

ORDER

In the matter of a COMPLAINT received from Bharatiya Stree Shakti (Nagpur Wing) against two episodes of the programme '*Crime Patrol–Dastak*' (based on the Delhi gang rape case), which was to be aired on Sony Channel on 11-12 January 2013. The BCCC has received the Complaint on the directions of Hon'ble High Court of Bombay, Nagpur Bench – P.I.L. No. 4/2013 dated 11.01.2013, as decided by the Hon'ble Court on 27.02.2013.

The genesis of the present complaint lies in the gruesome incident of 16th December 2012, which shook the conscience of the entire nation. The gang rape of the 23-year-old girl in Delhi led to outpour of unprecedented public sentiment, which took various forms such as protest marches, candlelight vigils, campaigns on social media etc. The huge public sentiment also led to the formation of a Committee under the former Chief Justice of India, Justice J.S. Verma, for revisiting the law against sexual offences against women. The incident also served as the catalyst for the tabling before the Parliament of the much-neglected Bill on sexual violence against women. The Bill, which is being closely followed by most sections of the society, is presently under consideration by the Parliament.

Sony Entertainment Television (Multi Screen Media Pvt. Ltd.), one of the leading TV channels in the country, decided to air special episodes on the Delhi gang rape on 11.01.2013 and 12.01.2013 on its programme, '*Crime Patrol – Dastak*'. It is important to mention here that '*Crime Patrol*' covers real life incidents of crime by re-enacting the incident of crime through real life characters.

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By way of advertisements as also through print media, it became known to the public at large that Sony is planning to air such shows on the Delhi gang rape incident. Being aggrieved by the same, Bharatiya Stree Shakti, a non-governmental organization, approached the Hon'ble High Court of Bombay, Nagpur bench, seeking restraint on the telecast of the shows in question *inter alia* on the ground that such telecast would be prejudicial to the fair conduct of the trial. However, vide order dated 27.02.2013, the Hon'ble High Court was pleased to dispose of the petition and upon mutual consent, refer the Parties to the Broadcasting Content Complaints Council (BCCC), New Delhi. The relevant extract of the order of High Court is being reproduced hereinbelow:

“.....

With consent of the learned counsel for the Petitioner and Respondents No. 2 and 3, the petition is disposed of in the following terms:

- i) The copy of the present petition and the copy of the rejoinder filed by the petitioner shall be presented before the Broadcasting Content Complaints Council (BCCC), New Delhi by the Petitioner within a period of one week.*
- ii) The Broadcasting Content Complaints Council (BCCC), New Delhi shall permit Respondent No. 3 to file reply alongwith documents, if any, and after hearing the Parties shall take a decision in accordance with the Broadcasting Content Complaints Redressal Mechanism, within a period of four weeks from today.*
- iii) The interim order passed by this Court shall continue for a period of four weeks.”*

Thereafter, pursuant to the aforesaid order, the Complainant filed copies of its complaint and rejoinder before the Council. Respondent No. 3 also filed its reply before the Council.

It may be pointed out here BCCC is only a self-regulatory body formed by the Indian Broadcasting Foundation and BCCC has no powers of pre-censorship. However, in view of the fact that the dispute has been referred to BCCC by the Hon'ble High Court of Bombay, Nagpur Bench, and also in view of the fact that the Parties have mutually consented to submit themselves to the jurisdiction of BCCC, the present complaint was

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accordingly considered by BCCC in its 23rd meeting held in Mumbai on 14th March 2013, and is thus being adjudicated upon. The episodes have been viewed by the members of BCCC in presence of the representatives of the channel and also the complainants.

It may be seen that the telecast duly mentions that the telecast is based on the Delhi gang rape incident and is in fact a complete reconstruction of the incident in an elaborate way. The show has discussed the role of each of the accused in a detailed manner and has also covered the various confessions rendered by such accused persons. The show also follows the conduct of the accused before and after the incident. Also, the episodes show the test identification parade being conducted and various other aspects of the investigative process. Thereafter, the show also depicts the public taking to the streets in anger in form of protests and campaigns. However, it must be mentioned that the show also duly mentions that the trial in the matter is still pending before the fast track court in Delhi.

The show is clearly based entirely on the prosecution story only. Therefore, it is seen that the show on several occasions declares the accused persons as guilty. In fact, in a long summation given towards the end of the show, the anchor even says that the maximum possible punishment should be given to the accused persons.

It is argued by the Complainant that the broadcast of the 2 episodes in question should be immediately stalled as the transmission of these 2 episodes would be highly detrimental and prejudicial for the conduct of fair trial in the case. Further, a real life enactment of the episode is also violative of the human dignity of the victim and her family. It is also submitted that enactment of the crime incident would also be violative of the right to privacy of the victim and her family. Besides transmission of such episodes would give a free hand to the entertainment channels to cash upon the traumatic crime experiences of the citizens and roll out entertainment stories for their viewers.

On the other hand, it has been argued by the channel that the episodes are based on newspaper reports. The telecast of the shows cannot affect a judicially trained mind and the judge will decide the matter on the evidence before him and therefore, there is no

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likelihood of interference on the administration of justice in the matter. It is also argued that restraint of the proceedings would amount to placing fetters on the free speech and artistic expression of the channel.

We have duly heard and considered the rival submissions of the Parties before us. In this respect, it is important to refer to the observations of Lord Hardwicke, L.C. in *St. James Evening's* case reported in (1742) 2 Atk. 469, which are as under:

“Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard.”

It must be borne in mind here that the present trial has generated a great amount of public curiosity and interest. Therefore, the case has immense legal and social implications. In fact, it must also not be forgotten that the prime accused, Ram Singh allegedly committed suicide inside his prison cell, thereby bringing the case back into prime public focus.

Considering the present day importance and implications of the case, there is no gainsaying that the telecast of the show is bound to have an impact of its own and the issue at hand must be dealt with utmost sensitivity. Therefore, the Council must carefully consider the prejudicial impact feared by the complainant vis-à-vis the conduct of fair trial and therefore, would the right to free speech and expression prevail over the rights of the accused of fair and impartial trial.

The Council cannot lose sight of the fact that all the accused persons have pleaded innocence and therefore claimed trial. Our legal system does not proceed to pronounce a person guilty before he has been accorded the full opportunity of facing a fair and impartial trial and presenting his defence. Fair and impartial trial is not just a part and parcel of the right to life and liberty but goes to the root of administration of justice and rule of law. The European Convention of Protection of Human Rights and Fundamental

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Freedom enunciates that exercise of right of free speech and expression carries with it duties and responsibilities and one such duty and responsibility is that exercise of such right must not take away the protection and reputation or rights of others.

The show goes on to pronounce the accused persons guilty and the anchor of the show even says that the maximum possible punishment must be handed out to the accused persons. Under our criminal justice system, it is a basic tenet that nobody has the right to pronounce a verdict, much less verdict of guilt or otherwise upon an accused and that it is the sole prerogative of criminal court. The show is clearly and admittedly based on the prosecution story only. There is the defence side of the story also. Whether the prosecution version should be accepted or not is to be decided by the Court only. Other than this, the Council does not find anything objectionable with the show with regard to the alleged breach of privacy.

It must also be borne in mind here that the trial is almost getting over and there is a likelihood of the pronouncement of the verdict soon. Therefore, in view of the above findings, the Council directs that the shows in question should not be telecast till the verdict is pronounced by the trial Court in the matter. The complaint stands disposed of in the above terms.

For & on behalf of:

Broadcasting Content Complaints Council


Justice (Retd.) A.P. Shah

Chairperson

Broadcasting Content Complaints Council

20 March 2013

New Delhi