

12th April, 2022

SERIES ON CYBER LAW: ISSUE 6

"ANALYSING PROCEDURE FOR REMOVAL OF OFFENDING CONTENT FROM THE ONLINE PLATFORMS" X V/S UOI

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1. Facts

1.1 The Photographs and images of Ms. X, an Indian woman, (herein referred to as the Petitioner) were taken from her social media accounts, Facebook & Instagram, and posted on the various pornographic website by some unknown identity without her knowledge and consent despite the requisite privacy settings on her social media account. Her pictures were not otherwise offensive but became offensive being shown in association with the pornographic website. This was alleged to constitute an offence under Section 67 of the Information Technology Act, 2000 (Herein referred to as the IT Act). She had already filed a complaint on the National Cyber-Crime Reporting Portal as well in the jurisdictional police station but to no recourse. Hence, the present writ petition is filed before the Hon'ble Delhi High Court.

2. Issues

2.1 Where a party seeks relief from the court to the effect that certain offending or illegal content needs to be removed from the world-wide-web, what directions are required to be passed by a court to make its order implementable and effective; and to which parties are such directions required to be issued;

2.2 What steps are required to be taken by law enforcement agencies to implement such directions issued by a court to ensure that despite court orders/directions offending content does not 'resurface' or remain available on the world-wide-web at the instance of errant parties; and such parties do not succeed in brazenly evading compliance of such orders/directions with impunity.

3. Decision

3.1 The court observed that the present case pertains to removal of the content of the petitioner which is been posted on pornographic websites, and such a case requires

the issuance of effective and implementable orders in relation to a grievance arising from offending content placed on the world-wide-web, needed to be examined closely; and a solution to the problem needed to be crafted out so that legal proceedings of the nature faced by this court did not become futile.

3.2 Answering the issues, the court suggested directions that should ordinarily be issued and the parties to whom these should be issued. Hence, the court may issue a direction:-

3.2.1 To the website or online platform on which the offending content is hosted, to remove such content forthwith and in any event within 24 hours of receipt of the court order. Also, to preserve all information and associated records relating to the offending content, at least for a period of 180 days or such longer period as court may direct.

3.2.2 To the search engines, to make offending content non-searchable by 'de-indexing' and 'de-referencing' the offending content in their listed search results.

3.2.3 To concerned intermediaries to endeavor to employ pro-active monitoring by using automated tools, to identify and remove or disable access to any content which is 'exactly identical' to the offending content that is the subject matter of the court order.

3.2.4 To the concerned law enforcement agencies, to obtain from the concerned website or online platform all information and associated records, including all unique identifiers relating to the offending content such as the URL (Uniform Resource Locator), account ID, handle name, Internet Protocol address and hash value of the actual offending content along with the

- metadata, subscriber information, access logs and such other information as the law enforcement agency may require, in line with Rule 3(1)(j) of the 2021 Rules, as soon as possible but not later than seventy-two hours of receipt of written intimation in this behalf by the law enforcement agency.
- 3.2.5 To the aggrieved party to furnish to the law enforcement agency all available information that the aggrieved party possesses relating to the offending content with a further direction to the law enforcement agency to furnish such information to all other entities such as websites/online platforms/search engines to whom directions are issued by the court in the case.
- 3.2.6 The aggrieved party should be permitted, on the strength of the court order passed regarding specific offending content, to notify the law enforcement agency to remove the offending content from any other website/online platform/search engines on which same or similar offending content is found to be appearing and accordingly, further steps should be taken by the Law enforcement agencies to remove such content.
- 3.2.7 The aggrieved party should make a complaint on the Cyber-Crime Reporting Portal (if not already done so), to initiate the process provided for grievance redressal on that portal.
- 3.2.8 Deducing the decision, the Hon'ble Court observed that the Petitioner's photographs though not in themselves obscene or offensive, were uploaded on pornographic websites adding derogatory captions to them without her consent and knowledge, such act would by and in itself amount to an offence under Section 67 of the IT Act.
- 3.2.9 This is so since section 67 of the IT Act makes it an offence to publish or transmit, or causes to be published or transmitted, in the electronic form, any material which appeals to the prurient interests of those who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. The only purpose of posting the petitioner's photograph on a pornographic website could be to use it to appeal to the prurient interests of those who are likely to see it. That apart, the inclusion of the name and/or likeness of a person on such website, even if the photograph of the person is not in itself obscene or offensive, without consent or concurrence, would at the very least amount to breach of the person's privacy, which a court may, in appropriate cases, injunct or restrain. It is evident that such publication would likely result in ostracisation and stigmatisation of the person concerned in society.
- 3.2.10 Whenever it comes to the removal of any content online, the highest responsibility lies on the intermediary on whose platform such content is available. Though Section 79 of the IT Act exempts intermediaries from certain liabilities; such exemption is not unqualified or unconditional and applies only if the intermediary fulfils certain conditions and obligations. The Government has strengthened this position by introducing the Intermediaries Rules, 2021 (2021 Rules), and made intermediaries more liable and obliged towards its users. The intermediaries can remove or disable access to offending content even on a voluntary basis, upon actual knowledge or on grievance received by it, would not amount to a violation of section 79(2)(a) or (b) of the IT Act on the part of the intermediary, thereby cementing the exemption available to an intermediary, provided the intermediary otherwise strictly follows the 2021 Rules. In *Shreya Singhal v. Union of India*, (2013) 12 S.C.C. 73, the Supreme Court held that an intermediary would lose the exemption from liability that it enjoys under section 79(1) if it does not 'expeditiously remove or disable access to' offending content or material despite receiving 'actual knowledge', which would mean knowledge inter-alia by way of a court order or on being notified by the appropriate government or its agency, which in the present context would mean the concerned police authorities.
- 3.2.11 Hence, an intermediary cannot be heard to say that it is unable to remove or disable access to offending content despite such actual knowledge as contemplated in law. The non-compliance with the directions of the court would forfeit the exemption of the intermediaries provided under section 79(1) of the IT Act and shall make such entity and its officers liable for action as mandated by section 85 of the IT Act.

4. Conclusion

- 4.1 As we head towards a digitized world, we can't ignore the menacing character and anonymous nature of the internet and have to mould our ways to accordingly deal with the cybercrimes in cyberspace. The present judgment is a notable and prominent example of how the situation should be handled in the present time when it comes to removal of offending content on online platforms. It realized the need for strict and effective directions for the intermediaries and law enforcement agencies and greater accountability in case the orders of the court are not complied with. It can be seen that efforts are made by the judiciary by coming up with such judgments and the Government by introducing Intermediaries Guidelines, 2021 which provides greater due diligence to be maintained for protecting the digital rights of its users. But it is important to accept the fact that while dealing with the internet, the *Mool Mantra* is "prevention is better than cure". Extra vigilance is required to protect oneself from the cybercrimes.

A copy of the judgment is annexed hereto at **page 3 to 4**.

W.P. (CrI.) 1082/2020

'X' v. Union of India

2020 SCC OnLine Del 761

In the High Court of Delhi at New Delhi
(BEFORE ANUP JAIRAM BHAMBHANI, J.)

'X' ... Petitioner;

Versus

Union of India and Others ... Respondents.

W.P. (CrI.) 1082/2020

Decided on July 17, 2020

Advocates who appeared in this case :

Mr. Sarthak Maggon, Advocate.

Mr. Ajay Diggpaul, 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.

The Order of the Court was delivered by

ANUP JAIRAM BHAMBHANI, J.:— This matter has been received by way of a supplementary list on urgent mentioning.

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

2. 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.

3. Application stands disposed of.

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

4. 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.

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

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

6. 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.

7. 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.

8. 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 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.

9. 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.

10. 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.

11. Issue notice.

12. Mr. Ajay Diggpaul, 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. List on 30th July 2020.

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