

\$~44

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

Date of Decision: 19th February, 2021

+ **W.P. (C) 2297/2021 & CM APPLs.6685/2021, 6686/2021,
6687/2021**

DISHA A. RAVI

..... Petitioner

Through: Mr. Akhil Sibal, Sr. Advocate with
Ms. Vrinda Bhandari, Mr. Abhinav
Sekhri, Ms. Sanjana Srikumar, Mr.
Krishnesh Sapat & Ms. Sonali Malik,
Advocates (M-8826571429)

versus

STATE (NCT OF DELHI) & ORS. Respondents

Through: Mr. Tushar Mehta, Solicitor General,
Mr. S.V. Raju, ASG with Mr. Amit
Mahajan, SPP, Mr. Rajat Nair, SPP
and Mr. Dhruv Pande, Ms. Mallika
Hiremath, Mr. Shantanu Sharma, Ms.
Sairica Raju, Mr. A. Venkatesh, Mr.
Guntur Pramod Kumar, Mr. Shaurya
R. Rai, Ms. Zeal Shah, Ms. Aarushi
Singh and Mr. Anshuman Singh,
Advocates for R-1/GNCTD.

Mr. Chetan Sharma, ASG and Mr.
Ajay Diggpaul, CGSC with Mr. Amit
Gupta, Mr. Vinay Yadav, Mr. Sahaj
Garg, Mr. Akshay Gadeock & Mr.
R.V. Prabhat, Advocates for R-
2/UOI.

Ms. Nisha Bhambhani and Mr. Rahul
Bhatia, Advocates for R-3.

Mr. Mrinal Bharti, Mr. Sumant De
and Mr. Manish Shekhar, Advocates
for R-4. (M:8527099904)

Mr. Hrishikesh Baruah, Mr. Pranav
Jain, Ms. Mehma Kaur & Ms.

Radhika Gupta, Advocates for R-5.
Mr. Kunal Tandon, Mr. Kumar
Shashank Shekhar and Mr. Amandeep
Singh, Advocates for R-6.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).
2. The present petition has been filed by Ms. Disha Ravi who is stated to be an environmental activist seeking various reliefs against the Police, the Ministry of Information and Broadcasting (hereinafter Ministry of I&B) and various news channels in respect of what are allegedly attributed leakage of her messages and various other investigation material which has been broadcasted and disseminated by the TV channels at the behest of Delhi Police. The case of the Petitioner is that she was arrested on 13th February, 2021 in Bangalore and was brought to Delhi. She was sent on police remand vide order dated 14th February, 2021 by the Duty Magistrate, Patiala House Courts.
3. She claims that after her arrest during the process of investigation, various messages, etc. were leaked by the police to the media, resulting in a large number of programs, news bulletins and online dissemination of various private messages and interventions which were broadcasted. Some of the bulletins also made allegations that she is associated with various illegal and unlawful groups. It is the submission of Mr. Akhil Sibal, Id. Senior Counsel appearing for the Petitioner that the official Twitter handle of Delhi Police released various comments about the investigation which is

going on and these formed the basis of the reports by the News channels. He also alleged that the Petitioner apprehends that various messages were leaked by the police to the media. He submits that there are four reliefs that the Petitioner claims in this writ petition. Firstly, that the alleged WhatsApp conversation ought to be removed from the public domain and the police should be directed not to disseminate anything, which is not part of the public record. Secondly, media houses ought to be directed to comply with the program code and the advertisement code. Thirdly, the Delhi police ought not to share the investigation files and lastly that the police ought not to conduct any press briefings.

4. The Id. Senior Counsel has taken the Court through the various Twitter messages which have been placed on record. Reliance is placed upon various judgments in the manner in which TV channels and other media outlets should exercise responsibility while reporting on an investigation which is ongoing. The Petitioner is claimed to have issued various cease and desist notices. However, since the media TV channels did not exercise any restraint, the present petition has been filed. Finally reliance is placed upon the office memorandum dated 1st April, 2010 issued by the Ministry of Home Affairs, which provides the broad guidelines in the manner in which the investigation and coverage of investigation should be undertaken.

5. Mr. Raju, Id. ASG appearing for the Delhi Police has at the outset presented an affidavit on behalf of the Delhi Police. The same has been sworn by Mr. Anyesh Roy, Deputy Commissioner of Police (Cyber Cell) to the effect that the allegations of the Petitioner that the information or investigation data has been leaked, is false and is incorrect. A categorical

statement has been made to the effect that no information or documents forming part of the case files has been shared by Delhi Police with any media houses or individual. The only exception to this is press briefings or broadcasts which are matter of record and are not disputed. He further submits that there is an attempt by the Petitioner to malign the police and there could be various other sources from where the leakage could have taken place. In any event, he assures the Court that the briefings of the Delhi Police will be in accordance with law.

6. On a query from the Court, Mr. Raju, Id. ASG confirms that the said office memorandum dated 1st April 2010 is operative even as of today. He further submits that the present writ petition is nothing but a method to exercise pressure on the investigation agencies by maligning them and an attempt to hamper the investigation.

7. Mr. Chetan Sharma, ASG appearing for the Ministry of I&B submits that the Ministry is the nodal body for enforcing the program code and advertisement code and under the Cable Televisions Networks (Regulation) Act, 1995 and its Rules. The said Ministry has constituted an inter-Ministerial Committee which is headed by the Additional Secretary, I&B to look into in any complaints which may be received. As on date No complaints have been received. He also challenges the maintainability of the writ petition.

8. On behalf of News Broadcasting Standards Authority (NBSA), Ms. Nisha Bhambani, Id. counsel submits that at the outset, the NBSA has no jurisdiction over tweets or internet articles. It is the authority working under the News Broadcasters Association (NBA) and has nine Members and is headed by a retired Supreme Court Judge. She submits that no complaint has

been received by the NBSA till date and if any complaint is received, the same shall be considered in accordance with the code of conduct applicable to the Members of the NBA. Id. counsel further confirms that the three TV channels which are impleaded in the present petition are Members of the NBA.

9. Mr. Mrinal Bharti, Id counsel on behalf of News 18, submits that he wishes to take instructions in the matter as he has been served with the paper book just a few hours ago. He wishes to verify the various broadcasts and submits that his channel would go by the broadcasts and justifies the same as the same are not violative in any manner.

10. On behalf of India Today – Mr. Hrishikesh Baruah, Id. counsel submits that the only publication which is complained of is an online article and does not relate to India Today TV channels. In any event, he submits that the Petitioner herself does not seem to be alleging that the WhatsApp messages are false or incorrect and cannot be attributable to her. If that is the position, the broadcasting of the WhatsApp messages which are correct cannot be complained of. Reliance is placed upon the judgment of the Supreme Court in *Central Public Information Officer, Supreme Court Of India vs Subhash Chandra Agarwal* 2020 5 SCC 481 and the judgment of the Queens Bench in *Douglas and Others v. Hello! Ltd [2001] QB 967*.

11. Mr. Kunal Tandon, Id. counsel appearing for Times Now places four submissions for consideration i.e. firstly, that all the information is in public domain and he has not had the opportunity to view the videos which has been shared with the Court. He further submits that in any event considering the tweets which have been posted by the Delhi Police, the broadcast of the said tweets or any other news relating to the investigation of the Petitioner

cannot be objectionable. He submits that the right of privacy of the Petitioner would be restricted only by public interest which has to be 'overwhelming' as per the judgment of the Supreme Court in ***K.S. Puttaswamy and Anr. v. Union of India & Ors., 2017 (10) SCC 1***. If the Petitioner wishes to enforce her remedies in terms of the Cable Televisions Networks (Regulation) Act and Rules, she has the remedy to do so. Since the Government has not refused to entertain the Petitioner's complaint as the Petitioner has not approached the Government, the maintainability of the petition is challenged.

12. In rejoinder, it is submitted that the difference between 'Public records' and records in public domain has to be maintained. The fact that the WhatsApp messages may be in public domain, does not make them a part of the public record. The Petitioner having been arrested, the entire leakage has happened at the instance of Respondent No.1. Since the office memorandum respects the privacy of undertrials, the same should be abided by.

13. Heard Id. counsels for the parties. The present petition raises issues of public importance. There are three aspects to the present case. Firstly, the privacy, dignity of the individual concerned as also her right to fair trial. The second aspect would be the sovereignty/integrity of the country and whether there could be reasonable restrictions that could be imposed considering the nature of the investigation that is currently taking place. The third aspect would be the right to free speech and the right of the public to know. Repeated judgments of various courts including the Supreme Court of our country have laid down broad principles and guidelines in order to ensure that a correct balance is struck.

14. Needless to add that in order to adjudicate the issues which have

arisen in the present petition, a detailed hearing would be required, inasmuch as a number of Respondents have not an opportunity to respond to the allegations made in the petition as also peruse the material that has been handed over to the Court today. Thus, time would have to be granted to the Respondents to file a reply to the application for interim relief.

15. However, the question at this stage is whether the present state of affairs ought to continue. This Court has had the opportunity to view the videos, which have been placed on record of News18 and several other materials, which have been revealed from the record including the tweets by of Delhi Police and other publications which are online. There is no doubt that the regulation of content in print and electronic media has been a very contested issue across the world and India is no exception to that. The reasons for the same are not far to seek in as much as content regulation is viewed as being directly affrontive to the Right of free speech. However, while a journalist cannot be asked to reveal the source, it would have to be ensured that the source ought to be a verified and authentic source and the content ought not to be merely speculative or conjectural. Content also ought not to be offensive, scandalising and to the extent possible should be factual in nature.

16. In the present case, the affidavit, which has been placed on record by the Delhi Police reads as under:

“I, Anyesh Roy, Deputy Commissioner of Police, Cyber Crime Unit-CyPAD, Special Cell, New Delhi do hereby solemnly declare and affirm as under:

1. That I am supervisory officer of the FIR No.49/2021 dated 04.02.2021, registered by PS Special Cell and am conversant with the

facts and circumstances of the case. I am further competent to swear this affidavit.

2. That the present affidavit is filed in compliance of the statement made before this Hon'ble Court dated 18.02.2020. In this regard, I respectfully state and submit that the allegation of the petitioner that the subject information [chats of the petitioner] has been leaked by the Respondent No.1, is false and factually incorrect.

I state and submit that no information/document forming part of the case file including the subject chats have either been shared by the Respondent No.1 with any media house or individual except the information communicated officially through press briefing or broadcast, which is a matter of record, nor the same has been leaked from Respondent No.1's end."

17. Thus, the Delhi Police has taken an unequivocal position that they are not responsible for leaking the messages or the investigation material to the media houses. The media houses, however, both in the online articles as also in the videos claim to the contrary. This would require a little more detailed examination in the present case and replies to be called from the TV channels.

18. The question that arises is what should be the ad interim directions that ought to be passed, if any, in order to ensure that all the three aspects – the Petitioner's privacy, dignity and right of fair trial - the sovereignty and integrity of the country - & the right to free speech are equally protected and balanced. The various cases which are placed on record have laid down two principles which are clear that the right of the individual has always to be balanced with the right of the public and the public interest which is

involved.

19. The print and electronic media plays a very important role in ensuring that there is no sensationalism and that they adhere to responsible journalism. Recent coverage by the media definitely shows that there is sensationalism. While police briefings and the happenings in Court proceedings etc. can also be broadcasted and disseminated, leaked investigation material ought not to be disseminated so as to prejudice the investigation.

20. Accordingly, without making any further observations, on the various issues which have been raised and would be adjudicated in the present petition, the following directions are issued:

- (i) The Delhi Police will strictly abide by the affidavit dated 18th February, 2021, which has been filed today as also the Office Memorandum dated 1st April, 2010, which is, admittedly, still in operation. The Delhi Police or other investigation authorities would, however, be, in terms of the said OM, entitled to conduct their briefings in accordance with law so long as no rights of the Petitioner are violated.
- (ii) Media houses shall also ensure that the telecast/broadcast by them is from verified/authenticated sources, though the sources need not be revealed. All disseminated content shall be in strict adherence to the '*Programme Code*' as contained in the Cable Television Networks Rules 1994 as also the Code of Ethics & Broadcasting Standards prescribed by the News Broadcasters Association.
- (iii) The editorial teams of the respective channels shall ensure that

only such broadcasts and telecasts are communicated and disseminated, which have verified data and verified content. The channel editors shall ensure that the channels exercise proper editorial control so that the Petitioner's investigation is not hampered, in any manner.

- (iv) If the charge-sheet is filed in the meantime and the same is made public, once the investigation reaches some conclusion, dissemination of the contents of the charge-sheet would not be interdicted in any manner.
- (v) Since there is an allegation that persons who sympathise with the Petitioner's cause are attempting to malign the police and investigation authorities, Mr. Akhil Sibal, Id. Senior Counsel while denying the allegation, assures that the Petitioner or any other person directly associated with her do not intend to indulge in any kind of maligning of the police or the investigating authorities. This assurance is accepted by the Court.
- (vi) The question of removal of content, which is already in public domain shall be considered with the hearing of the stay application at a later stage.

21. All parties and the media in general shall adhere to the above directions. The NBSA to communicate these directions to all its members. For the sake of ready reference of all stakeholders, a copy of the Office Memorandum dated 1st April 2010 is appended as Appendix A to this order.

22. Reply to the stay application or the writ petition, be filed within one week. Rejoinder thereto, if any, be filed within one week thereafter. List

Digitally Signed By:DINESH
SINGH NAYAL

Signing Date:19.02.2021 17:23:53

the matter for further hearing on 17th March, 2021.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 19, 2021/dk/Rahul/T/Radha



Appendix 'A'

Digitally Signed By: DINESH
SINGH NAYAL

Signing Date: 19.02.2021 17:23:53

F. NO.15011/48/2009-SC/ST-W
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK NEW DELHI /CS DIVISION

New Delhi, the 1st April, 2010

OFFICE MEMORANDUM

Subject: Advisory on Media Policy of Police—regarding

'Police' and 'Public Order' are State subjects under the Seventh Schedule (List-II) to the Constitution of India and, therefore, the State Governments and UT Administrations are primarily responsible for prevention, detection, registration, investigation and prosecution of all crimes within their jurisdiction. The Union Government, however, attaches highest importance to the matters relating to the prevention of crime; and therefore, the Union Government has been advising the State Governments/ UT Administrations from time to time to give more focused attention to the administration of the criminal justice system with emphasis on prevention and control of crime.

2. A good relationship of Police with media helps focus on the positive work done by the Police and the good detective and investigative efforts made. When crimes occur, the situation should be used to put the crime and law and order situation in correct perspective, bring out efforts being made by the police to nab the accused, prevent unnecessary panic, and send a message to the public from the angle of crime prevention and alert them against terrorist acts etc. Press communiqués and conferences form a vital component of communication channel between police and media. However, while sharing information with the public through the media, adequate precautions need to be taken to ensure that only authentic and appropriate information as is professionally necessary is shared without hampering the process of investigation or issues of legal/privacy rights of the accused/victims and matters of strategic and national interest.

The following guidelines may be scrupulously adhered to while dealing with media:

- I. Only designated officers should disseminate information to the media on major crime and law and order incidents, important detections, recoveries and other notable achievements of the police.
- II. Police Officers should confine their briefings to the essential facts and not rush to the press with half-baked, speculative or unconfirmed information about ongoing investigations. The briefing should normally be done only at the following stages of a case:
 - a. Registration
 - b. Arrest of accused persons

PMG

- c. Charge-sheeting of the case
- d. Final outcome of case such as conviction/acquittal etc.

Digitally Signed By: DINESH
SINGH NAYAL
Signing Date: 19.02.2021 17:23:53

In a case that attracts the interest of the media, a specific time may be fixed everyday when the designated officer would make an appropriate statement on the investigation.

- III. In the first 48 hours there should be no unnecessary release of information except about the facts of the incident and that the investigation has been taken up.
- IV. The general tendency to give piecemeal information/clues, on a daily/regular basis, with regard to the progress/various lines of investigation, should be strongly discouraged so that the investigations are not compromised and the criminals/suspects do not take undue advantage of information shared by the Police authorities about the likely course of the investigation.
- V. Meticulous compliance with the legal provisions and Court guidelines regarding protection of the identity of juveniles and rape victims should be ensured, and under no circumstances should the identity of juveniles and victims in rape cases be disclosed to the media.
- VI. Due care should be taken to ensure that there is no violation of the legal, privacy and human rights of the accused/victims.
 - a. Arrested persons should not be paraded before the media.
 - b. Faces of arrested persons whose Test Identification Parade is required to be conducted should not be exposed to the media.
- VII. No opinionated and judgmental statements should be made by the police while briefing the media.
- VIII. As far as possible no interview of the accused/victims by the media should be permitted till the statements are recorded by the police.
- IX. The professional tradecraft of policing and technical means used for the detection of criminal cases should not be disclosed as it alerts potential criminals to take appropriate precautions while planning their next crime.
- X. In cases where National security is at stake, no information should be shared with the media till the whole operation is over or until all the accused persons have been apprehended.
- XI. The modus operandi of carrying out the operations should not be made public. Only the particulars of apprehended persons and details of recovery should be revealed to the media on completion of the operations.
- XII. There should not be any violation of court directions and other guidelines issued by the authorities from time to time on this matter.
- XIII. Preferably, there should be one officer designated as the Public Relations Officer to handle the immediate information needs of all media persons and give the correct and factual position of any crime incident.
- XIV. As and when instances of misreporting or incorrect reporting of facts/details pertaining to an incident or the department comes to notice, a suitable rejoinder

PMJ

should immediately be issued and, in more serious cases, the matter should be taken up at the appropriate levels for remedial action.

- XV. Any deviation by the police officer/official concerned from these instructions should be viewed seriously and action should be taken against such police officer/official.

Digitally Signed By: DINESH SINGH NAYAL
Signing Date: 19.02.2021 17:23:53

3. You are requested to kindly issue suitable directions to all concerned under intimation to this Ministry. The receipt of this letter may kindly be acknowledged immediately.

Yours faithfully,

(Nirmaljeet Singh Kalsi)
Joint Secretary to the Government of India
Ministry of Home Affairs, North Block
New Delhi - 110001
Tel. No. 23092630

To,

1. **The Chief Secretaries of all State Governments and UT Administrations**
2. **The Principal Secretary / Secretary (Home) of all State Governments and UT Administrations.**
3. **Copy also for information and necessary action to:**
 - i. The DGs / IGs (In-charge of Prisons) - All State Governments / UTs for information and necessary action.
 - ii. The DGs of CPMFs/CPOs, Ministry of Home Affairs, Government of India.
 - iii. Director CBI, DoPT, Government of India.
 - iv. Ministry of Social Justice and Empowerment (Sh. P.P. Mitra, Joint Secretary), Shastri Bhawan, New Delhi.
 - v. Ministry of Women and Child Development (Mrs. Swarup Kiolkar, Joint Secretary, MWCD) Shastri Bhawan, New Delhi.
 - vi. JS(Judicial), JS(PM), JS(P-I), JS(P-II), JS(UT), JS(NM), JS(HR), JS (NE), JS (K), JS (DM) in Ministry of Home Affairs, Government of India.
 - vii. Shri Onkar Kedia, DDG, Media, Ministry of Home Affairs, Government of India.

(Nirmaljeet Singh Kalsi)
Joint Secretary to the Govt. of India

Pms.