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IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

M.A. No. _____ Of 2018

IN

WRIT PETITION (CRIMINAL) NO. 199 OF 2013

IN THE MATTER OF:

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER/

APPLICANT

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

APPLICATION FOR DIRECTIONS ON BEHALF OF

THE PETITIONER

To,
The Hon'ble Chief Justice
And his Companion Judges of the
Supreme Court of India
The humble petition of the applicant abovenamed;

1. That the present Application for directions is being necessitated due the continued application of Section 66A of the Information Technology Act 2000 [hereinafter, "IT Act"] in contravention of the decision rendered by a Division Bench of this Hon'ble Court in Writ Petition (Criminal) No. 199 of 2013, among others, in judgment dated 24.03.2015, reported as *Shreya Singhal v. Union of India & Ors.*, (2015) 5 SCC 1 [Hereinafter, "*Shreya Singhal Judgement*"].

2. That the Petitioner/Applicant herein filed Writ Petition (CrI.) No. 199 of 2013 challenging the constitutionality of Section 66A of the IT Act, which was heard along with other writ petitions, the lead matter being *Shreya Singhal v. Union of India*, W.P. (CrI.) No. 167 of 2012.

3. That the batch of writ petitions, along with Writ Petition No. 199 of 2013 filed by the People's Union for Civil Liberties [PUCL], Applicant herein, were decided *vide* judgment and final order dated 24.03.2015. This Hon'ble Court found Section 66A of the IT Act contrary to Articles 19 and 21 of the Constitution. Finding it impossible to save any part of the provision applying the doctrine of severability, this Hon'ble Court struck down the entire provision as unconstitutional.

A true and correct copy of the judgment and final order in *Shreya Singhal v. Union of India*, reported as (2015) 5 SCC 1, is **Annexure A**.

4. It is submitted that such a declaration of unconstitutionality results in rendering a provision void *ab initio* either wholly or in part, as the case may be. [*Deep Chand v. State of Uttar Pradesh*, AIR 1959 SC 648, para 13 (Subba Rao, J.), *Mahendra Lal Jaini v.*

State of Uttar Pradesh, AIR 1963 SC 1019, para 24].

Since this Hon'ble Court did not restrict the effect of its decision in *Shreya Singhal* in any manner, Section 66A ceased to exist from the date of its insertion into the IT Act, i.e. 27.10.2009. Further, the judgment and final order in *Shreya Singhal* rendered all investigations, prosecutions, and convictions based on Section 66-A IT Act illegal, and it forestalled any use of Section 66-A IT Act after the decision was rendered, i.e. 24.03.2015.

5. The Petitioner submits that despite the clear and unequivocal holding of this Hon'ble Court in *Shreya Singhal*, Section 66A of the IT Act continues to be applied in the legal system. A recent working paper by the Internet Freedom Foundation demonstrates that pending prosecutions under Section 66A of the IT Act not been terminated, and further that it continues to be invoked by police across India in First Information Reports registered after the judgment in *Shreya Singhal*. A true typed copy of the research paper – Sekhri & Gupta, *Section 66A and Other Legal Zombies*, IFF Working Paper No. 02/2018 is **Annexure B**.
6. That the research paper considers media reports, data from the National Crime Records Bureau, and cases

indexed in two different online databases. While these data sets do not provide exhaustive coverage of the entire legal system, they sufficiently establish that Section 66A of the IT Act continues to live on in the legal system despite the judgment in *Shreya Singhal*. A true typed copy of the table of cases referred to in the research paper is **Annexure C**.

7. That from the existence of several quashing petitions filed before High Courts, it is apparent that trial courts and prosecutors are not actively implementing the decision of this Hon'ble Court, and the burden of terminating illegal prosecutions based on Section 66A of the IT Act is unfairly falling upon accused persons. Thus, compliance with the Constitution has been made primarily dependent on the means of individual accused persons, potentially rendering justice beyond the reach of accused persons without means to afford quality legal counsel.
8. It is humbly submitted that the harm emanating from this state of affairs is enormous. Besides indicating disregard for the Constitution and this Hon'ble Court, the continued use of Section 66A of the IT Act is a direct violation of the fundamental rights under Articles

19(1)(a) and 21 of the persons against whom the provision is invoked. Beyond committing an unconscionable deprivation of their fundamental rights, the use of Section 66A also indirectly affects society at large. It sends a message that in spite of the Hon'ble Supreme Court of India having declared a provision unconstitutional, the enjoyment of basic fundamental rights by ordinary citizens remains subject to wanton abuse by police, and sheer ignorance of law within the legal system.

9. Although data suggests that FIRs registered after *Shreya Singhal* have invoked Section 66A together with other provisions, each instance of the continued use of Section 66A of the IT Act amounts to wastage of precious public resources in a criminal justice system which is looking to decrease arrears. It adds to the prosecutorial and police burden, for these agencies ultimately have to justify invocation of Section 66A. Further, it adds wasteful cases to the work of an already overburdened judiciary which must, in turn, spend precious judicial time on engaging with a provision that does not exist in law anymore.

10. It is submitted with the utmost respect that while the Petitioner is confident of the averments made in this application, with their limited resources they lack the means to identify each specific instance of application of Section 66A IT Act. Nor does the Petitioner claim to have conclusively identified reasons behind such non-compliance with the decision of this Hon'ble Court in *Shreya Singhal*. However, it is submitted that one reason for the present state of affairs is lack of adequate communication of the decision in *Shreya Singhal* across all branches of State.

11. That on several occasions, this Hon'ble Court has issued directions for compliance with its decisions by other branches of State, especially in cases involving fundamental rights, including directions to spread adequate awareness about the rights upheld in those judgments. Such directions help to ensure that the relevant actors are duly informed of actions taken by this Hon'ble Court, without waiting for the adequate notifications / circulars / advisories to be issued by the relevant government ministries.

12. In *D. K. Basu v. State of West Bengal*, (1997) 1 SCC 416 [Paragraphs 35 - 39], this Hon'ble Court while

issuing guidelines for curbing abuse of power by police officers, directed as follows:

39. *The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on All India Radio besides being shown on the National Network of Doordarshan any by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes.*

13. In *Voluntary Health Association of Punjab v. Union of India*, (2013) 4 SCC 1, besides giving several directions for implementation of provisions of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, the following direction was issued regarding disposal of cases:

9.11. *The various courts in this country should take steps to dispose of all pending cases under the Act, within a period of six months. Communicate this order to the Registrars of various High Courts, who will take appropriate follow-up action with due intimation to the courts concerned.*

14. Recently, this Hon'ble Court struck down Section 377 of the Indian Penal Code, 1860 in part *vide* the judgment in *Navtej Singh Johar v. Union of India*, 2018 (10) SCALE 386. One of the concurring opinions also issued separate directions to ensure adequate publicity of the judgment and final order [*Navtej Singh Johar*, Paragraph 352 (Nariman, J.)].

15. That, as a matter of fact, during the pendency of the above Writ Petitions ultimately decided in *Shreya Singhal*, this Hon'ble Court also passed order dated 16.05.2013 directing all states and union territories to ensure compliance with Advisory No. 11(6) / 2012 - CFE dated 09.01.2013 issued by Respondent No. 1, which installed procedural checks to limit abuse of Section 66A of the IT Act. True and correct copies of Advisory No.11(6)/2012-CLFE dated 09.01.2013 by the Respondent No. 1 and order dated 16.05.2013 of this Hon'ble Court are **Annexure-D** and **Annexure-E** respectively.

16. That while Respondent No. 1 issued Advisory No. 11(6)/2012-CLFE dated 09.01.2013 during the pendency of writ petitions ultimately decided in *Shreya*

Singhal, to the best knowledge of the Petitioner, no circulars/notifications/advisories have been issued by Respondent No. 1 subsequent to this Hon'ble Court's decision.

17. It is submitted to the knowledge of the Petitioner, the actions taken by Respondent, available in public domain, following the *Shreya Singhal Judgement* are:-
- (i) continued online publication of Advisory dated 09.01.2013, issued prior to *Shreya Singhal* and without legal basis today, (ii) online publication of the judgment in *Shreya Singhal*, and (iii) a statement by the then-Minister welcoming the decision in *Shreya Singhal* judgement. A true and correct copy of the PIB (Press Information Bureau) release dated 24.03.2015 in which a ministerial statement is made welcoming the *Shreya Singhal Judgement* is **Annexure - F**.

18. That the absence of any appropriate executive notifications or circulars has resulted in a signalling gap whereby other actors in the State machinery have presumably not received any official communication about the judgment and final order dated 24.03.2015 and its effects. The Petitioner submits that the same

may be remedied by issuance of appropriate directions by this Hon'ble Court.

19. That therefore, the Petitioner humbly submits that in the peculiar facts and circumstances of the case as mentioned herein above, it is necessary as also expedient for the ends of justice to issue directions for necessary safeguards, including but not limited to the prayer below.

PRAYER

It is, therefore, most respectfully prayed that in the interests of justice this Hon'ble Court may be graciously pleased to:

- (a) Direct Respondent No. 1 to ensure full compliance immediately with the judgment and final order dated 24.03.2015 in *Shreya Singhal v. Union of India*, reported as (2015) 5 SCC 1 through issuance of appropriate circulars / advisories addressed to the Chief Secretaries of all States and Union Territories, and the Director Generals of Police of all States and Union Territories, or equivalent officers thereof for onward circulation to the Police Stations;

- (b) Direct the Supreme Court Registry to dispatch a copy of the judgment and final order dated 24.03.2015 in *Shreya Singhal v. Union of India*, reported as (2015) 5 SCC 1, to all High Courts to pass appropriate orders in pending cases concerning Section 66A of the IT Act as well appropriate circulars, bringing the *Shreya Singhal* judgement to the notice of all district courts within their jurisdiction to prevent failures of justice;
- (c) Direct Respondent No. 1 to collect and furnish data for all prosecutions invoking Section 66A after 24.03.2015 before this Hon'ble Court in order to secure compliance with the *Shreya Singhal Judgement*;
- (d) Any other relief which this Hon'ble Court deem fit and proper in the circumstances may also be given.

DRAFTED BY:
SANJANA SRIKUMAR, Adv
ABHINAV SEKHRI, Adv

FILED BY:
PUKHRAMBAM RAMESH KUMAR

(_____)
Advocate
for the Applicant

Drawn on: __.__.2018
Filed on: __.__.2018

New Delhi

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
M.A. No ____ OF 2018
IN
WRIT PETITION (Crl.) NO. 199 OF 2013

IN THE MATTER OF:

People's Union for Civil Liberties (PUCL) ...Petitioner/Applicant

Versus

Union of India & Ors.

...Respondents

AFFIDAVIT

I, Dr. V Suresh, S/o K.S. Veeraraghavan aged about 59 years, R/o 458, 8th South Cross Street, Kapaleeshwar Nagar, Neelankarai, Chennai 600115, presently at New Delhi, do hereby solemnly affirm and declare as under:-

1. I am the National General Secretary of the Petitioner in the above-mentioned Writ Petition and as such well-acquainted with the facts of the case and in that capacity, am fully competent to swear this affidavit.
2. I have read and understood the contents of the accompanying Application for Directions and I say that the

contents thereof are true and correct to the best of my knowledge and belief.

3. I say that the Annexures ___ to ___ are true and correct copies of their respective originals.

DEPONENT

VERIFICATION

Verified at New Delhi on this ___ day of November, 2018 that the contents of paragraph 1 to 3 of my above affidavit are true to my knowledge and belief, and nothing false has been stated therein nor any material has been concealed thereof.

DEPONENT