IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.07.2020

\+ **W.P. (CRL) 898/2020 & CRL. M.A. 7426/2020 and CRL. M.A. 8961/2020**

DEVANGANA KALITA .....Petitioner

versus

DELHI POLICE ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Adit S. Pujari, Advocate with Ms Kriti Awasthi, Ms Tusharika Mattoo, Mr Kunal Negi, Mr Chaitanya Sundriyal, Advocates.

For the Respondent : Mr Aman Lekhi, ASG with Mr Amit Mahajan, SPP, Mr Rajat Nair, SPP Mr Ujjwal Sinha, Mr Ritwiz Rishabh, Mr Aniket Seth and Mr Dhruv Pande, Advocates for Delhi Police Mr Chaitanya Gosain, Advocate.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:

> "(i) Issue a writ of mandamus directing the Respondent Delhi Police to not leak any allegations pertaining to the Petitioner to the media pending investigation, and thereafter during trial;

(i) Issue a writ of mandamus directing the Respondent Delhi Police to forthwith withdraw all allegations contained in the "Brief Note" dated 02.06.2020;"

2. The petitioner is an accomplished student and is currently enrolled as a student in M. Phil-Ph.D Program with the Department of Women's Studies at the Jawaharlal Nehru University. The petitioner claims that she has participated in several peaceful campaigns/protests and is actively involved in issues concerning women.

3. The petitioner claims that she is a critic of the Citizenship Amendment Act, 2019 (CAA) and has been questioning the lack of response on the CAA from institutional agencies. The petitioner claims that she believes that the CAA is unconstitutional and has participated in peaceful protests for seeking repeal of the CAA and a stop to the National Register of Citizens (NRC) process.

4. The petitioner claims that she has all along advocated a peaceful approach to the criticism of the CAA. She asserts that she firmly believes in the principles guaranteed by the Constitution of India and has chosen to criticize the CAA believing that the same is unconstitutional.

5. The petitioner is involved in four FIRs: FIR No. 48/2020 registered with Police Station Jafrabad; FIR No. 50/2020 registered with Police Station Jafrabad; FIR No. 59/2020 registered with Police Station Crime Branch; and FIR No. 250/2019 registered with Police

Station Darya Ganj. The petitioner was arrested in FIR No. 48/2020 but was released on bail in the said FIR. She was arrested in FIR No. 250/2019 but was released on bail in that FIR as well. The petitioner is currently in judicial custody in FIR No. 50/2020. It is also averred in the petition that the petitioner was remanded to police custody in FIR No. 59/2020 till 08.06.2020.

6. The petitioner's grievance in the present petition stems from a "Brief Note" dated 02.06.2020 (hereafter referred to as 'the impugned note') circulated by the Delhi Police to various media agencies. The impugned note disclosed names of two girls including the petitioner and alleged that they belong to 'Pinjra Tod' Group and were actively involved in hatching a conspiracy to cause riots near Jafrabad Metro Station.

7. The impugned note disclosed that the Delhi Police was filing charge sheets in two cases on that date (that is, 02.06.2020). The first is referred to as 'the Jafrabad Riots Case' – FIR No. 50/2020 dated 26.02.2020 under Sections 147/148/149/186/353/332/333/323/283/ 188/427/307/302/ 120B/34 of the IPC read with Section 25/27 of the Arms Act, 1959 and Sections 3/4 of the Prevention of Damage to Public Property Act, 1984 registered with PS Jafrabad. The second case is referred to as Tahir Hussain case that arises from FIR No. 101/2020 dated 25.02.2020 under Sections 109/114/147/148/149/ 186/353/395/427/435/436/452/454/153A/505/120B/34 of the IPC & Sections 3/4 of the Prevention of Damage to Public Property Act,

1984 & Sections 25/27 of the Arms Act, 1959 registered with PS Khajuri Khas.

8. The information regarding FIR No. 101/2020 is not relevant for the purposes of this petition, as the petitioner's grievance relates to the contents of the impugned note that relate to the case arising from FIR No. 50/2020 (the Jafrabad Riot Case).

9. The said FIR was registered on the statement made by one police official from PS Jafrabad. He had, *inter alia*, reported that there were demonstrations and protests against enactment of the CAA at various places and the situation was tense. He, *inter alia*, reported that on 25.02.2020, a large crowd of one community had collected at the spot near Crescent School and was protesting against the CAA. Demonstrators from another community had collected at Kardampuri Side. The SHO declared the assembly as illegal and ordered them to disperse but the crowd turned violent and damaged Government Property. Certain persons from the crowd also fired upon the police. He stated that the police used tear gas and fired at the feet of the persons in the crowd to disperse them. Reports of violent incidents were received from various places in the North East District.

10. The impugned note states that twelve persons have been arrested in the said case and it further alleges that investigations have revealed that there was a deep-rooted conspiracy to cause riots in North-East Delhi. It also mentions the names of two persons (including the petitioner) and alleges that both of them belong to

'Pinjra Tod' Group and were actively involved in hatching a conspiracy to cause riots near Jafrabad Metro Station, Delhi. It is also alleged that they were part of a larger conspiracy and were found to be connected to "India Against Hate" Group and Umar Khalid. In conjunction with the said statements, the impugned note also mentions that a whatsapp message was found on the phone of an accused revealing the conspiracy and the extent of preparation for causing riots in Delhi. The content of the whatsapp message suggests the actions that should be taken by household women in case of riots (*Dange ke halat me ghar ki auratein kya karen*).

11. The petitioner contends that the investigation agency (Delhi Police) has leaked information selectively to the media with a view to spread a false propaganda against the petitioner and prejudice public opinion. The petitioner also refers to various other messages that are circulated in social media that draw from the impugned note. The petitioner claims that several news media outlets, TV media outlets and social media handles are relying on the allegations, as stated in the impugned note, to decry the petitioner as guilty for her alleged role in the violence that had broken out in North-East Delhi.

Submissions

12. Mr Pujari, learned counsel appearing for the petitioner contended that the impugned note was issued by the Delhi Police in an attempt to prejudice the petitioner's right to a fair trial and, thus, violates Article 21 of the Constitution of India. He submitted that the

impugned note was issued for the purpose of destroying the presumption of petitioner's innocence.

13. He further contended that the impugned note was circulated with a well thought out purpose to make selective leaks leading to trial by media and to establish the petitioner's guilt prior to her being tried. He submitted that by circulating the impugned note and selectively leaking the contents of the charge sheet, the respondents had caused immense damage to the petitioner's reputation and her fundamental right to a fair trial as it has weakened the presumption of her innocence.

14. He referred to the decisions of the Supreme Court in ***Rajinderan Chingaravelu v. Mr R.K. Mishra, Additional Commissioner of I T & Ors***:*(2010) 1 SCC 457*;***Sahara India Real Estate Corporation v. SEBI: (2012) 10 SCC 603***; ***State of Maharashtra v. Rajendra Jawanmal Gandhi: (1997) 8 SCC 386***; and ***Manu Sharma v. State: (2010) 6 SCC 1***. In addition, he relied on the dissenting opinion of Dr. Justice D.Y. Chandrachud in ***Romila Thapar v. Union of India: (2018) 10 SCC 753*** in support of his contention that the impugned note violated the petitioner's rights and the respondents ought to be restrained from making such selective leaks till the conclusion of the trial.

15. He also referred to the decision of the Division Bench of the Bombay High Court in ***Re State of Goa: Public Interest Litigation (Suo Motu) No. 3 of 2019, decided on 05.11.2019***, wherein the court

had referred to the proposed guidelines to be followed by the police while interacting with the media in cases pending trial.

16. Mr Pujari also referred to the Office Memorandum dated 01.04.2010 issued by the Government of India setting out an Advisory on the Media Policy of the Police. He submitted that in addition to directing that the said guidelines be followed, the Police ought to be directed to take additional precautions in riot cases such as not disclosing the names, religion, caste, or social position of the persons involved (be it the accused, victims or witnesses).

17. Mr Aman Lekhi, learned ASG submitted at the outset that there was no dispute with regard to the principles as set out by the Supreme Court in various decisions referred to by Mr Pujari. He submitted that the Delhi Police had not issued the impugned note with the intention of causing any prejudice to the petitioner or with a view to attack her reputation but for the sole purpose to accurately portray the case. He contended that this was necessary in view of the media campaign carried out by members of the 'Pinjra Tod' Group and their supporters to sway the public opinion against the actions of the Delhi Police. He submitted that the media campaign run by the petitioner's group was designed to make the public believe that the Delhi Police was persecuting the petitioner to muffle the voice of dissent and solely because she had participated in protests against the CAA. He stated that some of the messages circulated in social media also suggested that this was at the behest of a religiously biased machinery. He stated that such a campaign would have the effect of

adversely affecting the reputation of the Delhi Police and public faith in the authorities. He contended that in such circumstances, it was necessary for the Delhi Police to issue the impugned note to inform the public that the petitioner was not being persecuted but prosecuted on the basis of investigation and evidence that she was involved in commission of offences.

18. He earnestly contended that the petitioner had not issued any statement in the public disassociating herself from the various messages that were issued by her group or their supporters. He submitted that if the petitioner had distanced herself from such messages, it may not have been necessary for the police to name her in the impugned note. He submitted that the impugned note was not put out as any offensive measure against the petitioner but to defend the reputation and to maintain public trust in the Delhi Police.

19. Mr Lekhi further submitted that it was not the intention of the Delhi Police to run a media trial. He submitted that this was clearly evident from the fact that the Delhi Police had issued only one note (and not multiple notes) mentioning the petitioner's name. He further submitted the language of the impugned note was also measured and only referred to the contents of the charge-sheet. He contended that if it was the intention of the Delhi Police to run a media campaign against the petitioner and to prejudice fair trial, it would not have confined itself to issuing a singular note and that too after waiting till the stage of filing the charge-sheet.

20. Mr Lekhi also referred to the judgments cited by Mr Pujari and drew the attention of this Court to the facts in the said cases. He contended that the facts of the said case were not comparable to the facts in the present case. He also referred to passages from the said decisions that supported the view that the needs of the society were also to be balanced.

Discussion and Conclusion

21. The impugned note does not indicate as to who has issued it. It is an unsigned note and does not even mention that it is issued by or on behalf of the Delhi Police. In this regard, this court considered it necessary to ascertain whether the impugned note was in fact issued by the Delhi Police and if so, whether it was authorized.

22. In this regard, this Court had, by an order dated 10.06.2020 called upon the concerned DCP to file an affidavit affirming whether the information as mentioned in the petition had been circulated by Delhi Police. In compliance with the said order, an affidavit was filed on 06.07.2020. A plain reading of the said affidavit indicates that instead of addressing the said issue, the affidavit contained extensive averments declaring the petitioner guilty of several offences. It also appears that some of contents of the affidavit are not affirmations of truth but more a matter of opinion. The contents of the said affidavit were shared with the media as is evident from the fact that the same were reported even prior to the date of the hearing. Although the petitioner has made a grievance with reference to the same, this court

does not consider it necessary to examine the matter any further as the contents of the affidavit were reported after the affidavit was filed in this court and had been circulated to the parties.

23. In the aforesaid contest, it is necessary to bear in mind that the petitioner has not been found guilty of any of the alleged offences. An affidavit affirming that the petitioner is guilty of the offences would clearly be inapposite. It is trite law that an accused is innocent until held guilty after a fair trial. The prosecution must meet the standards of proof and establish that an accused is guilty of the offence charged beyond reasonable doubt. The *substratal* rationale of following this principle is to eliminate the possibility of any innocent being punished or suffering any ignominy for a crime that he/she has not committed.

24. It is also necessary to bear in mind that human dignity is recognized as a constitutional value and a right to maintain one's reputation is a facet of human dignity. A person cannot be denuded of his or her dignity merely because he/she is an accused or is under trial.

25. It is also averred in the affidavit that the petitioner could not make any grievance of being subjected to a media trial since she and the members of her group had started a media campaign/trial in her favour to gain sympathy and generate public opinion against the respondent investigating agency. It is averred that she cannot now be heard to be aggrieved by a rebuttal and factual explanation of real

and true facts. This averment is based on an erroneous premise that merely because the sympathizers of the petitioner have issued messages on social media that she is being maliciously persecuted or demanded her release, it would entitle or justify the investigating agencies to proclaim that the petitioner is guilty of offences even at the stage, where the investigation is not complete. There is a cardinal difference in attempting to influence formation of an opinion that an accused is not guilty and the State attempting to influence an opinion to the contrary. An expression of an opinion that an accused is not guilty does not destroy the presumption of innocence that must be maintained till an accused is tried and found guilty of an offence. A media campaign to pronounce a person guilty would certainly destroy the presumption of innocence. The approach that it would be justified to fuel a media trial merely because the sympathizers of the accused are proclaiming his/her innocence, cannot be countenanced.

26. Having stated the above, it is not necessary to delve into the contents of the said affidavit, as in all fairness, Mr Lekhi, learned ASG neither relied on the said affidavit nor referred to it in the course of his submissions. Mr Lekhi confined himself to the questions, whether the impugned note violated the petitioner's right to a fair trial and whether the same was justified.

27. At the outset, he confirmed that the impugned note was issued by the Public Relations Officer of Delhi Police and was sent by *whatsapp* to four hundred and eight-four recipients, including all leading national dailies.

28. At this stage, it would be relevant to refer to the decisions relied upon by the petitioner. Mr. Pujari had referred to the decision of the Supreme Court in ***Rajinderan Chingaravelu v. Mr R.K. Mishra, Additional Commissioner of I T & Ors:(2010) 1 SCC 457*** and had drawn the attention of this Court to paragraph twenty-one of the said decision. The same is set out below:-

> "21. But the appellant's grievance in regard to media being informed about the incident even before completion of investigation, is justified. There is a growing tendency among investigating officers (either police or other departments) to inform the media, even before the completion of investigation, that they have caught a criminal or an offender. Such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed. Even where a suspect surrenders or a person required for questioning voluntarily appears, it is not uncommon for the investigating officers to represent to the media that the person was arrested with much effort after considerable investigation or a chase. Similarly, when someone voluntarily declares the money he is carrying, media is informed that huge cash which was not declared was discovered by their vigilant investigations and thorough checking. Premature disclosures or "leakage" to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law. Be that as it may."

29. It is necessary to note the factual context in which the Supreme Court had made the aforesaid observations. In that case, the appellant, who was employed in Hyderabad, wanted to buy a property in Chennai. He was advised that if he wanted to buy a good

plot he must be willing to pay a considerable part of the sale price in cash, and in advance, to the prospective seller. The appellant had identified a prospective buyer and wanted to go to Chennai with a large sum of money to finalise the deal. He contacted Reserve Bank of India, his bankers (ICICI Bank Ltd.) as well as the Airport Authorities to ascertain whether he could carry a large sum of money in cash while travelling by air. He was informed that there was no prohibition and therefore, he withdrew ₹65 lakhs from his bank. He disclosed the same at the Hyderabad Airport. He was also carrying a bank certificate certifying the source of his withdrawals. However, when he reached Chennai, some police officials and officers from the Income Tax Investigation Wing rushed into the aircraft and called out his name. The appellant identified himself and thereafter, he was virtually pulled out from the aircraft and taken to an office on the first floor of the airport. He was thereafter subjected to questioning about the money that he was carrying. The officers then attempted to coerce him to admit that the amount being carried by him was for some illegal purposes. No such admission was made by him, nonetheless, the officers seized the entire amount and thereafter permitted him to leave. In the entire process, he was detained for fifteen hours. The Tax Intelligence Officers informed the newspapers and media that they had made a big haul of ₹65 lakhs rupees in cash. Thus, making it appear that the appellant was illegally and clandestinely carrying the said amount and they had caught him red handed. The appellant then filed a writ petition before the High Court of Andhra Pradesh seeking various reliefs, including compensation for the illegal acts of the

officials and quashing the proceedings initiated against him under the Income Tax, 1961. The said petition was dismissed by the Andhra Pradesh High Court on the ground that no part of the cause of action had arisen within the State of Andhra Pradesh. Aggrieved by the same, the appellant filed a Special Leave Petition before the Supreme Court. Insofar as the appellant's claim that actions of the officers were illegal is concerned, the Supreme Court did not accept the same and held that where the *bonafide* of a passenger carrying an unusually large sum and the source and legitimacy of the amount have to be verified, some delay and inconvenience is inevitable. The Court held that the actions of the Investigating Wing of the Income Tax Department in detaining the appellant for questioning and verification were *bona fide* and in discharge of their official duties. However, insofar as the officers rushing to the media and claiming that they had caught a huge haul of money is concerned, the Court found the said action unjustified. It is in that context the Supreme Court made the observations as quoted hereinbefore. In that case, the Department filed an affidavit expressing regret for the inconvenience caused to the appellant and the Court accepted the same.

30. In ***Sahara India Real Estate Corporation v. Securitization and Exchange Board of India and Another (SEBI): (2012) 10 SCC 603***, the Supreme Court considered the law whether injunctions could be issued against press/media to postpone publications for a stated period of time in the interest of administration of justice. The Supreme Court referred to an earlier decision in ***Naresh Shridhar***

Mirajkar and Ors. v. State of Maharashtra and Anr: AIR 1967 SC 1, wherein the Court had held that "*that, such orders prohibiting publication for a temporary period during the course of trial are permissible under the inherent powers of the Court whenever the Court is satisfied that the interest of justice so requires*".

31. The Supreme Court noted that in ***Mirajkar's*** case, the Court had held that an order of a Court passed to protect the interests of justice and the administration of justice could not be treated as violative of Article 19(1)(a) of the Constitution of India. The Supreme Court referred to Article 129 and 215 of the Constitution of India and observed that the Supreme Court and High Courts are courts of record and under Article 215 of the Constitution of India, they have all the powers of such court, including the power to punish contempt of itself. The Supreme Court further held as under:-

> "33…..If one reads Article 19(2) which refers to law in relation to contempt of court with the first part of Article 129 and Article 215, it becomes clear that the power is conferred on the High Court and the Supreme Court to see that "the administration of justice is not perverted, prejudiced, obstructed or interfered with". To see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court/High Court to prohibit temporarily, statements being made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High Court or even in the subordinate courts. In view of the judgment of this Court in *A.K. Gopalan v. Noordeen* [(1969) 2 SCC

734], such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair trial of a suspect or accused under Article 21 from the time when the criminal proceedings in a subordinate court are imminent or where the suspect is arrested. This Court has held in *Ram Autar Shukla v. Arvind Shukla* [1995 Supp (2) SCC 130] that the law of contempt is a way to prevent the due process of law from getting perverted. That, the words "due course of justice" in Section 2(c) or Section 13 of the 1971 Act are wide enough and are not limited to a particular judicial proceedings. That, the meaning of the words "contempt of court" in Article 129 and Article 215 *is wider than* the definition of "criminal contempt" in Section 2(c) of the 1971 Act. Here, we would like to add a caveat. The contempt of court is a special jurisdiction to be exercised sparingly and with caution *whenever an act adversely affects the administration of justice* [see Nigel Lowe and Brenda Sufrin, *Law of Contempt* (3rd Edn., Butterworth, London 1996)]. Trial by newspaper comes in the category of acts which interferes with the course of justice or due administration of justice (see Nigel Lowe and Brenda Sufrin, *Law of Contempt*, p. 5 of 4th Edn.). According to Nigel Lowe and Brenda Sufrin (p. 275) and also in the context of second part of Article 129 and Article 215 of the Constitution the object of the contempt law is not only to punish, it *includes* the power of the courts to prevent such acts which interfere, impede or pervert administration of justice. Presumption of innocence is held to be a human right. (See *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [(2005) 5 SCC 294 : 2005 SCC (Cri) 1057] .) If in a given case the appropriate Court finds infringement of such presumption by excessive prejudicial

publicity by the newspapers (in general), then under inherent powers, the courts of record suo motu or on being approached or on report being filed before it by the subordinate court can under its inherent powers under Article 129 or Article 215 pass orders of postponement of publication for a limited period if the applicant is able to demonstrate substantial risk of prejudice to the pending trial and provided that he is able to displace the presumption of open justice and to that extent the burden will be on the applicant who seeks such postponement of offending publication."

* * * *

42…..The constitutional protection in Article 21 which protects the rights of the person for a fair trial is, in law, a valid restriction operating on the right to free speech under Article 19(1)(a), by virtue of force of it being a constitutional provision. Given that the postponement orders curtail the freedom of expression of third parties, such orders have to be passed only in cases in which there is real and substantial risk of prejudice to fairness of the trial or to the proper administration of justice which in the words of Justice Cardozo is "the end and purpose of all laws". However, such orders of postponement should be ordered for a limited duration and without disturbing the content of the publication. They should be passed only when necessary to prevent real and substantial risk to the fairness of the trial (court proceedings), if reasonable alternative methods or measures such as change of venue or postponement of trial will not prevent the said risk and when the salutary effects of such orders outweigh the deleterious effects to the free expression of those affected by the prior restraint.

> The order of postponement will only be appropriate in cases where the balancing test otherwise favours non-publication for a limited period…."

32. In ***Siddhartha Vashisht v. State (NCT of Delhi):(2010) 6 SCC 1***, the Supreme Court *inter alia* observed as under:-

> "299. In the present case, certain articles and news items appearing in the newspapers immediately after the date of occurrence, did cause certain confusion in the mind of public as to the description and number of the actual assailants/suspects. It is unfortunate that trial by media did, though to a very limited extent, affect the accused, but not tantamount to a prejudice which should weigh with the court in taking any different view. The freedom of speech protected under Article 19(1)(a) of the Constitution has to be carefully and cautiously used, so as to avoid interference with the administration of justice and leading to undesirable results in the matters sub judice before the courts.
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> 300. A Bench of this Court in *R.K. Anand v. Delhi High Court* [2009 (8) SCC 106] clearly stated that it would be a sad day for the court to employ the media for setting its own house in order and the media too would not relish the role of being the snoopers for the court. Media should perform the acts of journalism and not as a special agency for the court. "The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law." This will not be fair. Even in *M.P. Lohia v. State of W.B.* [2005 (2) SCC 686] the Court reiterated its earlier view that freedom of speech and expression sometimes may amount to interference with the administration of justice as the

> articles appearing in the media could be prejudicial, this should not be permitted.
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> 301. Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. [*Anukul Chandra Pradhan v. Union of India* (1996) 6 SCC 354]. It is essential for the maintenance of dignity of the Courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice."

33. In ***State of Maharashtra v. Rajinder Javalmal Gandhi: (1997) 8 SCC 386***, the Supreme Court observed that "*A trial by press, electronic media or public agitation is the very antithesis of rule of law. It can well lead to miscarriage of justice*.".

34. Mr Pujari had also referred to the dissenting opinion of Dr. Justice Chandrachud in ***Romila Thapar v. Union of India***(*supra*). Dr Chandrachud J. was of the opinion that in that case, the police briefings to the media had become a source of manipulating public opinion by besmirching the reputation of individuals involved and what followed was trial by media. The said conclusion was drawn in view of the conduct of the police in that case. It was noticed that the Joint Commissioner of Police, Pune had held a press conference in Pune within a few hours of the Supreme Court issuing notices to the

State of Maharashtra and two others, impleaded as respondents, in the proceedings. In the said press conference, the Joint Commissioner of Police had proclaimed that Pune Police had more than sufficient evidence against five individuals whose transit remand was stayed by the Supreme Court while ordering them to be placed under house arrest. Dr. Chandrachud J. observed that this was an oblique way to respond to the order passed by the Supreme Court. Apart from the above, it was also noticed that Additional ADG (Law & Order) Maharashtra had, during a press conference, read letters which were selectively flashed and read out. This was while the said letters were still under forensic analysis.

35. It was further observed that at the material time, when the arrested persons were to be produced before the Court in Pune, a letter attributed to one of the accused was telecasted on a television channel linking her with the unlawful activities of certain groups. In this regard, Dr Chandrachud J noticed that a serious grievance was made that the letters read out had not been placed before any court of law nor found any mention in the transit remand applications moved by the Pune Police before the Court in Faridabad.

36. It is clear from the facts of that case, as noted by Dr Chandrachud J., that his opinion regarding the police attempting to manipulate the public opinion was made in the context of the facts in that case.

37. Having stated the above, it is important to note that Dr. Chandrachud J. had also observed as under:-

> "the use of the electronic media by the investigating arm of the State to influence public opinion during pendency of an investigation subverts the fairness of the investigation. The police are not adjudicators nor do they pronounce upon guilt."

There can be no cavil with the aforesaid proposition.

38. In ***Re State of Goa: Public Interest Litigation (Suo Motu)*** (*supra*), the Bombay High Court at Goa instituted a *suo moto* Petition on the basis of a news report that appeared in a daily on 30.08.2019. It was reported that the police had arrested a couple who had allegedly abandoned their new born third male child. The report included a photograph in which the Police Inspector, Mapusa Police Station and the Police Sub Inspector of the said Police Station appeared prominently along with other officials. The photograph showed the police officials standing and the accused mother kneeling before them. The name of the accused mother along with the names of the police officials appeared quite prominently in print along with the said photograph.

39. In response to the show cause notice, the concerned Police Inspector filed an affidavit offering a justification for his actions. He stated that after the commission of the crime, the accused had absconded and since the act of the accused in abandoning a new born child was sensitive, therefore, meticulous investigation was carried

out and the accused concerned were apprehended. He stated that progress in regard to the apprehending of the accused, was being monitored by the media. And, the news about the arrest of the accused persons spread like wild fire. He further affirmed as under:

> "the members of the print and electronic media appeared at Mapusa Police Station while the accused lady being interrogated and requested to have visual clips of the accused, as the act of the accused person was required to made aware to the general public as to sensitize the public about the ill effects of abandoning the child the request of the media was honoured.
>
> The act of honoring the request of the media person was without any *mala fide* intension so also to uplift the image of the police which was under public scrutiny in the present crime since considerable time had lapsed from the day of commission of crime…."

40. The Division Bench of the Bombay High Court found the aforesaid explanation to be unjustified and without authority of law. Clearly, the act of the police officials in parading the accused woman militated against her right under article 21 of the Constitution of India and the constitutional value of maintaining the dignity of individuals.

41. In ***Mehmood Nayyar Azam v. State of Chhattisgarh and Ors.: AIR 2012 SC 2573***, the Supreme Court condemned the acts of police officers in humiliating a doctor while he was in custody. In that case, the photograph of the doctor holding a placard on which it was written that the doctor is a cheat, fraud, thief and a rascal – which he was compelled to hold – was taken and circulated by the police

officials to the general public and was also published in the press. In the given facts, the Supreme Court observed as under:-

> "… But, some, the incurable ones, become totally oblivious of the fact that living with dignity has been enshrined in our Constitutional philosophy and it has its ubiquitous presence, and the majesty and sacrosanctity dignity cannot be allowed to be crucified in the name of some kind of police action."

42. There are numerous cases where officials of enforcement agencies are quick to proclaim unearthing of scams and evasion of staggering values of revenue. In several cases, the claims made are found unsubstantiated. In some cases, the ultimate evasion assessed is only a small fraction of what had been claimed initially. There is little doubt that many of these disclosures are essentially motivated to get some media coverage rather than disseminate credible information.

43. Plainly, the public statements issued by the police and other enforcement agencies, are required to be responsible and measured as opposed to making fanciful claims. In ***Rajendran Chingaravelu*** (*supra*), the department had to file an affidavit expressing regret for the inconvenience caused to the appellant. They had, without conducting any investigation, publicized that they had caught a large haul of cash. Undeniably, the same had adversely affected the reputation of the appellant therein.

44. Some of the principles that emerge from the above decisions are as briefly summarized below.

45. The police or any other agency cannot use media to influence public opinion to accept that the accused is guilty of an alleged offence while the matter is still being investigated. The same is not only likely to subvert the fairness of the investigation but would also have the propensity to destroy or weaken the presumption of innocence, which must be maintained in favour of the accused till he/she is found guilty after a fair trial.

46. It is also well settled that the right to receive information is one of the essential the facets of Article 19(1)(a) of the Constitution of India. The right to freedom of speech and expression also encompasses the right to information. However, this right is not absolute and may be curtailed if it interferes with the administration of justice and the right of an accused to a fair trial.

47. The question whether media reporting or disclosing of information by the investigation agency has the propensity to prejudicially affect fair trial would depend on the facts of each case.

48. Concededly, there cannot be any blanket order proscribing the Delhi Police from disclosing any information regarding pending cases. The question whether reporting or publication of any information relating to a case pending consideration in a court, has the propensity to subvert fair trial or to interfere in the administration of justice, must be examined in the context of the facts of each case.

49. The relevant factors to be considered would include the nature of offence for which the accused is being tried; the stage of

investigation/trial; the nature of information; the vulnerability of the persons involved (accused, witness, victim or in some cases even the investigators); and the intention and purpose of circulating information.

50. Selective disclosure of information calculated to sway the public opinion to believe that an accused is guilty of the alleged offence; to use electronic or other media to run a campaign to besmirch the reputation or credibility of the person concerned; and to make questionable claims of solving cases and apprehending the guilty while the investigations are at a nascent stage, would clearly be impermissible. This is not only because such actions may prejudicially affect a fair trial but also because it may, in some cases, have the effect of stripping the person involved of his/her dignity or subjecting him/or her to avoidable ignominy. It is trite that *"the right to live includes the right to live with human dignity"* (see: ***Francis Coralie Mullin v. Administrator, Union Territory of Delhi: AIR 1981 SCC 746*****).** In ***Sukhwant Singh v. State of Punjab*****:2009 (7) SCC 559** the Supreme Court reiterated that "*the reputation of a person is his valuable asset, and is a facet of his right under Article 21 of the Constitution*". Human Dignity is a constitutional value and any action that unnecessarily denudes a person of his dignity would have a debilitating effect on the rights guaranteed under the Constitution of India.

51. At this stage, it would also be relevant to refer to the Office Memorandum dated 01.04.2010 issued by the Ministry of Home

Affairs, Government of India. The said Office Memorandum contains an advisory on media policy of police. It lays down the guidelines that are to be scrupulously adhered to while dealing with the media. The said guidelines, *inter alia*, stipulate that only the designated officer should disseminate information to the media on major crimes and law and order incidents, important detections, recoveries and other notable achievements of the police. The police officials should confine their briefings to the essential facts and not rush to the press with half baked, speculative or unconfirmed information about ongoing investigations. It is also stipulated that the briefing should normally be done only at the following stages of a case: (a) registration; (b) arrest of accused persons; (c) charge sheeting of the case; and (d) final outcome of the case such as conviction / acquittal etc. Further, due care should be taken to ensure that there is no violation of any legal, privacy and human rights of the accused/victims. And, the police while briefing the media should not make any opinionated or judgmental statements.

52. It was also pointed out by Mr Pujari that the proposed guidelines noted by the Division Bench of the Bombay High Court in ***Re: State of Goa and Ors.*** (*supra*) also specifically stipulated that the names of minor/woman/witnesses and the relatives of the accused are not disclosed to the press/media.

53. The clear object of including the above in the guidelines considered by the Bombay High Court, is to ensure that the identities

of the persons, who are vulnerable, are not disclosed to the public so as to protect them and their families from any harm.

54. The question whether the impugned note ought to be withdrawn, is required to be decided keeping the aforesaid in mind.

55. First of all, it has been clarified that the impugned note had been issued by the Public Relations Officer and was duly authorized. The impugned note was forwarded to all leading dailies and media houses. In that sense, the impugned note was not selectively disseminated.

56. At this stage, it is necessary to refer to the impugned note to determine whether the same falls foul of any of the principles as discussed hereinbefore.

57. The relevant extract of the impugned note is set out below:

> "**Jafrabad Riot case** - FIR No. 50/2020 dt. 26.2.2020 u/s 147/148/149/186/ 353/332/333/323/ 283/188/427/307/302/120B/34 IPC r/w 25/27 Arms Act r/w 3/4 Prevention of Damage to Public Property Act PS. Jafrabad – This case was registered for murder and riot that took place on 25.2.2020, on the 66 Futa Road, outside Crescent Public School, near Jafrabad Metro Station, Delhi. One Aman died due to the gun shot injury during the riot. Total 35 empty cartridges of different bore (11 cartridges of 7.65mm, 7 cartridges of 8 mm and 17 cartridges of5.56mm) were recovered from the spot.

Twelve persons were arrested in the case. Investigation has revealed that there was a deep rooted conspiracy to cause riots in North East Delhi. The list of arrested accused persons includes the names of Ms. Natasha Narwal and Ms. Devangana Kalita. Both Natasha and Devangana belong "Pinjra tod Group" and were actively involved in hatching the conspiracy to cause riots near Jafrabad Metro Station, Delhi. They were also part of a larger conspiracy and were found to be connected to the "India Against Hate" group and Umar Khalid. The following message, found in the phone of an accused, on whatsapp chat, reveals the conspiracy and the extent of preparation for causing riots in Delhi.

Dange ke halat me Ghar ki Auratein Kya kren

1. Ghar me garam khaulta hua pani or tel/oil ka intezam kare.
2. Building ki seedhiyo pr tel/shampoo/surf dalde.
3. Lal mirch pani garam me/ya powder ka istemal kre.
4. Darwazo ko mazbootk are, jald se jald Grill/Iron wala gate Lagwae.
5. Tezab ki bolte ghar me rkhe.
6. Balcony/terrace par eit or Pathhar rakhe.
7. Car/bikes se petrol nikal kar rkhe.
8. Lohe k darwazo me switch se current ka istemal kre.
9. Ek building se doosri building me jane k liye raste ka intezam kre.
10. Building ke sare mard hazrat ek Saath building na chhoden, kuchh log female safety ke liye ruken.

58. There is no dispute that the petitioner belongs to the 'Pinjra Tod' Group, as stated in the impugned note. The petitioner is, essentially, aggrieved by the allegation that she is actively involved

in hatching a conspiracy to cause riots near Jafrabad Metro Station and is also a part of a larger conspiracy. In addition, the petitioner is also aggrieved by the suggestion that the whatsapp chat, as set out in the impugned note, was recovered from her phone.

59. Mr Pujari had pointed out that certain persons active on social media had, relying on the impugned note, forwarded messages suggesting that the whatsapp chat as set out in the impugned note had been recovered from the petitioner's mobile. A newspaper circulated in Assam, also carried a similar report with the photograph of the petitioner.

60. The fact that the petitioner had been arrested in FIR No. 50/2020 has been well publicized. Therefore, her being named in the impugned note cannot be considered to be prejudicial to a fair trial that may ensue. It is also pointed out that the petitioner's name features in column no. 12 of the charge sheet and the allegation that the petitioner was involved actively in hatching a conspiracy to cause riots is articulated in the charge sheet. Further, the allegation that she was a part of a larger conspiracy and was found connected to 'India Against Hate' is also one of the allegations in the charge sheet. It does appear that the said allegations have been faithfully lifted from the charge sheet as this Court is informed that the name of the group referred to in the impugned note is incorrectly mentioned as 'India Against Hate' instead of 'United Against Hate'. However, the charge sheet also refers to the name of the said group as 'India Against Hate'.

61. Clearly, the petitioner disputes the allegations made in the impugned note. Mr Pujari contended that the same are unsubstantiated. However, that is not a question to be evaluated in this petition. The scope of the present petition is limited to examining whether the Delhi Police can be faulted for disclosing the said information in their press release.

62. Although, it is correct that the petitioner has been effectively declared to be guilty of the said conspiracy, however, the press release must be read in its context – a chargesheet containing the said allegation in being filed in Court. This is indicated in the opening paragraphs of the impugned note. The police authorities are not the adjudicators of guilt or innocence of any person. And, clearly, the police cannot pronounce on the guilt or innocence of any person. Thus, what is reported is their inference from the investigations, which is articulated in the report (the charge sheet) filed before the concerned court.

63. The contention that it was necessary for the police authority to name the petitioner in view of the campaign being run on social media is not persuasive. Clearly, it is not necessary to name the accused in media reports. However, the question before this Court is limited to examining whether such disclosure violates the right of the petitioner under Article 21 of the Constitution of India or offends any law. This Court is unable to accept that the said police communication violates the fundamental rights of the petitioner or provisions of any law. The question whether the respondent is

eventually able to establish their allegations beyond any reasonable doubt is a matter for the Trial Court to consider after a due trial. As noticed above, the contention that the respondent felt necessary to defend its position that they were not persecuting the petitioner but had proceeded against her on the basis of the investigation carried out, is also not a matter on which this Court requires to express any opinion. The reasons that prompted the respondent to issue the impugned note are not subject to judicial review provided they are *bonafide* and do not violate the petitioner's right.

64. Insofar as the petitioner's grievance that the impugned note suggests that a whatsapp chat as disclosed in the impugned note was found on her phone is concerned, it was clarified that the message referred to was not recovered from the petitioner's phone. A reading of the impugned note also indicates that the impugned note does not allege that the said whatsapp chat was found on the phone of the petitioner. It merely states that it was found on the phone of an accused. However, with the clarification provided, the petitioner's grievance in this regard stands addressed. The question whether the whatsapp chat could possibly lead to the inference of conspiracy as drawn by the police is matter for the trial court to consider and this court is not required to express any opinion at this stage.

65. In view of the above, the petitioner's prayer that the impugned note be set aside, cannot be acceded to.

66. The petitioner had also prayed that the respondent be refrained from issuing any further statements till the pendency of the trial. Mr Lekhi had submitted that the response of the police has been measured and, therefore, they have only issued one note in respect of this case and this would also establish that they are not running a campaign to malign the petitioner. The Office Memorandum dated 01.04.2010 also stipulates that briefing should normally be done only on four stages of the case: (a) at the time of registration; (b) at the time of arrest of the accused; (c) at the time of chargesheeting of the case; and (d) at final outcome of the case such as conviction/acquittal. The impugned note has been justified as having been issued at the time of filing of the chargesheet. Thus, in normal course, there would be no necessity of issuing any further communication till the final outcome of the case.

67. The cases concerning communal riots are undoubtedly sensitive cases. This Court is also informed that FIRs filed in such cases are not being publicly disclosed. In the circumstances, this Court considers it apposite to direct the respondent not to issue any further communication naming any accused or any witness till the charges, if any, are framed and the trial is commenced.

68. Unless directed otherwise, the trial is required to be conducted in open court. Thus, at this stage, this Court does not consider it apposite to restrain the respondent from issuing statements at the stage of trial.

69. The petition is disposed of in the aforesaid terms. The pending applications are also disposed of.

VIBHU BAKHRU, J

JULY 27, 2020
RK/pkv