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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 22.02.2023
Pronounced on: 06.03.2023

+ **CRL.M.C. 2214/2020 & CRL.M.A. 15761/2020**

TVF MEDIA LABS PVT LTD & ORS. Petitioners

Through: Mr. Vinayak Mehrotra,
Advocate

versus

STATE (GOVT.OF NCT OF DELHI)
& ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Pawan Kumar, P.S. Mukherjee
Nagar

(56)

+ **CRL.M.C. 2399/2020 & CRL.M.A. 16891/2020**

APOORVA ARORA & ANR. Petitioners

Through: Mr. Siddharth Aggarwal,
Senior Advocate with Ms.
Neha, Mr. Anirudh Gotety,
Ms. Sowjhanya Srikumar and
Mr. Vishwajeet Singh Bhati,
Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.

(57)

+ **CRL.M.C. 2215/2020 & CRL.M.A. 15763/2020**

MR SIMARPREET SINGH Petitioner

Through: Mr. Atul Singh and Mr.
Aatreya Singh, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

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SWARANA KANTA SHARMA, J.

1. The instant petitions under Section 482 of the Code of

Criminal Procedure, 1973 ('Cr.P.C.') have been filed seeking quashing of the order dated 10.11.2020 passed in Criminal Revision No. 260/2019 titled "*TVF Media Labs Pvt. Ltd. & Ors. vs. State & Ors.*" by learned Additional Sessions Judge, Rohini District Court, New Delhi, (hereinafter 'ASJ') and order dated 17.09.2019 passed in Criminal Complaint No. 1396/2019 titled "*Arvind Kumar vs. TVF Media*" by learned Additional Chief Metropolitan Magistrate (North), Rohini District Court, New Delhi (hereinafter 'ACMM').

2. This judgment shall govern the disposal of CRL.M.C. 2214/2020, CRL.M.C. 2399/2020 & CRL.M.C. 2215/2020 arising out of common set of facts, contentions and prayer. The petitioner no.1 in CRL.M.C. 2214/2020 is TVF Media Labs Pvt. Ltd. (hereinafter 'TVF'), a company incorporated under the provisions of the Companies Act, 2013 and petitioner no. 2 and 3 are Directors and Shareholders of petitioner no. 1. Whereas, petitioner no. 1 in CRL.M.C. 2399/2020 is the female protagonist and petitioner no. 2 is male protagonist in the web series titled 'College Romance'. The petitioner in CRL.M.C. 2215/2020 is the Casting Director of the said web series. Since the present petitions arise out of the same set of facts and contentions and the issue before this Court in all the petitions is also common, the same are being decided through this common judgment.

A. FACTUAL BACKDROP

3. The brief facts of the present case are that petitioner/TVF Media Ltd. is owner of web series titled 'College Romance' which is

being broadcasted primarily on various internet platforms such as YouTube, TVF Web Portal and Mobile Applications.

4. It is the alleged case of complainant that the said web series contains vulgar and obscene material and depicts women in indecent form in violation of the provisions of Sections 292/294 of Indian Penal Code ('IPC'), 1860, Section 67/67A of Information and Technology Act, 2000 ('IT Act') and Sections 2 (c), 3 and 4 of Indecent Representation of Women Prohibition Act, 1986. It is the case of the complainant that petitioner is also the owner-cum-manager of popular YouTube channel known as 'Timeliners', on which indecent content had been broadcasted and published for consumption by general public without any warning to the effect that the content is for adult consumption only.

5. It is alleged in the complaint filed by respondent no. 2 i.e. Arvind Singh that accused no. 2 and 3 are the shareholders and directors of petitioner company whereas accused no. 4 is the casting director of the Web Series in question titled 'College Romance' through which obscene content is being circulated on various Internet portals and the accused no. 5 and 6 are the actress and actor respectively who had played the character of female lead and male protagonist in the objectionable web series whereas the accused no. 7 and 8 are two script writers of the obscene web series.

6. It is alleged that TVF owns one of the YouTube entertainment channels popularly known as 'The Timeliners' and that TVF under its entertainment channel 'The Timeliners' produces and broadcasts/publishes different webseries and shoots entertainment

related videos and then uploads it on YouTube. It is also stated that the accused company is having its office at Delhi.

7. It is alleged that in the month of September 2018, TVF and its Managing Director broadcasted and published its new web series on YouTube titled 'College Romance', and on 06.09.2018, Episode 05 of Season 01 titled 'Happily fucked up' was published and broadcasted on YouTube. It is alleged that in the said episode, the petitioners in Crl.M.C. 2399/2020 used vulgar and obscene language. It is further stated that the title of the said episode in web series in itself is vulgar and obscene, and the said episode showcases indecent representation or obscene portrayal of girls or women in worst form. It is alleged that though vulgar words have been used throughout the entire web series 'College Romance', Episode 05 of Season 01 of the said web series has crossed all the limits of vulgarity and internet obscenity, and that on careful examination of the video which is available on YouTube, the same shall stand proved.

8. It is the case of complainant that the video in question is available to be viewed by everyone in India on YouTube without their being any age restriction mechanism. It is alleged that the Episode does not give any legal disclaimer/warning that, "the episode includes any vulgar content, internet obscenity or age restriction". It is alleged that all episodes of this web series, especially the above mentioned Episode, spreads Internet obscenity for achieving financial gains.

9. The specific complaint in the present case is that the language used in Episode 05 of Season 01 of the web series, airtime starting

from 5 minutes 24 seconds to 6 minutes 40 seconds as well as from 25 minutes and 28 seconds to 25 minutes and 46 seconds, is obscene and vulgar. It is alleged that the entire act and conversation, broadcasted and published, is indecent and obscene in the name of entertainment and with motive of financial gains. It is alleged that the accused persons, who are all above the age of 18, have no sense of morality or responsibility towards the society and have published/broadcasted vulgar, obscene and indecent web series.

10. The petitioners are aggrieved by learned ACMM's order dated 17.09.2019 vide which the learned ACMM was pleased to observe that case under Sections 292/294 of IPC and Section 67/67A of Information and Technology Act was prima facie made out and concerned SHO was directed to register FIR against the petitioners under appropriate provision of law after conducting investigation into the allegations of the complainant. The operative portion of the said order reads as under:

“...In the light of above cited observations made by Hon'ble Supreme Court of India and in the light of my foregoing discussion I am of the considered opinion that the vulgar language incorporated in the web series titled as College Romance is prima facie capable of appealing to the prurient interests of the audiences and circulation of such obscene material on various internet portals, prima facie discloses the commission of cognizable offences punishable u/s 292 / 294 and 67 / 67A IT Act. Specialized investigation by a competent agency such as police is required in the present matter to curb circulation of such obscene material amongst members of general public as well as for collection of evidence and apprehension of the culprits. Accordingly, this court deems it appropriate to direct the SHO PS Mukharjee

Nagar be directed to register and FIR and to conduct / get conducted investigation into the allegation of the complainant. It is needless to say that the direction to register an FIR, it does not necessary imply that the allegation of the complainant are true and correct, rather the allegations of the complainant have to pass the litmus test of investigation before ascertaining the veracity of the allegations made in the complaint. It is hereby made clear that SHO concerned is not bound to register the case in accordance with the Sections (Penal Provisions) enumerated by the complainant, rather he must exercise the judicious discretion in invoking the relevant sections of the IPC and other penal statues in accordance of the facts set out in the complainant. It is a trite law, however, still at the cost of repetition, it is hereby clarified that the direction to register an FIR in the present matter does not include a direction to arrest the accused. With these observations, the application under section 156(3) Cr.P.C stands allowed...”

11. Aggrieved by the said order, petitioners filed a revision petition before learned ASJ, and *vide* order dated 10.11.2020, learned ASJ was pleased to pass an order whereby the order of the learned ACMM was modified and it was held as under:

“...8. The present revision petitions have been filed against the impugned order dated 17/09/2019, whereby the application u/s 156(3) Cr.P.C., filed by the original complainant (respondent no.2 herein), was allowed, while observing that the vulgar language incorporated in the webseries titled as “College Romance” is prima facie capable of appealing to the prurient interests of the audiences and circulation of such obscene material on various internet portals, prima facie discloses the commission of cognizable offences punishable u/s 292/294 & 67/67 IT Act and SHO PS Mukherjee Nagar was directed to register an FIR and to conduct/get conducted investigation into the allegation of the complainant (respondent no.2 herein). This Court has gone

through the contents of the alleged webseries namely “College Romance”, particularly Episode no. 5 of series 01. It is admitted fact of all the parties that there are various obscene language throughout the episode and the same is not in denial, but merely abusive language may not amount to obscenity as per judgments relied upon by the parties. At present, the role of the Court, while dealing with the revision petitions, is confined to the correctness, illegality and impropriety of the impugned order...”

9. From the perusal of the above judgment, it is evident that both the Sections cannot be invoked at the same time. Scientifically, the content was only shown in the internet media and the prosecution has not stated anywhere that there was any other visual representation beyond the internet. Hence, the arguments of Id. Counsels for the revisionists in this regard to the extent that Sections u/s 292 and 294 IPC cannot exist together with Section 67A IT Act, if the content is only confined to the digital media, are acceptable. Rest of the arguments referred to the defining of whole content, is not permissible in the revisional jurisdiction as that can be done only after the collection of evidence in this regard and a final finding cannot be made while dealing with the revisional jurisdiction. **Hence, the impugned order passed by Id. ACMM is modified to the extent that FIR be registered only u/s 67A of Information & Technology Act and rest of the Sections related to IPC be dropped...”**

(Emphasis supplied)

B. SUBMISSIONS AT THE BAR

12. Learned senior counsel for the petitioners argued that the impugned orders suffer from illegality and are liable to be quashed since there is non-compliance of Section 154(3) of Cr.P.C. and therefore, non-compliance of the same will come in the way of

Section 156(3) as it is mandatory to comply with Section 154(3) before filing a complaint under Section 156(3). It is also stated that though it has been observed in order dated 10.11.2020 that Section 67A of IT Act is made out, albeit, the same has not been dealt with as to how the same is made out in the facts of the present case. It is also stated that as far as Section 67A of IT Act is concerned, the contents of the series will show that there is no sexually explicit content which will bring it under the purview of said provision.

13. *Per contra*, learned APP for the State and learned counsel for respondent no. 2 vehemently argued that it is not mandatory to comply with Section 154(3) of Cr.P.C, since from bare perusal of the language of same, it is clear that it is directory and not mandatory in nature. It is also argued that by virtue of the impugned orders, both learned ACMM and learned ASJ have given sufficient reasons and there is no illegality or infirmity in both orders. It is also contended that there was no disclaimer or warning that the content was meant for people above 18 years. It is stated that words and languages used in the web series are such that it will not be used by general public and that Section 67A of IT Act makes it clear that sexually explicit content will also include the language used in web series.

14. Respondent no. 2, who appeared in person, argued that he is an Alumnus of Delhi University. It is stated that web series 'College Romance' allegedly highlights the student life and character of Delhi University. It is stated that being an alumnus of Delhi University, he strongly believes that the characters shown in the web series not only damage the reputation of the country's prestigious Delhi University,

but also portrays wrong impression about its students and society as a whole. He also argues that such web series are harmful as it promotes obscene culture. He also argues that the petitioners have taken advantage of social media platforms, i.e. Over the Top ('OTT') platform in the absence of Indian technology regulations on OTT. It is also argued by respondent no. 2 that the web series promotes culture of obscenity which is now considered 'New Ok' on behalf of communities. It is stated that the web series had been intentionally launched on public platform of YouTube for financial gains. It is also stated that only to gain revenue, petitioners did not upload a warning that it is for people of the age of 18 years and above as YouTube does not allow revenue on such videos. It is stated that the petitioners have no right to post their obscene videos on the internet and label them as 'New OK' and portray them as new culture of India. It is stated that in the web series, the male protagonist has been using sexually explicit and obscene words during conversation with the female protagonist, and the said female protagonist had been opposing the use of such obscene words by repeating the same herself. In these circumstances, he argues that it amounts to circulation of obscene material by the petitioners and therefore, the order of the learned ASJ is in compliance with law.

C. ANALYSIS AND FINDINGS

15. The arguments addressed on behalf of learned counsels for both the parties have been heard at length by this Court and the

material on record has been perused.

16. At the outset, as far as the arguments raised on behalf of petitioners on non-compliance of Section 154(3) of Cr.P.C. are concerned, it is to be noted that as per the record, the complainant had approached the higher authority of the SHO concerned, i.e. ACP, Cyber Cell, North District with his grievance. Even otherwise, the word used under Section 154(3) is 'may' and not 'shall'.

17. The question before this Court is as to whether this Court, in the facts and circumstances of the case, will hold a view that the content of the web series 'College Romance' is obscene and that the order of learned ASJ directing registration of FIR against the petitioners under Section 67A of IT Act only is correct in law.

18. This Court to arrive at just decision of the case, has seen a few episodes of the web series titled 'College Romance', including the Episode 05 of Season 01 which is in question.

I. Legal Framework

19. This Court after going through the content of the case file, is of the opinion that the content of the web series in the present case will have to be judged in the context of Section 67 and 67A of IT Act, which are reproduced as under:

“67. Punishment for publishing or transmitting obscene material in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter

contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees...”

67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”

20. At the outset, a perusal of the order of both the Courts below reveal that the orders have been passed primarily on the findings that after going through the web series, particularly Episode 05 of Season 01, it was observed that all the petitioners herein have used obscene words throughout the episode and since the obscenity pertaining to electronic media can be dealt with only under Section 67 of IT Act, the learned ASJ has held that the FIR be registered under Section 67A of the IT Act, and not under Sections 292 and 294 of IPC as also observed by learned ACMM. The conclusion reached by the learned ASJ that offence under Section 67A of IT Act is made out in the present case, as borne out from the order, is on the premise that the petitioners have indulged in publishing, transmitting material which

was lascivious and appealing to the prurient interest and its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear.

21. The object behind enactment of Section 67 of the IT Act is punishing acts of publishing or transmitting obscene material in electronic form. Section 67A lays down that transmission of sexually explicit material circulated through cyber space is punishable. The judicial precedents dealing with 67 and 67A of IT Act and community standard test to determine obscenity in electronic media or otherwise, have been dealt with in following judgments.

22. The Hon'ble Apex Court in the case of *Aveek Sarkar v. State of West Bengal AIR 2014 SC 1493* held as under:

“...The correct test to determine the obscenity would be the community standard test i.e. Roth Test and not Hicklin Test and in order to check whether there is obscenity or not the material in question is to be taken as a whole. When the material taken as whole, it is found to be lascivious and tends to deprave a person who reads or sees or hears that material only can be said to be obscene. The Court observed that Hicklin test is in contravention to the Indian Penal Code. Further the Hon'ble Court observed that as the term 'obscene and obscenity' is not defined in Indian law. This makes the community standard test to be more suitable for Indian law regime. Also, the community standard test is more adaptive in need of changing the society...”

23. In *G. Venkateswara Rao v. The State of A.P.*, Hon'ble High Court of Andhra Pradesh, Amravati in *Writ Petition No. 1420 of 2020*, has observed as under:

“11.... The meaning of "Lascivious" is "feeling or revealing an overt sexual interest or desire". Similarly, prurient means

"having or encouraging an excessive interest in sexual matters, especially the sexual activity of others". The other word deprave means "morally corrupt; wicked". If the allegations satisfy any of these acts, including obscenity, the Court can issue a direction to register a complaint.....".

24. Hon'ble High Court of Bombay in *Jaykumar Bhawanrao Gore v. State of Maharashtra* 2017 SCC OnLine Bom 7283, had observed as under:

“Insofar as the meaning of sexually explicit act under section 67A concerned, submissions of learned counsel Mr. Ponda are to be accepted, as he pointed out from the dictionary that “explicit” means “describing or representing sexual activity in a direct and detailed way”. Thus, sexually explicit activity covered under section 67A is necessarily to be lascivious or of prurient interest, but the act within section 67 though is lascivious not necessary sexually explicit activity. However, it needs to be interpreted further. It does not require a bilateral sexual activity; it can be unilateral sexual activity but it should be explicit and not implied.”

25. Further in *Pramod Anand Dhumal Vs. State of Maharashtra* 2021 SCC Online Bom 34, it was observed by the Hon'ble High Court of Bombay as under:

“6...before the offence can be said to be complete under Section 67A of the IT Act prosecution must demonstrate or show that accused has published or transmitted material containing sexually explicit act. Explicit means “clear and detail”, with no room for confusion or doubt or when sexual activity is graphically described or represented electronically. When such act is electronically published or transmitted particularly amongst adult, it is punishable under Section 67A of the IT Act. Expression explicit means “stated clearly and

precisely and/or prescribing or representing sexual activity in direct and detailed way”. Expression “sexual activity” is defined in black’s law dictionary as “physically sexual activity or both persons engaged in sexual relations”.

26. In *Ekta Kapoor v. State of M.P.* I.L.R (2020) M.P. 2837, Madhya Pradesh High Court has held as under:

“54. The aforesaid concept is importable while interpreting Section 67 of Information Technology Act, 2000. In the aforesaid provision, there are no such words that the person who publishes or transmits or caused to be published or transmitted in the electronic form any lascivious material or such material which appeals to prurient interest was having or supposed to be having the knowledge about the content of the material. Thus, even if the content is not known and a person publishes or transmits or caused to do so even without knowledge, provisions of Section 67 of Information Technology Act, 2000, would be attracted. Presumption of knowledge on the part of petitioner shall have to be assumed and onus will be upon the petitioner to rebut such presumption by leading evidence”.

II. Community Standard Test

27. In the case at hand, the argument of the complainant, based on the community standard test, is that if the content of the web series is tested in light of the said test, it would certainly deprave and corrupt persons who watch such content. His other plea is that the content also tends to morally corrupt the viewers and depicts what does not happen in colleges and universities. The argument of the complainant was countered by the learned senior counsel for petitioners who stated that the content of the web series does not breach any existing

provision of law pertaining to obscenity or any other offences and further stated that in absence of any independent censor board, etc., the responsibility lies upon the producers of such web series to ensure that no such breach occurs. The learned senior counsel for the petitioners further argued that the yardstick to determine obscenity will be that of an ordinary man's common sense and not from the point of view of a hyper-sensitive man and that the web series has to be judged from the standards of contemporary society which is changing fast and vulgarity cannot be equated with obscenity. It was also stated that something which might have been considered obscene in the past may not be considered so by the standards of the present changed society.

28. As per Section 67 IT Act, transmission of 'obscenity' is punishable under the law, and transmission of 'sexually explicit act or conduct' is punishable under Section 67A of IT Act. To decide whether the content is obscene or not, the test as per judicial precedents has to be that of an ordinary common person and not a hypersensitive person.

29. As stated above, this Court had watched a few episodes of the web series 'College Romance' and the episode in question and the episode in question to decide the case more effectively and fairly. The intent behind watching the said web series was to analyze fairly as to whether the contention raised on behalf of the petitioners that the language used in the web series is **'in language'**, or is **'language used by new generation in colleges'**, or **'the students in law colleges and the younger generation in colleges uses this language**

only', is without merit or not.

30. This Court also wanted to test/examine the test of a common prudent man in practicality, acting itself as a common prudent person, so as to check as to whether such language, in fact, can be heard by a common prudent man without being embarrassed or finding it against decency or against the concept of decency. After watching few episodes of the series as well as the episode in question, this Court found that the actors/protagonists in the web series are not using the language used in our country i.e. civil language. The Court not only found excessive use of 'swear words', 'profane language' and 'vulgar expletives' being used, it rather found that the web series had a series of such words in one sentence with few Hindi sentences here and there. In the episode in question, there is clear description and reference to a sexually explicit act. The Court had to watch the episodes with the aid of earphones, in the chamber, as the profanity of language used was of the extent that it could not have been heard without shocking or alarming the people around and keeping in mind the decorum of language which is maintained by a common prudent man whether in professional or public domain or even with family members at home. Most certainly, this Court notes that this is not the language that nation's youth or otherwise citizens of this country use, and this language cannot be called the frequently spoken language used in our country.

31. The words 'obscene', 'vulgar', 'profane', 'prurient', 'lascivious', 'expletive', 'swearing', and 'rude and indecent language' have not been defined in IPC or IT Act .

32. The present case will be tested on basis of judicial precedents and dictionary meanings of these words and on the legal standard under Section 67 of IT Act that deals with transmission of material which is lascivious or appealing to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear such obscene content. Whether the vulgar language used by one person against the other in a web series will be covered under Section 67 of IT Act or not has to be judged and decided in light of the law laid down by the Hon'ble Apex Court in various judgments.

33. According to Black Law's Dictionary, 'obscenity' means "character or quality of being obscene, conduct tending to corrupt the public merely by its indecency or lewdness". The word 'lascivious' refers to "tending to excite lust, lewd, indecent, obscene, relating to sexual impurity, tending to deprave the morals in respect to sexual relations". The word 'prurient interest' refers to "morbid interest in sex, nudity and obscene or pornographic matters".

34. According to Oxford Dictionary, the meaning of 'vulgar' is "not having or showing good taste; not polite, elegant, or well behaved", and the word 'deprave' refers to "make somebody morally bad".

35. It means that the content is to be read with regard to the circumstances of the content itself and is also with regard to the persons who will read, see or hear such content. In the case at hand, the content in question is the content of the web series 'College Romance' and the persons who are likely to be affected or the

persons to whom such content can deprave and corrupt, in the present circumstances are the impressionable minds, since there is no warning, disclaimer or a classification of this series to be viewed by persons who are 18 years or above.

36. When the entire content of the series is seen in the light of above, it would lead any common person to a conclusion that the language used in the web series is foul, indecent and profane to the extent that it will affect and will tend to deprave and corrupt impressionable minds. Therefore, on the basis of this finding it can be held that the content of the web series will certainly attract the criminality as envisaged under Section 67 of the Information Technology Act.

37. In the case of *Samaresh Boss v. Amal Mitra* (1985) 4 SCC 289, it was held by the Hon'ble Apex Court that for judging whether content is obscene, regard must be given to contemporary morals and national standards.

38. There can be no two views that what may be offending to one may not be to another. The obscenity of the spoken language in the case in hand and the gross indecency with which the characters in the series conduct themselves in terms of the spoken language will show that the threshold of decency is crossed and the alleged private choice of individuals enters the public domain due to its availability to the public including children. This Court is of the opinion that the object of Section 67 of IT Act and the Court by this order is protecting the young minds with the least possible infringement upon freedom of expression. The history of censorship in this country

makes it evident that it was with a view to restrict the operation of certain kind of adult entertainment considered unsuitable for people below 18 years. It was developed by classification and the content considered unacceptable for general view was classified by certification so that those who knowingly make a choice to view them have sufficient maturity to exercise their choice in a responsible manner.

39. The community standard cannot be the standard of a particular local territory but is essentially in the national context. The fact that the words used in the web series are of nature that cannot even be reproduced in the judgment even for the purpose of adjudication is a pointer towards the extent of profanity of the language used by the web series.

III. Freedom of Speech vs. Public Decency and Morality

40. It was also argued that the petitioners have fundamental right to freedom of speech and expression and if the complainant does not like the content, he/she may not see it. While discussing so, it will be important to deal with the argument regarding Article 19(1)(a) of the Constitution of India which guarantees freedom of speech and expression. Article 19(2) of Constitution of India lays down the restriction on the freedom under Article 19(1)(a) which can be in interest of public decency or morality. Therefore, necessarily the material in question in the present case will also have to be tested in light of the fact as to whether the content of the web series is against public decency or morality.

41. In the name of individual freedom, such language cannot be permitted to be served to the general public and be represented to the world at large as if this is the language that this country and youth in educational institutions speaks. Holding so, will amount to a dangerous trend and will be against public interest. The individualistic choices, essentially in case they are of using such language, which remain in individualistic domain will not attract criminality and will not infringe the said person's individual freedom. However, in the name of individual freedom, neither such language can be permitted to be served to all without classification and be represented to the world at large as the spoken language of this country, nor it can be permitted that the youth of this country be told that this language is the latest accepted normal behavior.

42. Sexual explicitness depends from case to case and the content being judged in light of the audience it caters to. The petition before this Court essentially highlighted a significant concern due to increase in easy proliferation and easy access to such language by impressionable minds. This Court notes, after hearing the content of the web series, that the concern of the complainant was not devoid of merit. While balancing observations with the fundamental rights prescribed under the Constitution of India, the obscenity depicted in the web series has no cogent justification in the name of being the new language of the youth and accepted by the masses. The approach of this Court for applying the test of a common man and how the content will affect him and what his reaction will be, has to be in the Indian context as the Indian morality and values can only be judged

in the Indian context, keeping in mind the contemporary standards of civility and morality. The concept of morality differs in every country and the Courts need not look to the west or any other part of the world except towards itself in this regard.

43. Coming back to case at hand, the specific complaint of petitioner is that in Episode 05 of Season 01, airtime starting from 5 minutes and 24 seconds onwards upto 6 minutes and 40 seconds as well as from 25 minutes and 28 seconds upto 25 minutes and 46 seconds, the language of male and female protagonist is full of obscenity, vulgar words and expletives, without there being any warning or filter imposing restriction of age of viewers to whom the content should be visible. The language used in Episode 05 of Season 01 was heard by this Court, and the level of obscenity of the language and sentences used was such that this Court cannot reproduce it in the judgment itself for the purpose of adjudication. The language used in the web series at the abovementioned time referred to a sexually explicit act in spoken language. It is not just an expletive, but is profane and vulgar language being used referring to a sexually explicit act which certainly cannot be termed common or commonly accepted language. Rather the female protagonist in the series itself is heard objecting to the male protagonist and expressing her disgust over use of this language by repeating the same language herself to the male protagonist. In answer to that, the male protagonist further uses more vulgar expletives and indecent language which is bound to disgust a normal prudent man, if heard in public. Later in the said episode, the female protagonist uses the

same obscene, sexually explicit language to others and the male protagonist is seen enjoying and appreciating her conduct. The male protagonist uses words describing male and female genitalia and sexual act, thus by words, painting pictures of sexually explicit act which brings it under ambit of arousing prurient feelings by so doing. There's no escape from the same by saying that the said act was not done, shown or filmed. Depiction does not connote filming alone but conveying by a medium, which in this case is spoken language. Therefore, the content as discussed above will attract the criminality as laid down under Section 67 as well as 67A of IT Act. The male protagonist in this case who uses such language has been referred to as 'Bagga'. The bug of obscene, profane and bad language of 'Bagga' cannot be allowed to pollute the language of people.

44. As far as the argument of petitioner no.1 that it is in no manner related to the YouTube channel 'The Timeliners' and the web series titled 'College Romance' is concerned, the fact that the website of petitioner no. 1 in CRL.M.C. 2214/2020 i.e. 'www.tvfplay.com' reflects 'The Timeliners' as one of its channels cannot be ignored. However, the question regarding ownership of the several channels inter-se between the parties is a matter of investigation and cannot be dealt with by this Court, at this stage. Further, petitioner no. 2 and 3, admittedly, are the directors and shareholders of petitioner no.1.

45. This Court notes that it is specifically mentioned in Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, which mandates that the online curated content be classified. The specific rules under Information

Technology (Intermediary Guidelines and Digital Media Ethics Code), Rules 2021, read as under:

“...2(q).‘**online curated content**’ means any curated catalogue of audio-visual content, other than news and current affairs content, which is owned by, licensed to or contracted to be transmitted by a publisher of online curated content, and made available on demand, including but not limited through subscription, over the internet or computer networks, and includes films, audio visual programmes, documentaries, television programmes, serials, podcasts and other such content ...”

“...**APPENDIX**
CODE OF ETHICS

II) Online Curated content:

...**(B) Content Classification:**

(i) All content transmitted or published or exhibited by a publisher of online curated content shall be classified, based on the nature and type of content, into the following rating categories, namely: -

(a) Online curated content which is suitable for children as well as people of all ages shall be classified as "U" rating;

(b) Online curated content which is suitable for persons aged 7 years and above, and can be viewed by a person under the age of 7 years with parental guidance, shall be classified as "U/A 7+" rating;

(c) Online curated content which is suitable for persons aged 13 years and above, and can be viewed by a person under the age of 13 years with parental guidance, shall be classified as "U/A 13+" rating;

(d) Online curated content which is suitable for persons aged 16 years and above, and can be viewed by a person under the age of 16 years with parental guidance, shall be classified as "U/A 16+" rating; and

(e) Online curated content which is restricted to adults shall be classified as "A" rating.

(ii) The Content may be classified on the basis of.- i)

Themes and messages; ii) Violence; iii) Nudity; iv) Sex; v) Language; vi) Drug and substance abuse; and (vii) Horror as described in the Schedule, as may be modified from time to time by the Ministry of Information & Broadcasting.”

(Emphasis supplied)

46. The Part II ‘Issue Related Guidelines’ contained in Schedule of Rules of 2021 mention the following:

“...(d) Language:

1. Language is of particular importance, given the vast linguistic diversity of our country. The use of language, dialect, idioms and euphemisms vary from region to region and are culture specific. This factor has to be taken into account during the process of classification of a work in a particular category.

2. Language that people may find offensive includes the use of expletives. The extent of offence may vary according to age, gender, race, background, beliefs and expectations of the target audience from the work as well as the context, region and language in which the word expression or gesture is used.

3. It is not possible to set out a comprehensive list of words, expressions or gestures that are acceptable at each category in every Indian language. The advice at different classification levels, therefore, provides general guidance to consider while judging the level of classification for content, based on this guideline.”

(Emphasis supplied)

47. The present case involves TVF Media Labs Pvt. Ltd. acting as an ‘online content curator’. It is the legal duty of the online content curator to ensure that the transmitted material aligns with the expectations of the intended audience in order to generate anticipated financial gains. Additionally, the content must not cross the fine line

between acceptable standards of decency and vulgar language, in order to prevent any legal transgressions.

48. In the present case, TVF Media Labs Pvt. Ltd is involved in creation of episodes of the web series 'College Romance'. The said series is streamed on various platforms such as SonyLiv, YouTube, including TVF Play (an OTT Platform) which is owned by petitioner no. 1 in CRL. M.C. 2214/2020. It is, therefore, clear that 'online content curator' and intermediaries are also in clear violation of the above-mentioned guidelines as neither there was any classification nor any warning regarding the profanity of language or excessive use of expletives. The web series was available to every age group. Therefore, this web series also stood covered under violation of the Rules of 2021.

49. It is, therefore, clear that the intermediary i.e. petitioner no. 1 in CRL. M.C. 2214/2020 is in clear violation of these guidelines as neither there was any classification nor any warning regarding the profanity of language, excessive use of expletives as it was free for all channel.

50. A perusal of the above guidelines will also show that if the content of the present web series is examined in the light of contemporary moral and civil standards of the country, this Court reaches conclusion that the majority of people of this country do not use such language and are offended and disgusted with excessiveness of profanity, vulgarity and obscenity of the language used which is being served to everyone who cares to watch content on YouTube or other platforms without any certification and hindrances.

IV. Linguistic Morality, Obscenity and Vulgarity

51. Criminal law is based on moral conception of right and wrong. While this Court is not suggesting that Court should inhibit the celebration of freedom of expression, it cannot but observe that in the present case, in the name of freedom of expression and changing linguistic preferences of the youth, the overwhelming motive is economic profit and, therefore, restrictions are justified in such cases and infringements need to be punished. While this Court remains aware that the courts cannot ensure by way of orders, nor there can be any scheme by way of which a perfect society of perfect individuals be brought about, however, the scheme of the law and rules have to be appropriately tailored to ensure that without there being infringement of fundamental rights, there is no degrading and depravity caused by use of unhindered obscenity, profanity and foul language in free for all social media platforms.

52. The use of obscenities in the web series in the form of foul language degrades women so that they may feel victims as the expletives and obscenities refer to women being objects of sex and referring to their genitalia. The obscenity may not be limited, thus, to the sexual acts prohibited but also to the representation and content in the spoken language in the electronic transmission. The obscenity in the web series and the fact that it is available to the public at large is sufficient to warrant criminal prohibition. The element of representation and the power of suggestion of a foul and obscene language spoken definitely has power to cause harm and depravity to

the impressionable minds and the words spoken represent and conjure prurient thoughts. Such content and its availability to the public at large cannot be weighed or seen in the context of tolerance of the community who has been tolerating use of such expletives in spoken language by few in public to some extent.

53. The fluency with which the profane language is spoken, full of expletives, is being projected as if it is the general spoken language. If the argument of the petitioner is accepted, it will amount to holding that a language fluent in profanity and expletives is the 'new in' and the 'new normal language' and 'expletive free language' is the new abnormal'.

54. This Court, however, notes that the good old Hindi or any other Indian language does not need liberation from their goodness, and the civil society does not need liberation from civility and pride in speaking expletive free languages and mother tongues.

55. Interestingly, it was one thing to have argued that the language spoken in the web series is not profane, and it was another that it could not even be played in the Court to pass the test of a common man for the sheer obscenity of it. The original civility of languages of this country have outlasted many years of changes and are sure to stay here through the young generation as well, as it has through centuries. It will not be corrupted by exposure of the impressionable minds to such profanity in such web series.

56. The language and the importance given to languages will be clear from another fact that the International Mother Language Day is celebrated on 21st February every year. The importance, sanctity

and a sense of reverence to one's mother tongue and language, which-so-ever language it may be is close to the heart of the citizen concerned. To use such language as discussed above in the web series and argue that this is accepted by the masses as the spoken language, since it has undergone changes and has now emerged in the form presented in the web series, will be travesty of justice to the people of this country who love the languages they speak. Rather, terming this language as spoken language of this country will be permitting people to disrespect the language.

57. In case, the web series using such obscene and abusive words and foul language is allowed to be aired/transmitted without setting any boundaries, it will fail to send message that a certain standard of decency and civility is expected from electronic media. As this Court has observed, the impressionable minds consume what they have been served and they will serve the same on the streets, in schools, in their houses and all other places resulting in absence of civilized society. Societal standards fall if no effort is made to ensure that they are upheld. The petty incivilities will certainly lead to declining standard of civility and the fallen language standards will lead to moral depravity. The loss of civility and use of profanity and obscenities cannot be allowed to go to the extent of causing loss of civility at the national level as this web series is available in other languages too including Marathi, Kannada, Tamil, Telugu, Bengali, Malyalam, etc. This Court is of the firm view that profanity in language is not the popular culture of this country and public and citizens at large perceive the words spoken in the web series as taboo

and utterly obscene and sexually explicit as described by words.

58. In all social contexts, the web series shows distortion of the languages spoken in this country in the name of changing social reality and rather projects use of expletives, cursing, swearing, profanity as alternative realities represented by youth of this country which amounts to distortion of facts. Though the web series tends to project and argues before this Court of there being casual relationship between foul language and the common spoken Hindi and other languages by the youth of this country, this Court does not agree with the same. It is important for the courts and law to recognize that obscenity in conversation by use of this foul language is also to be considered obscenity and the harm it can cause to the society. The attitudinal changes can be brought about by exposure to such obscene language to the impressionable minds and the society will be unable to maintain a certain standard of values integral to a decent society.

59. In the present case, it is stated on behalf of the petitioners that language used or the behaviour depicted is neither sexually explicit nor does it evoke lustful thoughts or prurient feelings amongst people.

60. This Court is of the opinion that use of vulgar language including profanity and bad words in public domain and in social media platforms which are open to children of tender age needs to be taken seriously. The use of obscene words and foul language in social media platforms have to be regulated when it crosses a particular line, as it can be a true threat to impressionable minds and

cannot receive constitutional protection of free speech. While in schools, offices, etc., students can be punished for uttering or using profane speech, the authorities also need to regulate profanity which enters into domain of indecent speech by a broadcast medium.

61. The arguments of the petitioner that it will be unjust to term the contents as obscene merely because the contents depict vulgar language or that such sexual and vulgar content is no more unethical or unaccepted social feature, but represents the present social trend, does not find favour with this Court and the same is liable to be rejected.

V. Morality and Legality: Role of Courts

62. The web series does deprave the morality of the impressionable minds. Though it may be argued that the State cannot prescribe morality and Court cannot indulge in moral policing in the name of Indian values, this Court holds that when the self regulatory bodies do not do their duty and allow such content to be served indiscriminately to the people of all ages and the law does not define or provide specific remedy, the people have to turn to the Courts only.

63. No doubt, the Courts cannot do moral policing nor do the Courts ever want to. The jurisprudence of judicial restraint, however, cannot remain separate from the civil social sciences and the orders and judgments in different cases, different situations and situations arising for the first time cannot be subject to straight jacket formula

and be condemned as moral policing.

64. The use of profanity is also a moral issue and the society has to deal with it by its own means too. However, when the content is shown through social media, the sheer enormous power of electronic media and its reach to people of all ages will certainly invite attention of the Court, law enforcement and law making authorities to regulate it. One cannot lean in favour of unrestricted, unfettered freedom of profane, indecent and obscene speech and expression by way of web series without classification of the same.

65. Every language has its linguistic history and people who speak the said language attach pride with it. Only because a group of persons, due to every individual's choice, use foul language and excessive expletives in the original language, as in the present case Hindi, it cannot be said that with time, the language has lost its originality or civility and has adopted the profanity and obscenity as its core content. There is no denying even by this Court, as by all other Courts, that the language one chooses to speak is individualistic choice. The word 'individualistic', has individual at its heart. Therefore, primarily, it is the individual concern that will decide and make a choice what one wants to speak, whether foul or profane language full of expletives or not. However, this individualistic choice cannot be imposed on the majority of people, who due to their age, cannot make best choices or decisions. The individualistic choice which is not the choice of the majority of people of this country cannot be portrayed as choice of that majority and to be broadcasted on the ground or assumption that youth of this country

speaking such foul or profane language. This Court, therefore, holds that individualism of choice of using such profane language full of expletives has to give way to the majoritism of people who want to speak and hear civil language free of expletives for themselves and for their children.

66. The argument that the Courts cannot act as moral police and Courts, therefore, cannot impose choices on people, or that the new generation does not have a sense of shock and are not disgusted with such language and therefore, there is no question of having effect of depraving or corrupting their morals or encouraging lasciviousness, does not find favour with this Court. The language used in the web series with a series of vulgar words alleged to be the common spoken Hindi, the stress on Hindi since the web series in case at hand is in Hindi language, this Court holds the view that the words used in the series are not the part of conventional and spoken Hindi language and the expletives with reference to male and female genitalia and words and sentences which are necessarily vulgar cannot be described as 'Spoken Hindi language' either by the masses or the language used in universities and colleges by the youth of this country.

67. The youth of this country is the most valuable asset of this country who carries on its able shoulders, the responsibility of maintaining the magnificence of the valuable culture including the linguistic pride of this country, and a web series cannot be allowed to run unhindered taking shade and safety of arguments that no law makes it punishable or some people use such language which has

tendency to corrupt the young minds, and project that the young generation speaks such language.

68. The web series does not mirror the actual college life or society. Though the moral or linguistic choices as well as choice and freedom to watch any entertainment channel lies with every individual of this country as discussed above, the foul expletive profanities and obscene languages and swear words used in the web series cannot take shelter under argument of new generation using such language. Moreover just because some of them use this foul language, the foul language cannot lose the character of being foul language.

69. The words and language used in this web series will certainly be found by many as naturally disgusting, dirty and sexual and these swear words and profanities certainly are not part of standard Hindi or any other Indian language. In Indian society, even today, swear words are not spoken in the presence of the elderly, at religious places, or in front of women or children. Though the social perceptions shape the popular culture, the linguistic history in relation to such swear and obscene words has long been considered a taboo or unworthy of being spoken in a social gathering. To uphold the contention of the petitioners that hurling such obscenities in public forums and by the young generation in general, in the universities and colleges, is so common that it is considered natural, without causing any distress, could amount to holding that a certain standard of decency cannot be expected on streets, public places or educational institutions. Such linguistic decay of Hindi language will

go beyond falling standards in society. The use of profanity and words which are taboo in general parlance in the web series on the pretext that this is how the new generation behaves and speaks or communicates, in this Court's opinion, is not the mirror of such social realities and is certainly distorted. Though such web series may portray a certain part of society, the popular culture of this country still identifies with and adopts point of view of civil language.

70. Spoken language with passage of time can be recreated through repetition and over a period of time, some of its character may change. Media plays an influential role in putting forth such changes at times, however, they cannot be allowed to legitimize offensive language including swearing and profane words in the garb of change of language with passage of time.

71. The Indian society has also come a long way and there may be some social and cultural changes in the society. Tremendous changes have occurred in the electronic entertainment field also. But, the present series 'College Romance' which allegedly shows the actual and real new generation cannot pass the test of public decency. The Indian cinema which has now also extended to such web series and other short films etc. at social media and OTT platforms, undoubtedly is not the same as was in the old films where the romance between two persons was symbolically shown by showing two birds or flowers meeting on the screen. The limit regarding how much the society has changed will still have to be defined and seen in practicality. When examined in the practical light of common man,

this Court reaches a conclusion that the majority of this country cannot be said to be using such vulgar, profane, indecent, swear words and expletives as projected in the web series in question in day-to-day spoken language with each other even in educational institutions.

72. University of Delhi has its own glorious history, majesty, respect and heritage. The college students cannot be said to be using the language used in this web series since the limits of decency, civilized behavior and civilized language are recognized and still cared and valued by the new generation. Just because a few people may be using such language, they cannot be allowed to corrupt the minds which are impressionable and be told that this is '**in-thing**', '**the new ok**', or '**new normal**' language in the colleges.

73. The language which is being today called normal college culture and lifestyle is bound to percolate to school going children since it is unclassified and tomorrow may be called normal school culture, since the new generation will learn from the older generation. It will be a sad day for society in case the same vulgar and obscene language is spoken in schools, streets and houses in the name of new culture of the students. Considering the above, it is clear that the language of the web series in entirety termed content in legal terms does not pass the test of morale decency community test of a common man and the definition of decency and transgresses into the area of obscenity.

74. This Court applied the test of the common prudent man as stated above and found that this web series even for the purpose of

watching to decide the case could not have been played in the Court due to the vulgarity, profanity and indecency of the language. It is true to say that this language cannot be heard sitting with one's elders or children. While observing so, the Court may be looked upon as old fashioned or belonging to old school. However, this Court is of firm opinion that while examining the pride of the nation i.e. the language used for ages, there can be no question of profanity being considered part of this language even with passage of time. To hold that such language will fall under the definition of being considered civil, according to even modernized views and values of the present generation, will be far from the truth.

75. Undoubtedly, change is the law of nature. The society, the spoken languages, and the behavior of people undergo change with each generation. However, there are certain firm foundations of golden quality, which though may be termed as old classics, have been retained in the language our nation speaks.

76. The challenge faced by our country, as faced by many other countries, for enacting appropriate law, guidelines and rules to regulate the content on social media and on OTT platforms needs urgent attention. The courts in India are inheritance of an ancient magnificent justice system. The peculiar circumstances of a case may throw a challenge in certain situations where complaints of certain acts may not be squarely and specifically covered by the rules or regulations for want of specific definitions, as in the present case. However, this Court reiterates that the constitutional jurisprudence and the judiciary of this country has always ensured that there is no

man or situation which is without redressal and when a person turns to the court of law where the challenges are not squarely covered by written laws, the Courts have ensured that the justice system remains strong and effective and redresses the issue.

77. The Courts are seldom and rarely faced with the situation where the written provisions are unclear or incomplete. Though primarily the role of the judges in our country is to interpret and apply the law and ensure enforcement of constitutional rights and principles, when faced with a situation of unclear or incomplete laws, the Court has to exercise the power of taking recourse to constitutional values with care and objectivity by interpreting, reconciling and thereafter applying the law to the situation in hand. Denying to do justice faced by such situation will amount to permitting injustice to prevail and take shelter under advantage of unclear law and wearing the mask of false legality.

78. As far as the argument as to whether the Courts will be justified into entering the arena of adjudication of deciding a case when the existing codified law does not specifically define certain words is concerned, this Court is of the view that though it is correct that the legitimacy of judiciary may depend on justification of its decision which should be based on law and the task of judges is to do justice and enforce laws, at the same, the judges cannot close their eyes to situations where the law may be silent or unclear and taking advantage of that some acts may be committed which may run counter to fundamental assessments of morality and decency of just Indian society.

79. This Court by way of this judgment is not creating any new law, rather in the present situation, the Court wants to ensure that by way of rigorous process of legal reasoning and having regard to written provisions of available laws, case laws and societal affirmed values, it is able to point out the wrong doers and bring them within the ambit of law. This is not law making in the legislative sense, but essentially legitimate judicial work for which this Court is bound by its solemn oath to the Constitution of India. Even if a judgment triggers a debate in the society about an issue at the heart of a societal problem, it will serve the ends of justice i.e. the ultimate goal of a judge.

80. This Court is not confusing morality with legality, however, holds that as a constitutional court, it has to ensure its role of being answerable to its judicial conscience which is not confused with personal conscience, but is founded on its commitment to the oath of upholding the rule of law and it makes it its guide in difficult decisions, thus, not abdicating its responsibility to ensure rule of law.

D. CONCLUSION

81. The task of the Court in this case has been tough as it had to strike a delicate balance between free speech and freedom of expression and transmitting to all without classification the content which is obscene, profane, lascivious, sexually explicit in spoken language as it conjures with the words 'sexually explicit acts'. Words and languages are very powerful medium and needless to say, words have the power to paint and draw a picture at the same time. They are

the powerful means of bringing renaissance in history, harm, wound or bring about beautiful changes in the society so that every citizen gets the best and is able to give its best. The power of words is not limited and cannot be defined by way of a judgment. The power of obscenity and sexual explicitness of language used in this web series therefore, cannot be undermined and it has a definite effect of depraving and corrupting the minds of people, especially the impressionable minds and will require to be confined and subjected to Article 19(2) of the Constitution of India, and at the same time for transmitting such content, the petitioners will be liable to face action under Section 67 and 67A of I.T. Act for the reasons mentioned in the preceding paragraphs. The order of the learned ASJ is upheld to the extent whereby it has been held that section 292 and 294 IPC are not made out and 67A IT Act is made out however, it is modified to the extent of dropping offence under Section 67 of the IT Act. Resultantly, the order of the learned ACMM is upheld to the extent of registration of FIR under Section 67 and 67A of IT Act.

82. It is clarified that the direction to register FIR in the present case does not include a direction to arrest any of the accused/petitioner.

83. In case, this particular episode in question is still posted on any YouTube channel without classification, appropriate remedial steps will be taken by YouTube, as per law, rules and guidelines of the IT Act issued by Ministry of Information and Technology from time to time.

84. In the light of above, this Court draws the attention of the

Ministry of Information and Technology to the situations which are fast emerging on a daily basis and to take steps for enforcing stricter application of its rules qua the intermediaries as notified in Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and make any laws or rules as deemed appropriate in its wisdom, in light of the observations made in this judgment.

85. Accordingly, the present petition disposed of in above terms.

86. A copy of this judgment be forwarded to the Secretary, Ministry of Electronics and Information Technology, Government of India, and concerned officials of YouTube India.

A copy of this judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 6, 2023/ns

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