

Appellate No. 2 (2021)

128

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

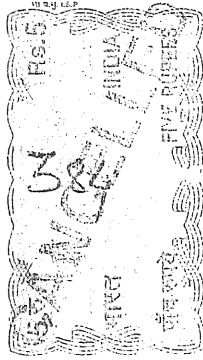
IN ITS CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (STAMP) NO. 3979 OF 2020

Hansa Research Group Pvt. Ltd. & ors. ... Petitioners

V/s.

Sachin Vaze & ors. ... Respondents



REJOINDER

MAY IT PLEASE YOUR LORDSHIPS:

Petitioner No. 1 was served with a copy of 'Counter Affidavit on behalf of the Respondent No. 01 to 04' on January 25, 2020 at about 7 PM. After perusing the same the Petitioners most respectfully submit as under:

1. At the outset it is most respectfully submitted that the abovesaid Counter Affidavit filed by Respondents seem to have been filed for the sake of filing some reply, as the same contains nothing but merely few denials and unsubstantiated, vague and superficial allegations against the Petitioners and their alleged aiding and abetting to ARG Outlier Media Pvt. Ltd., which is prima facie false and baseless.

2. It is surprising that although the Petitioners had all throughout dealt with and investigated by Respondent No. 1, he doesn't choose to come forward and deny the allegations made in the Petition in an Affidavit, which speaks volumes and prima facie establishes that the allegations as made out in the Petition as well as in the Petitioner's letter dated October 27, 2020 addressed to all superior officers specifically narrating in detail the various acts of harassment and intimidation meted out to the Petitioners by Respondent No. 1. What is

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surprising is that instead of Respondent No. 1 dealing with and refuting in an Affidavit, it is Respondent No. 3, who had never personally interacted or dealt with the Petitioners in any of these dates when they were called and kept present in the Crime Branch, has chosen to come forward and file the Affidavit in question on the alleged basis that he is aware of the facts of the case and he is making this Affidavit in reply on that basis. It is nowhere stated that why Respondent No. 1, was unable to make an Affidavit to deny these allegations.

3. The petitioners were compelled by the unwarranted pressure and harassment to move this Hon'ble court for an independent investigation. The non denial by the first respondent and non traversal of the crucial averments reinforce the prayer made. The petitioners have no interest in any particular media channel, they cannot be compelled to implicate or exonerate any channel. Whatever facts are in their knowledge, have been fully shared with the investigating agency.

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4. Without prejudice to the above it is most respectfully further submitted that the abovesaid Counter Affidavit in point No. 10 sub-point vii refers to and rely upon Para No. 19 of the Status Report filed by Respondent on 14.01.2021 before this Hon'ble Court. It is submitted that Petitioners have not been, till date, served with a copy of the said so called Status Report filed by Respondent before this Hon'ble Court. Since Respondents are referring to and relying upon the said document or the portion of the same against the Petitioners and especially some allegation are made against Petitioners in the said Status Report, it was incumbent upon the Respondent to serve a copy of the same to Petitioners. However, in absence of service of any such copy of the said

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Status Report, Petitioners are unable to deal with the same and they reserve their right to file a reply on the same, as and when required.

5. In any event, in view of abovesaid Counter Affidavit and the averments therein, Petitioners would like to, in short, point out and/or highlight few aspects in the matter which are as follows:

A. Delayed and vague reply:

a. As stated hereinabove, the abovesaid Counter Affidavit is filed by Respondent No. 3 on behalf of Respondent Nos. 1 to 4 who is not concerned about any investigation carried out visa vis the Petitioners by Respondent No. 1 and has no first hand knowledge about any of the allegations made against Respondent No. 1 in the Petition. The Respondent No. 3's Affidavit is only in the form of plain denials and unsubstantiated, vague and superficial allegations against the Petitioners and their alleged aiding and abetting to ARG Outlier Media Pvt. Ltd., which is prima facie false and baseless.

b. Petitioners would like to bring to the kind attention of this Hon'ble Court a letter dated October 27, 2020 referred to and relied upon by them in their Petition (Annexure - K Page Nos. 125 to 127), a copy of which is annexed hereto at Annexure - A, for the ready reference of this Hon'ble Court. Petitioners have, in detail, recorded all the facts and ill treatment given to them in the course of investigation by Respondent No. 1 and submitted the same to Home Secretary, Government of Maharashtra, Additional Chief Secretary (Home), Government of Maharashtra, Director General of Police, Maharashtra,

Respondent No. 2, Joint Commissioner of Police (Crime), Addl Commissioner of Police (Crime) and Deputy Commissioner of Police (Crime) and requested them to kindly intervene and stop the harassment of Petitioners, its Directors/CEO/personnel whose only action in the matter is the filing of the FIR against an ex-employee.

- c. Respondents have not replied to or in any manner dealt with the said letter dated October 27, 2020 at any time and the present reply has been filed only after almost two and half months since the service of the Petition that too with general denials of allegations in a formal form. This letter, therefore, assumes great significance and is in fact a clinching piece of evidence to establish the case of harassment and trauma caused to Petitioners by the Respondents.
- d. Even now, Respondents, in their entire reply filed by them in the form of abovesaid Counter Affidavit have neither touched the said letter nor refuted to or dealt with the same in any manner which further establishes case of Petitioners against the Respondents and exposes the false and baseless case of the Respondents.
- e. Even the present reply filed by Respondent in the form of abovesaid Counter Affidavit is full of vague and plain denials which cannot take place of or discredit or falsify the precise and detail date wise narratives mentioned by the Petitioners in their abovesaid letter dated October 27, 2020 and also in the Petition.

19

B. Role of the Petitioners

a. Role of Petitioners in the entire course of measuring of TRP is very limited. As mentioned and illustrated by Petitioners in paragraph Nos. 3, 4, 5, 6 and 7 of the Petition, it is Broadcast Audience Research Council (BARC) which measures TRP on the basis of "Bar-o-meters" which are connected to the TV in the selective households by Petitioners in the household allotted by Meterology Data Pvt Ltd (MDL), a subsidiary of BARC. These "Bar-o-meters" capture activities such as programs watched, family members who were watching the program and then uploads the said captured data to BARC server through sim card installed in it when connected to the BARC server.

b. It is thus clear that the Petitioners have no knowhow on the information that is collected, forwarded, processed etc. at BARC and action taken by them thereupon.

c. Further, this activity of installing said "Bar-o-meters" is covered only in 20 states and union territories by Petitioner No. 1 for BARC and most of these states and union territories have their regional channels and do not exclusively watch English channels.

C. Procedure followed by the Petitioners

It is alleged by the Respondent that Petitioner No 1 does not have any internal procedures for conducting the field operations of recruiting and maintaining the panel households. It is respectfully submitted that Petitioner No 1 has been successfully operating in the field of Market Research and Field Operations since 1984, for a period of 36 years, and has handled numerous

large and complex field projects and the same cannot be done without robust internal processes. In this regard, it has been explained in detail to the Respondents in this case the methodology and processes followed by Petitioner No 1 in recruiting, training and managing the Relationship Managers who are directly engaged in installing and supervising the panel households on behalf of BARC. The following documents have been submitted by Petitioner No 1 to the Respondents, outlining the processes followed:

- 1) Details of Training imparted by Petitioner No 1 to Relationship Managers
- 2) Employee Confidentiality Agreement
- 3) Due Diligence Process towards Relationship Manager
- 4) Internal Enquiry Process in case of any suspicious activity in the Field
- 5) Code of Conduct for all employees of Petitioner No 1

The above documents attached herewith as Annexure B, to be assessed together with the actual day to day oversight of Field Operations on a continuous basis, and timely and prompt corrective action whenever necessary, constitute the operating processes that ensure the uncompromising performance of field work for running the panel households for BARC.

D. Complicity of ex employees and action taken by Petitioners

- a. The Counter Affidavit filed by the Respondents indirectly and vaguely allege involvement of Petitioner No. 1 and others in the present offence as 5 of their ex-employees have been allegedly arrested in the FIR under investigation.

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b. It is humbly submitted that as stated in paragraph No. 8 of the Petition, as soon as Petitioner No. 1 came to know about the commission of offence by one of their Relationship Manager viz. Vishal VedprakashBhandari, they took prompt action and terminated him. A complaint was also filed with the police for the offences committed by the said Vishal Vedprakash Bhandari and the present investigation is outcome of the same. Therefore, in fact, whatever investigation or the so called unearthing of fraud that has been done by the police, it is Petitioner who has to be given a small credit for the same to set the law in motion. However, sadly the Petitioners are facing all the unwarranted trauma and harassment at the hands of Respondent No. 1.

c. As far as other four allegedly arrested ex-employees of the Petitioner No. 1 are concerned, it is submitted that they had already left its services before their role was exposed by the police and the Petitioner No. 1 or others had no right, control or authority on them.

d. The Respondents should have borne it in mind that the Petitioner No. 1 is a private limited company, and in that capacity, upon commission of any alleged offence, can at the most terminate its employee(s) and forward him/them to a law enforcing machinery. Beyond this a private limited company has no right, authority and control on anyone and the Petitioner No. 1 has performed this duty as prescribed by law. Anything beyond this that is expected by Respondents from the Petitioners is baseless and is contrary to the legal position.

¹⁰
E. Petitioners have no interest in ARG outlier Media Pvt. Ltd. or their petition

- a. The Counter Affidavit filed by Respondents allege active aid and abetment of Petitioners with ARG outlier Media Pvt. Ltd. However, it is submitted that such statement of the Respondents is a result of their own figment of imagination. Such statement seems to be an outcome of Respondents' surmises and presumptions and has no iota of evidence to support. Even the said Counter Affidavit fails to illustrate any such act which aids and abet and/or any supporting piece of material for such statement.
- b. It is submitted that, as reflected from the said Counter Affidavit, to draw such conclusion, only because few reliefs, that too not all, prayed for by Petitioners and the said ARG outlier Media Pvt. Ltd. seems to be similar, is totally uncalled for and baseless.
- c. Petitioner at this juncture, would like to bring to the kind attention of the Hon'ble Court that it was in fact Petitioner No. 1 which had filed a Suit against the said ARG outlier Media Pvt. Ltd. before the Civil Court, a copy of which is annexed to the Petition at Annexure – F.
- d. As illustrated in the Petition, this allegation seems to be an outcome of Petitioners refusal to make a statement against said ARG Outlier Media Pvt. Ltd.

F. Alleged financial interest or involvement of Petitioner No. 1

- a. All the alleged financial interests and involvements of Petitioner No. 1 and its connected companies were clearly

^{le} disclosed to BARC way back in the year 2013. BARC Directors initially appointed Petitioner no 1 with full knowledge of what businesses the group has. The Hansa Group ownership, including association with advertising agency, was submitted to BARC in a written document titled "Technical Proposal BARC Television Audience Measurement System" dated September 17, 2013. Petitioner's group websites have always displayed the group entities for anyone to see.

- b. Further, the fact of said disclosure to BARC as well as the said document viz. "Technical Proposal BARC Television Audience Measurement System" dated September 17, 2013 has also been submitted with Crime Branch during the course of investigation. The submission was done on November 23, 2020 and the acknowledgment of Crime Branch of the same is shown in Annexure - C hereto.
- c. Therefore, in spite of this if the Respondents continue to make such allegations it speaks volumes about their prejudice towards the Petitioners and this in fact supports the case of Petitioners for transfer of investigation.

G. Petitioners are not Accused, Petitioners are First Informants

- a. The Respondents ought to have borne in mind that Petitioners are not Accused in the matter in hand. On the contrary they are the First Informant at whose behest the criminal law is set in motion.
- b. In fact, Petitioner Nos. 3 and 4 have been cited as witness in the initial charge-sheet filed by the Respondents before the Ld. Metropolitan Magistrates Court.

- c. As alleged by the Respondents in the Counter Affidavit, there is no basis, evidence or material produced by them, to term Petitioners as suspects.
- d. It appears from paragraph No. 7 and 15 of the said Counter Affidavit that the Respondents have wrongly construed that the Petitioners, being First Informants, are contending any immunity from enquiry or interrogation or are hesitant to appear before the police to put forth their case, explain the facts, and establish the guilt of the Accused and co-operate with the process of investigation. It is once again submitted that grievance of the Petitioner is not against their summoning to Crime Branch to assist investigation. It is well clear from the Petition as well as letter dated October 27, 2020 that the grievance of the Petitioners is against their harassment, coercion and intimidation meted at the Crime Branch which has been in detail narrated by them in the Petition as well as the said letter dated October 27, 2020.
- H. The Respondents, in point No. 10 sub point iii, have admitted to have issued only two Summons to the Petitioners, one on 15.10.2020 and another on 09.11.2020. In fact, this admission proves the allegations of the Petitioners as far as breach of the process laid down by law. The Petitioners have in Petition as well as in their letter dated October 27, 2020 have mentioned all the dates on which they were called at Crime Branch and detained there. These dates and times have not been disputed by the Respondents in the entire Counter Affidavit.


- cc.
- I. The Petitioners further submit that although interim orders of this Hon'ble Court mentions about calling of Petitioner twice in a week for the inquiry for a reasonable period, none of the Petitioners have been called by the Respondents for investigation for the last about 6 weeks. In the circumstances, the Petitioners submit that since several rounds of questioning and production of multitude of documents have already been done and they are no longer required for questioning and especially when two charge-sheets have already been filed wherein Petitioners are not Accused but in fact Petitioner Nos. 3 and 4 are cited as witnesses, the Respondents may be directed to give three working days notice in case they need any of Petitioner's presence for investigation of the case and on such notice being given, the Petitioners/any of them should comply with such requisition and attend the office of Respondent No. 3 as required for a limited period as prescribed in the earlier interim order.

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In these facts and circumstances it is most respectfully prayed that the prayers of the Petitioners made in the Petition may kindly be granted.

Mumbai

Dated this January 27, 2021



Petitioner No. 2

V E R I F I C A T I O N

I, Narasimhan K Swamy, age about 63 years, Petitioner No. 2 and Director of Petitioner No. 1, having office at First floor, Building - A, Sahney Business Centre, 27 Kirol Road, Vidyavihar (West), Mumbai -

139

400 086, do hereby declare for myself and Petitioner No. 1, 3 and 4 that what is stated hereinabove is true and correct to the best of my knowledge, information and belief and I believe the same to be true.

Solemnly affirmed at Mumbai

Dated this January 27, 2021

Petitioner No. 2

Identified by me

Advocate

Before Me,

Bar and Bench

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Solemnly affirmed before me by Haroldman K. Suresh who is identified before me as Adv. Anshul Pholida and I personally know this 27th day of Jan 2021 High Court, Appellate Side, Bombay

Assistant Registrar High Court, Appellate Side

Stamp: ORGANIZATION OF BARRISTERS AND ADVOCATES OF INDIA