

Flipkart Internet Private Limited vs State Of Nct Of Delhi & Anr on 25 January, 2022

Author: Rajnish Bhatnagar

Bench: Rajnish Bhatnagar

(VIA VIDEO CONFERENCING)

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 162/2022

FLIPKART INTERNET PRIVATE LIMITED

..... Petitioner

Through: Mr. Siddharth Luthra, Sr. Advocate
Dheeraj Nair, Mr. Kumar Kishore
Vishruty Sahni, Mr. Angaj Gaurav
Kaustubh Seth and Mr. Ayush
Adv.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondent

Through: Mr. R. S. Kundu, ASC for the State with
Ms. Sumedha Singh and Mr. Mukul Dagar

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% 25.01.2022 CRL.M.A. 1577/2022 (exemption) Exemption allowed, subject to just exceptions.

The application stands disposed of.

W.P.(CRL) 162/2022 & CRL.M.A. 1576/2022 (for interim direction) By way of this petition, filed under Article 226 of the Constitution of India, read with Section 482 Cr.P.C. the petitioner is seeking the following reliefs:-

(a) Issue an appropriate writ, order or direction to quash the FIR No. 108 of 2021 dated 18.02.2021, registered at Police Station- Sant Nagar, Burari, New Delhi, filed under Section 39, 49 and 51 of the Wild life (Protection) Act, 1972, and all proceedings thereunder (VIA VIDEO CONFERENCING) and of similar nature against the Petitioner;

(b) Issue an appropriate writ, order or direction to Respondent No. 1 for producing the records of the investigation carried out in respect of FIR No. 108 of 2021 dated 18.02.2021, registered at Police Station- Sant Nagar, Burari, New Delhi;

It is submitted by the learned senior counsel for the petitioner that petitioner is only an intermediary and has nothing to do with the alleged offence as people trade on the petitioners' platform. It is further submitted by him that petitioner cannot be made liable as protection is there as per Section 79 of Information Technology Act, 2000 to the intermediary. It is further submitted that if the state wants to prosecute then action can be taken against the seller but not qua the petitioner as petitioner is an intermediary only. It is further submitted by learned senior counsel that even after the protection, the complainant still has lodged two FIRs against the petitioner on the same allegations which is not maintainable as per the judgment of Supreme Court in TT Antony v. State of Kerala, (2001) 6 SCC Learned senior counsel for the petitioner has placed reliance upon the judgment of Supreme Court in Google India Private Limited v. Vishaka Industries, 2020 (4) SCC 162. The relevant para reads as follows:

"50. Section 79 is a safe harbour provision. Internet intermediaries give access to host, disseminate and index content, products and services originated by third parties on the internet.

(VIA VIDEO CONFERENCING) There are different kinds of intermediaries. They include:

- i. Internet Access and Service Provider (ISP). Examples are given in this category of Airtel, Vodafone, BSNL among others;
- ii. Data Processing and Web Hosting Providers. Examples include Godaddy and Bigrock;
- iii. Internet Search Engines and Portals like Google, Yahoo and Bing;
- iv. E-mail hosts like gmail (Google) and yahoomail; v. Then there are instant messaging platforms such as Whatsapp, Facebook Messenger, Skype, etc.; vi. E-commerce intermediaries where the platforms do not take title to the goods being sold like Amazon India, Flipkart, etc.;
- vii. Internet Payment Systems and Mobile Wallets like Paytm, etc.;
- viii. There are also participative internet platforms."

Further reliance has been placed upon Amazon Seller Services Pvt. Ltd. & Ors. v. Amway India Enterprises Pvt. Ltd. & Ors. 2020 (81) PTC 399 (Del). The relevant para reads as follows:

142. Section 79 of the IT Act is a safe harbour for online marketplaces, limiting their liability for third party information posted on their systems. It is to ensure that the liability for non-compliance and/or violation of law by a third party, i.e. the seller, is not fastened on the online market place. In holding that Amazon is in fact not an (VIA VIDEO CONFERENCING) intermediary, the learned Single Judge has obviated

the need for any evidence to be led in the matter.

Issue notice. Learned ASC who appears on advance notice, accepts notice. Issue notice to respondent no.2 on steps being taken by the petitioner by all permissible modes, returnable on 18th May, 2022.

Let the status report be filed by the state before the next date of hearing. List on 18th May, 2022.

Till the next date of hearing, investigation qua petitioner and its officers are stayed.

RAJNISH BHATNAGAR, J JANUARY 25, 2022