

2024 SCC OnLine Del 8113

In the High Court of Delhi at New Delhi

(BEFORE AMIT MAHAJAN, J.)

ABC ... Petitioner;

Versus

State and Another ... Respondents.

Crl.M.C. 495/2019^s

Decided on November 6, 2024

Advocates who appeared in this case :

Mr. S.D. Salwan, Sr. Adv. with Mr. Arvind Chaudhary, Mr. Sachin Chaudhary & Mr. Vinay Yadav, Advs.

Mr. Rajkumar, APP for the State.

Insp. Seema Singh, SPUWAC.

Mr. Ajay Verma with Mr. Vaishnav Kirti Singh, Advs. for R-2.

The Judgment of the Court was delivered by

AMIT MAHAJAN, J. (Oral):—

CRL.M.A. 33295/2024

1. By the present application, the petitioner seeks issuance of directions to the Registry to mask the name of the petitioner from the order and the pleadings that were filed before this Court in the present case including the order dated 10.05.2024.

2. This Court *vide* order dated 10.05.2024 disposed of the petition bearing CRL. M.C. 495/2019, and set aside the impugned judgment and order dated 23.01.2019. Consequently, the order passed by the learned Metropolitan Magistrate in CC No. 1026/1/2015 directing registration of FIR against the petitioner was also set aside.

3. Subsequently, the petitioner filed a writ petition bearing W.P. (C) No. 15145/2024 seeking directions to remove the case details, judgment, and URL of the judgment dated 10.05.2024 passed by this Court in CRL. M.C. 495/2019 from public access on their websites since all the criminal proceedings between the parties had already been quashed. The Writ Court, consequently, directed the petitioner to approach the concerned Court for appropriate directions for masking the details of the parties.

4. The learned Senior Counsel for the petitioner submits that irreparable prejudice will be caused to the petitioner, his social life and his career prospects if the petitioner's name is indicated as a person involved in criminal case despite the fact that the case against the petitioner has ultimately been quashed by this Court.

5. He submits that the petitioner is entitled to protection under 'right to privacy' and the 'right to be forgotten' which have now been well defined and also recognised as a fundamental right. He relies upon the judgment of the Hon'ble Apex Court in *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 to contend that the right to privacy incorporates the right to be forgotten.

6. He submits that the instant issue has attracted sufficient attention even overseas in the European Union which led to the framing of General Data Protection Regulation that governs the manner in which personal data can be collected, processed and erased.

7. He submits that citizens have a right to request that search engines that gather personal information remove links to private information when asked provided that such information is no longer relevant.

8. He submits that the petitioner is a young man, carrying out his profession. He further submits that uploading of the case details on websites besides being stigmatic is also adversely affecting his personal life, career and future prospects. He submits that the presence of case details on the internet gives an impression that the petitioner is involved in a criminal case. He consequently submits that the same acts as a deterrent and is hampering the career growth and employment opportunities of the petitioner.

9. Admittedly, the criminal proceedings against the petitioner were ultimately quashed by this Court *vide* order dated 10.05.2024. Since the proceedings against the petitioner have already been quashed, this Court finds merit in the arguments advanced by the learned Senior Counsel for the petitioner.

10. The Hon'ble Apex Court while discussing the ambit of privacy and the need of informational privacy in *Justice K.S. Puttaswamy v. Union of India* (supra) observed as under:

"623. An individual has a right to protect his reputation from being unfairly harmed and such protection of reputation needs to exist not only against falsehood but also certain truths. It cannot be said that a more accurate judgment about people can be facilitated by knowing private details about their lives — people judge us badly, they judge us in haste, they judge out of context, they judge without hearing the whole story and they judge with hypocrisy. Privacy lets people protect themselves from these troublesome judgments.

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632. The technology results almost in a sort of a permanent storage in some way or the other making it difficult to begin life again giving up past mistakes. People are not static, they

change and grow through their lives. They evolve. They make mistakes. But they are entitled to re-invent themselves and reform and correct their mistakes. It is privacy which nurtures this ability and removes the shackles of unadvisable things which may have been done in the past.

633. Children around the world create perpetual digital footprints on social network websites on a 24/7 basis as they learn their "ABCs" : Apple, Bluetooth and chat followed by download, e-mail, Facebook, Google, Hotmail and Instagram. [Michael L. Rustad, Sanna Kulevska, "Reconceptualizing the right to be forgotten to enable transatlantic data flow", (2015) 28 Harv JL & Tech 349.] They should not be subjected to the consequences of their childish mistakes and naivety, their entire life. Privacy of children will require special protection not just in the context of the virtual world, but also the real world.

634. People change and an individual should be able to determine the path of his life and not be stuck only on a path of which he/she treaded initially. An individual should have the capacity to change his/her beliefs and evolve as a person. Individuals should not live in fear that the views they expressed will forever be associated with them and thus refrain from expressing themselves.

635. Whereas this right to control dissemination of personal information in the physical and virtual space should not amount to a right of total eraser of history, this right, as a part of the larger right to privacy, has to be balanced against other fundamental rights like the freedom of expression, or freedom of media, fundamental to a democratic society.

636. Thus, the European Union Regulation of 2016 [Regulation No. (EU) 2016/679 of the European Parliament and of the Council of 27-4-2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive No. 95/46/EC (General Data Protection Regulation).] has recognised what has been termed as "the right to be forgotten". This does not mean that all aspects of earlier existence are to be obliterated, as some may have a social ramification. If we were to recognise a similar right, it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant, or is incorrect and serves no legitimate interest. Such a right cannot be exercised where the information/data is necessary, for exercising the right of freedom of expression and information, for compliance with legal obligations, for the performance of a task carried out in

public interest, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. Such justifications would be valid in all cases of breach of privacy, including breaches of data privacy."

(emphasis supplied)

11. It is well settled that the right to privacy is a fundamental right and forms an intrinsic part of Article 21 of the Constitution of India. The concept of right to privacy incorporates the right to be forgotten. In the age of internet, every piece of information that finds its way to the internet, gains permanence. The need to allow the masking of names of individuals acquitted of any offence or when criminal proceedings against such persons are quashed, emanates from the most basic notions of proportionality and fairness. While the access to information is a fundamental aspect of democracy, the same cannot be divorced from the need to balance the right to information of the public with the individual's right to privacy. This is especially when after the quashing of the proceedings, no public interest can be served by keeping the information alive on the internet.

12. There is no reason why an individual who has been duly cleared of any guilt by law should be allowed to be haunted by the remnants of such accusations easily accessible to the public. Such would be contrary to the individual's right to privacy which includes the right to be forgotten, and the right to live with dignity guaranteed under Article 21 of the Constitution of India.

13. Accordingly, the registry of this Court is directed to remove the name of the petitioner as well as Respondent No. 2 from the records of CRL. M.C. 495/2019 and its search results. The registry in future, instead of the names of the petitioner and Respondent No. 2 being shown in the cause title of the said case, the pleadings or the orders passed in the said case, is directed to show the petitioner as 'ABC' and Respondent No. 2 as 'XYZ'.

14. The petitioner is permitted to approach all concerned portals, public search engines to mask the judgment passed in CRL. M.C. 495/2019 insofar as the name of the petitioner and Respondent No. 2 are concerned who shall only indicate the masked names of the parties in respect of the proceedings in CRL. M.C. 495/2019.

15. Whenever the petitioner or Respondent No. 2 would apply or approach any of the social media or search engines, it is expected that they would also follow the principle of 'right to privacy' and 'right to be forgotten' as envisaged hereinabove and remove any other material which may be on the record pertaining to the said case wherein the name of the petitioner and Respondent No. 2 are reflected.

16. The present application is accordingly disposed of with the aforesaid directions.

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