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

+ W.P.(C) 6453/2018 & CM APPL. 24840/2018  
GURMEET SINGH ..... Petitioner  
Through: Mr. Gurmeet Singh, Adv.  
with petitioner in person

versus

GOOGLE INC. AND ORS. .... Respondents  
Through: Mr. Arvind K. Nigam, Sr.  
Adv. with Ms. Shrutima, Mr. Mikhil  
Sharda and Mr.Mehtab Singh Sandhu,  
Advs. for R-1  
Mr. Anil Singh, CGSC with Mr. Abhinav  
Tyagi, Adv. for R-3

**CORAM:**  
**HON'BLE THE ACTING CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**  
**ORDER**  
% **01.06.2018**

**CM No.24840/2018 (Exemption)**

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

**W.P.(C) 6453/2018**

3. This writ petition has been filed by the petitioner complaining against hate speech by private persons on the website of Google Inc., Facebook and Youtube.

4. In our view, the issues raised by the petitioner stand covered by the pronouncement in *Pravasi Bhalai Sangathan v. Union of*

**India, (2014) 11 SCC 477.** In para 11 of the pronouncement the Court has detailed the statutes on the subject, which reads as follows:

*“11. Given such disastrous consequences of hate speeches, the Indian legal framework has enacted several statutory provisions dealing with the subject which are referred to as under:*

| <i>Sl. No.</i> | <i>Statute</i>                                                                                             | <i>Provisions</i>                                                  |
|----------------|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| 1.             | <i>Penal Code, 1860</i>                                                                                    | <i>Sections 124-A, 153-A, 153-B, 295-A, 298, 505(1) and 505(2)</i> |
| 2.             | <i>Representation of the People Act, 1951</i>                                                              | <i>Sections 8, 123(3-A) and 125</i>                                |
| 3.             | <i>Information Technology Act, 2000 and Information Technology (Intermediaries Guidelines) Rules, 2011</i> | <i>Sections 66-A, 69 and 69-A Rule 3(2)(b) and Rule 3(2)(i)</i>    |
| 4.             | <i>Code of Criminal Procedure, 1973</i>                                                                    | <i>Sections 95, 107, 144, 151 and 160</i>                          |
| 5.             | <i>Unlawful Activities (Prevention) Act, 1967</i>                                                          | <i>Sections 2(f), 10, 11 and 12</i>                                |
| 6.             | <i>Protection of Civil Rights Act, 1955</i>                                                                | <i>Section 7</i>                                                   |
| 7.             | <i>Religious Institutions (Prevention of Misuse) Act, 1988</i>                                             | <i>Sections 3 and 6</i>                                            |
| 8.             | <i>Cable Television Networks (Regulation) Act, 1995 and the Cable Television Networks Rules, 1994</i>      | <i>Sections 5, 6, 11, 12, 16, 17, 19, 20 and Rules 6 and 7</i>     |
| 9.             | <i>Cinematographers Act, 1952</i>                                                                          | <i>Sections 4, 5-B and 7</i>                                       |

”

5. The Supreme Court of India has discussed at length the remedies which could be available to a person aggrieved by hate speech which have to be resorted to against any person in respect of any such material.

6. So far as the liability of intermediary as the respondents and the countours thereof are concerned, the same has been also considered by the Supreme Court of India as laid down in ***Shreya Singhal v. Union of India, (2015) 5 SCC 1*** which reads as follows:

*“117. Section 79 belongs to Chapter XII of the Act in which intermediaries are exempt from liability if they fulfil the conditions of the section. Section 79 states:*

*“79. Exemption from liability of intermediary in certain cases.—(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.*

*(2) The provisions of sub-section (1) shall apply if—*

*(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or*

*(b) the intermediary does not—*

*(i) initiate the transmission,*

*(ii) select the receiver of the transmission, and*

*(iii) select or modify the information contained in the transmission;*

*(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.*

*(3) The provisions of sub-section (1) shall not apply if—*

*(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;*

*(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.*

*Explanation.—For the purposes of this section, the expression ‘third party information’ means any information dealt with by an intermediary in his capacity as an intermediary.”.*

**118.** *Under the 2011 Rules, by Rule 3 an intermediary has not only to publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary's computer resource but he has also to inform all users of the various matters set out in Rule 3(2). Since Rules 3(2) and 3(4) are important, they are set out hereinbelow:*

*“3. Due diligence to be observed by intermediary.—  
The intermediary shall observe following due  
diligence while discharging his duties, namely—*

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*\**

*(2) Such rules and regulations, terms and conditions  
or user agreement shall inform the users of computer  
resource not to host, display, upload, modify, publish,  
transmit, update or share any information that—*

*(a) belongs to another person and to which the user  
does not have any right to;*

*(b) is grossly harmful, harassing, blasphemous,  
defamatory, obscene, pornographic, paedophilic,  
libellous, invasive of another's privacy, hateful, or  
racially, ethnically objectionable, disparaging,  
relating or encouraging money laundering or  
gambling, or otherwise unlawful in any manner  
whatever;*

*(c) harm minors in any way;*

*(d) infringes any patent, trademark, copyright or other  
proprietary rights;*

*(e) violates any law for the time being in force;*

*(f) deceives or misleads the addressee about the origin  
of such messages or communicates any information  
which is grossly offensive or menacing in nature;*

*(g) impersonate another person;*

*(h) contains software viruses or any other computer  
code, files or programs designed to interrupt, destroy  
or limit the functionality of any computer resource;*

*(i) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation.*

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*(4) The intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through e-mail signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty-six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes.”*

*119. The learned counsel for the petitioners assailed Rules 3(2) and 3(4) on two basic grounds. Firstly, the intermediary is called upon to exercise its own judgment under sub-rule (4) and then disable information that is in contravention of sub-rule (2), when intermediaries by their very definition are only persons who offer a neutral platform through which persons may interact with each other over the internet. Further, no safeguards are provided as in the 2009 Rules made under Section 69-A. Also, for the very reasons that Section 66-A is bad, the petitioners assailed sub-rule (2) of Rule 3 saying that it is vague and over broad and has no relation with the subjects specified under Article 19(2).*

*120. One of the petitioners' counsel also assailed Section 79(3)(b) to the extent that it makes the intermediary exercise its own judgment upon receiving actual knowledge that any information is being used to commit unlawful acts. Further, the expression “unlawful acts” also goes way beyond the specified subjects delineated in Article 19(2).*

*121. It must first be appreciated that Section 79 is an exemption provision. Being an exemption provision, it is closely related to provisions which provide for offences including Section 69-A. We have seen how under Section 69-A blocking can take place only by a reasoned order after complying with several procedural safeguards including a hearing to the originator and intermediary. We have also seen how there are only two ways in which a blocking order can be passed—one by the Designated Officer after complying with the 2009 Rules and the other by the Designated Officer when he has to follow an order passed by a competent court. The intermediary applying its own mind to whether information should or should not be blocked is noticeably absent in Section 69-A read with the 2009 Rules.*

*122. Section 79(3)(b) has to be read down to mean that the intermediary upon receiving actual knowledge that a court order has been passed asking it to expeditiously remove or disable access to certain material must then fail to expeditiously remove or disable access to that material. This is for the reason that otherwise it would be very difficult for intermediaries like Google, Facebook, etc. to act when millions of requests are made and the intermediary is then to judge as to which of such requests are legitimate and which are not. We have been informed that in other countries worldwide this view has gained acceptance, Argentina being in the forefront. Also, the*

*Court order and/or the notification by the appropriate Government or its agency must strictly conform to the subject-matters laid down in Article 19(2). Unlawful acts beyond what is laid down in Article 19(2) obviously cannot form any part of Section 79. With these two caveats, we refrain from striking down Section 79(3)(b)."*

7. In view of the law laid down by the Supreme Court of India, the present writ petition is completely misconceived.

8. Therefore, learned counsel for the petitioner prays for leave to withdraw this writ petition in order to enable him to invoke the appropriate remedies if available in accordance with law.

Accordingly, the writ petition is dismissed as withdrawn with liberty as prayed.

*Dasti.*

**ACTING CHIEF JUSTICE**

**C.HARI SHANKAR, J**

**JUNE 01, 2018**  
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