

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 25<sup>TH</sup> DAY OF APRIL 2023 / 5TH VAISAKHA, 1945

OP(CRL.) NO. 703 OF 2022

AGAINST CRL.MP 814/2022 IN CRL.MP 2478/2021 IN SC 118/2018

OF ADDITIONAL SPECIAL SESSIONS COURT (SPE/CBI)-III,

ERNAKULAM

PETITIONERS:

1 INDO-ASIAN NEWS CHANNEL PVT LTD.  
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,  
MR. M.V. NIKESH KUMAR,  
REPORTER STUDIO COMPLEX,  
HMT COLONY, PIN - 683503

2 M.V. NIKESH KUMAR  
AGED 48 YEARS, S/O. M.V. RAGHAVAN,  
CHIEF EXECUTIVE OFFICER,  
INDO-ASIAN NEWS CHANNEL PVT.LTD  
MELETHU VEEDU, BARNASSERI,  
PAPPINISSERI VILLAGE  
KANNUR, PIN - 683503

BY ADVS.

SRI.KALEESWARAM RAJ

SRI.C.P.UDAYABHANU

SRI.BOBAN PALAT

SRI.NAVANEETH.N.NATH

SRI.P.U.PRATHEESH KUMAR

SRI.P.R.AJAY

SRI.RASSAL JANARDHANAN A.

SRI.ABHISHEK M. KUNNATHU

RESPONDENTS:

1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA,  
ERNAKULAM, PIN - 682031

- 2 P. GOPALAKRISHNAN @ DILEEP  
PADMA SAROVARAM HOUSE,  
KOTTARAKADAVU, ALUVA,  
ERNAKULAM, PIN - 683101
- 3 BAIJU PAULOSE  
DY. S.P., CRIME BRANCH,  
ALAPPUZHA, PIN - 688001
- 4 P. BALACHANDRA KUMAR  
S/O. P.PUSHKARAN,  
MANKALA PADIPURA, MANGOOTTAM,  
THIRUPURAM. P.O.,  
THIRUVANANTHAPURAM, PIN - 695133

BY ADVS.

SRI.PHILIP T.VARGHESE  
SMT.ACHU SUBHA ABRAHAM  
SMT.V.T.LITHA  
SMT.K.R.MONISHA  
SMT.NITYA R.  
SRI.SUJESH MENON V.B.

SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 03.04.2023,  
THE COURT ON 25.04.2023 DELIVERED THE FOLLOWING:

**"C.R."**

**BECHU KURIAN THOMAS, J.**

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**O.P.(Crl.) No.703 of 2022**  
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Dated this the 25<sup>th</sup> day of April, 2023

**JUDGMENT**

Petitioners are persons in control of a Television News Broadcasting Channel by name "Reporter TV". By the impugned order, they have been directed to produce news items, including discussions and interviews broadcasted during the period from 25.12.2021 to 21.10.2022 in connection with the trial of a pending case. The direction was issued pursuant to a petition seeking reference to this Court under section 15(2) of the Contempt of Courts Act, 1971 (for short 'the Act') for initiating contempt proceedings against the petitioners for broadcasting details of the trial, repeatedly.

2. The second respondent is the 8<sup>th</sup> accused in S.C. No.118 of 2018 on the files of the Sessions Court, Ernakulam and is facing an indictment for the offence including rape in the said case. The prosecution alleges that on 17.02.2017, a movie actress in the Malayalam film industry was raped by the first accused. Subsequently, on 10.07.2017, the second

respondent, who himself is a movie actor, was arrayed as the 8<sup>th</sup> accused. The trial of the said case is going on, and a large number of witnesses have already been examined. In the meantime, despite section 327(2) of the Code of Criminal Procedure, 1972 (for short 'Cr.P.C') and the conduct of proceedings *in camera*, details of the case, including scandalous and malicious statements, were allegedly published in the media. Hence the second respondent filed CrI.M.P No.661 of 2020 and by order dated 19.03.2020, the learned Sessions Judge directed that nobody shall print or publish the proceedings in connection with the trial of S.C. No.118 of 2018, except the matters permitted in **Nipun Saxena and Another V. Union of India and Others** [(2019) 2 SCC 703].

3. While so, second respondent again filed CrI.M.P No.2478 of 2021 on 30.12.2021 seeking a reference to the High Court under section 15(2) of the Act for initiating contempt proceedings against the petitioners herein. It was alleged that, from 25.12.2021 onwards, the petitioners, who are in charge of the television news channel called 'Reporter TV', indulged in broadcasting false, fabricated and misleading matters relating to the trial with a view to cause prejudice against the court and even the judicial system and in an orchestrated attempt to derail the trial of the case. According to the second respondent, despite the trial being conducted as *in camera*, the TV news channel carried on false propaganda in clear

violation of the expressed statutory prohibition causing not only a media trial but also great prejudice to the court and the parties involved. The content of the programme telecasted on 25.12.2021 was produced as a DVD, pointing out that the conversation broadcasted on the said date was a blatant interference in the subject matter of the litigation. It was also contended that the broadcast was made with the expressed knowledge that the Sessions Case was directed to be conducted *in camera*. It was further alleged that a parallel trial was being conducted by the petitioners herein through the TV channel, with sinister motives and designs

4. A detailed counter affidavit was filed by the petitioners, denying the allegations. It was stated that the restriction under section 327(2) Cr.P.C exists only in reporting transactions that happen inside the court hall and form part of the enquiry and trial only and that when persons come forward and disclose shocking things through the TV channel, such statements cannot be attributed as contemptuous.

5. While the aforesaid petition was pending consideration, another petition was filed by the second respondent as CrI.M.P No.689/22 in CrI.M.P No.2478 of 2021 for accepting a pen-drive as evidence of various channel discussions and interviews conducted on several days by the petitioners herein.

6. The aforesaid petition was also objected to by the petitioners

contending that the pen-drive produced contained portions of interviews and news-hour clippings, which are only short clippings of conversations that cannot convey a complete picture of the context in which those conversations were broadcasted. Petitioners thus requested for rejection of the petition to accept the pen-drive.

7. However, the learned Sessions Judge taking note of the nature of objections against acceptance of the pen-drive and the materials required for the enquiry, directed the petitioners to produce the interviews and channel discussions relating to S.C. No.118 of 2018 broadcasted from 25.12.2021 till 21.10.2022.

8. While assailing the impugned order Sri. Kaleeswaram Raj, learned counsel for the petitioners, contended that as per the proviso to section 10 of the Act when criminal cases are pending, the court is precluded from raising the same issue as contempt of court. It was further contended that the second respondent had no locus standi to maintain a petition as he was a third party against whom no right could be sought to be enforced. The learned Counsel also argued that by the impugned order, the court was compelling the petitioners to provide pieces of evidence which could be self-incriminatory and by virtue of the provisions of Article 20(3) of the Constitution of India, they are protected, and hence the direction was without authority. The last contention urged on behalf of

the petitioners was that what was sought by the second respondent were only matters telecasted from 25.12.2022 to 05.04.2022, but the court directed the production of materials broadcasted till 21.10.2022 and therefore, the court had acted beyond what was sought for.

9. Sri. Philip T. Varghese, learned counsel for the second respondent, contended that the impugned order could not be subjected to a challenge, that too under Article 227 of the Constitution of India since it was only a step in the enquiry. The learned counsel further submitted that the proviso to section 10 of the Act would not apply, as evidenced by various decisions of the Supreme Court and therefore registration of an FIR does not bar initiation of contempt of court proceedings. The learned counsel also argued that Article 20(3) would not apply in the course of criminal proceedings, especially while gathering information for producing it before the court and also that the direction to produce the materials arose only because petitioners themselves had objected to the pen-drive produced. It was further submitted that since petitioners themselves were in possession of the original contents, which were already available in the public media, no prejudice will be caused by such production.

10. I have heard Sri. Vipin Narayan learned Public Prosecutor also and considered the rival contentions.

11. The learned Sessions Judge is in the process of considering an

application whether a reference to the High Court under section 15(2) of the Act must be made or not. In the process of enquiry, certain materials have been directed to be produced by the impugned order. The materials are apparently available in the public domain as they relate to interviews broadcasted by the first petitioner's TV News Channel. Evidently, five FIRs dated 28.01.2022 have already been registered against the petitioners as FIR No.3/22, FIR No.6/22, FIR No.4/22, FIR No.5/22 and FIR No.2/22. All these FIRs have been registered alleging that petitioners had, without the permission of the Additional Special Sessions Court (SPE/CBI), Ernakulam, in S.C. No.118 of 2018, with intent to reveal the details of the trial, conducted discussions and broadcasted the same through the Reporter TV channel, social media, YouTube and internet and committed the offence under section 228A(3) of the IPC.

12. To appreciate the contention on behalf of the petitioners that once FIR's have been registered, a further contempt action cannot be initiated, it is necessary to extract section 10 of the Act, which deals with the power of the High Court to punish for contempt of subordinate courts.

The provision reads as below:

***"10. Power of High Court to punish contempts of subordinate courts.- Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself:***



*Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860) “*

13. Though the contention based upon the proviso to section 10 of the Act was impressive on first blush, such an interpretation cannot be accepted as that would defeat the very purpose of the statute itself. The proviso to S.10 of the Act can apply only in cases where the acts alleged as contempt are punishable as contempt itself under the specific provisions of the Indian Penal Code, 1860 (for short ‘the IPC’). Merely because the acts alleged as contempt, also satisfy the description of other offences under the penal code, that by itself would not exclude the applicability of the contempt jurisdiction.

14. In the decision in **Bathina Ramakrishna Reddy v. State of Madras** (AIR 1952 SC 149), an identical contention was raised and rejected by the Constitution Bench of the Supreme Court with reference to the erstwhile Contempt of Courts Act, 1926. Thereafter, the issue came up once again for consideration in **State of M.P. v. Revashankar** (AIR 1959 SC 102). Again in **Daroga Singh and Others v. B.K.Pandey** [(2004) 5 SCC 26] also, the question was dealt with. After referring to all the earlier decisions, it was observed that the proviso to S.10 of the Act must be interpreted to exclude “*only in cases where the acts alleged to constitute*

*contempt are punishable as contempt under specific provisions of the Indian Penal Code, but not where these acts merely amount to offences of other description for which punishment has been provided in the Indian Penal Code.”*

15. The offence alleged in the five FIR's is section 228A of IPC. The said provision penalises persons printing or publishing the name or anything which reveals the identity of the victim in a trial relating to rape without permission of the court. Section 228A creates an offence under the IPC not as contempt but as a separate penal provision. Though petitioners are being proceeded against under section 228A of the IPC, that by itself would not attract the proviso to section 10 of the Act. Thus, petitioners cannot take the benefit of the proviso to section 10 of the Act for excluding them from being proceeded against in contempt. Viewed in the above perspective, the main contention urged by the petitioners that they are protected by the proviso to section 10 of the Act is not at all tenable and has no merit in it.

16. The next contention urged was based on Article 20(3) of the Constitution, which protects an accused from self-incrimination. The provision reads that 'no person accused of any offence shall be compelled to be a witness against himself'. The provision requires three main ingredients to be satisfied, and they are (i) he must be accused of an

offence, (ii) that he must be compelled to be a witness and (iii) that compulsion must be to be a witness against himself.

17. The purpose of the statute directing trial of certain categories of cases to be held *in camera* has a salutary objective. No person, including the press, can report what transpires inside the court or discuss or publish the statement of witnesses or even disclose the evidence in cases that are being tried *in camera*. When allegations are raised about publishing details of a trial of an *in camera* proceedings, it is essential, in public interest, as well for the court, to ascertain details of the matter published or telecasted. In the process of ascertaining or verifying the details, the petitioners who are not even named as accused, cannot claim the privilege of the doctrine against self-incrimination. Further, in the instant case, all that has been directed to be produced are materials that are already in public domain and a part of which are already produced in court in a pen-drive. Since the contents of the pen-drive were objected to by the petitioners stating that they were only piecemeal production, the Court directed the production of the materials for comparison to arrive at a conclusion regarding the veracity of the materials produced by the second respondent. By no stretch of imagination can the direction be termed as compelling the petitioners to be a witness against themselves.

18. In this context, it is apposite to bear in mind the decision in

**Ritesh Sinha v. State of Uttar Pradesh and Another** [(2019) 8 SCC 1], wherein the Supreme Court held that, directing an accused to give a voice sample during the process of investigation for comparison, would not fall within the vice of Article 20(3) as they are only materials for comparison in order to lend assurance to the court on the inference based on the other pieces of evidence. Thus the contention based on the doctrine against self-incrimination is rejected.

19. The argument based on the absence of locus standi of the second respondent cannot also be of any avail to the petitioners. The second respondent has only brought certain instances to the knowledge of the court for the purpose of informing that contempt of court has taken place. Even if the second respondent is an accused in the crime, that does not restrain him from bringing to the notice of the court instances, which can amount to contempt. Even if the process of enquiry is triggered by an accused, ultimately, it is for the court to arrive at a conclusion as to whether any contempt has occurred. Therefore the said contention also is without any merit.

20. In this context it is appropriate to mention that a reading of the impugned order reveals that the court has not arrived at a conclusion to take contempt of court proceedings against the petitioners. The court has only directed the petitioners to produce materials that were allegedly

broadcasted during a particular period to enable it to arrive at a conclusion as to whether any contempt has been committed or not. The period from 25.12.2021 till 21.10.2022 is also within the discretion of the court. Even though the petitioners alleged contempt of court only for the period till 05.04.2022, the same does not restrain the court from seeking production of documents relating to the broadcast of the alleged contemptuous matter till 21.10.2022.

21. Viewed in the above perspective, I find that the challenge raised by the petitioners is without any merit. The impugned order merely directs the petitioners to produce matters that are already in the public domain and hence the order cannot cause any prejudice also.

Therefore there is no merit in this original petition, and it is dismissed.

Sd/-

**BECHU KURIAN THOMAS**  
**JUDGE**

vps

APPENDIX OF OP (CRL.) 703/2022

PETITIONER' S/S' EXHIBITS

- Exhibit P1 TRUE COPY OF CRL.M.P 2478A/2021 IN SC NO.118/2018 DATED 30/12/2021 WITH NOTICE
- Exhibit P2 TRUE COPY OF THE ORDER IN CRL.M.P 661/2020 DATED 19.03.2020 PASSED BY THE HON'BLE TRIAL COURT.
- Exhibit P3 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS HEREIN IN CRL.M.P. 2478A/2022 DATED 28/01/2022
- Exhibit P4 TRUE COPY OF THE ORDER DATED 18/01/2022 PASSED BY THIS HON'BLE COURT IN O.P (CRL.) 23/2022.
- Exhibit P5 TRUE COPY OF THE FIRST INFORMATION REPORTS DATED 28.01.2022 IN CRIME NO.03/2022.
- Exhibit P5(a) TRUE COPY OF THE FIRST INFORMATION REPORT DATED 28.01.2022 IN CRIME NO.06/2022
- Exhibit P5(b) TRUE COPY OF THE FIRST INFORMATION REPORT DATED 28.01.2022 IN CRIME NO.04/2022
- Exhibit P5(c) TRUE COPY OF THE FIRST INFORMATION REPORT DATED 28.01.2022 IN CRIME NO.05/2022
- Exhibit P5(d) TRUE COPY OF THE FIRST INFORMATION REPORT DATED 28.01.2022 IN CRIME NO.02/2022
- Exhibit P6 TRUE COPY OF CRL.M.P. 689/2022 IN CRL.M.P 2478A/ 2021
- Exhibit P7 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS HEREIN IN THE ABOVE CRL.M.P DATED 12/04/2022

- Exhibit P8 TRUE COPY OF CRL.M.P. 814/2022 IN  
CRL.M.P 2478A/ 2021 DATED 05/04/2022
- Exhibit P9 TRUE COPY OF THE ADDITIONAL COUNTER  
AFFIDAVIT FILED BY THE RESPONDENTS 4 & 5  
HEREIN IN THE ABOVE CRL.M.P 814/2022  
DATED 12/05/2022
- Exhibit P10 TRUE CERTIFIED COPY OF THE ORDER PASSED  
BY THE HON'BLE DISTRICT AND SESSIONS  
COURT, ERNAKULAM IN CRL.M.P. 814/2022 IN  
CRL.M.P 2478A/ 2021 DATED 28/11/2022
- Exhibit P11 TRUE COPY OF THE PROCEEDINGS IN THE  
CRL.M.P 814/2022 IN CRL.M.P 2478A/ 2021  
DATED 09/12/2022.