

Ananya Kumar vs Union Of India & Ors. on 11 March, 2024

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 1485/2023

ANANYA KUMAR

Through: Mr. Manan Aggarwal, Advocate
(Through V.C.)

versus

UNION OF INDIA & ORS.

Through: Mr. Apoorv Kurup and Ms. Gauri Goburdhun, Advocates
UOI.
Mr. Santosh Kr. Tripathi
Counsel for GNCTD with Mr.
Rishabh Srivastava and Mr.
Sharma, Advocates along with
Manoj Kumar, IFSO, Special
Delhi Police.

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Date of Decision: 11th March, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The petitioner has filed under Article 226 of the Constitution of India, in the nature of a public interest litigation (PIL) seeking following prayers:-

A. Issue a writ of mandamus, or any other appropriate writ, order or direction to the respondent no. 2 to issue mandatory standing order/guideline to be followed by Delhi Police that whenever any aggrieved complainant approaches the Police in Delhi for lodging FIR related to Cyber-Crime, the Police shall initially invoke the relevant provisions of the Information Technology Act, 2000 in compliance of the law laid down by the Hon'ble Supreme Court of India in Sharat Babu Digumarti Vs. Govt. of NCT of Delhi Criminal Appeal No. 1222/2016 dated 14.12.2016 and as per mandate of Section 81 of the IT Act.

B. Direct the respondent no. 1 and 3 that they shall provide separate infrastructure and online visibility for proper functioning of the adjudicating officer appointed

under the IT Act and run mass awareness publicity to make the people aware that such adjudicating officer has been appointed under the IT Act having power of the Civil Court so people can approach the said officer for redressal in respect of contravention in relation to Chapter IX of the IT Act.

2. The case of the petitioner in brief as culled out from the petition is as under:-

a. The Information Technology Act, 2000 was enacted by the Indian Parliament to ensure protection to the victims of Cyber-Crime but despite the enactment of the said Act the same is not being implemented in its true sense by the respondents as a result our citizens are not able to avail timely criminal as well as civil remedy under the said act, even the public money spent in establishing and running the new special Cyber Police Stations in Delhi is getting waste as in the National Capital Delhi, whenever the aggrieved complainant approaches the Police in Delhi for legal action in Cyber-Crime, the police in a routine manner registers an FIR only under the provisions of the Indian Penal Code, 1860 (in short "IPC") in contravention of the law laid down by the Hon'ble Supreme Court of India in Sharat Babu Digumarti Vs. Govt. of NCT of Delhi Criminal Appeal No. 1222/2016 dated 14.12.2016 and as per mandate of Section 81 of the IT Act.

b. As per section 78 of the IT Act only a police officer not below the rank of Inspector can investigate any offence under the IT Act, as time is the essence in the online offences, so in order to not burden the work of an Inspector in a Police Station the provisions of the IT Act are not being invoked by the respondent no. 2 in Delhi.

c. This fact is also apparent from the two FIR's and NCRB data of 2020 as per which on comparing the rate of Cyber-Crimes in various Metropolitan Cities in the year 2020, the rate of total Cyber-Crimes per One Lakh of population was 104.6 in Bengaluru, 50.5 in Lucknow and 32 in Ghaziabad, however, in Delhi it was merely 1 case was reported per One Lakh of population from the analysis of this data it is clearly visible that the respondent no. 2 is not invoking the provision of IT Act in the Cyber-Crime reported offences in Delhi and the same is reflected in the various replies of the RTI filed by the petitioner before the respondent no. 2, although various news reports are depicting different story that Cyber-Crime in Delhi has increased by 100% during year 2020-2021.

d. Whereas civil remedy is concerned under Section 46 of the IT Act an adjudicating officer who shall adjudicate whether any person has committed contravention of any of the provisions of this Act or of any rule, regulation, direction or order and shall hold an inquiry in the manner prescribed by the Central Government and further, the adjudicating officer is vested with the power of a civil court to adjudicate any matter before it, therefore, the Secretary of Department of Information Technology of each of the States or of Union Territory shall serve as an adjudicating officer, but the said provisions and notification have no enforcement in Delhi since there is no

information available on the State Government website regarding the said adjudicating officer and how the said officer functions in his capacity as an adjudicating officer under the IT Act.

3. We have heard Mr. Manan Aggarwal, learned counsel for the petitioner and Mr. Santosh Kr. Tripathi, learned Standing Counsel appearing for the R-2 & R-3, the contesting party and perused the counter affidavit as also the comprehensive reply filed by the R-2/ Delhi Police in compliance of this Court's order dated 11.08.2023.

4. In respect of the arguments regarding the implementation of the provisions of Section 46 of the Information Technology Act, 2000 (for short "IT Act, 2000"), the contents of the counter affidavit of the respondent no.1 / Ministry of Electronics and Information Technology would be relevant. As can be seen, Section 46 empowers the Central Government to appoint an Adjudicating Officer for holding an inquiry in cases of violations of provisions of the IT Act, 2000 as also to adjudicate on the claims / penalties in the manner as prescribed by the Government. It has been stated in the affidavit that the Central Government in terms of the aforesaid section brought into force the Information Technology (Qualification and Experience of Adjudicating Officer and manner of holding Enquiry) Rules, 2003 vide the notification dated 17.03.2003. The said rules contain the prescribed procedure for regular functioning of the Adjudicating Officer as also the procedure for holding enquiry and adjudicating the claims and penalties.

5. It has been further clarified that under Section 46(1) of the IT Act, 2000, the Central Government has appointed the Secretary of the Department of Information Technology of each of the States or Union Territories as Adjudicating officer vide Notification No.240, dated 25.03.2003. As such, it appears that the further implementation is to be carried out by the respective State and Union Territories. In that they are empowered to provide separate infrastructure and online facility for the regular functioning of the Adjudicating Officers. Simultaneously, the States / UTs are also empowered to run suitable awareness programme.

6. Thus, insofar as the role of the Central Government in respect of the present PIL is concerned, it is clear that there is no further obligation upon the Central Government with regard to the implementation of Section 46 of the IT Act, 2000.

7. So far as the respondent no.2/Delhi Police is concerned, it has filed a detailed and comprehensive reply to the petition traversing almost all the issues raised in the present petition. It is stated in the comprehensive reply that there is a distinction in the offences stipulated in the IT Act, 2000 and the IPC which the police authorities carefully assess in respect of every case before taking action. It has been made clear that after such preliminary investigation, the cases are registered either under the IT Act or under both, the IT Act, 2000 as well as the IPC. The affidavit categorically specifies that out of 125 cases registered with the Cyber Crime unit, Special Cell, about 50 cases have been registered under the IT Act, 2000. That apart, the Delhi Police has very fairly also specified various difficulties and dynamics faced by it while dealing with cyber crime, particularly emanating in jurisdictions beyond the territorial limits of this country. However, at the same time, the Delhi Police has also informed that as of today India has executed Mutual Legal Assistance Treaties

(hereinafter referred to as the "MLAT") with 42 countries and the exchange of data depends heavily on assurance of reciprocity of the other nation.

8. That apart from the above, the Delhi Police has given in detail as to how it has been in the past, and for the future, implemented preventive measures to mitigate the cyber crime. The said measures are more particularly enumerated in Para 9 of its comprehensive reply. The same are extracted hereunder:-

"9. That notwithstanding the above, the following preventive measures have been taken to mitigate the cyber crimes:

a. In order to combat the emerging cyber trends, 15 cyber police stations have been established in each District of Delhi.

b. Cyber Crime Unit of Delhi has been rechristened as Intelligence Fusion & Strategic Operations (IFSO) Unit. The mandate has been expanded to generate intelligence and carry out operations to counter new cyber crimes.

c. Easy reporting of cybercrime at www.cybercrime.gov.in. d. Cyber Crime reporting facilitation number 1930 (earlier 155260) is functioning round the clock. To strengthen the system of 1930, a copy of FIR registered on any complaint or a complaint submitted via 1930 helpline is being sent to the concerned financial entity within 24 hours so that the banks/wallets have authentic reasons to block the money.

e. PAN linkage of mobile numbers is affected to link the cyber fraudster found complicit in the cybercrime across the country. f. After conducting cluster analysis of NCRP complaints, various steps are taken to mitigate cybercrime viz. FIR is registered as per provisions of law, the same is reckoned as a new MO and is added to the list of new MO. Further the same is shared with the banks, published for awareness, etc. g. As a proactive step, mobile numbers and IMEIs found involved in cyber crimes are sent to DoT for blocking.

h. Delhi Police has also inked an MOU with Truecaller to detect the fake numbers and give a green badge to the verified numbers of police personnel and a blue tick mark to the verified government services. i. This Unit organized a one-day JCCTs (Joint Cyber Crime Coordination Teams) conference in which 51 senior officers of the rank of Dy. SP to Addl. DGsP from 9 states and stakeholders from banks, TSPs, DoT, SFIO, FIU, Cert-In, and Meity participated. At length discussion with regard to hot spots and the action plan to mitigate cyber crime took place.

j. Coordination with Foreign Security and Intelligence Components: As a part of its capacity-building initiative, a three-day joint training session with the French Delegation on Investigation Techniques to Combat Cybercrime in co-ordination with 14C and French Embassy was organized at IFSO/NCFL. On 01.02.2023, a delegation from Australia came to NCFL Dwarka and interacted on the latest trends of cybercrime and collection of digital evidence.

k. Cyber UDAY 2.0 (Universal Direct Awareness in Youth) has been launched on 06/10/22 by Hon'ble LG of Delhi in which 225 students and 88 teachers participated. The initial target of CYBER UDAU 2.0 in coordination with districts is to reach and educate 26,000 students in schools/colleges about cyber-crime and prevention awareness within four months.

l. The Hon'ble Lieutenant Governor (LG) of Delhi Sh. Vinay Kumar Saxena has unveiled an e-book on 'Cyber Swachhta for Citizens. This e- book will be used to create awareness through various social media platforms."

9. A perusal of the contents of the comprehensive reply of respondent no.2/Delhi Police brings to fore the fact that the police authorities have a comprehensive mechanism in place for dealing with the crimes that are reported to it; conducting preliminary investigation, both under IT Act, 2000 as also IPC and after preliminary application of investigative methodology, register the FIR either under the IT Act, 2000 or under both the IT Act, 2000 and IPC. It is also clear that India has also executed international agreement/treaties referred to as MLATs with 42 countries which also would be a pro-active measure in preventing as also for investigating cyber crime. We are also convinced that the Delhi Police has undertaken adequate measures for prevention and mitigation of cyber crimes.

10. Even otherwise, the provisions of Cr.P.C. provides sufficient safeguards and redressal methodology to any person aggrieved by an alleged inaction on the part of the police authorities in not registering cyber crimes under the provisions of IT Act, 2000, by filing applications in the nature of protest petitions post filing of chargesheet or filing applications under Section 156(3) read with Section 200 of the Cr.P.C., 1973. As such, the contentions of the petitioner in this regard too, overlooks the specific provisions provided in the Cr.P.C. to redress any such grievance. On that account, the submissions in the present PIL are untenable and rejected.

11. So far as the implementation of judgment of Supreme Court in Sharat Babu Digumarti Vs. Govt. of NCT of Delhi, reported in (2017) 2 SCC 18, is concerned, we find from the counter affidavit of respondent no.1 and the comprehensive reply of respondent no.2/Delhi Police that the ratio laid down is being effectively and practically implemented by the concerned authority. That so far as the contention of the petitioner that the provisions of IT Act, 2000 being the latter Special Act would be given primacy over the provisions of IPC which is a general Act is concerned, there is no quarrel with the proposition and the ratio laid down by the Supreme Court in the aforesaid judgment. It cannot be doubted that in every case reported to the police authorities having a shade of cyber crime, such authorities being the sole repository of requisite expertise in such technical offences, would be competent to distinguish whether such crimes would fall within the purview of IT Act, 2000 or IPC or both of these Acts. Thus, the contention of the petitioner that in all such cases the Delhi Police would have no authority other than to first register every crime under the IT Act, 2000, would not only be contrary to the law in Sharat Babu's case (Supra) but also cannot be countenanced since no such rigid or straight jacket formula confining or restricting the investigative powers of the Delhi Police under various Penal Acts including IPC, can at all be curtailed. For these reasons too, the contentions of the petitioner are repelled.

12. In view of the above, we are satisfied with the measures undertaken by the respondent no.1/MEITY as also respondent no.2/Delhi Police as stated in their counter affidavit / comprehensive reply respectively.

13. Accordingly, nothing further remains for passing any further directions in the present PIL and the same is disposed of accordingly.

ACTING CHIEF JUSTICE TUSHAR RAO GEDELA, J MARCH 11, 2024 rl