been placed before it to show that any of these " book had any characters found in the similarities with the persons in the real life of Gopalagowda and his family; that the important incidents that took place were found. in the biography of Gopala Gowda written by one D.T Chandrashekar and that did not contain the characters mentioned by Defendant- I in the book in question and that only shows that this book is a purification and had no relevance to the life of Gopala Gowda and the important incidents in his life. According to the trial Court, the character of Smt. Parameswarappa in the book did not at all find a place in the life of Gopalagowda. and, therefore, the plaintiffs had only an imaginary grievance about the other characters found in the book; that Gopala Gowda was a Socialist in his political conviction but Krishnappa Gowda was branded as a Communist;. that the important events in Gopalagowda's life are not found in the book; that Gowri Deshpande as depicted in the book is only a fictitious character and therefore the major role she had played in the novel would not e in any way be defamatory either of Gopala Gowda or the members of his family. In para24 of its order, the trial Court found that only 3 incidents which had taken place in the life of Gopala Gowda had been incorporated in the novel in question and these similarities would not be sufficient. to come to the conclusion prima facie that this novel is based on the life of Gopala Gowda and even assuming that the novel is based on the life of Gopalagowda the trial Court came to the conclusion that prima facie no defamatory material was found in the novel.

21. The trial Court relied on certain passages in Halsbury's Laws of England and also on a couple of other decisions to come to the conclusion that no right thinking person would, after reading the book or seeing the picture, come to the conclusion that the plaintiffs would be held to ridicule or that a low opinion ,about them

could be formed. The trial Court had also the benefit of viewing the picture and it was of the view that the picture was produced in good taste and it contained many good artistic features, But the trial Court did not discuss either cursorily or in detail what exactly the scenes and the dialogues in the film represented and in what way those scenes and dialogues had no, connection with the main characters and events in the life of Gopalagowda.

22. The trial Court found on the 2nd point that no irreparable injury would be caused to the plaintiffs and so obviously it answered the 3rd point regarding the balance of convenience in favour of the, defendants.

23. Mr. Janardhana, learned counsel for ,the appellants/ plaintiff s in this case, maintained that the findings of the trial Court suffer from serious infirmities since it misdirected itself both on questions of facts as also on questions of law. According to him, the trial Court has erred in not noticing the various averments made in the plaint with special reference to certain excerpts from the book in question which in his view related to the life of Gopala Gowda, the members of his family and close associates. He submitted that the trial Court erred in coming to the conclusion that there could be no defamation against a dead person and even against the plaintiffs who claimed to be defamed on the ground that the action of defamation is a personal action and it dies with the person and, therefore, it does not enure to the benefit of toe estate of the deceased person. He also submitted that the trial Court misdirected itself in coming to the conclusion- that the well-known decision of the Court of appeals in E. Hutton & Co. v. Artemus Jones (1908-10) All ER Reprint 29) (CA) was not relevant to the facts of this case. According to him, the trial Court should have taken the novel as a whole and the picture as a whole and satisfied itself whether the novel in question was based on the life of Gopalagowda and the picture was based on that novel and satisfied itself about the reaction of a person who had read the novel and had seen the picture.

24. The limitations of this Court in a matter like this while dealing with the interlocutory order of the trial Court which had the benefit of going through the novel as also viewing the film in question should be noticed first. The law is very well settled, i.e., if the trial Court has given a finding of fact on a proper appreciation of the material on record, the pleadings, etc. and it has applied the law correctly to the facts of the case, it is not open to this Court to interfere with that finding of the trial Court merely because it is open to this Court to take a different view in the matter. So, the first consideration in this appeal is whether the trial Court had come to proper conclusions even on questions of facts.

25. The finding of the trial Court on the question whether there was a prima facie case or not -was primarily based on the fact that there were only 3 similarities relating. to the life of Gopalagowda in the novel. If this finding though it is a finding of fact, is contrary to the record, it is open to this Court to examine that, finding as an appellate Court and satisfy itself on the material on record whether that finding of the trial Court could be interfered with. The reasons given by the trial Court for coming to the conclusion that the novel in question is not the biography of Gopalagowda and no right thinking person on reading the book would think that the book is based on the life of Gopalagowda rest on 2 characters, viz., Sree and Smt. Channaveeraiah in the novel do not bear any resemblance of Sree and Smt. Parameshwarappa in real life who were admittedly the family friends of Gopalagowda. It may be so. These 2 characters in the book do not have any remote resemblance to Sri and Smt.Parameshwarappa. But, more than 10 other characters in the novel both in political life and social life bear some resemblance, if not a close resemblance, to some of the people who, were known to Gopalagowda, who had kept his company and participated with him in his political and social activities. The trial Court made no effort to go into these characters numbering more than 10 before coming to the conclusion that the book is a pure work of art and fiction and not based on the life of Gopalagowda. So, it has become necessary for this Court to examine them as they were not considered by the trial Court and to find out whether there is any resemblance to the real characters and events in the life of Gopalagowda. It will only burden the record, if this Court goes into the other character in detail who according to the plaintiffs bear a close resemblance to the real characters and personalities in the life of Gopalagowda. They are with sufficient clarity and authority brought out in paras 10, 11 and 12 of the plaint. What is more, the defendants have also gone on record to say presumably with a view to acquire publicity for the picture or publicity for

themselves that the novel is based on the life of Gopalagowda. In Times of India', dt. Nov. 1,4, 1986, under the caption Kannada Film Letter - Politicians And Cinema, there is a reference to the participation of Ministers, J. H. Patel and M. P. Prakash in the film and their names figured in that news letter. The news letter states that Sri J. H. Patel and Sri M. P. Prakash had dabbed their faces with make-up to feature in the movie based on the 1st defendant's novel. It also states that "Krishna Mazadi, a forceful short story writer and journalist, who wields the megaphone for the film has already completed shooting one schedule in Bangalore and is busy shooting in Shimoga at present". Further it is said in that letter that "The story is reportedly inspired on the life of the veteran Socialist, Gopala Gowda, who had a very powerful political career. Anant Nag plays Krishnappa Gowda. Archana Vishwanath, daughter of B. S. Vishwanath, who had lost the elections to Gopala Gowda, ironically plays Krishnappa Gowda's girl friend Gowri Deshpande. She makes her debut with this film. Other political leaders who feature in this film include Sriyuths Chandre Gowda, B. K. Chandrashekar, Abdul Nazir Sab and Rajvardhan". In another publication called India Today (Current events) dated 15-12-1986 under the caption 'Karnataka Screen Test' there is a reference to the production of this picture. There also names of politicians whose names had appeared in 'Times of India' are found. Additionally it is stated that "The film Awasthe (phase), the shooting of which was in full swing last fortnight, is the brainchild of Director Masadi who conceived of it' two years ago. He said, the idea of involving politicians 'was to give the film a natural effect, Patel, was once a close associate of Gopala Gowda, the main character in the film, and so readily agreed to associate himself with the project. Other Politicians soon followed. Based on a novel by noted Kannada writer U. R. Anantha Murthy, it chronicles the life of Gopala Gowda, a socialist leader of Shimoga District who played a considerable role in the State's politics in the '50s and '60s." In another article which appeared in Sunday 6-12 September 1987 under the caption 'personality' there is a writing about Anant Nag who played the role of Krishnappa, Gowda. In that article there is a reference to the film 'Awasthe' and it is stated therein that the picture is based on the life of Karnataka politician Gopalagowda. If any more proof is needed, if at all it is indeed required, it is found in the article that appeared in the Deccan Herald dated 11-9-1987 under the caption 'Idealism and Compromise in Politics' It reads as under? :

"Awasthe, a Kannada film with a political theme, which is to be released in the State next week, will go down in the annals of Indian film history as a unique event. It features seven politicians in important roles. Among them are three Ministers (Mr. M. P. Prakash Mr. J. H. Patel and Mr. Abdul Nazir Sab), one Member of Legislative Council (Prof. B. K. Chandra Shekar), two members of the Legislative Assembly (Mr. B. R. Yavagal and Mr. Rajvardhan, Chief Whip of Karnataka Assembly)."

Again in pages 3 and 4 (Pages 171 and 172 of the record) of the article it is stated :

"The highly rated novel is supposed to have drawn its material from the turbulent and ideologically committed socialist leader the late Gopala Gowda who hailed from Malnad. In- the 60s he rose to be a leader of great consequence in the political scene of Karnataka. The ,peasant leader who waged a relentless battle to live up to his uncompromising honesty and ideals was the prototype for the hero of the novel and was decidedly the inspiration for the novelist.

Though the plot encompasses many events and characters from the life of Gopala Gowda, the director is averse to the idea of looking at the film as a true-life biography of any individual. He said the central character is portrayed as embodying the qualities associated with a strong-willed idealist caught up in a system which has a debilitating influence on his ideology.

Krishna Masadi said, the predicament of the character and the sequences reflecting various stages in his heroic struggle are portrayed in such a way that they have a universal appeal and strong contemporary relevance.

Awasthe presents a slice of political life through the 'existentialist protagonist' Krishnappa Gowda. Into the plot are woven several contradictions in society - those between illusions and realist, profession and practice, idealism and triviality."

Further in page 8 of this Article (Page 176 of the record) there is a reference to the character Gowri Deshpande. It says

"It is an interesting coincidence that Archana Viswanath, daughter of Viswanath who had lost to Gopala Gowda in an Assembly election in 70's, is making her acting debut (as the heroine) in the film.

Noted film distributor, writer and former director of NFDC M. Bhaktavatsala plays the important role of the contractor. B. V. Karanth also appears in an interesting role."

26. These materials have come into existence at an undisputed point of time, i.e., before this matter reached the Court some time in the 3rd week of September, 1987. Neither defendant-I nor the other defendants came forward with any disclaimer by publishing in the press or by issuing notices to the editors of various newspapers to say that their assertion that this book was based on the life of Gopalagowda is not correct. But, only when the matter was taken to the Court at the instance of the plaintiffs, these defendants pleaded that the characters in the book and the picture are fictitious characters who have no resemblance to the life of Gopalagowda or to the persons who figured in his life. In the circumstances, on a question of fact, the trial Court gravely erred in coming to the conclusion that the novel in question is not based on the life of Gopala Gowda. It is not necessary to give a finding on the prima facie nature of the case against the defendants, t at this book should be a biography of the life of Gopalagowda. It is sufficient it the book is based on certain important incidents and aspects in the life of Gopalagowda and some of the characters found in the novel have some connection with the characters, and personalities who had figured in the real life of Gopalagowda. Therefore, it is open to this Court even on a question of fact to come to the conclusion that the trial Court gravely misdirected itself by not noticing the unchallenged material on record in coming to the conclusion that the book was not based on the life of Gopalagowda. Mere mentio-ning of 3 incidents in his life in book would not be sufficient to make out a case against the plaintiffs that nothing in the book would remotely suggest any defamatory materials either against Gopalagowda or against the plaintiffs.

27. The trial Court also misdirected itself in not noticing the defences available to the defendants in a suit for defamation. As a matter of fact, there is no reference at all regarding the defences taken up by the defendants. It is well settled that in a suit for defamation what the Court has to examine is the natural and ordinary meaning of the words found in the book and the inference that could be drawn by the ordinary man. The learned authors Sir Brian Neill and Richard Rampton in "Duncan & Neill on Defamation" have quoted the decision of the House of Lords in *Rubber Improvement Ltd. v. Daily Telegraph Ltd.*, (1963-2 All ER 151) on this point. Lord Reid has observe as follows :

"There is no doubt that in actions for libel the question is what the words would convey to the ordinary man it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the, words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning."

Lord Morris of Borth-y-Guest in the Privy Council in *Jones v. Skelton* (1963) 3 All ER 952, has said :

"The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning : any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general

knowledge and not fettered by any strict legal rules of construction would draw from the words."

And in *Grubb v. Bristol Uniwd Press Ltd* (1963) 1 QB 309, Holroyd Pearce,LJ said:

"But in deciding the ordinary and natural meaning of the words the jury must take into account the ordinary reasonable implications of the words. As Cotton, LJ said in *Henry's case* (1880-49 LJ CP 830) in the Court of Appeal: 'One must consider, not what the words are, but what conclusion could reasonably be drawn from it, as a man who issues such document is answerable not only for the terms of it but also for the conclusion and meaning which persons will reasonably draw from and put upon the document. If the defendant published of John Smith :'His name is certainly not George Washington, then, however much the defendant may argue that the words were a harmless truism concerned merely with nomenclature, the natural and ordinary implication of the words is that John Smith is untruthful; and presumably the jury would find that to be the ordinary meaning of the words."

The meaning intended by the Publisher is irrelevant. The meaning in which the words were understood is irrelevant.

28. As regards the function of the Judges in a case of defamation, the learned authors have quoted the observation of Lord Reid again in the aforesaid decision in *Rubber Improvement Ltd. v. Daily Telegraphs Ltd.* (1963-2 All ER 151).Lord Reid considered how the Judge should approach his task of deciding the range of possible meaning and said : -

"Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question."

Lord Morris of Borth-y-Guest again in *Jones v. Skelton* (1963-3 All ER 952) said:

"In deciding whether words are capable of conveying a defamatory meaning the court will reject those meanings which can only emerge as the produce of some strained or forced or utterly unreasonable interpretation."

It is also well settled in law that the intention and the knowledge of the author is irrelevant and that is settled by the decision in *E. Hulton & Co. v. Jones* (1908-10) All ER Re Print 29 (CA) Which was cited by the learned counsel for the plaintifffs. But surprisingly the trial Court has taken the view that that decision is not applicable to the facts of the case. I am at a loss to understand the reasons given by the learned Judge. He misdirected himself in applying the relevant legal principles for deciding the plea of defamation in a case like this.

29. In my view, if the nature of the defences put by the defendants is kept in view, the only defence available to them is that the characters in the book from the beginning to the end are fictitious characters and they have no resemblance whatsoever to the life of Gopalagowda or to the other persons who had appeared in his life. There is no doubt that great novelists have written books based on the lives of and characters in real life or legendary characters whose names are found in history of mythology. In western literature Don Juan is supposed to be a legendary 16th century character in European Aristocracy. Mozart has immortalised him in music; Byron in Poetry, Balzac and Dumas in Novels; Bernard Shaw in his play 'Man and Superman". Those compositions, plays and books were not subjected to the law of defamation, because the characters, in those books were purely fictitious characters without any resemblance to any other characters in real life, who are either alive or dead. But, in this case, the memory of Gopalagowda is fresh in the minds of the ordinary people in this State. He was the son of the soil and the best part of his life was spent in the freedom movement in this State. He had a name, fame and reputation for integrity and fearless advocacy of his political convictions. The traffic control circle facing this ,High Court bears his name to perpetuate his memory. His wife and children

are the plaintiffs. It is open to them to question the novel if the same is derogatory of Gopalagowda as a husband and father, if he had been depicted as a person leading a dissolute life without any respect for the sanctity' of the married life or if Plaintiff-I is shown as a woman of low profile or if there is a reflection on her chastity or a reflection on the paternity of Plaintiff-3 and thereby their reputation is tarnished by the novel as a so by the picture in the minds of the people who read the book and also see the picture.

30. Now coming to the actual material which, according to the plaintiffs, is defamatory, certain incidents in the life of Krishnappa Gowda in the novel which according to them did not happen in the life of Gopalagowda are referred to. But after reading the book, it is possible that any reader of average intelligence could come to the conclusion that Krishnappa Gowda is no other than Gopalagowda and though Gopalagowda was looked upon as a hero in the political history of this State, he could not be so in the eyes of the readers who read the book because of his personal life. The 2 instances to which I have made a brief reference in the early part of this order regarding the personal life of Krishnappa Gowda would show that he was leading a dissolute life. Despite his physical affliction he was involved with women of disrepute in preference to his own wife. The description in regard to these 2 instances, i.e., cohabiting with Gowri Deshpande and with another by name Luciana should make the readers after reading the novel sad. Any reader of average intelligence would think very low of him because of the manner in which those two instances have been luridly described by Defendant-1. He may feel that those descriptions are works of art. But the ordinary reader would find them as obscene if they have any reference to real characters. More so his wife and children who had respected him and loved him and they in turn would be defamed in the eyes of others because of their legal relationship as wife children. Even regarding the definition of 'defamation' the trial Court was in error in taking the view that the words complained of in the book do not amount to defamation. A reference should be made to their decision of the Supreme Court in Ranjit D. Udeshi v. State of Maharashtra. The Supreme Court was dealing with the novel written in England by a well known author D. H. Lawrence. The Supreme Court found that certain paragraphs in that book were obscene. This is what the Supreme Court observed in this context : '

"The Court must, therefore, apply itself to consider each work at a time. This should not, of course, be done in the spirit of the lady who charged Dr. Johnson with putting improper words in his Dictionary and was rebuked by him, 'Madam, you must have been looking for them'. To adopt such an attitude towards Art and Literature would make the Courts a Board of Censors. An overall view of the obscene matter in the setting of the whole work would, of course, be necessary, but the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open influences of this sort and into whose hands the book is likely to fall. In this connection the interests of our contemporary society and particularly the influence of the book etc. on it must not be overlooked. A number of considerations may here enter which it is not necessary to enumerate, but we must draw attention to one fact. Today our National and Regional Languages are strengthening themselves by new literary standards after deadening period under the impact of English. Emulation by our writers of an obscene book under the aegis of this Court's determination is likely to pervert our entire literature because obscenity pays and true art finds; little popular support. Only an obscurant will deny the need for such caution. This consideration marches with, all law and precedent on this subject and so considered we can only say that where obscenity and art are mixed, art must be so preponderating as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. In other words, treating with sex in a manner offensive to public decency and morality (and these are the words of our Fundamental Law), judged of by our National standards and considered likely to pander to lascivious, prurient or sexually precocious minds must determine the result. We need not attempt to bowdlerize all literature and thus rob speech and expression of freedom. A balance should be maintained between freedom of speech and expression and public decency and morality but when the latter is substantially transgressed the former must give way."

31. I should not be understood as mixing up the law on obscenity with the law of defamation in this case. But I have made a reference to this passage only with a view to highlight that if, those passages of a widely read novel are found obscene by Indian standards, similar passages in the novel in question may not pass muster

and if those passages have any connection to real life characters or tarnish their image or reputation, there, would be a prima facie case to go for trial which would warrant an interim order in favour of the plaintiffs. But, it is wrong to say at this stage that there is no prima facie case, despite the fact that certain materials found in the hook are only obscene by Indian standards but also derogatory to the relationship between husband and wife, father and Son, when, according to the plaintiffs, they had a perfectly adjusted life with Gopalagowda without any misunderstanding and without any betrayal by one of the other. The trial Court was therefore in error at this stage in coming to the conclusion that there was no prima facie case against the defendants. The trial Court was also in error in coming to the conclusion, as regards the picture. that as a whole it does not bear any resemblance to the characters and personalities who figured in the life of Gopalagowda.

32. One more flaw in the order of the trial Court in this case is that, though it had the benefit of viewing the film, it did not narrate the scenes in detail apart from saying that the picture taken as a whole does not in anyway offend the, sensibilities of. Plaintiffs 1 to 3 It is only because of this Lacuna in the order of the trial Court, I was constrained to see the picture myself. If the picture is viewed without any reference to the novel, it would be correct to say, as contended by the teamed counsel for Defendant-8, that there is nothing defamatory in the picture. It is said across the Bar that disharmony is always there in the lives of many men and pictures of this sort are in hundreds wherein there is always a conflict between a man and his wife and consequent involvement with another woman in his life,. That is all what the picture has exposed about Krishnappa Gowda, if it is viewed without reference to the characters in the book and if it is viewed without reading the book. But it is difficult to know at this stage how many would have read the book without seeing the picture and how many would see the picture without or after reading the book. But the Court has to protect the reputation of the widow, an unmarried girl and the adolescent boy involved in this case till then. These persons really have a grievance against the screening of the picture since some of the characters in the book based on the life of Gopalagowda bear a close resemblance to the characters in the picture. To summarise the characters in the picture, it shows Krishnappa Gowda when he was a young boy tethering the cattle; he was not sent to school though he had parents as they were unable to finance his education; that on one of the days on which he was driving the cattle home, one good Samaritan encountered him and found that he was not going to school, though he was a bright boy, for want of finance. He took the permission of his parents, put him to school and afterwards saw him through his college education. In the college he showed signs of leadership with a very bright future. He showed remarkable interest and insight in the social and the political institutions in this State and met interestingly another character Appaji who in the real life of Gopalagowda is Anna Deshpande alias R.B. Hemadri. Anna Deshpande had ' imbibed in him lofty ideals of a Socialistic pattern of society. In pursuance of this political philosophy he suffered imprisonment and took an active part in the uprising of the peasantry against the landlords and in bringing about social reforms. His marriage was also on the advice of the good Samaritan Maheshwaraiah who tells him that life is incomplete without a wife and he gets married. But, there was very little in his married life. The picture highlights the fact that, after his marriage he was mostly in the company of the other woman Gowri Deshpande. Very little is shown about his wife Plaintiff-I though she nurses him when he was laid down with paralytic attack. That nursing part is shown in an inelegant manner. What is shown is removing the bedpan from his bed since he was not in a question to go to the toilet by himself. Another part of the picture shows that she used to serve him drinks when he took his food which obviously indicates that without drinks he would -not enjoy her company. There is a reference in the novel which has to be mentioned at this stage. The reference is that Krishnappa Gowda without drinking was not in a position to have any Obviously, the inference that could be drawn is that without drinks he could not go to her. So the people who have read the book and the viewers of the film who have also read the book would naturally come to the conclusion that here was a man who was leading a double life and was acclaimed to be a great political leader of this State. The other inference that could be drawn from the picture is regarding his son who is Plaintiff-3. Plaintiff-3 does not find a place at all in the picture. Though a specific question is put to him in the picture by the other woman Gowri Deshpande as to the whereabouts of his family, he does not make any reference to his son though his son was very much alive, Plaintiff-3 is not shown in the picture at all. However in the book it has come on record that Krishnappa Gowda after the birth of the first child, i.e., Plaintiff-2, did not have any physical relations with his wife and if

that is so, the natural corollary from that statement of fact is that subsequent to the birth of Plaintiff-2, Plaintiff- 1 had given birth out of wedlock to another child, i.e., Plaintiff-3, and, therefore, the interference that could be drawn from this situation is that Plaintiff-3 was not born to Gopala Gowda but out of wedlock. That is a great damaging aspect which would very- gravely affect the reputation of both Plaintiffs 1 and 3. In the circumstances, the picture as such dehors the book could be called as a purely social picture consisting 3 principal characters, i.e., Krishnappa Gowda, his mentor and a third Woman, but if it is taken into consideration with certain material facts found in the book regarding the life of Gopalagowda and the other characters who have figured in his life, a man of average intelligence who has read the book and has seen the picture is likely to form the conclusion that Plaintiff-3 was born out of wedlock and Plaintiff-1 had given birth. to him despite the fact that she had no access to her husband after the birth of Plaintiff-2. I think this aspect of the book and the picture would be sufficient to come to the conc' that the trial Court erred gravely in taking the view t hat the plaintiffs have not made out any prima facie case against the defendants.

33. It is not necessary for the plaintiffs to prove how other persons would react to a situation like this at this stage. It is for them to prove at the stage of trial. What the plaintiffs have to prove is how others would think of them by certain events which find a place both in the book and in the picture, i.e., their well-wishers or their friends or the persons near and dear to them. That is the reason, now in English law there is a liberal approach to the law of defamation. The earlier definition given by Parke B in *Parmiter v. Coupland*, (1840) 6 M & W 105 is:

"A publication which is calculated to injure the reputation of another by exposing him to hatred, contempt or ridicule."

This was found to be inadequate and is now liberalised by the following definition by Scrutton LJ in *Youssouppoff v. MGM Pictures Ltd.*, (1934) 50 TLR 581 :

"The law recognises in every man a right to have the estimation in which he stands in the opinion of others unaffected by false .statements to his discredit."

This seems to be the right definition of the word 'defamation'. In *SIM v. Stretch*, (1936) 2 All ER 1237, Lord Atkin expressed the view that the definition by Parke B seemed to be too narrow. The learned Law Lord observed,:

"Judges and text book writers alike have found difficulty in defining with precision the word'defamatory'. The conventional phrase exposing the plaintiff to hatred, ridicule or contempt is probably too narrow. The question is complicated by having to consider the person or class of persons whose reaction to the publication is the test of the wrongful character of the words used. I do not intend to ask your Lordships to lay down a formal definition, but after collating the opinions of many authorities I propose in the present case the test : would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally ?"

and who are the right thinking members of the Society is defined in *Byrne v. Deane*, (1937) 1 KB 818. Slessor LJ said :

" in my view, to say or to allege of a man that he has reported certain acts, wrongful in law, to the police, cannot possibly be said to be defamatory of him in the minds of the general public. We have to consider in this connection the arbitrium boni, the view which would be taken by the ordinary good and worthy subject of the King, and I have assigned to myself no other criterion than what a good and worthy subject of the King would think of some person of whom it had been said that he had put the law into motion against wrongdoers, in considering that such a good and worthy subject would not consider such an allegation i n itself to be defamatory."

Adopting these tests to the facts in this case, the Court has to determine how Plaintiff-I who is a working woman will face the situation in the company of her co-workers and colleagues and relations. In the picture it is shown that Krishnappa Gowda who allegedly portrays the life of Gopalagowda. was being served alcoholic drinks by his wife. The actual words in the book are : (Omitted - Ed.)

Though these words by themselves do not figure in the conversation between the husband and wife, what is shown is, she has to entertain tier husband with drinks when she served food to him.

34. The next incident which finds a place in the book is that Krishnappa Gowda's wife is a stingy woman. The context in which this remark was made is that Krishnappa Gowda's wife Seetha had a sum of Rs. 10,000/- as her bank balance and that amount was earned by her from the emoluments that she earned from a certain Bank where she was working as a clerk. Krishnappa Gowda asked his wife to give this amount to Maheswaraiiah for the purpose fo gambling in races. The reaction of any woman will be to say 'no' since her hard earned money is not meant to be squandered away by gambling in the racecourse. For not parting with the money, Krishnappa Gowda makes a remark 'stingy woman' and this leads to an altercation between the wife and the husband. In the picture also the words 'stingy woman' are used with reference to his wife in his conversation with other woman Gowri Deshpande. Perhaps in the context of the demand made by Parameswaraiiah for a loan of Rs. 10,000/-for gambling in races, any wife is justified in saying 'no' if it is her own money. She is only frugal and not stingy by saying so. Defendant-1 has used the word 'stingy'. He is entitled to use any word of his choice in order to bring out his character in the novel. But if it is defamatory of any person who could be connected with that character, the Court has to examine whether the word stinginess was apt in the context and Plaintiff was really in life a stingy woman. Therefore, these instances in the picture, i.e., omission to show that plaintiff-3 was part of the family, the use of word 'stingy' with reference to Plaintiff-I in the novel and the niggardly treatment given to her in the picture when in real life she was alleged to be a perfect companion and wife and the reflection by possible inferences on the chastity of PlaintiffI and paternity of Plaintiff-3 would give the plaintiffs a prima facie cause of action to maintain an action against the other defendants also.

35. Plaintiff- I would be concerned about how she would be thought of by her coworkers and colleagues where she is working either by seeing the picture and/or by reading the book; Plaintiff-2 is a college student and how her class-mates would think of her either by reading the book and or by seeing the picture would be her concern. Plaintiff-3 is an engineering student and what his friends would talk about him and how they would treat him after reading the book and or seeing the picture would be his concern. In the circumstances, the finding of the trial Court line my view calls for interference.

36. It is very fairly submitted by the learned counsel for Defendant-I who is the author of the book that he would not bring out the reprint of the book till the case is finally disposed of. Obviously, the auther who was a good friend of Gopalagowda has realised the consequences of an action f or defamation against him and perhaps his true feelings towards his friend and his family have got the bettle of his legalistic attitude. That submission is recorded and therefore there is no need to make any interim direction against Defendant1. It also follows that no direction need be given to the publishers.

37. It was contended by the learned counsel for Defendants 4 to 8 that their case stands on a different plane. Mr. Channabasappa and Mr. Reddy invited my attention to the stand taken by them in their written statement. They submitted that all the stigma that could be attached to the author and the publisher cannot be fastened on their clients since the portions which would affect the plaintiffs' reputation have been omitted, in the picture produced by them. The picture is admittedly based on the novel and without the novel the picture would not have come into existence in the form in which it is now. As a matter of fact the picture was given wide publicity by associating the characters in the novel with the life of Gopalagowda and, therefore, Defendants 4 to 8 cannot take the benefit of the characters in the life of Gopalagowda and at the same maintain that the picture by itself would not in any way affect the reputation of Plaintiffs I to 3. The picture has to be seen as a whole in the light of the book and a man of average intelligence could certainly form an opinion about the paternity of Plaintiff-3 or in regard to the chastity of Plaintiff-I and this has a very serious consequence in our

Indian society which is still conservative in these matters. Therefore, it is a fit case to go for the trial and till the trial is concluded, Respondents 4 to 8 should be restrained from exhibiting and screening the picture.

38. Injunction could be granted under the repealed Specific Relief Act in a matter like this is also clear from the illustration given under Section 39 of the said Specific Relief Act. Illustration 'E' reads as follows :

"A threatens to publish statements concerning B which would be punishable under ChapterXXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication even though it may be shown not to be injurious to B's property."

This illustration refers to the offence of defamation under the Indian Penal Code and the power of the Court to grant mandatory injunction when a prima facie case is made that the reputation of a person or persons is involved in the suit. In those circumstances, it is open to the Court to put an end to the threat of defamation by a mandatory injunction. When we are dealing with a case of defamation we are dealing with personal rights, viz., right to live in dignity and the right to live without one's reputation being besmirched by others. Loss of reputation and consequent loss of character and dignity in one's life cannot be compensated in terms of money. Plaintiffs have advisedly claimed one rupee as damages. In the circumstances Defendants 4 to 8 should be restrained for a temporary period from exhibiting the film in question.

39. However, there is one other aspect for consideration. No doubt, a large sum of money has been spent for the production of the picture. Production of picture, it is common knowledge is a costly business and, therefore, by the interim order made by this Court Respondents 4 to 8 would be financially affected if this case takes its own time for reaching the ultimate finality. But, learned counsel for the plaintiffs has given an assurance that he would go on with the case from day to day without taking any adjournment and, if no adjournment is taken by the plaintiffs there would be no difficulty for the trial Court to go on with the trial from day to day and complete the proceedings within a period of 8 weeks from this date.

40. Accordingly, this appeal is allowed and the order of the trial Court is set aside. There shall be an order restraining Respondents 4 to 8 from exhibiting and screening the picture in question for a period of 2 months from today.

41. The plaintiff's undertaking that they would go on with the case from day-to-day is recorded. If any adjournment is asked for by the plaintiffs, the interim order by this Court stands vacated. Parties shall complete the pleadings by the 18th December and the trial Court shall frame the issues before 31st December. Parties shall commence the trial in the first week of January and the trial Court shall dispose of the suit before 31-1-1988. However, it is made clear that, if the defendants were to take any adjournments on reasonable grounds, the plaintiffs would be entitled to extension of time for the final disposal of the suit equivalent to the period of adjournments that may be granted.

42. Appeal allowed.