



2024:DHC:8296



\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: October 3, 2024

+ **W.P.(CRL) 3320/2023**

MS. G

.....Petitioner

**Through: Mr. Arpit Bhalla, Mr. Mohit
Yadav, Advocates**

V

**UNION OF INDIA THROUGH ITS
SECRETARY & ORS.**

.....Respondents

**Through: Mr. Vaibhav Gaggar, Senior
Panel Counsel & Ms. Shefali
Munde, Advocates for R-1
and 2**

**Mr. Amol Sinha, ASC for
State with Mr. Kshitiz Garg,
Mr. Ashvini Kumar,
Ms. Chavi Lazarus,
Advocates SI Niraj, P.S.
Cyber Outer**

**Mr. Tejas Karia, Mr. Varun
Pathak, Ms. Ameer Rana,
Ms. Prasadhi Agrawal,
Advocates for R-5**

**Ms. Anushka Sharda,
Mr. Madhav Khosla,
Ms. Smriti Nair, Advocates
for R-6**

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 04.11.2024
16:53:00

W.P.(CRL) 3320/2023

Page 1



2024:DHC:8296



Ms. Mamta R. Jha,
Mr. Rohan Ahuja,
Ms. Shruttina Ehersa,
Mr. Rahul Choudhary,
Ms. Amishi Sodani,
Advocates for R-4/Google
LLC

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The present writ petition is filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Code”) seeking directions to the respondents to disable and prevent online dissemination of non-consensual explicit content/videos/screenshots.
2. With the consent of counsel for the parties, the petition is taken up for final disposal. The factual matrix of the case as stated by the petitioner is that the petitioner is aged about 19 years and is claimed to be an upcoming social media influencer. The petitioner was a minor and school going girl when she came in contact with MP who lured her into performing intimate acts over a video call which was clandestinely recorded by MP without her knowledge or consent. The



2024:DHC:8296



video was used to blackmail the petitioner. Subsequently, MP leaked the said video which led to dissemination and re-sharing by third-parties on several websites/webpages including social media platforms and images from the said video are also reflecting on various search engines. The petitioner thereafter approached the respondent no.3/SHO Cyber Cell and filed a complaint against the said MP which was culminated into registration of FIR bearing no. 78/2023 dated 26.10.2023 under section 67A of the IT Act and 384 IPC and also wrote to respondents no. 3 to 6. The petitioner being aggrieved filed the present petition and prayed as under:

- A. Issue a writ in the nature of mandamus directing the respondent no.1 to issue appropriate directions by way of notification and declare sharing of the private video of the petitioner as illegal.**
- B. Issue a writ in the nature of mandamus directing the respondents to remove the private videos from their online portals and create a link so that the said private videos of the petitioner is not circulated in future on their portal.**
- C. Issue a wite in the nature of mandamus directing the respondent no.2 to recover and remove more intimate videos of the petitioner from the online accounts, mobile devices of the boy MP so that the same may not be circulated on the online portals of the respondent no. 4 to 6 and other websites.**



2024:DHC:8296



D. Grant any other relief, which the Hon'ble Court deems fit in the circumstances of the case in the interest of justice and equity.

3. Sh. Amol Sinha, Additional Standing Counsel for the respondent no.3 submitted that on 26.10.2023, a complaint was received from the petitioner wherein it was stated that some unknown individual has made viral her private nude video over the WhatsApp and Instagram, etc. The petitioner also alleged that a demand of Rs.30 Lakhs by WhatsApp message was also made to not transmit her image. Sh. Amol Sinha also submitted that the immediate action was taken and FIR bearing no.78/2023 Dated 26.10.2023 under section 384 IPC and 67A of the IT Act was registered at P.S. Cyber Outer District. The police arrested MP just within two days of registration of the FIR on 28.10.2023, who had recorded and disseminated the video. The mobile of MP was searched and videos of the victim in compromising condition were found therein. The statement of the petitioner was also recorded under section 161 of the Code, and the videos and threatening messages on WhatsApp chats were seized through seizure memo. Notice under section 91 of the Code has been served to WhatsApp and Instagram for obtaining records from the said



2024:DHC:8296



social media platforms. The statement of petitioner was recorded under section 164 of the Code wherein the petitioner/victim stated that the MP not only engaged in a physical relationship with her when she was minor but also recorded a nude video and threatened to make it public if she disclosed the incident to anyone. The offences punishable under sections 4 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, have been added. The Police also identified another person from whose WhatsApp account, the petitioner received extortion messages(s) and that person was arrested on 22.11.2023. The accused Shameen vide order dated 21.12.2023 was granted bail by the Sessions Court. The petitioner had provided some links/URLs of the videos for which take-down notices were sent to Instagram, YouTube, Twitter (now called 'X') and which were immediately acted upon by the platforms. The collaborative efforts of the petitioner, Police and the platforms, have resulted into take-down of the content/URLs as well as deactivation of accounts through which the video was being shared, to prevent further dissemination. The hash of the video has been uploaded on the website www.StopNCII.org, which is a not-for-profit organization which works with partners and



2024:DHC:8296



stakeholders from around the world, including social media platforms, to assist in removal/take-down of non-consensual explicit imagery. The charge-sheet against accused has been filed in the court on 27.12.2023 and the case is pending for trial. The petitioner was assured that if any other link related to the case is provided by the petitioner or by anyone else, then immediate action shall be taken in accordance with law.

4. Ms. Mamta Rani Jha, counsel for the respondent no. 4/Google, LLC submitted that the immediate action was taken after being notified about URLs of the video mentioned and Google has also acted upon takedown requests received from the State Police. Google has undertaken voluntary automated and technological measures and as a result thereof, hundreds of URLs containing such video has been taken down from the YouTube platform, and de-indexed from the Google search engine, and the process is continuing in collaboration with State Police and petitioner. Google also provided the petitioner, the step-wise procedure for using the publicly available reporting & take-down mechanisms to notify any video/URLs which may come to her attention. The petitioner has successfully used the said webform to



2024:DHC:8296



report 312 URLs of the video. Due to collaborative approach by the State, petitioner and the platforms, the further dissemination/sharing of the video has been expeditiously and substantially curtailed so far as YouTube and Google search are concerned.

4.1. It is further stated that no technological tools are fool-proof and there may be some instances wherein the video may escape detection on account of different resolution/configuration/watermarking despite the best efforts/tools available. Therefore, the issue can be resolved holistically only by continued collaboration of the parties. In case, any further URLs are found by the petitioner, the same may be notified directly to Google on its dedicated reporting mechanism for seeking removal of Nudity/Graphic Sexual Content or Unlawful Impersonation, which is publicly available at https://support.google.com/legal/contact/Ir_idmec. The State, in case of any URLs of the video can also report on https://support.google.com/legal/contact/Ir_gov which is a dedicated webform for the law enforcement agencies in India.

4.2. It is further stated that while a search engine may de-index a URL, unless the video is removed from the source website (third-party



2024:DHC:8296



website), it may continue to resurface, frustrating the efforts undertaken by the petitioner, State and the platforms. Therefore, the directions to remove the video hosted on the third-party websites be passed and such removal directions to the source/uploader websites would nip the dissemination in the bud, and holistically address the petitioner's grievance. The respondent no.4/Google, LLC has also filed orders passed by this Court in such cases titled as **MJ V Union of India**, WP (Crl) 956/2021 vide order dated 07.05.2021; **VP V Union of India**, WP (Crl) 1669 of 2021 vide order dated 03.09.2021, **AX V Google LLC**, CS (OS) 750/2022 vide judgement dated 08.02.2023 and **X V www.hostiserver.com & Ors.** vide order dated 06.03.2023.

5. Mr. Tejas Karia, counsel for the respondent no.5/Meta Platforms, Inc. ("Meta") submitted that the petitioner has not identified any Facebook or Instagram URLs containing any instances of content containing non-consensual intimate imagery ("NCII"), despite Meta reaching out to petitioner through counsel and requesting for such information so that Meta may investigate and act in accordance with Meta's policies. Mr. Karia further submitted that, Meta is committed to expeditiously actioning such content and the



2024:DHC:8296



various significant measures that Meta has undertaken to curb the spread of NCII on Meta's platforms, including by making it easy to report NCII, deploying technology-based tools to proactively search for and action NCII, providing resources for users and victims of NCII, and also taken actions on NCII, with a significant amount being actioned before they are even reported to Meta. Meta has already published the details of its Grievance Officer and its grievance mechanism on the Facebook Service as well as on the Instagram Service. This information is publicly available on the Facebook Service at <https://facebook.com/help172990116225777> and the Instagram Service at https://help.Instagram.com1359806704386690?Helpref=uf_permaLink.

The users are empowered to report NCII by reporting it to Meta through the grievance redressal channel. Meta has made it very easy to report NCII directly on its platforms and provided users with reporting labels that encompass NCII. The users can report instances of such content using any reporting flow, including an easy-to-locate-and-use drop-down tool. Once content is accurately reported, Meta's automated technologies detect and prioritize sexual imagery. The reported content



2024:DHC:8296



may also be manually reviewed by a team of trained reviewers who work 24/7 to support users who need help. If the reported content violates Meta's policies, such as NCII, it is removed.

5.1. Mr. Tejas Karia also further submitted that the respondent no.4/Meta Platforms employs and invests heavily in technology like Artificial Intelligence and machine learning to combat violating/unlawful content, including NCII. If the content violates Meta's policies, the content will be removed and the relevant account may be disabled. The said technology will be extremely helpful for women whose intimate pictures are often shared without their consent and Meta also uses technologies like Photo DNA to identify and prevent sharing of CSAM and made its photo and video matching technologies open source, which allows industry partners, developers and non-profits to more easily identify abusive content.

5.2. The State and law enforcement note that the reported NCII has been uploaded to StopNCII.org thereby giving weight to the significant impact this initiative has on tracking and actioning NCII. Notably, the petitioner herself may also report NCII directly to StopNCII.org to prevent the circulation of said NCII. Meta has also



2024:DHC:8296



supported the National Centre for Missing and Exploited Children (NCMEC) in the development of "Take It Down," at <https://takeitdown.ncmec.org/faq>, which was launched globally in 2023. Meta provides several resources to help people combat the spread of NCII. Meta also provides information online on the prevention, reporting, and removal of NCII at [https://about.fb.com/wp-content/uploads/2017/03/not-without my-consent. pdf](https://about.fb.com/wp-content/uploads/2017/03/not-without-my-consent.pdf) and <https://about.meta.com/actions/safety/topics/bullying-harassment/ncii/>. Meta also launched "Stop sextortion", another online resource in Meta's Safety Center, which provides access to resources developed by Meta and Thorn to combat sextortion as well as information on how to respond to sextortion at <https://about.meta.com/actions/safety/topics/bullying-harassment/stopsextortion>.

5.3. Meta's systems are effective, as they have proactively identified and actioned millions of pieces of NCII. However, no platform's systems are perfect, and billions of pieces of content, the vast majority of which do not violate Meta's policies are uploaded to Meta's platforms daily, which may result in the existence of some instances of



2024:DHC:8296



NCII on its platforms. Mr. Tejas Karia also submitted that the systems of Meta are assuredly highly effective at proactively finding and actioning NCII. Meta has dedicated teams that routinely oversee and evaluate Meta's tools, including its proactive monitoring measures, to ensure their efficacy. Meta has implemented dozens of other measures over the years to combat NCII, promote the safety of youths, and protect the privacy of users some of which can be found at [https: // about. meta. com/ actions/ safety/ topics/=bullying-harassment/ncil/](https://about.meta.com/actions/safety/topics/=bullying-harassment/ncil/) and [https: // www. meta. com/ help/ policies/ safety/tools-support-teens-parents/](https://www.meta.com/help/policies/safety/tools-support-teens-parents/).

6. Ms. Anushka Sharda, counsel for the respondent no.6/Microsoft Corporation submitted that it is only a sales and marketing entity which providing services to Microsoft Corporation Inc., in India and is not responsible for, or in control of the Microsoft Bing search engine. Ms. Anushka Sharda also submitted that the correct entity responsible for the operations of Microsoft Bing in India is Microsoft Corporation Inc. ("Microsoft Corporation").

6.1. The counsel further stated that Microsoft Bing is not a content hosting platform and has no control over the data uploaded and



2024:DHC:8296



published on third party web pages. Microsoft Bing uses automated, algorithmic, processes to crawl, index, and match third party content published on the world wide web with user search queries. In order to locate and remove problematic imagery, requestors must provide the specific URLs from where the images or videos are hosted. When content is hosted on third party platforms/non-Microsoft properties, Microsoft Corporation can prevent it from being found on the Bing search engine but cannot remove the content itself. Microsoft Bing provides a dedicated reporting tool, through which users and law enforcement agencies can report suspected CSAM at <https://www.microsoft.com/en-us/concern/bing.com> Microsoft Bing also deploys automated tools to detect and de-index duplicate instances of such CSAM content from Microsoft Bing's index. However, despite Microsoft Bing's best efforts, all duplicate instances of the video may not be detected and de-indexed through automated operation of these tools. Therefore, if imagery is discoverable through Bing search, the specific URLs where the images or videos reside should still be reported to Microsoft Bing by the petitioner and law enforcement agencies to enable Microsoft Bing to de-index the same



2024:DHC:8296



from its search results. Microsoft Bing does not publish or host the content in its index and the complainant will also need to work with webpage owners (webmasters) to have content actually removed from the internet, since Microsoft Bing has the ability to remove third party content (reported URLs) from its index but cannot remove the content from the internet. Ms. Anushka Sharda further stated that, it has not received any report, by way of emails, or its dedicated web-form from the petitioner or any law enforcement agencies. However, Microsoft Corporation has acted promptly to de-index the 30 URLs, identified in the body of the petitioner's email to the respondent no. 4, and Microsoft Corporation has not received a copy of the attachment to the said email. The content of the aforesaid 30 URLs has been classified as CSAM by Microsoft Bing, and the automated tools available in respect of CSAM have been deployed to identify and de-index duplicate instances of the video.

7. Ms. Anushka Sharda, also submitted that any further URLs pertaining to the video are notified to Microsoft Corporation, through Microsoft Bing's dedicated web-reporting form, or through email issued to Microsoft Bing's grievance officer in India at



2024:DHC:8296



grievanceofficer@microsoft.com, these URLs will be de-indexed, expeditiously, and in the manner required under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("2021 IT Rules").

8. It is reflecting from the submissions of the parties that there is a comprehensive legal framework to address NCII, which includes a statutory procedure for the issuance of blocking directions to intermediaries by the Central Government under Section 69A of the IT Act read with the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009. Rule 3(1)(b) of the 2021 IT Rules provides that intermediaries “shall make reasonable efforts by itself, and to cause the users of its computer resource to not host, display, upload, modify, publish, transmit, store, update or share any information that,.... [s] invasive of another's privacy including bodily privacy”. Rule 3(2) of the 2021 IT Rules enables social-media users to submit complaints to an intermediary's grievance officer and Rule 3(2)(b) specifically provides that intermediaries, within 24 hours from the receipt of a complaint made by an individual or any person on his behalf under this sub-rule, in



2024:DHC:8296



relation to any content which is *prima facie* in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of such individual, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it. In addition, Rule 3A of the 2021 IT Rules created a Grievance Appellate Committee to consider appeals or a decision of an intermediary's grievance officer.

9. There is no doubt that the video offends the rights and dignity of the petitioner. The content has been recorded without petitioner's consent or knowledge. The State Police has already filed an FIR bearing no.78/2023 dated 26.10.2023 under section 67A of the IT Act and 384 IPC and provisions of POCSO Act. The parties have tried to work together to address the grievance and protect the petitioner's dignity. It cannot be overlooked that no technological measures are fool-proof and there can be instances of content escaping the net of



2024:DHC:8296



such technology. Therefore, the solution lies in a multi-step, multi-layered approach calling for collaboration amongst all stakeholders.

10. The present petition, along with pending applications, if any, is disposed of with the following directions:

- i. the details of the petitioner be masked within the paper-book, including any names mentioned in the affidavits and the Registry is directed to place a redacted copy on the record of the Court.
- ii. The petitioner is directed to submit Video and URLs if any which she is able to identify in future to the State Police for necessary action. The State Police is also directed to communicate with the intermediaries and the third-party websites whereupon such URLs exist/hosted to seek expeditious removal.
- iii. The respondents no. 4 to 6 and/or any other intermediaries are directed to take reasonable measures to take action against the URLs containing the video which are either provided to them by the petitioner or the State and identified by URLs immediately. The intermediaries are also directed to endeavour to take down the video through the automated tools deployed by them.
- iv. The petitioner is granted liberty to notify any URLs of the Impugned Video in case found subsequently, to the State and/or the intermediaries through their respective dedicated reporting mechanism(s) for necessary action and report NCII directly to "StopNCII" and/or "Take It Down", which is available to allow the proactive removal of NCII and CSAM.



2024:DHC:8296



11. The Court also records appreciation for the advocates as mentioned in the appearance for their assistance in the petition.

DR. SUDHIR KUMAR JAIN
(JUDGE)

OCTOBER 3, 2024
N/TK

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 04.11.2024
16:53:00

W.P.(CRL) 3320/2023

Page 18