
(2016) 08 DEL CK 0154
In the Delhi High Court
Case No : W.P.(C) No. 2399 of 2015

Kritika Padode

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) 3 Crimes 641

Hon'ble Judges : Ms. G. Rohini, CJ. and Jayant Nath, J.

Bench : Division Bench

Advocate : Mr. Naman Joshi, Advocate, for the Petitioner in W.P.(C) No. 2399 of 2015; Mr. Siddharth Aggarwal, Mr. Sukumar and Mr. Ambar Bhushan, Advocates, for the Petitioner in W.P.(C) No. 5602 of 2015; Ms. Monika Arora, CGSC with Mr. Kushal Kumar, Advocate, for th

Final Decision : Disposed Off

Judgement

Ms. G. Rohini, C.J.—These three petitions have been filed by way of Public Interest Litigation with a prayer to declare the action of the Central Government and Delhi Police in banning the telecast of the documentary titled "India's Daughter" as illegal and without jurisdiction. The petitioner in W.P.(C) No.5602/2015 has also prayed for quashing the orders dated 3rd and 4th March, 2015 of the learned Metropolitan Magistrate, Patiala House Courts exercising the jurisdiction under Article 227 of the Constitution of India.

2. We have heard the learned counsel for both the parties.

3. "India's Daughter" is a documentary film about the gang rape and brutal assault of a young woman on 16th December, 2012 in a moving bus in New Delhi.

4. The four accused in the said case, known as "Nirbhaya case", were convicted and were awarded death sentence by the Special Fast Track Court, Saket, New Delhi holding that it is a case falling under the category of "rarest of rare" and the same was confirmed by the High Court of Delhi. The appeal against the

conviction and sentence is pending before the Supreme Court and the accused/convicts are presently detained in Tihar Jail.

5. On 28.02.2015, it was announced by BBC that the documentary film "India's Daughter" would be aired on the International Women's Day on 08.03.2015 and that the same would also include the interview of one of the convicts. On 03.03.2015, FIR No.29/2015, P.S. Cyber Crime Cell, Economic Offences Wing, Delhi came to be registered for the offences punishable under Sections 504, 505, 505(1)(b) and 509 of Indian Penal Code, 1860 read with Section 66A of Information Technology Act, 2000 on the basis of the newspaper and internet reports that the convict in his interview had made highly objectionable, grossly offensive, malicious and derogatory remarks hurting the feelings of women and that the publication and telecast of the same in print and electronic media may provoke breach of peace and may cause public mischief.

6. On 03.03.2015 itself, an application was moved by the Delhi Police through the Inspector Cyber Crime Cell, Economic Offences Wing, Delhi in the Court of the Duty Metropolitan Magistrate, Patiala House Courts, New Delhi seeking a direction to the competent authority in the Ministry of Information and Broadcasting not to allow telecast of the said interview of the convict in India stating that in case the interview is telecasted, it may lead to widespread public outcry and serious law and order problem. Having entertained the said application, the learned MM passed a restraint order until further orders which reads as under:

"An application has been moved by the IO requesting for blocking of interview of one of the convicts of Nirbhaya Gang Rape case from telecasting and broadcasting on the internet and other print media. It has been stated that if the said interview is allowed to be aired, it may cause huge public outcry and may create law and order problem. Heard. Since an FIR has already been lodged against the said interview and also there is a possibility of law and order problem being caused, it is hereby directed that said interview shall not be uploaded/transmitted/published through any web portal or print or any other media till further orders. The application and this order be put up before the concerned Court on 04.03.2015 at 2 PM."

7. The said application was put up before the Chief Metropolitan Magistrate, Patiala House Courts on 04.03.2015 and has been placed on record. The said order may also be reproduced hereunder:

"IO of the case has moved an application for intimation submitting that on 3.3.2015 an application for preventing the media/internet from publishing/transmitting/telecasting/uploading the interview of one of the convicts in Nirbhaya gangrape case, was made before the learned Duty MM who has already been pleased to pass a restraint order till further orders.

Order dated 3.3.2015 of Sh. Puneet Pahwa, learned MM, PHC, New Delhi perused. Be kept on record."

8. On 03.03.2015, the Government of India, Ministry of Information and Broadcasting has also issued an "advisory" advising all the private satellite TV channels not to telecast the documentary "India's Daughter" or any excerpts from it or any programmes based on the said excerpts. It was also stated that any violation of the programme code shall invite such action as provided for in the Cable TV Networks (Regulation) Act, 1995 and the Rules made thereunder as well as the terms and conditions stipulated in the uplinking/downlinking guidelines. The said "advisory" dated 03.03.2015 reads as under:

"Government of India

Ministry of Information and Broadcasting

"A" Wing, Shastri Bhawan,

New Delhi.

3rd March, 2015

Advisory

Whereas a number of private TV channels have been showing certain excerpts of a programme titled "India's Daughter", proposed to be telecast by the BBC and the NDTV. The excerpts contain an interview with one of the convicted rapists of the Delhi gangrape victim of December, 2012. These excerpts were telecast on various channels throughout the day, with visuals of the convict, who was showing no remorse whatsoever for the heinous act. Further, the excerpts also contained his chauvinistic and derogatory views regarding women in general and the victim in particular. These programmes also provided a platform for the convict to use the media to further his own case, especially when his appeal against his conviction, is sub-judice.

Whereas the telecast of these excerpts appear to encourage and incite violence against women, thus compromising women's public safety. They also provide encouragement to anti-social elements to indulge in violent acts compromising law and order.

Whereas the telecast of these excerpts appear to compromise the role of the media as the upholder of constitutional values as the fourth pillar of our democracy. The media is likely to be seen as a voice for the perpetrator of such crimes by providing him a medium to communicate his views on the matter repeatedly. Further, his appeal being sub-judice, this is also liable to be construed as interference with the due process of law.

Whereas the telecast of these excerpts are liable to attract provisions of Rule 6(1) (d, e, f, i, k and o) of the Cable Television Networks Rules, 194.

All the private satellite TV channels are accordingly advised to not telecast the documentary "India's daughter" or any excerpts from therein or any programmes based on these excerpts.

Any violation of the Programme Code shall invite such action as provided for in the Cable TV Networks (Regulation) Act, 1995 and Rules framed thereunder as well as the terms and conditions stipulated in the uplinking/downlinking guidelines."

9. Challenging the validity of the said "advisory" issued by the Ministry of Information and Broadcasting, the present writ petitions have been filed contending inter alia that the ban on broadcasting imposed under the said "advisory" violates the fundamental rights of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. It is also contended that the prohibitory order issued on a mere apprehension that the documentary may lead to serious law and order problem is wholly unwarranted apart from being without jurisdiction since the same is not authorised by any law. The further contention is that since the documentary in question being a mirror reflection of the ground reality of the mindset of one of the convicts, the same needs to be appreciated and accepted so as to enable correction of the societal mindset of gender bias and social norms and to bring out the systemic changes in societal behaviour.

10. A status report has been filed on behalf of the Delhi Police stating that the investigation of the case in FIR No.29/2015 is in progress and upon completion of the investigation the final report would be filed before the learned Chief Metropolitan Magistrate.

11. It is no doubt true that the Ministry of Information and Broadcasting had issued the "advisory" dated 03.03.2015, however, on the same day a judicial order came to be passed by the jurisdictional court preventing the media/internet from publishing/transmitting/telecasting/uploading the interview of the convict. The said order is still in operation.

12. It is apparent from the facts borne out of record that the "advisory" dated 03.03.2015 was a mere advice to the private satellite TV channels.

13. However, there is a judicial order prohibiting telecasting and the matter is still pending before the competent court of law.

14. Therefore, the contentions advanced by the petitioners regarding the validity of the "advisory" issued by the Ministry of Information and Broadcasting deserve no consideration at this stage.

15. So far as the judicial orders dated 3rd and 4th March, 2015 are concerned, since the matter is pending before the competent court of law and more particularly the investigation is still in progress, the interference by this Court either under Article 226 or under Article 227 of the Constitution is not warranted.

16. Accordingly, leaving it open to the learned Chief Metropolitan Magistrate to proceed with the matter pending on his file following due process of law and granting liberty to the petitioners or any aggrieved party to work out the other remedies available under law, the writ petitions are disposed of.