

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

**CRIMINAL WRIT PETITION NO.663 OF 2021
WITH
INTERIM APPLICATION NO.525 OF 2021**

ARG Outlier Media Private Limited & another ... Applicants/
Petitioners

Vs.

State of Maharashtra & others ... Respondents

**WITH
INTERIM APPLICATION NO.524 OF 2021
IN
CRIMINAL WRIT PETITION NO.663 OF 2021**

ARG Outlier Media Private Limited & another ... Applicants/
Petitioners

Vs.

State of Maharashtra & others ... Respondents

**WITH
INTERIM APPLICATION NO.523 OF 2021
IN
CRIMINAL WRIT PETITION NO.663 OF 2021**

ARG Outlier Media Private Limited & another ... Applicants/
Petitioners

Vs.

State of Maharashtra & others ... Respondents

**WITH
INTERIM APPLICATION NO.522 OF 2021
IN
CRIMINAL WRIT PETITION NO.663 OF 2021**

ARG Outlier Media Private Limited & another

... Applicants/
Petitioners

Vs.

State of Maharashtra & others

... Respondents

WITH
INTERIM APPLICATION NO.521 OF 2021
IN
CRIMINAL WRIT PETITION NO.663 OF 2021

ARG Outlier Media Private Limited & another

... Applicants/
Petitioners

Vs.

State of Maharashtra & others

... Respondents

WITH
INTERIM APPLICATION NO.261 OF 2021
IN
CRIMINAL WRIT PETITION NO.663 OF 2021

Umesh Chandrakant Mishra

... Applicant

IN THE MATTER BETWEEN:

ARG Outlier Media Private Limited & another

... Petitioners

Vs.

State of Maharashtra & others

... Respondents

Mr.Ashok Mundargi, Senior Advocate with Mr. Niranjan Mundargi, Mr. Zoeb Cutlerywala, Mr. Vikram Kamath, Mr. Pinak Bhagwat i/by. Phonix Legal for Petitioner and Applicant in IA Nos. 521/2021, 522/2021, 523/2021, 524/2021.

Mr. Gaurav Borse and Ms. Dhinika Shah for Applicant/Intervener in IA No. 261/2021.

Mr. Anil C. Singh, ASG a/w. Mr. Aditya Thakkar, Mr. D.P. Singh for UOI.

Mr. Deepak Thakre, PP a/w. Mr. Prakash Shah, Mr. Ankur Pahade, M and Mr. Vijendra Mishra for Respondent-State.

**CORAM: S.S. SHINDE &
MANISH PITALE, JJ.**

DATED: 24th MARCH, 2021

PC.:

1. Heard Mr. Ashok Mundargi, learned Senior Advocate appearing for the petitioners. It is vehemently submitted on behalf of the petitioners that the FIR registered in the present case bearing CR No. 143 of 2020 dated 6th October 2020, registered at Kandivali Police Station, under Sections 409, 420, 120-B and 34 of the Indian Penal Code, 1860 and the investigation undertaken in pursuance of the same, is a wholly malafide action on the part of the respondents, in so far as the petitioners before this Court are concerned.

2. It is further submitted that the petitioners have not been named as accused in the said FIR and yet in the chargesheets filed in pursuance of the investigation, the petitioners have been categorized as 'suspects', which is a term unknown to criminal jurisprudence and finds no mention in the Cr.PC. The whole purpose of the exercise undertaken by the respondents is to keep the petitioners on tenterhooks and to harass them by keeping alive

threat of coercive action against them, even when they have not been named as accused in the said FIR or the chargesheets.

3. The FIR is based on a complaint allegedly lodged by the complainant claiming that bribes were given to certain individuals in whose houses barometers had been installed for ascertaining the time duration for which various channels were watched. The allegation is that such bribes were given so as to increase Television Rating Points (TRP) of certain channels and that the accused were involved in this exercise. The learned Senior Advocate has placed much stress on the press conference held by the Respondent No. 4- Commissioner of Police, Mumbai on 08.10.2020, wherein channel run by the petitioners was specifically named as being allegedly involved in the aforesaid TRP scam. It is submitted that neither in the complaint nor in the material that has come on record on the basis of investigation carried out till today and even after filing two chargesheets, there is anything to link the petitioners with the alleged TRP scam. On this basis, it is submitted that whole exercise carried out by the respondents, in so far petitioners are concerned is malafide and unsustainable, particularly when the respondent-state and its officers claim that further investigation is underway.

4. Mr. Mundargi, learned Senior Advocate has invited attention of this Court specifically to a clause in the chargesheet which reads as follows:-

“Clause 12. Particulars of accused persons-not charge-sheeted (suspect)

आरोपीपत्र न ठेवलेल्या आरोपींचा तपशील (संशयित)

(I) *Name.....Whether Verified

नाव: रिपब्लिक टी.व्ही. चॅनल्सचे पडताळलेले किंवा काय

मालक / चालक

आणि/अथवा त्यांचे

संबंधित व्यक्ती”

It is highlighted that the said clause pertaining to “suspects” which translates as owner/managers of Republic TV channel and/or persons associated with it, is a clause which gives a very wide scope for the respondents to continue to harass the petitioners, even when there is not even an iota of material against them till today. It is further submitted by Mr. Mundargi, learned Senior Advocate that according to the respondents, investigation has been undertaken and it continues till today from 06.10.2020 and evidently there is no material yet found against the petitioners. On this basis, it is submitted that the purpose of putting such a clause in the chargesheet appears to be to continue to harass the petitioners with such open ended investigation, which does not seem to be culminating towards finality, despite filing of two chargesheets. On this basis, it is submitted that significant questions arise for consideration in the present writ petition before this Court and that therefore, interim relief deserves to be granted during the pendency of this writ petition.

5. We have considered the aforesaid contentions raised on behalf of Petitioners and we have heard Mr. Mundargi, learned Senior Advocate appearing for petitioners and Mr. Deepak Thakre, learned PP appearing for Respondent-State. On a specific query put to Mr. Thakre, learned PP, as to whether the Respondent-State desires to continue further investigation into the matter, it is submitted that further investigation is indeed contemplated. It is also submitted that as on today the petitioners are not arraigned as accused in respect of aforesaid FIR. Since, the investigating officer states that further investigation is to be undertaken in the matter, we are of the opinion that the present petition deserves to be admitted and Rule needs to be granted on the following questions that arise for consideration:

1. Whether the prayers made on behalf of the petitioners for quashing the aforesaid FIR can be entertained by this Court, in the absence of petitioners being arraigned as accused in respect of the said FIR?
2. In the absence of Petitioners being named as accused in respect of aforesaid FIR, whether the petition can be entertained for the prayers made on behalf of petitioners pertaining transfer of investigation to the Central Bureau of Investigation and direction not to take any coercive steps against the petitioners, as also their employees and agents in connection with the said FIR?

3. Whether the respondents can be permitted to keep sword of investigation hanging over the heads of petitioners for indefinite period without petitioners being arraigned as accused in respect of the said FIR?

4. Whether the Investigation Officer can continue the investigation by invoking said widely worded clause in the chargesheet which reads as follows-

“Clause 12. Particulars of accused persons-not charge-sheeted (suspect)

आरोपीपत्र न ठेवलेल्या आरोपींचा तपशील (संशयीत)

(I) *Name.....Whether Verified

नाव: रिपब्लिक टी.व्ही. चॅनल्सचे पडताळलेले किंवा काय

मालक/ चालक

आणि/ अथवा त्यांचे

संबंधित व्यक्ती”

(The said clause pertaining to “suspects” is translated as

“owner/managers of Republic TV channel and/or persons associates with it”).

5. Whether the prayers made in the writ petition can be entertained only on the ground of serious malafide alleged against the respondents, when the petitioners are admittedly not arraigned as accused in respect of said FIR?

6. We propose to admit the present petition on the aforesaid questions of law.

7. Hence,

“Rule”.

Rule peremptorily returnable on **28th June 2021 at 2.30 p.m.**

8. On Rule Mr. Deepak Thakre, waives service of notice on behalf of Respondent Nos. 1 to 4.

9. Mr. D.P. Singh waives service of notice on behalf of Respondent No. 6.

10. In addition to service of notice through Court, the Petitioners shall serve a private notice by Registered Post A.D. and/or by Courier service and/or by hand delivery or by e-mail/fax on the Respondent No. 5 and shall file affidavit of service with tangible proof before the returnable date.

11. On the question of interim relief, Mr. Mundargi, learned Senior Advocate appearing for the petitioners reiterated the above mentioned contentions pertaining to the aspect of serious malafide against the respondents. He further submitted that there is real apprehension of Petitioner No. 2 regarding coercive action likely to be taken against him by the respondents, in view of past action of respondents in so far as the said petitioner is concerned. It was emphasized that the respondent-State had caused arrest of Petitioner No. 2 in respect of an earlier case pertaining to suicide of one Mr. Anvay Naik, even after competent Court i.e. the Court of

Chief Judicial Magistrate, Raigad-Alibaud had closed the case by order dated 16.04.2019, on the basis of closure report filed by the investigating officer. It was submitted that said closed case was subsequently reopened, without seeking leave of the Court and the Petitioner No. 2 was picked up and arrested. He has eventually released by the order of the Hon'ble Supreme Court in that regard. According to the learned Senior Advocate appearing for the Petitioners, the Respondent-State is acting in a most malafide manner and it is for this reason that without naming the petitioners as accused they are likely to be harassed in respect of FIR, which is subject matter of challenge in this petition. On this basis, it is submitted that urgent interim relief is necessary, particularly when throughout the pendency of the present writ petition, till date the statement made on behalf of Respondent-State about no coercive action has been in operation.

12. Mr. Deepak Thakre, learned PP appearing for Respondent-State strongly opposed grant of interim relief in the present case on the ground that further investigation is being undertaken in the matter. It is submitted that the Petitioner No. 2 cannot claim any special status and he must face the investigation and it is within the domain of investigating officer to take further necessary steps during the course of investigation including effecting arrest, if necessary.

13. We have considered rival submissions on the question of grant of interim relief. At the initial stage when this petition was taken up for consideration, on 19.10.2020, Mr. Harish Salve, learned Senior Advocate appearing for Petitioners on instructions had made a statement that in case summons are received by the Petitioner No. 2, he will appear in response to such summons and co-operate with the inquiry/investigation before the concerned police officer. The said statement was accepted by this Court. Thereafter, in the order dated 15.12.2020, Mr. Deepak Thakre, learned PP appearing for Respondent-State and its officials on instructions made a statement that no coercive action/steps would be taken against the persons referred to in Clause 12 of running page 21 of the chargesheet, which is quoted above in this order and the said statement was continued on various dates of listing of the present petition and it has continued till date.

14. Mr. Mundargi, learned Senior Advocate, appearing for the Petitioners invites our attention to the judgment of this Court in the case of *Gyanchand Verms Vs. Sudhakar B. Pujari (2011 SCC OnLine Bom 100)*, and third judge reference in the same matter reported in 2011 (6) Mh.L.J. 904, wherein it has been held that under the Cr.PC. there is no such concept as “suspect” and that investigation and proceedings can be undertaken only against accused persons. The relevant portion of the said judgment reads as follows:-

“30. A priori, I have no hesitation in taking the view that column 12 provided in Form I.I.F-V of Final Report Form, as prescribed by the State Government in terms of Notification dated 18th March 1997 or in the circular issued by the Director (SR), Government of India, Ministry of Home Affairs, dated September 21, 2005, is opposed to Criminal Jurisprudence; and retaining thereof in the police report submitted to the Court against the petitioner has the inevitable effect of violating his fundamental right guaranteed to him under Article 21 of the Constitution of India. Accordingly, the name of the Petitioner mentioned in supplementary police report/charge-sheet No. 6 and onwards up to the Final Police Report/charge-sheet as suspect accused will have to be effaced from the record. ”

15. In view of aforesaid exposition of law in the majority opinion of (A.M. Khanwilkar & V.M. Kanade, JJ.), the prosecution agency cannot invoke clause 12 in the chargesheet for taking coercive action against the petitioners. Accordingly, the investigating agency cannot take coercive action against the petitioners relying upon the aforesaid clause 12 of the chargesheet.

16. There can be no doubt about the fact that the investigating agency can continue with further investigation as per the statement made by Mr. Thakre, learned PP appearing for Respondent-State. At this stage, Mr. Thakre, learned PP on instructions made a statement that investigation would be completed qua the petitioners within 12 weeks from today. The

statement is accepted. But, at the same time, the petitioners in the peculiar facts and circumstances of the present case, need to be granted limited protection during the pendency of this petition.

17. Accordingly, we direct that in case the investigating officer desires to summon the Petitioner No. 2 for inquiry/investigation, he shall give clear notice of 3 days (excluding holidays) to him. In case, such notice/summons is received by the Petitioner No. 2, as assured by the Petitioner No. 2 to this Court and recorded in the order dated 19.10.2020, he shall appear and co-operate with the inquiry before the concerned investigating officer. During the course of investigation/inquiry, if the investigating officer has reason to believe that he needs to take coercive action against petitioner No. 2, he shall give clear notice of 72 hours before taking such coercive action, so as to facilitate the Petitioner No. 2 to approach the competent forum for appropriate reliefs. This interim order is granted in the peculiar facts and circumstances of this case, keeping in view the serious malafide alleged by the Petitioners against respondents and also keeping in view earlier actions taken by Respondent-State and its officials against the Petitioner No. 2. It is made clear that, unless aforesaid procedure is followed by the Investigating Officer, no coercive action of arrest should be taken against the Petitioner No. 2. Stand over to 28.06.2021 at 2.30 p.m.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)