

(2007) 12 DEL CK 0055

In the Delhi High Court

Case No : WP (Criminal) No. 1175 of 2007

Court on its Own Motion

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 20, 20(2), 5
Cable Television Networks Rules, 1994 — Rule 6

Citation : (2008) 146 DLT 429 : (2008) 100 DRJ 144 : (2008) 2 ILR Delhi 44 :
(2008) 2 RCR(Criminal) 11

Hon'ble Judges : Dr. M.K. Sharma, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : S.S. Gandhi, amices Curiae, A.S. Chandhiok, Mahesh Chhibber and Amit Kumar, for Uma Khurana, Adv Sanjay Katyal, Adv Nidhi Gupta and Shailja Sinha, for the Appellant;

Judgement

Mukundakam Sharma, C.J.—In today's age and world, the impact of media is far reaching. Electronic media as compared to print media has an added advantage because visuals have greater ramification and impact as it directly and immediately influences the mind of the viewer. With the growth of the number of News Channels and increasing popularity of "breaking news", electronic media has come to play a major role in stirring public opinion and consciousness. It is this potency to reach the public that entails that all the channels understand and realise the heavy responsibility that is thrust on them and that there is no case for possible misuse. Keeping in mind the role a responsible media can play in disseminating information and creating awareness among masses without crossing the limits that a civilised society would expect, we proceed to dispose of the present writ petition.

2. We came across a news item reported in the daily edition of Hindustan Times dated 7th September, 2007 in respect of a sting operation relating to one Ms. Uma Khurana. Prior to the said date, "Live India" a Television News Channel aired a programme on 30th August, 2007 regarding the above-said sting

operation conducted by them showing Ms. Uma Khurana, a teacher with a Delhi Government school, purportedly forcing a girl student into prostitution. Subsequent to the said telecast, aghast at the said act of the teacher, a crowd gathered at the school gate and started raising slogans demanding handing over of Ms. Uma Khurana to them. In the commotion and mayhem that followed some persons physically attacked Ms. Uma Khurana and even tore her clothes. Shocked by the aforesaid incident and consequent to public outcry the Directorate of Education, Government of Delhi first suspended Ms. Khurana and later dismissed her from service, in exercise of special powers vested in the Government. Police also sprung into action and started investigation. Later the aforementioned news item was published in the Hindustan Times which indicated that there was something more to the whole string operation than what met the eyes. In the aforesaid news item it was stated that the girl who had been shown as a student who was allegedly being forced into prostitution by Ms. Uma Khurana was neither a school girl nor a prostitute but a budding journalist eager to make a name in the media world.

3. Anguished at the news item published, which was preceded by violence and damage to property, we thought it fit to draw up proceedings on our own motion. After taking suo moto notice, we issued notices to the Government of NCT of Delhi and the Delhi Police. Mr. A.S. Chandhiok and Mr. S.S. Gandhi, Senior Advocates, were requested to assist the Court as amicus Curiae in the matter. On receipt of notice, the Education Department of the Government of NCT of Delhi and the Delhi Police entered appearance through their counsel.

4. Pursuant to the said notice, Mr. Madhup Tewari, Deputy Commissioner of Police, Crime & Railways, Delhi Police, filed a status report on 10th September, 2007. In the status report it is stated that one Mr. Virender Kumar, who had some monetary dispute with Ms. Uma Khurana, in connivance with one Mr. Prakash Singh, hatched a plan to trap Ms. Uma Khurana in a stage-managed act of forcing girls into prostitution. It is stated that on Ms. Uma Khurana's refusal to arrange girls to be delivered to some customer, Mr. Prakash Singh roped in Ms. Rashmi Singh, who was known to him, to act as a school girl, who Ms. Uma Khurana would be delivering to some "customer". Mr. Virender Kumar and Mr. Prakash Singh filmed Ms. Rashmi Singh with Ms. Uma Khurana at a pre-planned place where Ms. Uma Khurana came to "deliver" Ms. Rashmi Singh to some customer, as instructed by Mr. Virender Kumar. This whole stage managed episode was shown as a "sting operation" by the news channel. Public outrage followed causing violence and damage to property. Ms. Uma Khurana was beaten up, her clothes torn and later on arrested.

5. The Additional Director (Administration) Department of Education, Government of Delhi also filed a status report which stated that pursuant to the sting operation shown by the channel, the media reports and the riot in front of the school premises, a committee was constituted to view the CD supplied by the news channel and to submit a report. It is stated in the report that Vice Principal

of the school has identified Ms. Uma Khurana in the film footage and also recognised her voice in the film. Pursuant to the report of the Committee, Ms. Uma Khurana has been dismissed from service and Additional Director of Education (Vigilance) has further referred the matter to Crime Branch of Delhi Police for investigation. Steps which the Directorate of Education has contemplated with a view to secure a safe environment for children and employees in schools have also been delineated in the report.

6. Mr. Madhup Tewari filed another status report on 12th September, 2007 wherein, in the penultimate paragraph, it is stated that the Additional Director, Education has been informed that Ms. Uma Khurana has not been found to be involved in any organized prostitution racket involving school girls as shown in the sting operation and that a part of the sting operation was stage managed. In another status report filed on 6th October, 2007 by Mr. Madhup Tewari, it is stated that voice samples of Uma Khurana, Rashmi Singh and Prakash Singh were recorded by expert at CFSL and has been placed with the CFSL for expert opinion. It is also stated that recording of the sting operation was done selectively and the investigation was still in progress.

7. Subsequently on completion of the investigation, Police has also submitted charge sheet in the case. It was made clear by the Delhi Police that no concrete evidence was found against Ms. Uma Khurana to support the allegations of child prostitution made against her. Consequently, name of Ms. Uma Khurana has been cleared as no evidence was found by the Police which indicates that Ms. Uma Khurana was in any manner not involved with the alleged prostitution racket as tried to be projected through the aforesaid sting operation. Ms. Rashmi Singh, who was shown with the accused in the sting operation, was charged with impersonation, criminal conspiracy and creating false evidence. Mr. Prakash Singh and Mr. Virender Kumar were also charged with similar accusations.

8. The aforesaid position clearly establishes the fact that an innocent person was being induced to commit a very heinous crime. Her reputation has been damaged in the eyes of the public and even her modesty was outraged in the sense that she was manhandled and her clothes were torn by some people. The sting operation has become a stinking experience for Ms. Uma Khurana as she has not only lost her reputation but also her job. The question is how the recurrence of such incident could be stopped and minimised so that an innocent person cannot be victimised and not made to lose reputation.

9. Our attention was drawn by the learned counsel appearing for the Ministry of Information & Broadcasting, Government of India to the show cause notice issued by the said Ministry to Janmat TV-Live India , on 11th September, 2007. In the said show cause notice it was alleged that the telecast of the sting operation by the Janmat TV-Live India is defamatory, deliberate, containing false and suggestive innuendos and half truths. It is also indicated therein that as per Section 5 of the Cable Television Networks (Regulation) Act, 1995 read with provisions of Cable Television Networks Rules, 1994, no programme can be

transmitted/re-transmitted on any cable service which contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths. The said TV channel was further informed that it was bound to follow the Programme Code and Advertising Code which was not followed and in fact violated provisions of the said Act and the Rules. The said Channel was directed to show cause as to why action as per the provisions of Section 20 of the Cable Act should not be taken against them. On 19th September, 2007 an order was passed by the Director (Broadcast Content) in exercise of the powers conferred by sub-Section (2) of Section 20 of the Cable Television Networks Regulation Act, 1995. By the said order, transmission/re-transmission of JANMAT TV-Live India channel was prohibited with effect from 20th September, 2007 and ut po 20th October, 2007 through cable television networks and any other platform throughout the country.

10. Action has been taken by the Central Government against Janmat TV-Live India under the aforesaid Rules. Under the provisions of the Rule making power, Cable Television Networks Rules, 1994 were enacted.

11. Section 5 of the aforesaid Act provides that no person shall transmit or re-transmit through cable service any programme unless the programme is in conformity with the prescribed programme code. Rule 6 of the Cable Television Network Rules, 1994 prescribes a programme code that should be followed by any person responsible for transmission/re-transmission of any programme. The programme code is fairly exhaustive and stipulates that no programme which encourages and incites violence, maligns and slanders any individual and person, contain any false and half truths etc, should be carried and broadcast in a cable service. Section 20 of the said Act empowers the government to prohibit operation of any cable television network if it thinks it is necessary and expedient in public interest to do so, by a notification in the official gazette. Further, the Central Government can by an order regulate or prohibit transmission or re-transmission of any programme which is not in conformity with the programme code. Additionally, power has been given to the Central Government to regulate and prohibit transmission or re-transmission by any channel of a programme if it is not in the interest of integrity and sovereignty of India, security of India, friendly relations of India with any foreign State or public order, decency or morality.

12. Regulation of electronic media has always invoked sharp and divergent views with emotive and logical pleas and counter arguments. We are informed that the Ministry has invited suggestions from the general public including the media on a proposed Broadcasting Bill and Code of Conduct. A decision in this regard has to be taken by the government. But it cannot be denied that electronic media should and must protect innocent people so that their reputation cannot be sullied and damaged by false and incorrect depictions in the name of sting operation.

13. We have already referred to the fact that the Police after investigation could

not collect any evidence against the alleged act of Ms. Uma Khurana. Police could not even find any evidence in support of the allegation made against Ms. Uma Khurana through the sting operation by the aforesaid television news channel. In these circumstances there are enough grounds and material on which Ms. Uma Khurana could file an appropriate case for causing damage to her reputation and for the mental agony and physical hardship gone through by her. Damages in accordance with the law can be awarded by Courts in cases of defamation and loss of reputation. We leave it open to Ms. Uma Khurana to initiate appropriate proceedings, as advised in accordance with law for redressal of her grievances.

14. We were also informed that the Directorate of Education is reconsidering the matter with regard to her dismissal from service and Therefore that aspect is also left open by us to be taken up by the Government of NCT of Delhi and also by Ms. Uma Khurana in appropriate manner and appropriate forum.

15. Such incidents should not happen and false and fabricated sting operations directly infringing upon a person's right to privacy should not recur because of desire to earn more and to have higher TRP rating. Right to freedom of press is a valuable right but the right carries with it responsibility and duty to be truthful and to protect rights of others.

16. We have also come across an article titled "A tale in the sting", relating to the Uma Khurana incident, written by Ms. Barkha Dutt, Managing Editor of NDTV wherein she has referred to media reports/sting operations in the United States. Ms. Dutt in her article referred to reports of the American newspaper "Chicago Sun Times" wherein Police officers were bribed by journalists to get a bar license. Police officers taking bribe were caught on hidden camera and later the sting operation was shown on TV. The said programme won many awards but not the Pulitzer prize because they could not agree on whether the methods used were honourable enough. After having referred to the said incident, Ms. Dutt observed:

This is, perhaps, what is at the heart of the matter. There is something unseemly and mildly sleazy about reporters playing Pied Pipers who lay out the cheese to seduce comen into their rat traps. It is much easier to justify the use of a hidden camera when it is for capturing the event that would take place whether or not the camera was there. Entrapment somehow can't manage to shake off the suggestion of fabrication.

17. There is no doubt and there is no second opinion that ?truth? is required to be shown to the public in public interest and the same can be shown whether in the nature of sting operation or otherwise but what we feel is that entrapment of any person should not be resorted to and should not be permitted. In this connection we may appropriately refer to the decision of the Supreme Court of the United States decided on 6th April, 1992 titled Keith Jacobson v. United States reported in 503 US 540. In the said decision it was held by the Supreme Court of the United States that in their zeal to enforce law, law protectors must not originate a criminal design, implant in an innocent person's mind a

disposition to commit a criminal act, and then induce commission of the crime so that the government may prosecute. Where the government or their agents induce an individual to break the law and the defense of entrapment is at issue, the prosecution must meet and answer by establishing and answering beyond reasonable doubt that the defendant was predisposed to commit the criminal act prior to first being approached by government agents. The Supreme Court of the United States has also declared that law enforcement officials go too far when they implant in the mind of an innocent person a disposition to commit an offense and induce its commission in order that they may prosecute. The Court held in very unambiguous terms that the Government should not play on the weakness of an innocent party and beguile the party into committing a crime which the party otherwise would not have attempted. While artifice and stratagem may be employed to catch those who are engaged in criminal enterprises, there would be a need to prove that the person in question had a predisposition to commit the said criminal act prior to being approached by the enforcement agencies. The Government must not punish an individual "for an alleged offence which is the produce because of the creative activity of its own officials". Ratio of the aforesaid decision rendered by the Supreme Court of the United States is in our considered opinion can be applied to the instant context also i.e. to the media.

18. Giving inducement to a person to commit an offence, which he is otherwise not likely and inclined to commit, so as to make the same part of the sting operation is deplorable and must be deprecated by all concerned including the media. Sting operations showing acts and facts as they are truly and actually happening may be necessary in public interest and as a tool for justice, but a hidden camera cannot be allowed to depict something which is not true, correct and is not happening but has happened because of inducement by entrapping a person.

19. The duty of the press as the fourth pillar of democracy is immense. It has great power and with it comes increasing amounts of responsibility. No doubt the media is well within its rightful domain when it seeks to use tools of investigative journalism to bring us face to face with the ugly underbelly of the society. However, it is not permissible for the media to entice and try to actively induce an individual into committing an offence which otherwise he is not known and likely to commit. In such cases there is no predisposition. If one were to look into our mythology even a sage like Vishwamitra succumbed to the enchantment of "Maneka". It would be stating the obvious that the Media is not to test individuals by putting them through what one might call the "inducement test" and portray it as a scoop that has uncovered a hidden or concealed truth. In such cases the individual may as well claim that the person offering inducement is equally guilty and a party to the crime, that he/she is being accused of. This would infringe upon the individual's right to privacy. We believe and trust that all TV channels/Media shall take steps and prohibit its reporters from producing or airing any programme which is based on entrapment and which are fabricated, intrusive

and sensitive. We also believe that responsible and senior TV journalists/ reporters and editors who are involved in production and airing of programmes through electronic media should take steps for drawing up a self-regulatory code of conduct. The Press Council of India should also examine and can take initiative in this regard.

20. Certain proposed guidelines were also placed before us by the learned amices. The said proposed guidelines are as follows:

1. A channel proposing to telecast a sting operation shall obtain a certificate from the person who recorded or produced the same certifying that the operation is genuine to his knowledge.

2. There must be concurrent record in writing of the various stages of the sting operation.

3. Permission for telecasting a sting operation be obtained from a committee appointed by the Ministry of Information and Broadcasting. The said committee will be headed by a retired High Court Judge to be appointed by the Government in consultation with the High Court & two members, one of which should be a person not below the rank of Additional Secretary and the second one being the Additional Commissioner of Police. Permission to telecast sting operation will be granted by the committee after satisfying itself that it is in public interest to telecast the same. This safeguard is necessary since those who mount a sting operation themselves commit the offences of impersonation, criminal trespass under false pretence and making a person commit an offence.

4. While the transcript of the recordings may be edited, the films and tapes themselves should not be edited. Both edited and unedited tapes be produced before the committee.

5. Sting operation shown on TV or published in print media should be scheduled with an awareness of the likely audience/reader in mind. Great care and sensitivity should be exercised to avoid shocking or offending the audience.

6. All television channels must ensure compliance with the Certification Rules prescribed under the Cable Television Network (Regulation) Act 1995 and the Rules made there under.

7. The Chief Editor of the channel shall be made responsible for self regulation and ensure that the programmes are consistent with the Rules and comply with all other legal and administrative requirements under various statutes in respect of content broadcast on the channel.

8. The subject matter of reports or current events shall not:

(a) Deliberately present as true any unverified or inaccurate facts so as to avoid trial by media since a "man is innocent till proven guilty by law";

(b) Present facts and views in such a manner as is likely to mislead the public

about their factual inaccuracy or veracity;

(c) Mislead the public by mixing facts and fiction in such a manner that the public are unlikely to be able to distinguish between the two;

(d) Present a distorted picture of reality by over-emphasizing or under-playing certain aspects that may trivialize or sensationalize the content;

(e) Make public any activities or material relating to an individual's personal or private affairs or which invades an individual's privacy unless there is an identifiable large public interest;

(f) Create public panic or unnecessary alarm which is likely to encourage or incite the public to crime or lead to disorder or be offensive to public or religious feeling.

9. Broadcasters/Media shall observe general community standards of decency and civility in news content, taking particular care to protect the interest and sensitivities of children and general family viewing.

10. News should be reported with due accuracy. Accuracy requires the verification (to the fullest extent possible) and presentation of all facts that are necessary to understand a particular event or issue.

11. Infringement of privacy in a news based/related programme is a sensitive issue. Therefore, greater degree of responsibility should be exercised by the channels while telecasting any such programmes, as may be breaching privacy of individuals.

12. Channels must not use material relating to persons' personal or private affairs or which invades an individual's privacy unless there is identifiable larger public interest reason for the material to be broadcast or published.

21. The Ministry of Information and Broadcasting is already examining whether a statute and/or a code of conduct should be enacted. The above proposed guidelines should be considered by the concerned Ministry and if they find favor, they may be incorporated in the enactment/guidelines, with modifications as deemed fit and proper.

22. In terms of the aforesaid observations, we discharge the notices suo moto issued by us to the State. The petition stands disposed of.