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via Video-conferencing

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (CRL.) 1082/2020**

‘X’

..... Petitioner

Through: Mr. Sarthak Maggon, Advocate.

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Ajay Digpaul, CGSC for respondent No.1.

Mr. Rahul Mehra, SSC (Criminal) for GNCTD with Mr. Chaitanya Gosian, Advocate and Mr. Divyank Tyagi, Advocate for respondent No.2.

Mr. Aditya Vaibhav Singh, Advocate for respondent No.3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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17.07.2020

This matter has been received by way of a supplementary list on urgent mentioning.

Crl. M.A. No. 9486/2020 (exemption)

Exemptions are granted, subject to just exceptions and subject to the petitioner completing all requirements of filing certified, true typed, properly margined copies of annexures and documents, attested affidavits and court fee within 10 days of physical re-opening of the court.

Application stands disposed of.

Crl. M.A. No.9485/2020 (for chamber hearing)

By way of the present application, the petitioner 'X' prays for conducting the proceedings in 'virtual chambers', namely an in-camera hearing, in the absence of any third party joining the video-conference, for protection of the petitioner's identity.

2. Since today, in any case, the petitioner has not joined the video-conference hearing, list on 30th July 2020.

W.P.(Crl.) No. 1082/2020

3. The petitioner, who wishes to keep her identity confidential, is stated to be a law student from Bangalore who complains that her pictures that she posted on the social media platforms 'Instagram' and 'Facebook', have mischievously and illegally, been lifted and placed by respondent No. 6 on the respondent No. 5 pornographic website, along with derogatory captions.

4. In this regard, the petitioner is stated to have made an on-line complaint to the DCP South West, Delhi on 11.07.2020, but to no avail.

5. Mr. Sarthak Maggon, learned counsel for the petitioner submits that the petitioner verily believes that respondent No. 5 is a spurious website, which carries pornographic content and which ought to have been banned and taken-down from the world-wide-web by the competent authorities. Counsel submits that respondent No. 5 has unauthorizedly, illegally and in utter violation of the provisions of the Information Technology Act, 2002 and the Indian Penal Code, 1860, placed the petitioner's photographs on that website, which is causing her deep

distress, anguish and embarrassment. It is further submitted that the petitioner believes that by reason of the inaction on the part of the authorities, these photographs have already received 15,000 views.

6. Counsel further submits that the cyber space in the country is regulated by nodal agencies under the Ministry of Electronics & Information Technology and the Ministry of Home Affairs of the Union of India/respondent No.1; and that action with respect to the offences would lie with the State of NCT of Delhi/respondent No. 2.

7. Insofar as respondent Nos. 3 to 5 are concerned, counsel submits that insofar as Internet Service Providers' Association of India/respondent No. 3 is concerned, that agency is an association of Internet Service Providers and is accordingly also a proper, if not necessary, party to the present proceedings. Respondent No. 4 Facebook Inc., which *inter-alia* owns the social media platform 'Instagram' is the on-line platform *inter-alia* from which the petitioner's pictures have been taken; and these entities are therefore liable under their privacy and cyber safety norms, terms and conditions.

8. Issue notice.

9. Mr. Ajay Digpaul, learned CGSC appears on behalf of respondent No.1/Union of India; Mr. Rahul Mehra, Senior Standing Counsel (Criminal) appears on behalf of State of NCT of Delhi/respondent No.2 and Mr. Aditya Vaibhav Singh, learned counsel appears on behalf of Internet Service Providers Association of India/respondent No. 3 on advance copy ; and accept notice.

10. Upon the petitioner taking steps, let notice be sent to respondent No. 4. Considering that no particulars of respondents Nos. 5 and 6 are available, no notice is being issued to the said respondents as of now.

11. Mr. Rahul Mehra, learned counsel for respondent No.2/State of NCT of Delhi submits that the petitioner's complaint has been received at PS: Dwarka, North ; however, the Delhi Police has a specialised unit, the Cyber Prevention Awareness and Detection Unit (CyPAD) which is also based out of Dwarka, New Delhi to which the complaint may be transferred, since this entity is fully equipped to deal with cyber crime matters such as this.

12. Mr. Mehra submits that urgent and immediate steps would be taken to first take-down the petitioner's photographs that have been uploaded onto the errant website; and subsequently, necessary investigation will be carried-out to trace and punish the offenders.

13. In view of the submissions made by Mr. Mehra, it is directed that the complaint made by the petitioner be transferred forthwith to the CyPAD unit of Delhi Police ; and that immediate action, as assured, be taken to remove the petitioner's photographs from the errant website. It is further directed that to this end, the petitioner, through her counsel, would render all co-operation and assistance to respondent No.2.

14. Let status reports/counter-affidavits be filed within 03 weeks ; rejoinder thereto, if any, be filed within 02 weeks thereafter. The status report on behalf of respondent No.2 be filed under the signatures of DCP, CyPAD, Delhi Police.

15. Registry is directed *not* to make available a copy of the physical/ electronic records of this case, for inspection to anyone other than the parties, without permission of this court.
16. List on 30th July 2020.

ANUP JAIRAM BHAMBHANI, J

JULY 17, 2020

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