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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28.08.2015

+ W.P.(CRL) 766/2015

MUKESH

..... Petitioner

Through Mr. M.L. Sharma, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through Ms. Nandita Rao, ASC (Crl.)
Inspector J.B. Dharkar, P.S. EOW

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

W.P. (Crl.) 766/2015 and Crl. MA No. 5550/2015 (Stay)

1. The present is a petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C., 1973 praying as follows:-

“1. To seize entire said film namely “Mukesh Interview @ India Daughter” & its raw material being as case property for proper prosecution AND

2. Be further pleased to declare/issue direction & prohibition order not to use any part of the impugned film namely “Mukesh Interview @ India Daughter” for any action and process in any legal and judicial proceedings in any manner. AND

3. Be pleased to allow cost of the writ petition. AND

4. This Hon'ble Court may graciously be pleased to grant such other or further relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to do the complete justice to the petitioner.”

2. Mr. M.L. Sharma, learned counsel appearing on behalf of the petitioner states that the present petition is connected to a public interest litigation which is currently pending before this Hon'ble Court. However, this submission made on behalf of Mr. M.L. Sharma has been opposed by Ms. Nandita Rao, Additional Standing Counsel (Criminal) appearing on behalf of the official respondent.

3. The petitioner has been convicted by the trial Court for the commission of an offence under Sections 365/376(2)g/377/307/395/397/396/412/201/120 IPC along with other co-accused in the case commonly known as 'Nirbhaya's Rape and Murder Case'.

4. The appeal filed on behalf of the petitioner has since been dismissed and the conviction and sentence imposed by the trial Court on the petitioner has been upheld.

5. Mr. M.L. Sharma, counsel appearing on behalf of the petitioner submits that a Special Leave Petition against the judgment and order dismissing his appeal by this Court is pending consideration before the Hon'ble Supreme Court of India.

6. The present petition arises out of the following facts:-

(i) an interview of the petitioner was conducted by one Leslee Udwin/respondent no. 2 at the Tihar Jail, Delhi which was subsequently utilized for the production of a documentary film purportedly titled "Mukesh Interview @ India daughter"

(ii) the above mentioned documentary is stated to have been screened worldwide except in India by the British Broadcasting Corporation, respondent no. 3 herein.

7. According to Mr. M.L. Sharma, counsel appearing on behalf of the petitioner, the aforesaid documentary was screened and exhibited in the teeth and in violation of an order restraining the producers from uploading/transmitting/publishing the aforesaid documentary through any web portal or print or any other media, passed by the learned Duty MM, Patiala House Courts, New Delhi on 3rd March, 2015.

8. A perusal of the status report filed on behalf of the official respondent reveals that pursuant to the interview of the petitioner, wherein the latter is stated to have allegedly made defamatory, offensive and insulting remarks against women, an FIR No. 29/2015 dated 3rd March, 2015 under Sections 504/505(1)(B)/509 IPC read with Section 66A of the Information Technology Act, 2008 was registered by the Police Station Economic Offences Wing, New Delhi. The said order dated 3rd March, 2015 was passed at the instance of the Economic Offences Wing.

9. It is stated by Ms. Nandita Rao, ASC (Criminal) appearing on behalf of the official respondent, on instructions from Inspector J.B. Dharkar, Economic Offences Wing, New Delhi, that investigations in the subject FIR are currently underway.

10. Ms. Nandita Rao, ASC (Criminal) appearing on behalf of the official respondent further states that at this stage, the subject enquiry is focussed on the collection of the permissions obtained by respondent no. 2 which enabled her to conduct the interview of the petitioner within the premises of the Tihar Jail, Delhi.

11. In the above background, Mr. M.L. Sharma, counsel appearing on behalf of the petitioner limits the relief in the present petition to prayer clause (1) and (2).

12. On the contrary, Ms. Nandita Rao, ASC (Criminal) appearing on behalf of the official respondent states that with regard to prayer clause (1), investigation is on-going and all necessary steps in accordance with law shall be taken at an appropriate stage.

13. Insofar as prayer clause (2) is concerned, Ms. Nandita Rao would urge that in view of the order passed by the concerned Magistrate on 3rd March, 2015 at the instance of the Economic Offences Wing, there is no apprehension of the allegedly offensive documentary being exhibited/screened in India.

14. As per the law laid down in *Sakiri Vasu vs. State of U.P.* reported as (2008) 2 SCC 409, the Court held as follows:-

“13. The same view was taken by this Court in *Dilawar Singh vs. State of Delhi* (JT vide para 17). We would further clarify that even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for

ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

14. Section 156(3) states:

“156(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

The words “as abovementioned” obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.PC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide *State of Bihar vs. JAC Saldanha* (SCC: AIR para 19).

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or

implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”

15. In view of the foregoing, I am entirely in agreement with the submissions made on behalf of the Economic Offences Wing that this petition is premature at this stage since the reliefs prayed for on behalf of the petitioner may be raised at an appropriate stage before the concerned Magistrate, before whom the subject FIR is currently pending adjudication.

16. The petition is devoid of any merit and the same is hereby dismissed.

SIDDHARTH MRIDUL, J

AUGUST 28, 2015/sd