

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 1247 of 2020

AFR

Swadheen Kumar Raut *Petitioner*
-versus-
State of Odisha *Opposite Party*

Advocates appeared in this case:

For Petitioner : Mr. Gautam Misra, Senior Advocate
assisted by Mr. Anupam Dash, Advocate

For Opposite Party : Mr. Prasanna Kumar Mohanty
Addl. Standing Counsel

**CORAM:
THE CHIEF JUSTICE**

JUDGMENT
28.06.2023

Dr. S. Muralidhar, CJ.

1. The Petitioner, who is at present working as 'Input Editor' in Orissa Television Ltd. (OTV), Bhubaneswar has filed this petition under Section 482 of the Code of Criminal Procedure, 1972 (Cr.P.C.) seeking the quashing of the criminal proceeding in G.R. Case No.3245 of 2020 pending in the Court S.D.J.M., Bhubaneswar against him under Sections 269, 270, 120-B and 505(1)(b) of the Indian Penal Code (IPC) read with Section 52 of the Disaster Management Act, 2005.

2. The background facts are that the audio recording of a telephonic conversation between two men, one of whom claimed

to have returned from a COVID Hospital after being identified as a Corona +ive was telecast by the OTV News Channel on 6th August, 2020. The said conversation also was uploaded on Youtube and other social media platform by OTV. The allegation was that one of the men in the conversation had undermined the seriousness of the corona pandemic and claimed that it would be cured without treatment and medicines.

3. An FIR was registered in Capital Police Station (PS) as Capital PS Case No.303 of 2020 under the aforementioned provisions on the ground that by telecasting and circulating the above audio recording, OTV was dissuading the public from availing the requisite treatment thereby causing an increase in the spread of COVID. It was further alleged that as a result of such circulation of the audio recording, fear/alarm was being spread in the public as regards the medical treatment protocol and clinical management of COVID patients. It was further alleged that the OTV was spreading false information regarding misappropriation of central government funds for the treatment of COVID patients and admission of fake cases just to meet the daily targets by the Bhubaneswar Municipal Corporation (BMC) and other private COVID hospitals. It was alleged that by creating a trust deficit between the government and the public, the telecast by OTV of the aforementioned audio clip was likely to spread panic and fear and induce the public to commit offences against the State.

4. The Petitioner on the other hand claims that the intention behind uploading the audio clip was to alert the government about

its existence and requiring the government to go into the root of the matter and verify the claim. An additional affidavit has been filed by the Petitioner placing on record the complete transcript of the conversation including an English translation thereof.

5. Mr. Gautam Misra, learned Senior Advocate appearing for the Petitioner submits that the audio recording that was uploaded on the social media platform of OTV was a casual conversation between two friends and did not attract any of the offences for which the aforementioned FIR has been registered against the Petitioner. Far from creating panic and anxiety, the conversation has pointers on how to prevent the disease and the importance of using masks. Mr. Misra relies on a series of judgments including *State of Haryana v. C.S. Bhajanlal AIR 1992 SC 604* and *Prakash Mishra v. State of Odisha 2015 (II) OLR 93* to urge that this Court should interfere under Section 482 Cr PC in order to prevent a miscarriage of justice. जयते

6. Further, it is contended by Mr. Misra that inasmuch as OTV is a media platform, registering a criminal case in the above background against it would amount to curtailing the freedom of the press. Reliance is placed on a judgment of this Court in *Kali Charan Mohapatra v. Srinivas Sahu AIR 1960 Ori. 65* and of the Supreme Court in *Arnab Ranjan Goswami v. Union of India (2020) 14 SCC 12*.

7. Mr. Prasanna Kumar Mohanty, learned Additional Standing Counsel (ASC), appearing for the State referred to the transcript

of the conversation and submitted that it had the potential to unnecessarily cause panic amongst the public and amounted to spreading fake news. In this context, he referred to certain observations of the Supreme Court in its order dated 31st March, 2020 in Writ Petition (Civil) No.468 of 2020 (*Alakh Alok Srivastava v. Union of India*).

8. The above submissions have been considered. At the outset, it must be noted that the learned ASC has not questioned the correctness of the English transcript of the audio recording which has been placed on record by the Petitioner along with an additional affidavit dated 18th June, 2023. While it is not necessary to set out the entire conversation, the portions thereof which are relevant for the issue on hand are set out below. It must be noted that PW 1 is the caller and PW 2 (who apparently underwent treatment for Corona) is the person answering the call,:

“P1: Are you back home now?

P2: yes, I returned last Tuesday.

P1: Oh, you are back since last Tuesday .. aa! Ha!
Ha! How was your experience?

P2 : Nothing, they are just taking us from here.

P1: Really..

P2 : They just keep us there and give us no medicines..

P1: and ..

P2 : They tell us we would get cured on our own..

P1: You swear?

P2 : Just vitamin, that A to Z multi vitamin..

P1: Ha haha.

P2 : We just take that at night..

P1: Okay..

P2 : If you get a cold, you will have a medicine for cold.

P1: Ha Ha..

P2 : If you get a fever, you will have medicine for fever; those who have cough, they give a cough syrup.

P1: Okay, which cough syrup ?

P2 : What ?

P1: Which cough syrup ?

P2 : A cough syrup called Tasarikor something like that.

P1: okay.. okay.. okay..

P2 : Someone who has no symptoms he would take no medicines of course.”

9. A major part of the conversation is about P2 claiming that he did not take any medicine but had in any event recovered. The other relevant portions of the conversation are as under:

“P2 : The way the BMC people are spreading panic..

P1: Ha..ha..ha..

P2 : There is nothing to it..

P1: Nothing?

P2 : No, nothing..

P1: Oh God..

P2 : The ones who have some lungs related problems..

P1: Yes..yes..yes..

P2 : The ones having trouble breathing, would have certain convenience there in the sense that they would get access to oxygen, antibiotics, saline, etc..

P1: Okay..okay..okay..

P2 : Otherwise there are about a thousand.. a hundred.. two hundred just like me..

P1: Ha..ha..ha..ha..

P2 : Just eating and loitering around..

P1: Oh..Okay..okay..okay..

P2 : And they return when they are released..
ahn!.. ahn!..

P1: He!.. he!.. he! he!.. Okay.. okay.. okay..

P2 : And you.. If you ever go there, you will get the real picture.. सत्यमेव जयते

P1: Oho! Then there is nothing to panic about ?

P2 : Nothing..

10. One portion relied upon by the State to sustain registering the complaint reads as under:

“P2 : These BMC people are deliberately taking us there to meet their target.

P1: There is a target, plus they must be siphoning of something from the medicine bills. Did you complete the billing formalities during discharge?

P2 : For one patient..

P1: Yes..

P2 : If they register a patient they get something from the Central Government..

P1: Really..

P2 : For the eight days period, the Central Government is paying about 1.5 to 2.5 lakhs per patient.

P1: Okay.. okay.. okay..

P2 : They are siphoning of these funds.. these hospitals.. these health people..

P1: Hmm.. hmm.. hmm..

P2: BMC, all of them together..

P1: Okay.. okay.. okay..”

11. Learned ASC was unable to point out which precise portion of the above conversation answered the description of the offence of spreading panic and causing alarm amongst the members of the public. On the other hand, Mr. Gautam Misra, learned Senior Advocate for the Petitioner, maintained that the conversation was indeed a casual one between two persons in private which did not intend to cause any alarm.

12. A perusal of the conversation in its entirety reveals that it does give certain pointers to the precautions a COVID +ive might want to take and the kind of treatment he/she may or may not require. It does highlight the importance of using masks and taking steps to prevent the spread of the COVID pandemic. This, even while it is critical of some of the measures put in place by the government.

13. Viewed objectively, it cannot be said that the telecasting of the above audio clip would cause unnecessary panic among the public

as claimed by the State. In this connection, the following observations of the Supreme Court in *State of Haryana v. Bhajanlal* (*supra*) in the context of instances where interference under Section 482 Cr PC may be called for are relevant:

“(a) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. Again in *Prakash Mishra v. State of Odisha* (*supra*) this Court reiterated the decision of the Supreme Court in *Rishipal Singh v. State of Uttar Pradesh* (2014) 7 SCC 215 to the effect that the High Court should not allow a vexatious complaint to continue, which would be a pure abuse of the process of the law and the same has to be interdicted at the threshold.

15. Considering that the OTV is a media platform and is essentially discharging the function of disseminating news, the following observations in *Kali Charan Mohapatra v. Srinivas Sahu* (*supra*) would be relevant:

“(5) Clauses (a) and (b) of S. 505 I.P.C. have obviously no application. The Magistrate issued summons presumably under clause (c) of that Section. That clause (omitting immaterial portions) penalizes the publication or circulation of any statement with intent to incite or which is likely to incite any class or community. Long before the commencement of the Constitution in Shib Nath

Banerjee v. Emperor, 40 Cal WN 1218, it was pointed out that this section deals with the liberty of the subject and must be construed very strictly in favour of the defence.

This principle applies with greater force now because the right of freedom of speech and expression has been made one of the Fundamental Rights guaranteed under Article 19(1)(a) of the Constitution. In a democratic set up a citizen has a right subject to certain restrictions to point out, either by means of a pamphlet or by holding public meetings, what he considers to be the various instances of acts of commission and omission on the part of the officials of a particular place in consequence of which the public of that place are suffering. The exception to S. 505 I.P.C. grants him immunity from prosecution if he had reasonable grounds for believing these allegations to be true and if he did not have the necessary intention as required by that Section. In the Constitution also, the only restriction placed on the exercise of this fundamental right is that imposed by clauses (2) of Article 19.”

16. In *Arnab Ranjan Goswami v. Union of India* (*supra*) it was observed by the Supreme Court as under:

“Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). India’s freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable

to the legal regime enacted with reference to the provisions of Article 19(2). But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position. Yuval Noah Harari has put it succinctly in his recent book titled “21 Lessons for the 21st Century”: “Questions you cannot answer are usually far better for you than answers you cannot question.”

17. Upon a careful perusal of the complaint/FIR and the transcript of the conversation as placed on record by the Petitioner with the additional affidavit, the Court is satisfied that the offences under which the FIR has been registered are not even prima facie made out against the Petitioner. Indeed, the conversation appears to be a casual one not intended to cause panic in the public. It is highly unlikely that this one conversation would somehow induce the public to avoid treatment for Covid thus resulting in the spread of the pandemic and much less still induce the public to commit offences against the State. The Court is of the view that that the continuation of such criminal case against the Petitioner, who is an Input Editor of OTV is likely to have a chilling effect on press freedom.

18. For the aforementioned reasons, the criminal proceeding in G.R. Case No.3245 of 2020 pending in the Court S.D.J.M., Bhubaneswar and all proceedings consequent thereto are hereby quashed. The petition is accordingly allowed.

19. A copy of this judgment be sent forthwith to the concerned trial Court.



S.K. Jena/Secy.