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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE/ORIGINAL/INHERENT JURISDICTION

DR. DHANANJAYA Y. CHANDRACHUD; CJI., PAMIDIGHANTAM SRI NARASIMHA; J., MANOJ MISRA; J.

Criminal Appeal No 1255 of 1999; September 13, 2023

People's Union for Civil Liberties & Anr. versus The State of Maharashtra & Ors.

Media Trial - Propriety and procedure of media briefings by police personnel - The Supreme Court directed the Union Ministry of Home Affairs to prepare a comprehensive manual on media briefings by police personnel within a period of three months. Also directed Director Generals of Police (DGPs) of all states to submit their suggestions for the manual. The input of the National Human Rights Commission (NHRC) be considered in this matter. (Para 18 – 20)

Media Trial - Unfair reporting by the media has the potential to affect public opinion and impinge upon the presumption of innocence which is one of the cardinal principles of criminal jurisprudence. (Para 7)

WITH Criminal Appeal No 1256 of 1999 Criminal Appeal No 1367 of 1999 Contempt Petition (Civil) No 47 of 2011 in Writ Petition (C) No 316 of 2008 TC (C) No 27 of 2011 Writ Petition (Civil) No 316 of 2008

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ORDER

- 1 This batch of cases raises two significant issues:
 - (i) The procedure to be followed by the police in investigating police encounters; and
 - (ii) The propriety and procedure of media briefings by police personnel.
- 2 The first issue, governing police encounters, has since been dealt with in the judgment of this Court dated 23 September 2014 in **People's Union for Civil Liberties v State of Maharashtra**¹.
- 3 The second issue pertains to the modalities to be followed by the police in conducting media briefings where a criminal investigation for an alleged offence is in progress. The issue assumes significance, particularly, in the context of the manner in which media reportage takes place, particularly in crimes involving a degree of public interest.
- 4 Having regard to the ramifications of the issues involved, the Court appointed Mr Gopal Sankaranarayanan, senior counsel, as *Amicus Curiae*.
- 5 A questionnaire was circulated by the *Amicus Curiae* in order to elicit information from the States and Union Territories. Several States, including the States of Bihar, Goa, Haryana, Jharkhand, Rajasthan, Tamil Nadu and Uttarakhand have responded, besides the Administrations of Andaman and Nicobar Islands, Chandigarh and Puducherry. Observations have been submitted by the People's Union for Civil Liberties, one of the appellants in the batch of cases. Other States, including the States of Assam, Chhattisgarh, Himachal Pradesh and Madhya Pradesh have served copies of the replies filed by them in a connected petition².
- 6 Media reporting on matters involving the commission of crimes involves several aspects bearing on public interest. At a basic level, the fundamental right to free speech and expression is directly implicated. This engages the right of the media to disseminate news, views and information and the right of the viewing public or readers of printed news. There can be no gainsaying the fact that both the media in pursuance of its fundamental right to the freedom of speech and expression as well as the consumers of news, information and ideas have a right to disseminate and to receive fair and unbiased information. Criminal offences and investigation into them by the law enforcement machinery involves significant elements of public interest bearing upon the right to be informed and the right to know.
- 7 At the same time, there are competing considerations which are also of immense significance. At one level, the accused whose conduct is under investigation is entitled to a fair and unbiased investigation by the police. Unfair reporting by the media has the potential to affect public opinion and impinge upon the presumption of innocence which is one of the cardinal principles of criminal jurisprudence. At the stage of the investigation and even trial, every accused is entitled to the presumption of innocence. Media reportage in a manner which implicates the culpability of the person who is under investigation is liable to seriously impinge upon the reputation and personal dignity of the individual under investigation. Biased reporting also gives rise to public suspicion that the person under investigation has committed the offence though the complicity of the accused is yet to be

¹ (2014) 10 SCC 635

² Surat Singh v Union of India (Writ Petition (C) No 316 of 2008)

investigated and, if a charge-sheet is submitted to be subjected to the administration of criminal justice in accordance with law.

8 At another level, media reportage also impinges upon the right of victims or, as the case may be, survivors of crimes. In a given case, the victim may be a minor. In some cases, the nature of the crime may involve the privacy of the victim, in cases such as those involving gender violence. The publication of photographs and visuals of the bodies of deceased victims of crime affects the very notion of preserving the dignity in death.

9 While a disclosure by the media of relevant details involves public interest associated with the fundamental right under Article 19(1)(a) of the Constitution, equally, the rights of the accused and of the victims or, as the case may be, survivors of crimes have a direct bearing on the fundamental right to life and personal liberty which is protected by Article 21.

10 At this stage, it would be material to note the provisions of the Explanation to Section 3 of the Contempt of Courts Act 1971, which reads as follows:

“Explanation.—For the purposes of this section, a judicial proceeding—

(a) is said to be pending—

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898)¹, or any other law—

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.”

11 The manner in which the Explanation has been incorporated may expose a person to a charge of contempt for reporting on a criminal proceeding only after the charge-sheet has been filed or, as the case may be, cognizance taken or summons/warrant issued. The two hundredth Report of the Law Commission chaired by Justice M Jagannadha Rao, a former Judge of this Court, noted the background of the provision as it arose upon the report of the Bhargava Committee under the auspices of a Joint Committee of Parliament. The *Amicus Curiae* has adverted to the fact that the report of the Bhargava Committee did not take notice of the decision in **A K Gopalan v Noordeen**³ which treated the arrest of an accused as the point of commencement for taking cognizance of criminal contempt. The Law Commission in these circumstances made recommendations for remedying the situation.

12 The ambit of these proceedings is confined to the pre-trial stage where the investigation has been initiated and is continuing. The *Amicus Curiae* submitted that any disclosure by the police about an investigation must be cognizant of the fact that the

³ (1969) 2 SCC 734

information as disclosed impacts not only upon the victim of the crime and the accused, but on the rule of law. In its decision in **Sahara India Real Estate Corporation Limited v Securities and Exchange Board of India**⁴, this Court underscored the need to maintain the balance between the right of the accused under Article 21 and the right of the media/public under Article 19(1)(a).

13 During the course of the submissions, the issues which have been raised by the *Amicus Curiae* in the written note of submissions are as follows:

- “1. Who can brief the media?
2. At what stage is the briefing done?
3. How much information is to be shared at each stage?
4. What information cannot be shared?
5. Is the information to be shared or conveyed verbally or in writing?
6. What safeguards to be followed (no names of victims, no photos of accused who have to stand Test Identification Parade, no opinions/judgments, no disclosure of line of investigation or technical knowhow, no information in National Security issues)
7. Whether copies of Press Releases are maintained by the police department?
8. Disciplinary action against officers who do not abide by instructions.”

14 A painstaking exercise has been conducted by the *Amicus Curiae* in preparing a compilation containing:

- (i) The Media Relations Handbook of the Los Angeles Police Department;
- (ii) The Press Relations Notice of the New York Police Department;
- (iii) The Communication’s Advisory of the Association of Chief Police Officers, UK;
- (iv) The Standard Operating Procedure issued by the Metropolitan Police, London in regard to Media Relations in June 2012;
- (v) The Dorset Police’s Media Relations Guidelines;
- (vi) The instructions prepared by the Central Bureau of Investigation more specifically in paragraphs 24.9 to 24.31 of the CBI Manual titled “Policy Division”; and
- (vii) The Office Memorandum dated 1 April 2010 issued by the Union Ministry of Home Affairs which contains an advisory on the media policy of the police.

15 At this stage, it would be material to note that among the statutory provisions, the following have a broad bearing on the issues which are raised in the course of the proceedings:

- Section 228-A of the Indian Penal Code, 1860
- Section 327 of the Criminal Procedure Code, 1973
- Section 74 of the Juvenile Justice Act, 2015 (earlier Section 21 of the Juvenile Justice Act, 2000)
- Sections 8(1)(g) & (h) and 8(2) of the Right to Information Act, 2005

⁴ (2012) 10 SCC 603

16 The *Amicus Curiae* has prepared the following suggestions on the basis of which appropriate guidelines can be formulated for conducting media briefings:

- “1. Each district or town ought to have a Media Briefing Cell (MBC) for interactions with the media. Such interaction / Press Releases must be in writing and with the authorization of a senior police officer. Press Briefs must be prepared on each case, which will be the basis of any media briefings.
2. The briefing of the press can be done at any stage after an FIR has been registered, an arrest effected or a raid conducted. However, at the earliest stages, very little information must be parted with, as facts would need full and complete confirmation.
3. Notwithstanding anything else, the primary concern of the police ought to be the fair administration of justice without compromising on individual rights of privacy or of presumption of innocence.
4. Information ought not to be released which would portray the police as insensitive or vindictive or which would suggest the pre-judging of an issue.
5. The location of the offence, especially in the context of harassment, domestic violence, stalking etc., ought to be avoided as it would compromise the victim.
6. In no circumstances may the identity of victims of sexual offences and juvenile cases be divulged by the police. The same may apply to the victims of continuing offences, i.e. abductions and kidnapping. The police would also be careful to share details of ongoing operations or investigative strategy that would alert the offenders or compromise witnesses confidential informants.
7. The Press Briefs will be maintained as permanent records of the media interactions of the police, with one copy at the Police Station in question, one at the MBC and one at the District Headquarters. All such briefs will be provided online as well.
8. Any breach of the above Guidelines must be strictly dealt with departmentally, so that any such misadventure may be deterred.”

17 The guidelines of the Union Ministry of Home Affairs were prepared over a decade ago on 1 April 2010. Since then, with the upsurge in the reporting of crime not only in the print media, but in the electronic and social media, it becomes extremely important that there should be a Standard Operating Procedure which balances out the considerations which we have noted above. There can be no denying the fact that the disclosure of an official version of the investigation would ensure against speculative crime reporting, which may be of a dis-service both to the public interest involved and the interest of the accused, prospective witnesses as well as the victims and survivors of crime. There is, in that sense, a need to have a uniform policy which can be adopted for nominating nodal officers who would be available to share the official version at the stage of investigation, consistent with the need to ensure that the disclosure itself does not derail the course of the investigation. The nature of the disclosure cannot be uniform since it must depend upon the nature of the crime and the profile of the stake holders, including victims, witnesses and the accused themselves. The age and gender of the accused as well as of the victims would have a significant bearing on the nature of the disclosure to be made. It is equally important to emphasise that the nature of the disclosure which is made by the police in the course of media briefings should be objective in nature and should not consist of a subjective opinion pre-judging the guilt of the accused. The guidelines must duly factor in the need to ensure that the disclosure does not result in a media trial so as to allow for the pre-judging of the guilt of the accused. Media trials are liable to result in a derailment

of justice by impacting upon the evidence which would be adduced and its assessment by the adjudicating authorities.

18 Bearing in mind the above aspects, we are of the view that the Union Ministry of Home Affairs should prepare a comprehensive manual on media briefings by police personnel. Some of the considerations which would weigh in balancing various issues of public interest while the framing of guidelines have been flagged in the earlier part of this order as well as in the questionnaire and the guidelines which have been prepared by the Amicus Curiae. The Amicus Curiae has collated, for the purposes of formulation, the practices which have been followed by police departments in other jurisdictions and by the Central Bureau of Investigation and Union Ministry of Home Affairs in India.

19 We direct that all the Directors General of Police shall, within a period of one month from the date of this order, communicate to the Union Ministry of Home Affairs their suggestions for the preparation of appropriate guidelines. Thereafter, the Union Ministry of Home Affairs shall proceed to prepare the guidelines after considering the views which have been received from the Directors General of Police and after consulting other stake holders including representative segments of the print and electronic media who may have suggestions on the issue. Organisations representing the print and electronic media should also be consulted.

20 The National Human Rights Commission which has been represented by Ms Shobha Gupta, counsel, has also prepared its response to the questionnaire which was circulated by the *Amicus Curiae*. The view point of the National Human Rights Commission shall also be duly taken into consideration.

21 This exercise shall be completed by the Union Ministry of Home Affairs by 31 December 2023.

22 The Union Ministry of Home Affairs shall furnish a copy of the guidelines to the *Amicus Curiae*, Mr Gopal Sankaranarayanan, and to Ms Shobha Gupta, counsel for the National Human Rights Commission.

23 List the proceedings in the second week of January 2024.

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