IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

PIL-CJ-LD-VC-23 OF 2020

Imran Khan son of Moin Khan. .. Petitioner

Versus

The State of Maharashtra & Others. .. Respondents

with

CRIMINAL I.A.-CJ-LD-VC-1 OF 2020
IN
PIL–CJ–LD–VC-23 OF 2020

Mohammed Arif Shaikh and Anr. .. Applicants

IN THE MATTER OF:

Imran Khan son of Moin Khan. .. Petitioner

And

The State of Maharashtra & Others. .. Respondents

Mr.Vivek Shukla i/b V.Shukla & Associates, Advocate for the Petitioner/Intervenor-Applicants.

Mr.Deepak Thakare, Public Prosecutor with Ms.P.P.Shinde, APP for the Respondent Nos.1 to 3 – State.

Mr.Naresh Thacker with Mr.Shailesh Poria and Mr.C.Keswani i/b Economic Practice Note for Respondent No.4.

Mr.Darius Khambatta, Senior Advocate with Mr.Tejas Karia, Mr.Udit Mendiratta, Mr.Vaibhav Singh, Mr.Thejash R. and Mr.Gourav Mohanty i/b Shardul Amarchand Mangaldas for Respondent No.5.

Mr.Anil Singh, Additional Solicitor General with Mr.Aditya Thakkar and Mr.D.P.Singh, Advocates for the Union of India.

–

CORAM : DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.

RESERVED ON : AUGUST 17, 2020

PRONOUNCED ON : AUGUST 21, 2020.

JUDGMENT: (PER DIPANKAR DATTA, CJ)

1. The petitioner had invoked the writ jurisdiction of this Court by filing a writ petition (WP-LD-VC-7 of 2020). It was alleged therein that one Abu Faizal has been posting objectionable video clips as well as offensive messages on YouTube, Facebook and other social media sites which have the potential of creating communal disharmony, more particularly a sense of enmity between Hindus and Muslims, and despite approaching the R A K Marg Police Station with a complaint urging the police as well as the State

Government to exercise statutory powers under Sections 149, 151, 110, etc. of the Code of Criminal Procedure, 1973 (hereafter the “CrPC”) for deletion of such clips/messages, the police as well as the State Government has been largely inactive. A coordinate bench of this Court, by its order dated May 22, 2020, called for an affidavit-in-reply from the respondents. Such order further directed investigation against the said Abu Faisal, if substance were found in the allegations made by the petitioner against him. Also, the respondents were directed to block the video uploaded on social media. However, on the returnable date, i.e., June 2, 2020, the writ petition was considered by another coordinate bench. Such bench was of the opinion that the writ petition is in the nature of a public interest litigation. Liberty was, thus, granted by the order of disposal of the said writ petition dated June 2, 2020 to the petitioner to file appropriate writ petition in the necessary format. Consequent upon merger of the order dated May 22, 2020 in the later order dated June 2, 2020, the former ceased to be the operating direction.

2. The petitioner has presented this PIL petition under Rule 4(e) of the Bombay High Court Public Interest Litigation Rules availing the liberty granted by the order dated June 2, 2020. The grievance voiced by the petitioner in this PIL petition and the prayers made therein are substantially the same as in the earlier writ petition. It is also averred that since no effective step has been taken by the police, the said Abu Faizal (not a party to the PIL petition) has felt encouraged to post objectionable video clips/offensive messages one after the other with an intention to create unrest. Based thereon, the petitioner has claimed the following relief:

> "(A) That this Hon'ble Court in exercise of powers under Article 226 of the Constitution of India, 1950 r/w inherent power u/s. 482 of Cr.P.C. be pleased to issue writ mandamus and/or any other appropriate writ, order, directing the Respondent Police to forthwith take preventive action u/s. 110, 149, 151 of CrPC for deletion of incriminating hate speech video from the social media and for taking action against 'AIMIM Abu Faizal' in accordance with the provisions of CrPC, IP Code, with further direction to the Respondent Nos.4, 5 and 6 to permanently block the access of "AIMIM Abu Faisal" to their corresponding Social media viz.

> ‘Youtube’, ‘Google’, ‘Facebook’ and to take all such steps to prevent the repetition of such criminal misuse of these social media by such elements in future”.

3. A status report dated June 16, 2020, filed in deference to an order dated June 12, 2020 passed on this PIL petition is on record. It is signed by the Senior Inspector of Police, R A K Marg Police Station, Mumbai, the respondent no.3. Perusal thereof reveals the steps taken on receipt of the petitioner’s complaint. It is further revealed therefrom that on receipt of a complaint containing allegations similar to those levelled by the petitioner against the said Abu Faisal, an FIR has been registered against him by the Hyderabad city Cyber Crime Cell being FIR No.811/2020 under section 153-A/269/188/505(1)(b)/505(2) of the Indian Penal Code read with section 67 of the Information Technology Act, 2000 (hereafter “the I.T. Act”) and in course of investigation, which is in progress in the right earnest, it has been ascertained that the accused, a resident of Hyderabad, is presently in Dubai, U.A.E. Also, correspondence has been made for issuance of a ‘Lookout Circular’.

4. Mr. Shukla, learned advocate representing the petitioner, has persuasively endeavoured to impress upon us by referring to the decision of the Supreme Court in ***Manohar Lal V/s. Vinesh Anand***, reported in (2005) 5 SCC 407 that the said Abu Faizal is an offender and action under the extant laws is required to be taken against him to subserve a social need, since the society cannot afford a criminal like him to escape liability.

5. Mr. Shukla has also contended that the said Abu Faisal having repeatedly committed cognizable offences, it is not only the duty of the police to prevent it but it is also the duty of the police to register an FIR under section 154 of the CrPC upon an information to that effect having reached it, in terms of the decision of the Constitution Bench in ***Lalita Kumari V/s. Government of Uttar Pradesh and Others***, reported in (2014) 2 SCC 1.

6. According to Mr. Shukla, the concern expressed by the petitioner in the PIL petition is of seminal importance and to maintain the balance and rapport that the people of various

religious communities in India have, the prayers made in the PIL petition ought to be granted.

7. Appearing for Facebook, Mr. Khambatta, learned senior advocate has submitted that his client is prepared to remove the objectionable posts if directed by this Court subject to the petitioner providing the URL numbers thereof. It has also been submitted by him that in terms of the provisions of the I.T. Act and the rules framed thereunder, it is not for the 'intermediary' as defined in clause (w) of sub-section (1) of section 2 of the I.T. Act to judge whether access of public to any information ought to be blocked or not; it is for the designated authority under the I.T. Act to make an order to that effect or if the Court so directs, an intermediary like Facebook would have to give effect to the relevant order by blocking access.

8. An affidavit-in-reply has been filed by Google LLC, wherein it is averred that the objectionable video has *"already been taken down for violation of the Community Guidelines of You Tube"*. Mr. Thacker, learned advocate on

behalf of Google LLC, adopted the submissions of Mr. Khambatta.

9. In course of hearing on July 24, 2020, our attention was drawn by Mr. Anil Singh, learned Additional Solicitor General representing the Union of India (the added respondent) to the provisions of the I.T. Act and the rules framed thereunder as well as to the decision of the Supreme Court in ***Shreya Singhal V/s. Union of India***, reported in (2015) 5 SCC 1. In such decision, although the Court had struck down section 66A of the I.T. Act being violative of Article 19(1)(a) of the Constitution, section 69A of such Act and the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 (hereafter "the 2009 Rules") were held to be constitutionally valid. The Court also ruled that section 79 of the I.T. Act is valid subject to clause (b) of sub-section (3) of section 79 being read down.

10. We have heard Mr. Shukla, Mr. Singh, Mr. Khambatta, and Mr. Thacker at some length. We have also perused the materials on record.

11. On a plain reading of the aforesaid prayer clause (A) of the petition, it becomes clear that the petitioner seeks orders on the State and its police force to prevent commission of cognizable offence by the said Abu Faisal and to take steps for deletion of the offensive video clips/messages, as well as for direction on the respondents 4 to 6 to permanently block the access of the said Abu Faisal to the relevant social media sites.

12. We are, therefore, tasked to decide whether for the alleged inaction of the State and its police force, as complained of by the petitioner, any direction could or should be issued to the State. While on such task, we shall bear in mind that the messages attributed to the said Abu Faisal by the petitioner, if correct, would amount to “hate speech” as explained by the Supreme Court in ***Pravasi Bhalai Sangathan V/s. Union of India***, reported in (2014) 6 SCC 477.

13. Section 69A of the I.T. Act enables the Central Government or any of its officers specially authorised by it in this behalf to record satisfaction, by assigning reasons

that it is necessary or expedient in the interest of the sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence related thereto and subject to the provisions of sub-section (2) of Section 69A of the I.T. Act, and direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource. Sub-section (2) of section 69A of the I.T. Act provides that the procedure and safeguards subject to which such blocking for access by the public may be carried out shall be prescribed by rules.

14. It is in terms of the power conferred by sub-section (2) of section 69A of the I.T. Act that the Rules of 2009 have been framed. Such rules contain a comprehensive procedure for blocking for access of information by the public. The word “organization” has been defined in rule 2(g) of the said 2009 Rules to mean

Ministries or Departments of Government of India, State Governments and Union Territories and any agency of the Central Government to be notified by it in the Official Gazette. In terms of rule 3, the Central Government is obliged to designate by issuing notification in the Official Gazette an officer not below the rank of Joint Secretary as the “Designated Officer” for such purpose as indicated in the relevant rules. Rule 4 thereof requires every organization to designate one of its officers as the “Nodal Officer”. Rule 5 confers powers on the Designated Officer in its discretion to issue directions for carrying out the purpose of such rules. A detailed procedure is contemplated by Rule 6 for blocking of access by the public any information generated, transmitted, received, stored or hosted in any computer resource. A Nodal Officer may request the Designated Officer and upon such request being received, further steps that are required to be taken are enumerated in rules 7, 8 and 9 of such Rules. The Designated Officer in terms of rule 10 is required to block any information or part thereof if so directed by the competent court in India. The

requirement of rule 11 is that a request received from a Nodal Officer shall be decided expeditiously but not later than seven working days from the date of receipt thereof. These provisions have been referred to by us for facility of appreciation of the procedure that is statutorily prescribed for taking care of a grievance of the nature voiced by the petitioner in this PIL petition.

15. On August 17, 2020, Mr. Shukla placed before us a complaint dated July 24, 2020 lodged by the petitioner before the Nodal Officer appointed under rule 4 of the 2009 Rules, i.e., the Joint Director, Ministry of Home Affairs, Government of India, as well as other officials. We are not too sure as to whether wisdom dawned on the petitioner immediately after the aforesaid statutory provisions were referred to us by Mr. Singh on July 24, 2020 itself that his remedy lay before the Nodal Officer, but we have failed to comprehend as to why having approached this Court with this PIL petition and when the same was *sub judice*, the petitioner rushed to the Nodal Officer to have his grievance redressed without waiting for the Court's decision. It would

have been appropriate for him to obtain leave from the Court to approach the Nodal Officer, if a decision from the authorities in terms of the I.T. Act were intended. Be that as it may, paragraph 5 of such complaint reads as follows:-

> "5. Therefore, we kindly request the Nodal Officer as follows:
>
> a) to register FIR for each of the above hate speeches creating amenity between two communities as per ratio laid down in the case of *Manohar Lal vs Vinesh Anand* [(2005) 5 Supreme Court Cases 407].
>
> b) The Accused is sitting at Dubai, UAE with whom, our country has the extradition treaty, hence, through Police to get issued 'Red Corner Notice' via Interpol against Abu Faisal and to take steps for his extradition and for prosecuting him in accordance with the law.
>
> c) To block the access of Abu Faisal to his Facebook account/Google access permanently in the exercise of statutory powers and;
>
> d) Through Mumbai Police/Special Executive Magistrate to initiate preventive measures u/ s.110(e)(g), 149, 151 of Cr.P.C. against the abovenamed accused because he is so desperate and dangerous to be enlarged without taking bond/surety from him to maintain 'good behaviour' and not to repeat such offences, particularly considering the thousands of people liking his hate speeches thus getting ill-influenced."

16. It is neither necessary for us to make any observation on the aforesaid prayers, nor does the situation call for application of the ratio of the decision in ***Manohar Lal*** *(supra)* here. Such decision was rendered in regard to a completely different issue, i.e., applicability of section 340, CrPC to arbitral proceedings. Paragraph 5 has been relied on by Mr. Shukla. The general observation appearing therein is well known and does not admit of any doubt. However, each case has to be decided bearing in mind its own peculiar facts. Suffice it to note, the decision in ***Shreya Singhal*** *(supra)* says that there are only two ways in which a blocking order can be passed – one by the Designated Officer after complying with the 2009 Rules and the other by the Designated Officer when he has to follow an order passed by the competent Court. The position in law is, thus, unambiguous that neither the State nor its police force can issue a blocking order; it is left to the discretion of the Designated Officer under the 2009 Rules to himself pass an order for blocking, if the circumstances call for such an

order, or block in deference to an order of a competent court.

17. Having regard to the statutory provisions noticed above and its interpretation by the Supreme Court in ***Shreya Singhal*** *(supra)*, the relief claimed by the petitioner for direction on the police to delete the objectionable video clips/offensive messages from the social media appears to be misconceived. Insofar as direction on the private respondents to permanently block the access of the said Abu Faisal to their corresponding social media sites is concerned, we refrain from making any direction but leave it free to the private respondents to regulate their affairs and make such exclusion as would be desirable for strong reasons of public policy of India and the integrity of the State.

18. We now take up for consideration the decision in ***Lalita Kumari (supra)***. No doubt, registration of an FIR is mandatory under section 154 of the CrPC if information received by the police discloses commission of a cognizable offence and no preliminary inquiry is called for in the given

situation. However, the decision in ***Lalita Kumari*** *(supra)* does not lay down the law that in all cases of failure on the part of the police to register an FIR under section 154 of the CrPC despite receipt of information disclosing commission of a cognizable offence, the remedy of the aggrieved complainant lies in approaching the writ Court for direction in that behalf.

19. Having regard to a long line of decisions of the Supreme Court starting with ***All India Institute of Medical Science Employees' Union (REGD) v. Union of India,*** reported in (1996) 11 SCC 582, ***Gangadhar Janardan Mhatre v. State of Maharashtra***, reported in (2004) 7 SCC 768, ***Minu Kumari and Another v. State of Bihar and Others***, reported in (2006) 4 SCC 359, ***Aleque Padamsee v. Union of India***, reported in (2007) 6 SCC 171 and ***Sakiri Vasu v. State of Uttar Pradesh and Others***, reported in (2008) 2 SCC 409, the law seems to be well settled that a High Court ought to discourage writ petitions or petitions under section 482 of the CrPC where alternative remedies under section 154(3) of the CrPC read

with section 36 or section 156(3) or section 200 read with section 190 of the CrPC have not been exhausted. It is true that the aforesaid decisions notwithstanding, a different approach could be adopted in a case where the offence alleged affects the human body and the police fails to discharge its mandatory statutory duty of registering an FIR; however, the present case also does not fall in that category. In fact, ***Aleque Padamsee*** *(supra)* bears close resemblance to the facts of this case. In the Article 32 petition that was filed before the Supreme Court, it was alleged that the police had not acted on complaints disclosing cognizable offence and directions were prayed to register cases. According to the petitioners, speeches had been made by the private respondents which were likely to disturb the communal harmony in the country and the likely result of such inflammatory speeches was to create hatred in the minds of citizens against the persons belonging to minority communities. The Supreme Court relegated the petitioners to the forum available under the CrPC. Being guided by such decision, we observe that if indeed the

petitioner's complaint of fresh posts having been uploaded with similar contents and the police remaining inactive despite information given disclosing a cognizable offence, is true, it is open to the petitioner to pursue his remedy provided by the CrPC. No direction of the nature sought for should therefore be passed.

20. That leaves us with consideration of the petitioner's prayer for direction on the police to prevent cognizable offence being committed by the said Abu Faizal. The duty entrusted upon the police by sections 149 and 150 of the CrPC to prevent commission of cognizable offence has to be preceded with knowledge or information of a design to commit a cognizable offence. Section 151 confers power to arrest an offender without a warrant. In a given situation, if it can be shown that the police despite having prior knowledge or information of the design of commission of a cognizable offence has failed to discharge such duty and thereby prevent an offence, such omission could form a subject matter of scrutiny by the Court. However, without having any prior knowledge or information of any design of

the said Abu Faizal and the probable time to commit cognizable offence by posting objectionable video clips/offensive messages and without being empowered to block access of the said Abu Faisal to social media sites, it may not be possible for the police to prevent a cognizable offence being committed by him. If indeed anyone including the petitioner has any clue of any criminal intention, the same may be shared with the police for it to discharge its duties according to the statutory mandate. However, on facts and in the circumstances, we do not see any occasion to make any direction, as prayed for by the petitioner.

21. In any event, since the Nodal Officer has been approached by the petitioner and the observations made in paragraphs 17 and 19 supra, we dispose of this PIL petition, with the additional observation that if at all the complaint dated July 24, 2020 is worthy of being taken to its logical conclusion, the Nodal Officer and the Designated Officer under the I.T. Act may proceed in that direction; alternatively, if the petitioner does not wish to pursue the complaint dated July 24, 2020, he may file a fresh complaint

before the Nodal Officer and seek appropriate relief from the Nodal and Designated Officers under the I.T. Act and the 2009 Rules.

22. In view of the order as above, nothing survives in the interim application for intervention. It too stands disposed of.

23. Before we part, we wish to observe that the people may exercise some degree of restraint on their liberty of free speech and expression particularly during these testing times. The right cannot be exercised to sow seeds of hatred and to create disharmony among religious communities. Since inflammatory posts/messages have the potential of disturbing public peace and tranquility, strong action ought to be taken against those responsible to uphold the high values aimed at by the Constitution. In a secular country like India, the citizens of different religions should feel assured that they can live in peace with persons practicing other religions. Regrettably, a trend is clearly discernible that in the name of exercise of a right, the liberty of free speech is being abused with bad faith. The freedom that Article 19(1)

(a) guarantees to every citizen should be exercised rationally and in an orderly manner for legitimate exercises including fair and constructive criticism as well as for upholding the preambular promise of securing fraternity, assuring the dignity of every individual and the unity and integrity of India. The framers of our Constitution visualised a stable society providing sufficient scope for exercise of the right of free speech and expression. However, those exercising such a right must not remain oblivious that the exercise cannot rise above national interest and interest of the society. In the guise of exercising the right, no form of insult to any group or community disrupting public order ought to ensue. Notwithstanding the provisions of law in vogue, it is time that the State introduces a regime of conduct with stricter norms but satisfying the test of reasonableness, in exercise of the power conferred by Article 19(2) of the Constitution, to deal with rapid rise of absolutely avoidable, uncalled for and unwarranted inflammatory posts/messages on the social media.

24. There shall be no order as to costs.

25. This order will be digitally signed by the Sr. Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(Madhav J. Jamdar, J.) **(Chief Justice)**

Pravin D. Pandit

Digitally signed by Pravin D. Pandit
Date: 2020.08.21 17:20:14 +0530