

2024 SCC OnLine Del 1264

In the High Court of Delhi at New Delhi

(BEFORE SUBRAMONIUM PRASAD, J.)

Mahua Moitra ... Petitioner;

Versus

Directorate of Enforcement and Others ...
Respondents.

W.P.(C) 2676/2024 and CM APPL. 10932/2024

Decided on February 23, 2024

Advocates who appeared in this case :

Ms. Rebecca M. John, Sr. Advocate with Mr. Samudra Sarangi, Ms. Saloni Jain, Ms. Nitya Jain, Mr. Akash Jaini and Mr. Pravir Singh, Advocates.

Mr. Zoheb Hossain, Mr. Vivek Gurnani and Ms. Pranjal Tripathi, Advocates for R-1/ED.

Mr. Chetan Sharma, ASG, Mr. Anurag Ahluwalia, CGSC with Mr. Amit Gupta, Mr. Vinay Yadav and Mr. Vikramaditya Singh, Advocates for R-2/UoI.

Mr. Sidhant Kumar, Ms. Manyaa Chandok and Mr. Om Batra, Advocates for R-3/ANI.

Ms. Mrinal Bharti, Mr. Manish Sekhari, Mr. Swapnil Srivastava and Ms. Sanjana Srivastava, Advocates for R-14.

Mr. Pavan Narang, Mr. Himanshu Sethi and Ms. Aishwarya Chabra, Advocates for R-20.

The Judgment of the Court was delivered by

SUBRAMONIUM PRASAD, J.:— The Petitioner has approached this Court to direct Respondent No. 1/ED from preventing any information from being leaked, including any confidential, sensitive, unverified/unconfirmed information, to the print/electronic media in relation to the ongoing investigation/proceedings carried out by Respondent No. 1/ED under F No : T-3/HIU-II/04/2024, under which Summons have been issued to the Petitioner, amongst other prayers.

2. The Petitioner herein is a former elected Member of Parliament from Krishnanagar, West Bengal constituency and is a member of the All India Trinamool Congress Party (AITC). An investigation has been initiated by the Respondent No. 1/ED against the Petitioner for an alleged violation of the provisions of Foreign Exchange Management Act, 1999. It is the case of the Petitioner that Respondent No. 1/ED had issued summons to the Petitioner on 14.02.2024, calling upon her to

appear physically before the Respondent No. 1/ED on 19.02.2024 along with certain documents. It is stated that the said summons were received at the address on 16.02.2024. It is stated that the news articles in question were published regarding these summons issued by Respondent No. 1/ED to the Petitioner even before the Petitioner received the summons. It is stated that certain news pertaining to the investigation has also been published, which according to the Petitioner has been leaked by the Respondent No. 1/ED. It is the case of the Petitioner that the Respondent No. 1/ED has leaked information regarding issuance of summons to the Petitioner even before the Petitioner received the summons; the information regarding extension of time of three weeks sought by the Petitioner for complying with the summons dated 14.02.2024; and the fact that the Petitioner's request for extension was being rejected and a fresh summons had been issued directing compliance of summons by 26.02.2024. It is also stated that sensitive information of potential allegations, against the Petitioner, which are part of the subject matter of the investigation being carried out by Respondent No. 1/ED, are also being leaked to the press. The Petitioner has, therefore, approached this Court by filing the instant writ petition stating that the press reports are violating her right to privacy and dignity and right of fair investigation.

3. Learned Senior Counsel appearing for the Petitioner, apart from reiterating the averments made in the writ petition, has placed reliance upon the Judgments passed by a Coordinate Bench of this Court in **W.P.(C) 15617/2022** in the case of *Vijay Nair v. Central Bureau of Investigation* dated 21.11.2022 and in *Disha A. Ravi v. State of (NCT of Delhi)*, 2021 SCC OnLine Del 822.

4. Learned Senior Counsel appearing for the Petitioner has drawn attention of this Court to the Advisory on Media Policy issued by the Government of India *vide* Office Memorandum dated 01.04.2010 regarding sharing of information by the investigating agency with the public through media.

5. Learned Counsel appearing for the Respondent No. 1/ED has categorically denied that Respondent No. 1/ED is leaking any sensitive information to the press regarding the investigation being carried out against the Petitioner and states that the Respondent No. 1/ED is scrupulously following the Office Memorandum dated 01.04.2010 which is the advisory on media policy regarding sharing of information by the investigating agency with the public through media.

6. Mr. Chetan Sharma, learned ASG appearing for Respondent No. 2/Union of India, also contends that the Union of India has given directives to various Departments to scrupulously follow the Advisory on Media Policy issued by the Government of India *vide* Office Memorandum dated 01.04.2010.

7. Learned Counsel for Respondent No. 3/ANI states that the material which has been reported is based on sourced information obtained by the media. He states that the newspapers cuttings and other reports only state facts which are borne out of records. He further states that the Petitioner is a former Member of Parliament and is a public personality and people are entitled to know about the investigation that is being carried out against the Petitioner.

8. Heard learned Counsel appearing for the Parties and perused the material on record.

9. The Government of India has issued an Advisory on Media Policy *vide* Office Memorandum dated 01.04.2010 regarding sharing of information by the investigating agency with the public through media. The said Advisory lays down the precautions that need to be taken to ensure that only authentic and appropriate information is shared without hampering the process of investigation and issues of legal/privacy rights of the accused/victims and matters of strategic and national interest. The said Advisory reads as under:

**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 p


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

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 pertaining to an incident


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· incorrect reporting of facts/details comes to notice, a suitable rejoinder

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.

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

10. The statement of the learned Counsel for Respondent No. 1/ED and Respondent No. 2/UoI, that the Advisory on Media Policy issued by the Government of India *vide* Office Memorandum dated 01.04.2010 regarding sharing of information by the investigating agency with the public through media are being scrupulously followed is taken on record.

11. The Members of Electronic Media have come out with a self-regulatory mechanism and have laid down the Code of Ethics and Broadcasting Standards and some of the provisions of Code of Ethics include Impartiality and objectivity in reporting, ensuring neutrality and privacy of the persons involved. The Respondents No. 3 to 21 are bound by the Code of Ethics and no further Orders need to be passed regulating them further.

12. It is well settled that modern communication mediums advance public interest by informing the public of the events and developments that takes place in a democratic set-up. Dissemination of news and views for popular consumption is a must and any attempt to deny the same has always frowned upon by Courts. It is also equally well settled that freedom of speech and expression guaranteed under Article 19(1) (a) includes freedom of press and communication needs in a democratic society i.e., the right to be informed and the right to inform, however, not at the cost of right to privacy. The Apex Court in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 SCC 641 has observed as under:

"In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.

Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in the newspapers have to be critical of the actions of government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power."

13. The Petitioner herein is a former elected Member of Parliament and a public figure. The people are entitled to know about any news regarding the public figures. The accountability of persons who are public figures towards society is higher and they are subject to a higher level of public gaze and scrutiny. A Division Bench of this Court in *Multi Screen Media (P) Ltd. v. Vidya Dhar*, 2013 SCC OnLine Del 842, while dealing with balancing the right of privacy and freedom of press of public figures, has observed as under:

"30. Merely because a publication pertains to a Court proceeding one should not rush to a conclusion to opine prima facie that it either tends to impair the impartiality of the Court or affects the ability of the Court to determine the true facts. One has to carefully see the nature of the publication and find out : Whether keeping in view the content of the publication there appears to be a real and substantial danger of prejudice to the trial of a case.

31. One more important factor to be kept in mind. If a public figure is involved in a litigation and the matter pertains to the affairs of the State, the right of the public to be informed of the evidence led at the litigation having a bearing on how the public figure discharged the fiduciary duty while conducting the affairs of the State would have to be given primacy over the interest of the individual, for the reason those who enter public life and enjoy the perks of the State would be accountable at a higher level of probity and would be subject to a higher level of public gaze and scrutiny."

(emphasis supplied)

14. Since public figures are subject to closer scrutiny, unless the publications amount to harassment and invasion in private life of the individual public personality concerned or the family of the public personality, publications regarding the public life of such public personalities cannot be stopped from being published either by the Government or by the Orders of the Court [Refer : *Kailash Gahlot v. Vijender Gupta*, 2022 SCC OnLine Del 679].

15. This Court has carefully perused the various news articles which have been annexed with the writ petition. The newspaper cuttings do not deal with the private life of the Petitioner but are only reportings regarding the investigation that is being conducted against the Petitioner who is a public figure and same is unrelated to her private

life. There is nothing in the news articles which would have the effect of invading into the privacy of the Petitioner or tend to impair the impartiality of the investigation or that it can have the effect of prejudicing the trial of the Petitioner in the event it is initiated. It is well settled that Gag Orders against the media can be passed only when it has the potential to prejudice any investigation or an ongoing trial.

16. In view of the statement made by the learned Counsel for Respondent No. 1/ED that the Advisory on Media Policy issued by the Government of India *vide* Office Memorandum dated 01.04.2010 has been and is being followed, and after perusing the news articles, this Court is of the opinion that the reliefs as sought for by the Petitioner by way of the present writ petition need not be granted at this stage.

17. In view of the above, the writ petition is dismissed, along with pending application(s), if any.

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