

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.01.2016

+ **W.P.(C) 3480/2008 & CM Nos. 6647/2008, 8032/2008, 69/2013,
11601/2013,15188/2013**

JAGRAN T.V. PVT. LTD.

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sudhir Nandrajog, Senior Advocate with
: Mr Mrinal Bharti, Advocate.

For the Respondents : Ms Monika Arora, CGSC with Mr Harsh Ahuja
: and Mr Gaurav Upadhyay, Advocates for R-1.
: Mr Rakesh Kumar Sharma, Advocate for R-2.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner is an independent television production house and is engaged in the business of providing news items through electronic media to the general public. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning an order dated 03rd January, 2008 whereby the petitioner was directed to comply with the following directions:

“They shall not telecast/re-telecast the above mentioned news items titled 'Shaitan Doctor' in their Channel henceforth.

They are directed to run the following scroll on their television channel [in legible large font and at normal speed without any interruption of "Breaking News" etc.] round the clock for a period of three days w.e.f. 12:00 Noon on 05.01.2008 to 12:00 Noon in 08.01.2008.

"IBN 7 CHANNEL HAS BEEN WARNED BY THE MINISTRY OF INFORMATION AND BROADCASTING FOR VIOLATION OF PROGRAMME CODE BY TELECAST OF NEWS ITEM TITLED 'SHAITAN DOCTOR' IN RESPECT OF DR. AJAI AGARWAL OF GHAZIABAD. IBN 7 CHANNEL APOLOGISES FOR THE SAID VIOLATION AND ASSURES TO BE MORE CAREFULL IN THE FUTURE."

2. The petitioner has also impugned other orders dated 11th January, 2008, 07th February, 2008 and 02nd May, 2008 whereby its representations made against the aforementioned order dated 03rd January, 2008 were rejected.

3. The controversy involved in the present petition relates to a program broadcast by the petitioner titled "*Shaitan Doctor*". The said program was, *inter alia*, based on a sting operation which showed doctors taking money to amputate limbs of healthy individuals so that they could beg for alms. The program also showed that Respondent No.2 - who was an orthopedic surgeon and at the material time posted as CMO, District Hospital, Gautam Budh Nagar - involved in the illegal activity. The aforesaid programme was

aired on 29th July, 2006.

4. Aggrieved by the broadcast of the aforesaid programme, Respondent No.2 issued a legal notice dated 11th November, 2006. Subsequently on 14th September, 2007 an FIR bearing No. 881/2007 under Section 467,468,469,471,418,420 IPC was registered at the Police Station Gilani Gate, Ghaziabad on a complaint made by Respondent No.2. A complaint was also filed with the Ministry of Information and Broadcasting.

5. Respondent No.1 issued a show cause notice dated 08th November, 2007 alleging that the broadcast of the programme “*Shaitan Doctor*” on 29th July, 2006 appeared to have maligned an individual person and, thus, violated Section 5 of the Cable Television Networks (Regulation) Act, 1995 (hereafter ‘the Act’) read with Rule 6(1)(i) of the Cable Television Networks Rules 1994 (hereafter ‘the Rules’). The petitioner was, accordingly, called upon to show cause as to why action under the provisions of Section 20 of the Act be not taken against the petitioner. The petitioner responded to the show cause notice claiming that the report telecast by it was supported with reasonable and sufficient amount of evidence. The petitioner contended that given the nature of news involved, a sting operation was necessary otherwise the information would not have

been revealed. It asserted that the sting operation was carried out by Dedicated Investigators Guild (DIG) which was an independent legal entity.

6. It was also contended that the report was based on well researched information and as a news channel, it was the petitioner's duty to air the news and provide information to public at large. The petitioner claimed that there was no violation of Section 5 of the Act.

7. Respondent No.1 considered the response of the petitioner as well as the recommendations of the Inter Ministerial Committee (hereafter 'IMC') and concluded that telecast of the news item title "*Shaitan Doctor*" was in violation of Rule 6(1)(i) of the Rules; accordingly, Respondent No.1 passed the impugned order dated 3rd January, 2008.

8. Thereafter, the petitioner made several representations against the impugned order and also sought an opportunity of a personal hearing. Although the competent authority of Respondent No.1 granted the petitioner an opportunity to be heard, it did not find any merit in the representations made by the petitioner. Nonetheless, by an order dated 2nd May, 2008, the Competent Authority of Respondent No.1 modified the

impugned order dated 3rd January, 2008 by directing that the scroll of apology be telecast for a period of two days, from 12 noon on 3rd May, 2008 to 12 noon on 5th May, 2008, instead of three days as directed earlier.

9. Mr Sudhir Nandrajog, Senior Advocate appearing on behalf of the petitioner submitted that the petitioner was standing by the news item in question and neither Respondent No.1 nor any other authority had verified the authenticity of the recording aired by the petitioner. He submitted that since the petitioner was asserting that its report was truthful and correct, it was incumbent upon Respondent No.1 to independently examine the recording and come to an informed conclusion after examining the relevant facts. He submitted that the CD (compact disc) submitted by the petitioner had not been forensically tested and, therefore, Respondent No.1's conclusion that the news item in question violated the Programme Code was erroneous. Lastly, he submitted that the issue whether Respondent No.1 had been defamed was pending investigation with the police authorities and the impugned order ought to be suspended till the investigations were completed.

10. Ms Monika Arora, learned Advocate appearing for Respondent No.1 countered the arguments advanced on behalf of the petitioner and submitted

that Respondent No.1's decision was made on the basis of sufficient material and after hearing the petitioner. She contended that in the given circumstances, the impugned order could not be faulted as being arbitrary or unreasonable. She also contended that the petitioner had been warned earlier in regard to the violation of the Programme Code but had persisted in not complying with the same.

11. Respondent No.2 contended that the petitioner had fabricated the story in question and had aired the same only with the object of enhancing their viewership and TRP Ratings without any concern as to the truth of the news item. He contended that the petitioner had procured the data from a third party and had aired the same without verifying the genuineness or the truthfulness of the incident being reported and, thus, had violated Section 5 of the Act read with the relevant Rules. He further submitted that the truthfulness of the events shown was examined by the Ethics Committee of the Medical Council of India and UP Medical Council. However, the allegations remained unsubstantiated. He further alleged that the sting operation was planned by another doctor - who was jealous of the Respondent's reputation - in connivance with DIG only with the view to

sully the reputation of Respondent No.2. He, accordingly, submitted that the present petition was liable to be dismissed.

12. The reach of electronic media is very wide and as such it has become a powerful medium for disseminating information and instant communication to a large section of the public. Undoubtedly, any defamatory report, which is telecast as a news item, would irretrievably sully the reputation of the person concerned. Thus, the requirement of using the electronic medium responsibly cannot be exaggerated. A Division Bench of this Court in the case of **Ms Uma Khurana (The Court on Its Own Motion) vs. State: W.P.(Crl.) 1175/2007, decided on 14th December, 2007** had examined an incident of false - and probably malicious - reporting which had resulted in an innocent person being subjected to ignominy, humiliation, harassment, physical assault and loss of employment. This Court had emphasized that electronic media must protect the innocent people and their reputation cannot be permitted to be damaged by false and incorrect depictions in the name of sting operations.

13. In the instant case, it cannot be disputed that the programme aired by the petitioner was highly derogatory to the reputation of Respondent No.2. The programme showed Respondent No.2 agreeing to amputate a limb of a

healthy person for money, so that the person concerned could beg for alms as a maimed person. Clearly, if the aforesaid news item was not true or had been telecast without doing the proper due diligence, the petitioner would undoubtedly be guilty of offending the Programme Code, to say the least. Whilst the petitioner asserts that the said report was correct, the respondents dispute the same. Section 5 of the Act mandates that *“No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.”* Rule 6 of the Rules prescribes the Programme Code. Rule 6(1) of the Rules reads as under:-

"6. Programme Code. –(I) No programme should be carried in the cable service which:-

- (a) offends against good taste or decency;
- (b) contains criticism of friendly countries;
- (c) contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes;
- (d) contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths;
- (e) is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote-anti-national attitudes;
- (f) contains anything amounting to contempt of court;

(g) contains aspersions against the integrity of the President and Judiciary;

(h) contains anything affecting the integrity of the Nation;

(i) criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country ;

(j) encourages superstition or blind belief;

(k) denigrates women through the depiction in any manner of the figure of a women, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals;

(m) contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups

(n) contravenes the provisions of the Cinematograph Act, 1952 (37 of 1952).

(o) is not suitable for unrestricted public exhibition:

Provided that no film or film song or film promo or film trailer or music video or music albums or their promos, whether produced in India or abroad, shall be carried through cable service unless it has been certified by the Central Board of Film Certification (CBFC) as suitable for unrestricted public exhibition in India.

Explanation – For the purpose of this clause, the expression “unrestricted public exhibition” shall have the same meaning as assigned to it in the Cinematograph Act, 1952 (37 of 1952);"

14. Facially, the news item aired by the petitioner falls foul of the Programme Code inasmuch as it maligns and slanders Respondent No.2. Thus, the onus to establish that the news item was true and that proper

precautions were taken is on the petitioner; failing which, the only conclusion that can be drawn is that the petitioner is guilty of offending the Programme Code.

15. After the programme was aired, the Indian Medical Association, Noida constituted an enquiry committee to enquire into the serious charges that were leveled. Apparently, the enquiry committee appealed through press for persons to come forward and give evidence against Respondent No.2. However, no such evidence was forthcoming. Accordingly, Indian Medical Association, Noida concluded that the charges leveled against Respondent No.2 appeared to be incorrect.

16. The Inter Ministerial Committee (IMC) constituted by Respondent No.1, at its meeting held on 1st March 2007, considered the complaint of the Secretary, UP Nursing Association with regard to the telecast of two news items including "*Shaitan Doctor*". The IMC observed that there was no specific decision of any Court in respect of the reported incident and since it lacked the experience to evaluate the evidence as per law, therefore, it be left to the individuals concerned to take up the matter of defamation in Civil Courts. Respondent No.1 also communicated this decision to the petitioner by a letter dated 3rd April, 2007.

17. Apparently, the matter was again put up for reconsideration by the IMC on 18th October, 2007. By this time, the Allahabad High Court had, in a pending writ petition, considered the allegations made against Respondent No.2 and had decided not to issue any further directions in the matter as the High Court found that several enquiries had been conducted against Respondent No.2 but in each case he had been exonerated. In view of the aforesaid order dated 20th April, 2007 passed by the Allahabad High Court, the IMC reconsidered its earlier decision and concluded that the petitioner had violated Rule 6(1)(i) of the Rules and recommended that a warning be issued to the petitioner with a direction to run an apology scroll for a period of three days.

18. The impugned order dated 3rd January, 2008 was passed pursuant to the recommendations made by the IMC.

19. A bare perusal of the recommendations of the IMC as well as the impugned order indicates that Respondent No.1 was persuaded to hold that Programme Code (Rule 6 of the Rules) had been violated principally for the following reasons:-

(a) That the Allahabad High Court had, by an order dated 20th April, 2007 passed in **Dr. Vinod Kumar V. State of U.P. and others**: Civil Misc.

Writ Petition No. 74150 of 2005, observed that *"many enquiries were conducted at various level on the issue in question against Doctor Ajay K. Aggarwal but in each case, he was exonerated. The Court, therefore, saw no point that the matter should be allowed to continue against him anymore"*.

(b) That the Medical Council had also exonerated Respondent No.2 for the alleged activities reported by the petitioner.

20. It is not disputed that the petitioner was not a party to the proceedings before the Allahabad High Court or to the enquiries, the reports of which were placed before the Allahabad High Court. It is also apparent that the impugned order was passed in view of the decision of the Allahabad High Court not to pursue the matter against Respondent No.2. In this view, the grievance of the petitioner that its contention that the report submitted by it was authentic had not been examined independently by IMC or Respondent No.1, appears to be justified.

21. Having stated the above, it would also be necessary to observe that the news item aired by the petitioner was procured by it from a third entity and had not been generated by the petitioner itself. Although the petitioner

has asserted that the news item had been prepared by DIG on its behalf, it is admitted that the petitioner was not involved in the investigations that had led to developing the news item, which was telecast. In the circumstances, it would be necessary for the petitioner to establish that it had done the necessary due diligence and had verified and ascertained the authenticity of the report before airing the same. The standard of care required of the petitioner for telecasting such reports is very high. It is not sufficient for the petitioner to simply state that the Respondent No.1 has not forensically examined the CD or the recording. The onus to establish that the recording was not tampered and the voice recorded was that of Respondent No.2 is on the petitioner. The petitioner would have to establish that the recording was authentic and produce sufficient material and evidence to indicate that it had independently verified the authenticity of the report that it had aired. Although the petitioner had claimed that the report was supported by the reasonable and sufficient amount of evidence, the petitioner does not seem to have placed any such evidence along with its reply to the show cause notice. The petitioner has also not placed any material which would establish the authenticity of the recording. As indicated earlier, the onus to establish the truthfulness of the report is entirely on the petitioner.

22. In the given circumstances, the impugned order insofar as it directs the petitioner to run an apology scroll is set aside and Respondent No.1 is directed to reconsider the matter afresh. The petitioner is at liberty to place all evidences available with it to establish that it had duly verified and ascertained the authenticity of the reported news item prior to it being aired along with the affidavit of the persons who were involved in reporting the story. The Respondent may place the necessary material evidence no later than four weeks from today.

23. The writ petition and all the pending applications are disposed of with the aforesaid directions. The parties are left to bear their own costs.

JANUARY 04, 2016
RK/pkv

VIBHU BAKHRU, J