

Harsh Mander & Anr vs Gncet Of Delhi & Ors on 26 February, 2020

Author: S. Muralidhar

Bench: S.Muralidhar, Talwant Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(Crl.) 565/2020

HARSH MANDER & ANR.
Through:

..... Petitioners
Mr.Colin Gonsalves, Senior Advocate
with Ms.Sneha Mukherjee, Ms.Nabila
Hasan, Mr.Siddharth Seem and
Mr.Tariq Adeeb, Advocates.

versus

GNCT OF DELHI & ORS.
Through:

..... Respondents
Mr.Arun Bhardwaj, CGSC with
Mr.Tushar Mehta (SGI) for Union of
India.
Mr.Rahul Mehra Standing Counsel
(Crl.) of State, with Mr. Tushar
Sannu, Mr.Jamal Akhtar,
Mr.Chaitanya Gosain, Mr.Divyank
Tyagi, Mr.Amanpreet Singh and
Mr.Anand Thumbayil, Advocates.
Mr.Praveer Ranjan, Special
Commissioner of Police.
Mr.Mehmood Pracha,
Mr.R.H.A.Sikander, Mr.Jatin Bhatt,
Mr.Sanawar, Ms.Afsha Pracha,
Mr.Prateek Gupta, Mr.Yashovardhan
Oza, Ms.Vidushi Bajpai and Mohd.
Danish, Advocates for Applicant.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH
ORDER

% 26.02.2020

1. Although the notice issued in this petition was accepted in the forenoon today by Mr. Amit Mahajan, learned counsel, on behalf of the Respondent Nos.2 and 3, i.e. Commissioner of Police, Delhi (CP) and Deputy Commissioner of Police (North-East) [DCP (NE)], a serious objection was raised in the post lunch session by Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal) that given the judgment of this Court in GNCTD v. Union of India 232 (2016) DLT 196 (DB), and of

Constitution Bench of the Supreme Court in *State (NCT of Delhi) v. Union of India and Anr.* (2018) 8 SCC 501 and of a two-Judge Bench of the Supreme Court in *GNCTD v. Union of India* 2019 SCC Online SC 193 his role as the only counsel who can possibly represent the Delhi Police cannot be bypassed. He pointed out that Union of India is not even a party to the petition.

2. In response to the above submission, Mr. Tushar Mehta, learned Solicitor General of India ('SG') handed over an application praying that Union of India should be impleaded as party/Respondent to the petition. The said application is taken on record. The Registry is directed to number the application. Notice is issued on that application.

3. The Court is at this stage only considering prayer (I) in the present petition. This Court has heard the submissions of Mr. Colin Gonsalves, learned Senior counsel for the Petitioners, Mr. Tushar Mehta, learned SG and Mr. Rahul Mehra, learned Senior Standing counsel (Criminal) for the Delhi Police.

4. The Court has viewed four video clips in the Court. The first of the video clips is of the speech delivered by Mr. Anurag Thakur, who is a Member of Parliament from the Hamirpur Lok Sabha constituency in Himachal Pradesh and also happens to be a Minister of State for Finance in the Government of India. This is a speech delivered on 21st January, 2020.

5. The second clip is of an interview given by Mr. Pravesh Verma, Member of Parliament from the West Delhi Constituency on 28th January, 2020 to the HT Channel. The third is a video clip of the speech delivered by Mr. Kapil Mishra on 23rd February, 2020 in the presence of DCP, North East Mr. Ved Prakash Surya. The fourth is a video clip that shows Mr. Abhay Verma, a sitting MLA of the Laxmi Nagar constituency in Delhi on 25th February, 2020, repeating the very slogan that features in the first clip of Mr. Anurag Thakur.

6. It must be mentioned here that in the forenoon session, Mr. Tushar Mehta stated that he had not watched any of the above videos. One of these clips of Mr. Kapil Mishra was then played in open Court in the pre-lunch session. During the lunch recess, Mr. Mehta apparently watched the remaining three videos.

7. In the post-lunch session, Mr. Praveer Ranjan, Special Commissioner of Police, stated that while he had watched the first three videos, he had not viewed the fourth video of Mr. Abhay Verma. That clip was then played in the Court for his benefit.

8. The refrain of the learned SG's submission has been that the time is not 'appropriate' or 'conducive' for FIRs to be registered in relation to these clips. He further refers to other video clips, which according to him are 'inflammatory' and which according to him would equally require action by the police at a 'conducive' time.

9. When asked to elaborate which is this 'conducive time', the learned SG stated it would not be possible for him to state at this stage. In light of what has been witnessed in the capital city in the last three days, with the number of death in the riots having risen to 18 (officially), with a large

number of persons being injured, some critically, with the unabated arson and looting of properties and incidents of violence, stone pelting, the Court posed specific queries to Mr. Praveer Ranjan, Special CP about what the consequences would be with every day's delay in registering an FIR for each of the speeches played in Court which ex facie appear to be answering the description of the crime of hate speech in terms of Section 153A (a) and

(b) IPC, both of which are cognisable and non-bailable. In addition to these clips the learned SG has referred to certain other clips which he himself terms as 'inflammatory' and in respect of which no FIR has been registered. The Court has also impressed upon Mr. Ranjan that he should convey to the CP the 'anguish' of the Court regarding the consequences of failure to register FIRs in an atmosphere like the present one.

10. It must be added at this stage that Mr. Ranjan volunteered that in relation to the deaths, the destruction of properties, injuries to large number of people in the incidents over the last three dates in the capital city, as many as eleven FIRs have been registered. This in fact underscores the point which the Court wishes to make, particularly to the Delhi Police, viz., that an FIR is first and foremost an acknowledgement of the commission of a crime. The police should be guided by the judgment of the Constitution Bench of Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh* (2014) 2 SCC 1 and go strictly by the mandate of the law. It should seriously consider the consequences that would ensue with every day's delay in registering FIRs not only on the basis of the video clips that have been played in Court but all other video clips of speeches/actions by anyone, whosoever it may be, which disclose ex facie the commission of an offence, bearing in mind that the rule of law is supreme and that no one is above the law.

11. Mr. Ranjan Special CP, assures the Court that he will himself sit with the CP today itself and view all the videos, not limited to the videos played in the Court but any other videos that might be provided to them and which they perhaps already are in possession of and take a conscious decision which will be communicated to the Court tomorrow itself.

12. List on 27th February, 2020 at 2:15 PM.

13. Dasti under signature of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 26, 2020 mr