A Court of justice is a public forum. It is through publicity that the citizens are convinced that the Court renders evenhanded justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the Court proceedings

[Case Brief] Naresh Shridhar Mirajkar And Ors V/s State Of Maharashtra And Anr

Case name:	Naresh Shridhar Mirajkar And Ors V/s State Of Maharashtra And Anr
Case number:	1966 SCR (3) 744
Court:	Supreme Court of India
Bench:	Hon'ble Chief Justice of India P.B. Gajendragadkar Hon'ble Justice A.K. Sarkar Hon'ble Justice K.N. Wanchoo Hon'ble Justice M. Hidayatullah Hon'ble Justice J.C Shah Hon'ble Justice J.R. Mudholkar Hon'ble Justice S.M. Sikri Hon'ble Justice R.S. Bachawat Hon'ble Justice V. Ramaswami
Decided on:	3 /03/1966
Relevant Act/Sections:	Constitution of India, Official Secrets Act 1923, Civil Procedure Code, Sales Tax Act, Criminal Procedure Code, Specific Relief Act

➢ BRIEF FACTS AND ROCEDURAL HISTORY

1. The allegations which had been made in the said article was to the effect that China Cotton Exporters, of which Mr. Thackersey was a partner, had obtained licences for import of art silk yarn on condition that the same would be sold to handloom weavers only; and that in order to sell the said silk yarn in the black market with a view to realise higher profits, three bogus

handloom factories were created on paper and bills and invoices were made with a view to create the impression that the condition on which the, licences had been granted to China Cotton Exporters, had been complied with. Mr. Thackersey's concern had thus sold the said yarn in the black-market and thereby concealed from taxation' the large profits made in that behalf.

2. These allegations purported to be based on the papers filed in Suits Nos. 997 and 998 of 1951 which had been instituted by China Cotton Exporters against National Handloom Weaving Works, Rayon Handloom Industries, and one Bhaichand G. Goda. The said Bhaichand G. Goda was alleged to have been the guarantor in respect of the transactions mentioned in the said suits. The said Bhaichand Goda had, in the course of insolvency proceedings which had been taken out in execution of the decrees passed against him, made an affidavit which seemed to support the main points of the allegations made by the Blitz in its article "Scandal Bigger Than Mundhra".

3. The Procedural history is:
   a. During the course of further proceedings, it was discovered that Mr. Goda had made several statements before the Income-tax authorities in which he had reiterated some of the statements made by him in his affidavit on which he was cross examined. From the said statements it also appeared that he had alleged that in addition to the invoice price of the transactions in question, he had paid Rs. 90,000/- as "on money" to China Cotton Exporters. As a result of the discovery of this material, an application was made by Mr. Karanjia before the learned Judge for permission to recall Mr. Goda and confront him with the statements which he had made before the Income-tax authorities. The learned Judge granted the said application.
   b. Mr. Chari, challenged the correctness of the said order and alternatively suggested to the learned Judge that he should pass a written order forbidding publication of Mr. Goda's evidence. The learned Judge, however, rejected Mr. Chari's contentions and stated that he had already made an oral order forbidding such publication, and that no written order was necessary. He added that he expected that his oral order would be obeyed. The petitioner felt aggrieved by the said oral order passed by Mr. Justice Tarkunde and moved the Bombay High Court by a Writ Petition No. 1685 of 1964 under Art. 226 of the Constitution.
   c. The said petition was, however, dismissed by a Division Bench of the said High Court on the 10th November, 1964 on the ground that the impugned order was a judicial order of the High Court and was not amenable to a writ under Art. 226. That is how the petitioner has

moved this Court under Art. 32 for the enforcement of his fundamental rights under Art. 19(1)(a) and (g) of the Constitution.

d. Along with this petition, three other petitions have been filed in this Court; they are Writ Petitions Nos. 7, 8 and 9 of 1965. Mr. P. R. Menon, Mr. M. P. Iyer, and Mr. P. K. Atre, the three petitioners in these petitions respectively, are Journalists, and they have also challenged the validity of the impugned order and have moved to the Supreme Court under Art. 32 of the Constitution for enforcement of their fundamental rights under Art. 19(1)(a) and (g).

➢ ISSUES BEFORE THE COURT

1. Whether a judicial order passed by the High Court prohibiting the publication in newspapers of evidence given by a witness pending the hearing of the suit, is amenable to be corrected by a writ of certiorari issued by this Court under Art. 32(2)?
2. Whether in the interests of the administration of justice, such publication should be banned or not?
3. Whether the impugned legislation is a legislation directly in respect of the subject covered by any particular article of the Constitution, or touches the said article only incidentally or indirectly?
4. Whether the orders passed by quasi-judicial tribunals can be said to affect Art. 14?
5. Whether a petition under Art. 32 can at all lie against a Judge in respect of any action performed by him while in the seat of justice?
6. Whether an order which has been passed directly and solely for the purpose of assisting the discovery of truth and for doing justice between the parties, infringes the fundamental rights of the petitioners under Art. 19(1)?

➢ RATIO OF THE COURT

1. The Court observed that The Petitioners who are Journalists, have a fundamental right to carry on their occupation under Art. 19(1)(g); they have also a right to attend proceedings in court under Art. 19(1)(d); and that the right to freedom of speech and .expression guaranteed by Art. 19(1) (a) includes their right to publish as Journalists a faithful report of the proceedings which they have witnessed and heard in court.
2. The Court referred the case of **Sakal Papers (P) Ltd., and Others v. The Union of India [1962 AIR 305]**, where it has been held by this Court that the freedom of speech and expression guaranteed by Art. 19(1)(a). includes the freedom of press.

3. The Court observed that It is well-settled that in general, all cases brought before the Courts, whether civil, criminal, or others, must be heard in open Court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, courts must generally hear causes in open and must permit the public admission to the court-room.
4. The Court explained that The principle underlying the insistence on hearing causes in open court is to protect and assist fair, impartial and objective administration of justice; but if the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court. In this connection it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice; it is a means, not an end.
5. It is the fair administration of justice which is the end of judicial process, and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice. That, in our opinion, is the rational basis on which the conflict of this kind must be harmoniously resolved.
6. The Court observed that If the High Court thus had inherent power to hold the trial of a case in camera, provided, of course, it was satisfied that the ends of justice required such a course to be adopted, it would not be difficult to accept the argument urged by the learned Attorney General that the power to hold a trial in camera must include the power to hold a part of the trial in camera, or to prohibit excessive publication of a part of the proceedings at such trial. What would meet the ends of justice will always depend upon the facts of each case and the requirements of justice. In a certain case, the Court may feel that the trial may continue to be a public trial, but that the evidence of a particular witness need not receive excessive publicity, because fear of such excessive publicity may prevent the witness from speaking the truth. That being so, the Judges are unable to hold that the High Court did not possess inherent jurisdiction to pass the impugned order. The Hon’ble Judges have already indicated that the impugned order, in our opinion, prevented the publication of Mr. Goda's evidence during the course of the trial and not thereafter.
7. The Court observed that The proviso to s. 352 of the Code of Criminal Procedure, 1898, prescribes that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any

inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in the room or building used by the Court. The last provision to which the Judges may refer in this connection is s. 151 of the Code of Civil Procedure, 1908. This section provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. These statutory provisions merely illustrate how the power of the Court to hold certain trials in camera, either fully or partially, is inevitably associated with the administration of justice itself.

8. The Court observed that the argument that the impugned order affects the fundamental rights of the petitioners under Art. 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions, of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Art. 19(1).
9. The Court referred the case of **A.K. Gopalan v. The State of Madras [(1950) S.C.R. 88]**, in which Kania C. J., had occasion to consider the validity of the argument -that the preventive detention order results in the detention of the applicant in a cell, and so, it contravenes his fundamental rights guaranteed by Art. 19(1) (a), (b), (c), (d), (e) and (g). Rejecting this argument, the learned Chief Justice observed that the true approach in dealing with such a question is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenu's life. On that ground alone, he was inclined to reject the contention that the order of detention contravened the fundamental rights guaranteed to the petitioner under Art. 19(1). He thought that any other construction put on the article would be unreasonable.
10. The ground that they are invalid because they illegally contravene his fundamental rights, it would be open to the party to move this Court under Art. 32. Such a challenge is not against any decision of this Court, but against a Rule made by it in pursuance of its rule-making power.
11. The Court referred the case of **Prem Chand Garg [(1963) Supp. 1 S.C.R. 885]** in which the Court observed that this Court can review or recall its order passed under the said Rule. Cases

in which initial orders of security passed by the Court are later reviewed and the amount of security initially directed is reduced, frequently arise in this Court; but they show the exercise of this Court's powers under Art. 137 and not under Art. 32.

12. Therefore, the Judges were not satisfied that Mr. Setalvad is fortified by any judicial decision of this Court in raising the contention that a judicial order passed by the High Court in or in relation to proceedings brought before it for its adjudication, can become the subject-matter of writ jurisdiction of this Court under Art. 32(2). In fact, no_ precedent has been cited before us which would support Mr. Setalvad's claim that a judicial order of the kind with which the Judges were concerned in the present proceedings has ever been attempted to be challenged or has been set aside under Art. 32 of the Constitution.
13. The Court referred the case of **Smt. Ujjam Bai v. State of Uttar Pradesh [1962 AIR 1621],** in which the scope of the jurisdiction of this Court in dealing with writ petitions under Art. 32 was examined by a Special Bench of this Court. This decision would show that it was common ground before the Court that in three classes of cases a question of the enforcement of the fundamental rights may arise; and if it does arise, an application under Art. 32 will lie. These cases are: (1) where action is taken under a statute which is ultra vires the Constitution; (2) where the statute is intra vires but the action taken is without jurisdiction; and (3) where the action taken is procedurally ultra vires as where a quasi-judicial authority under an obligation to act judicially passes an order in violation of the principles of natural justice.
14. The Court observed that So far as the jurisdiction of this Court to issue writs of certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction. The Judges have no doubt that it would be unreasonable to attempt to rationalize the assumption of jurisdiction by this Court under Art. 32 to correct such judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Art. 32.
15. The words used in Art. 32 are no doubt wide; but having regard to the considerations which the Judges have set out in the course of this judgment, and were satisfied that the impugned order cannot be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Art. 32; to hold otherwise would be repugnant to the well-recognized limitations within which the jurisdiction to issue writs of certiorari can be exercised and inconsistent with the

uniform trend of this Court's decisions in relation to the said point. The result is, the petitions fail and are dismissed. There would be no order as to costs.

16. Though it was not disputed, Justice P Gajendragadkar, considered that whether a law empowering a trial in camera is a valid law. An order directing a trial to be held in camera prohibits entry into the court but the Hon'ble Judge do not think that it can be said that it thereby offends the right to move freely throughout India which is given by sub-cl. (d) of cl. ,(I) of Art. 19. Justice P Gajendragadkar would put this view on two grounds. Firstly, that the law providing for trials being held in camera, even if it trespasses on the liberty of movement, would be protected under cl. (5) of Art. 19 which permits laws to be made imposing reasonable restrictions on that right in the interests of the general public. Now it is well recognized that the power to hold trials in camera is given in the interests of administration of justice. There can be no doubt that administration of justice is a matter of public interest. Then it seems to me indisputable that the restrictions that the exercise of the power to hold trials in camera imposes on the liberty of movement are reasonable. It is circumscribed by strict limits; see Scott. V. Scott [(1913) 1 A.C. 417] It is unnecessary to discuss these limits for it has not been contended that the restrictions are not reasonable.
17. Secondly, it was imparted by the Justice P Gajendragadkar that the law does not violate any fundamental right to free movement. A court house is not such a place into which the public have an unrestricted right of entry. The public no doubt has a right to be present in court and to watch the proceedings conducted 'there. But this is not a fundamental right. It is indeed not a personal right of a citizen which, the Hon'ble Judge conceive, a fundamental right must be. It is a right given to the public at large in the interests of the administration of justice. It cannot exist when the administration of justice requires a trial to be held in camera for in such a case it is not in the interest of justice that the public should be present. That right to be present in a court must be subject to the control of the Judge administering the business of the court.
18. The Court observed that the principle on which the law is based is that the utterance or publication would interfere with the course of justice and its due administration. As the Hon'ble Justice has already said, the law preventing publication of the court's proceedings is based on the same principle. The publication is prohibited only because it interferes with the course of justice. An obstruction to the course of justice will of course be a contempt of court. That obstruction may take various forms. There is obstruction when comments on the merits of a case pending in a court are made. Such comments are prohibited by law and that law relates to contempt of court.

19. Likewise, an obstruction to the course of justice occurs when a court in the interests of justice prohibits publication of the proceedings and that prohibition is disobeyed. Such publication is prohibited by law and the law empowering the prohibition equally relates to contempt of court. That law is concerned with the powers of the court alone and does not purport to confer rights on persons. Such a law would be a good law under cl. (2) of Art. 19 if the restrictions which it imposes are reasonable. What the Hon'ble Judge has earlier said in connection with the reasonableness of the restrictions imposed by the law providing for a trial to be held in camera will apply to this case also. The restrictions which this law empowers to be imposed have to be confined within the strict limits and are plainly reasonable.
20. The Court observed that the power and jurisdiction of this Court is so narrow that nothing on the merits of a controversy of a civil case can ever come up before it under Art. 32. It is unlikely that this Court will torture cases to fit them into Art. 32. A person may try but he will find this a Sisyphean task. It cannot be brought here by pleading breach of fundamental rights. It is only when a Judge directly acts in some collateral matter so as to cause a breach of a fundamental right that the ordinary process of appeals being unavailable or insufficient a case under Art. 32 can be made out. If there is a decision in a civil proceeding, an appeal is the only appropriate remedy. When the, High Court Judge acts collaterally to cause a breach of fundamental right the Hon'ble Judge was clear that an approach to this Court is open under Art. 32.
21. The Hon'ble Judges were of opinion that if this Court is satisfied that a fundamental right has been trampled upon it is not only its duty to act to correct it but also its obligation to do so. In the present case, the Judges were satisfied that the order passed by Mr. Justice Tarkunde was an erroneous and illegal order. The Judges cannot assume that it suppresses publication temporarily because Goda's business was sought to be protected and Goda's business, it is to be presumed, was expected to outlast the trial. A permanent suppression on publication would certainly be without jurisdiction.
22. Justice Shah observed that Article 19(1) of the Constitution declares certain personal freedoms in cls. (a) to (g) as guaranteed rights of citizens, and cls. (2) to (6) define restrictions which may be lawfully imposed by any existing or future law on those rights. Guarantee of personal freedoms subject to restrictions which are or may be imposed is in terms absolute, but since the rights are enforceable only against State action and not against private action, infringement of the personal freedoms by non-State agencies cannot be made a ground for relief under Art. 32.
23. By Art. 32(2) this Court is invested with jurisdiction to issue writs, directions or orders for the enforcement of fundamental rights. Implicit in the claim for invoking this jurisdiction are two

components: that the claimant has the fundamental freedom which is guaranteed by Part III of the Constitution, and that the freedom is directly infringed by the agency against whose action the protection is given. When it is claimed that an order made pursuant to a judicial determination of a disputed question of law or fact infringes a fundamental right under Art. 19, the claimant has to establish that he has the right claimed, and that by the order made the Court has directly infringed that right. But the function of the Court is to determine facts on which claim to relief is founded, to apply the law to the facts so found, and to make an appropriate order concerning the rights, liabilities and obligations of the parties in the light of the appropriate law.

24. The Court observed that when the rights under Art. 19 of a third party are affected by an order made by a Court in a judicial proceeding, there is in a sense a disputed question which is raised before it about the right of that third person not to be dealt with in the manner in which the Court has acted or proposes to act, and the Court proceeds upon determination of that disputed question. Such a determination of the disputed question would be as much exempt from the jurisdiction of this Court to grant relief against infringement of a fundamental right under Art. 19 as a determination of the disputed question between the parties on merits or on procedure. An order made against a stranger in aid of administration of justice between contending parties or for enforcement of its adjudication does not directly infringe any fundamental right under Art. 19 of the person affected thereby, for it is founded either expressly or by necessary implication upon the non-existence of the right claimed and so long as the order stands, it cannot be made the subject- matter of a petition under Art. 32 of the Constitution.
25. The Court observed that Code of Civil Procedure contains no express provisions authorizing a Court to hold its proceedings in camera: but the Court has inherent jurisdiction to pass an order excluding the public when the nature of the case necessitates such a course to be adopted. Hearing of proceedings in open Court undoubtedly tends to ensure untainted. Administration of justice and departure from that course may be permitted in exceptional circumstances, when the Court is either by statutory injunction compelled, or is in the exercise of its discretion satisfied, that unless the public are excluded from the courtroom, interests of justice may suffer irreparably. An order, for hearing of a trial 'in camera is only intended to prevent excessive publication of the proceedings of the Court, if such excessive publication may, it is apprehended, cause grave harm either to the public interest or to the interests of the parties or witnesses, which cannot be offset by the interest which it is the object of a trial in open Court to serve.

26. The Court explained that trial in closed session is generally ,ordered to prevent publicity which is likely to deter parties or their witnesses from giving evidence, on account of the nature of the evidence such as intimate details of sexual behavior, matters relating to minors and lunatics, matters publication of which may harm the interests of the State or the public at large, for instance, disclosure of official secrets, or matters which lead to publication of secret processes, publication of which would destroy the very basis of the claim for relief etc. In these cases, the Court may hold a trial in closed session and wholly exclude the public throughout the trial or a part thereof.
27. Circumstances may also justify imposition of a partial ban on publicity in the interests of justice and the Court may instead of holding a trial in camera and thereby excluding all members of the public who are not directly concerned with the trial, restrain publication of the evidence'. Such an order may, having regard to the nature of the dispute and evidence given, be within the jurisdiction of the Court.

➢ DECISION OF THE COURT

1. The Court held that the petitions therefore fail and are dismissed. Bachawat, J. Counsel for the petitioners submitted that the High Court had no power to affect the right of the petitioners to publish reports of the deposition of Bhaichand Goda by an order passed in a proceeding to which they were not parties, and if there is a law which confers this power, such a law is repugnant to Art. 19 (1)(a) of the Constitution. The Hon'ble Justice has not accepted either of these contentions. In agreement with the learned Chief Justice, holds that the High Court in the exercise of its inherent powers can, in exceptional cases, pass an order restraining the publication of any matter in relation to any proceeding pending before it. The inherent powers of the Court are preserved by s. 151 of the Code of Civil. Procedure.
2. The High Court was competent to pass the impugned orders, but assuming that it exceeded its jurisdiction, the order does not infringe Art. 19 (1) (a). The High Court has jurisdiction to decide if it has jurisdiction to restrain the publication of any document or information relating to the trial of a pending suit or concerning which the suit is brought. If it erroneously assumes on this matter, a jurisdiction not vested in it by law, its decision may be set aside in appropriate proceedings, but the decision is not open to attack on the ground that it infringes the fundamental right under Art. 19 (1) (a).
3. Thus, it was pronounced that a Court of justice is a public forum. It is through publicity that the citizens are convinced that the Court renders evenhanded justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the

publication of the report of the Court proceedings. The publicity generates public confidence in the administration of justice. In rare and exceptional cases only, the Court may hold the trial behind closed doors, or may forbid the publication of the report of its proceedings during the pendency of the litigation.

4. The petitions are not maintainable, and are dismissed. In accordance with the opinion of the majority these Writ Petitions are dismissed. No order as to costs.