**Summary and outcome**

The Bombay High Court in India issued guidelines for television news channels when they report on ongoing legal proceedings. The Court was hearing a batch of public interest petitions filed against television news channels for scandalous reporting in the aftermath of the death by suicide of the prominent Indian actor Sushant Singh Rajput.

Rajput was found deceased in his apartment on June 14, 2020 and a criminal investigation had been initiated to ascertain the cause of death. The public interest petitions alleged that in the aftermath of Rajput’s death, some news channels carried out a media trial and this negatively affected the legal proceedings. The Court agreed with the petitioners that the reporting had affected the right to a fair trial of the accused persons under Article 21 of the Constitution. It censured the news channels and laid down a series of guidelines to balance the freedom of the press under Article 19(1)(a) and the right to a fair trial under Article 21 when reporting on ongoing legal proceedings.

**Facts**

The case pertained to news reporting in aftermath of the death by suicide of the prominent actor Sushant Singh Rajput. Rajput was a film actor aged 34 years old who died by suicide in Mumbai on June 14, 2020. On June 18, 2020, the Mumbai Police registered an Accidental Death Report and commenced an inquiry under Section 174 of the Code of Criminal Procedure, 1973 (‘Cr.P.C.’) to ascertain the cause of death and to find out whether the death was the result of any criminal activity. On June 24, the Post-Mortem report revealed that there were ‘no struggle marks or external injuries’ [pg. 30] on Rajput’s body and the death was caused due to asphyxia due to hanging, thus implying that the cause of death of suicide.

From June 14 onwards, various news channels aired intense discussions on ‘prime time on the probable cause of death of the actor’ [pg. 13]. Some channels resorted to speculative reporting to suggest that Mumbai Police had passed off his homicidal death as a suicide and that Rajput’s actress girlfriend Rhea Chakraborty ‘had orchestrated his death’ [pg. 13]. They aired programs that claimed that Rajput had been murdered, ran opinion polls asking their viewers on whether Chakraborty should be arrested or not, ran headlines that suggested that Rajput was mentally weak and ‘taunted the actor for committing suicide’, etc. [pg. 15].

Following these speculative reports, Rajput’s father lodged a criminal complaint against Chakraborty in Patna, Bihar naming her as an accused in his son’s homicidal death under Sections 341, 342, 380, 406, 420, 306, 506 and 120B of the Indian Penal Code (“**IPC**”). As Chakraborty was based in Mumbai and the death occurred in Mumbai, she applied to the Supreme Court to transfer proceedings to Mumbai. On August 19, 2020, the Supreme Court declined the transfer petition and directed the Central Bureau of Investigation (“**CBI**”) to take over the investigation. Soon after, the Enforcement Directorate (“**ED**”) and the Narcotics Control Bureau (“**NCB**”) also joined the investigation to launch separate prosecutions against Chakraborty. The investigations were based on the premise that Chakraborty drugged Rajput, was involved in financial wrongdoing regarding his assets, and had thus committed offenses under the Narcotics Drugs and Psychotropic Substances Act, 1985 (“**NDPS**”) and the Prevention of Money Laundering Act, 2002. Chakraborty was arrested by the NCB and incarcerated for approximately one month. On October 7, 2020, the Bombay High Court granted Chakraborty bail and found that the materials collected by the NCB did not prima facie suggest that she had committed any offense under the NDPS Act.

Owing to the scandalous reporting, five Public Interest Litigation petitions (“**PILs**”) were filed before the Bombay High Court in the present case between June 25, 2020, and September 10, 2020, seeking reliefs against the news channels for unethical and irresponsible reporting that interfered with the lawful investigation in the case. The Petitioners were Asim Sarode (an advocate working on human rights issues), Nilesh Navlakha (a filmmaker and social activist), Mahesh Singh (a retired officer of the Indian Police Service), ‘In Pursuit of Justice’ (a registered society working to preserve rule of law), and Preranaa Arora (a public-spirited individual residing in Mumbai).

The Petitioners had claimed that the news reporting was in contravention of the right to a fair trial under Article 21 of the Indian Constitution, the Cable Television Networks (Regulation) Act, 1995 (“**CTVN Act**”), the Cable Television Networks Rules, 1994 (“**CTVN Rules**”), the Mental Health Act, 2017 and the Contempt of Courts Act, 1971 (“**CoC Act**”).

Petitioner Nilesh Navlakha (PIL (ST) No. 92252/2020) sought the ‘temporary postponement of news reporting in any manner which would be tantamount to a media trial or parallel investigation’ [pg. 19] under Article 21 of the Constitution.  Petitioner Asim Sarode (PIL-CJ-LD-VC No. 40/2020) sought the Press Council of India (“**PCI**”) to inform all its members to display sensitivity when reporting on issues of mental illness and to abide by the World Health Organisation's Guidelines on Mental health. Petitioner Mahesh Singh (PIL No.1774 of 2020) sought that guidelines be issued for media houses to refrain from publishing false, derogatory, and scandalous comments that may jeopardize the reputation of the Police or hinder the administration of justice under Article 21 of the Constitution. Petitioner ‘In Pursuit of Justice’ (PIL No. 3145 of 2020) and Preranaa Arora (Criminal PIL No. 2339 of 2020) also sought that news channels be cautioned from broadcasting shows that obstructed the administration of justice under Article 21. They sought that the CoC to be invoked against erring news channels and a clarification that the starting time for the CoC to be invoked is from the moment a First Information Report (“**FIR**”) is registered instead of the moment when a court/judicial proceeding is initiated.

The petitioners had arrayed a range of Respondents, including the Ministry of Information and Broadcasting (Government of India), News Broadcasters’ Association (“**NBA**”), the PCI, the National Broadcasters Federation (“**NBF**”), the CBI, the State of Maharashtra and a variety of news channels including Times Now, Republic TV, India Today Group NDTV Ltd., News 18, among others. The Respondents argued that there already existed a sufficient regulatory framework for news broadcasting and it was not required for the Court to frame additional guidelines in this regard.

**Decision overview**

The judgment was delivered by a division bench of Chief Justice Dipankar Dutta and Justice Girish Kulkarni of the Bombay High Court. The Court framed five issues based on the Petitions:

1. Whether trial by media obstructs the ‘administration of justice' under Section 2(c)(iii) of the CoC Act?
2. Do ‘judicial proceedings’ under Section 3 of the CoC commence with the registration of an FIR? Further, should Section 3 that provides an exception to contempt of court be deleted or read down?
3. Whether media trial during an ongoing pending investigation falls within the restrictions contained in the CTNV Act and the CTNV Rules?
4. Whether the so-called regime of self-regulation adopted by the news channels was adequate and if had any statutory sanctity under the CTVN Act?
5. How should media reporting be regulated to strike a balance between freedom of speech and the right to a fair trial?

Petitioner Navlakha arrayed the Ministry of Information and Broadcasting, the News Broadcasters Association, the CBI, the PCI, the State of Maharashtra, and several media channels in his petition. He argued that the media trial in the present case was ‘posing a real and substantial risk of prejudice to the proper administration of justice’ [pg. 20]  He sought the ‘temporary postponement of news reporting in any manner which would be tantamount to a media trial or parallel investigation’ [pg. 19] under Article 21 of the Constitution. He also argued that the tenets of the Programme Code (prescribed under the CTVN Act and the CTVN Rules) be followed in letter and spirit that prohibited news channels from broadcasting defamatory, false, scandalous content and other kinds of content that amounted to contempt of court.

Petitioner Sarode alleged that the telecasts ‘left him disturbed as they contained photographs of the [Rajput’s] dead body’ [pg. 17]. He alleged that the telecasts were insensitive about serious mental illness and were gravely harmful to viewers suffering from illnesses such as depression. He sought that the PCI inform all its members to display sensitivity when reporting on issues of mental illness, to abide by the WHO's Guidelines on Mental health, and give full effect of the Mental Health Act, 2017 that recognizes suicide as a mental illness.

Petitioner Singh alleged that news channels had tarnished the image of the entire police force by accusing the Mumbai police of intentionally botching the investigation and tampering with evidence. He sought that guidelines be issued for media houses to refrain from publishing false, derogatory, and scandalous comments that may jeopardize the reputation of the Police or hinder the administration of justice under Article 21 of the Constitution.

Petitioner ‘In Pursuit of Justice’ and Petitioner Preranaa Arora sought similar reliefs. They sought that news channels be cautioned from broadcasting shows that obstructed the administration of justice under Article 21. They also sought a declaration that for the CoC to be invoked, the starting time should be the moment that an FIR is registered instead of the moment when court/judicial proceedings are initiated. They submitted that an accused person’s right to a fair trial under Article 21 was a ‘valid restriction operating on the right of free speech under Article 19(1)(a)’ [pg. 25].

The Ministry of Information and Broadcasting argued that the Union Government had fulfilled its duty to regulate news broadcasting by putting in place a sufficient regulatory framework through the CTVN Act and the CTVN Rules. If any person was aggrieved by any news reporting, they had a ‘right to approach the Courts and seek relief in terms of defamation or affecting the administration of justice in contempt jurisdiction’ [pg. 122]. The Ministry said that it had been exercising its powers and enforcing this mechanism and had in the past taken multiple actions and even suspended some erring broadcasters.

The NBA argued that it ‘may not be necessary for this Court to lay down any additional guidelines’ [pg. 135]. It argued that there existed sufficient statutory safeguards under the CTVN Act, the Program Code, through judicial remedies under the contempt of court law, remedies under the IPC, as well as self-regulatory remedies.

The NBF submitted that there was no need for guidelines on media reporting from the stage of registration of FIR as ‘such restriction on reporting by media would tantamount to no crime ever being reported and would amount to silencing of the press’ [pg. 146] under Article 19(1)(a) of the Constitution.

Respondent Times Now (a news channel) argued that ‘norms to regulate the media and to raise its professional standard must come from inside, thereby in a way accepting the self-regulation mechanism of the broadcasting industry’ [pg. 130]. It submitted that the CTVN Act, the CTVN Rules and the Program Code provide a sufficient safeguard required to be followed by electronic media.

**Court’s Findings**

**Issue 1:** Whether trial by media obstructs the ‘administration of justice’ under Section 2(c)(iii) of the CoC Act?

The Court answered this question in the affirmative. Section 2(c)(iii) states that criminal contempt means the publication of any matter or the doing of any other act whatsoever which interferes with, or obstructs or tends to obstruct, the administration of justice in any other manner. The Court explained that the concept of ‘administration of justice’ under 2(c)(iii) of the CoC Act was very broad. It stated that while contempt under Section 2(c)(i) and 2(c)(ii) were limited to specific acts of "scandalizing the authority of a court" or interfering with "due course of a judicial proceeding", contempt under Section 2(c)(iii) encompassed all other cases of a residual character and would include media reporting that interfered with a fair trial. The Court clarified that the ‘stage from which administration of justice commences may be prior to institution/initiation of judicial proceedings’ [pg. 184] and might even extend beyond the termination of proceedings. The Court noted that any publication that is determined by an appropriate court (that has the power to issue contempt proceedings) to cause prejudice and ‘affect a fair investigation of the accused as well as a fair trial’ [pg. 185] would be included under this provision.

**Issue 2:** Do ‘judicial proceedings’ under Section 3 of the CoC commence with the registration of an FIR? Further, should Section 3 that provides an exception to contempt of court be deleted or read down for lack of clarity?

Section 3 lays down instances when publication, which otherwise would be contemptuous, does not amount to criminal contempt of court subject to some conditions laid down in the section being fulfilled. The court held that judicial proceedings under Section 3 of the CoC commence with the registration of an FIR based on the definition of ‘contempt’ in the CoC Act. The Court refused to delete or read down Section 3 in its entirety. The Court noted that the Petitioner had not challenged the constitutional validity of Section 3 but just urged the Court to read down Section 3 for the sake of enhanced clarity. The Court held that it did not see any reason to say that a bare reading of Section 3 produced absurd results or that it was in conflict with the preceding Section 2(c) that defined criminal and civil contempt.

**Issue 3:** Whether media trial during an ongoing pending investigation falls within the restrictions contained in the CTNV Act and the CTNV Rules?

The Court held reporting on a ‘pending investigation on a criminal complaint clearly falls within the restriction as contained in the Programme Code as stipulated under Section 5 of the CTVN Act and Rule 6 of the CTVN Rules’ [pg. 203]. The Court noted that the CTVN Act was the repository of power to take measures for violation of the Program Code that clearly and unambiguously prohibited carrying of any program on the cable network that amounts to contempt of court. The Court explained that TV channels and broadcasters ‘function under the registration as granted to them under the CTVN Act’ [pg. 197] and are thus under a statutory obligation to adhere to the various stipulations prescribed by the Programme Code under Section 5 of the CTVN Act and Rule 6 of the CTVN Rules. The Court noted that the news channels’ reporting would attract sub-rules (a), (d), (f), (g), (i), and (k). These provisions imposed a clear restriction that no program should be aired that: offends the good taste or decency [sub-rule (a)]; contains anything defamatory, deliberate, false and suggestive innuendos and half innuendos and half-truths [sub-rule (d)], contains anything amounting to contempt of Court [sub-rule (f)]; criticizes, maligns or slanders any individual [sub-rule (i)]; denigrates women through the depiction in any manner of the figure of a woman in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals [sub-rule (k)].

**Issue 4:** Whether the so-called regime of self-regulation adopted by the news channels was adequate and if had any statutory sanctity under the  CTVN Act?

The Court rejected the Respondents’ argument that self-regulation by the channels by forming private associations (NBA and the NBF) was adequate. The Court explained that although the ‘objects of the NBA and the NBF could be laudable’ [pg. 209], these bodies could not be said to have statutory sanctity as 1) their membership was optional and broadcasters could choose to not join these associations thus evading the regulatory mechanism. 2) These bodies are not under the control of the ‘Central Government or any other stator agency’ [pg. 208]. 3) These self-regulatory mechanisms would ‘hardly meet the constitutional expectations of the citizens of fair and responsible broadcasting. The Court explained that as the Government owns the air-waves which these broadcasters use, it would not amount to a breach of the freedom of media under Article 19(1) if the Government hauls up erring channels for violations of the Program Code.

**Issue 5:** How should media reporting be regulated to strike a balance between freedom of speech and the right to a fair trial?

The court held that regulation of media reporting was necessary if it was amounting to a media trial however such regulation must be limited to securing the rights of accused persons and others under Article 21, as well as to preserve and maintain the sanctity of the criminal justice system of the country. The Court relied on Manu Sharma v. NCT of Delhi ((Sidhartha Vashist @ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1.)) to reiterate that there was danger of ‘serious risk of prejudice if the media exercises an unrestricted and unregulated freedom’ [pg. 211] for example, by publishing photographs of suspects before identification parades or by outright statements that declared a suspect guilty. The Court reiterated that it was ‘not only desirable but the least that was expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper the fair investigation by the investigating agency and more importantly does not prejudice the right of defense of the accused in any manner whatsoever.’ [pg. 212]

In this regard, the Court provided a list of situations/guidelines that news channels must ‘exercise restraint and reframe from’ [pg. 245] in the context of ongoing legal proceedings:

* ‘in relation to death by suicide, depicting the deceased as one having a weak character or intruding in any manner on the privacy of the deceased’ [pg. 245];
* ‘referring to the character of the accused/victim and creating an atmosphere of prejudice for both’ [pg. 245];
* ‘holding interviews with the victim, the witnesses and/or any of their family members and displaying it on screen’ [pg. 245];
* ‘analyzing versions of witnesses, whose evidence could be vital at the stage of trial’ [pg. 245];
* ‘publishing a confession allegedly made to a police officer by an accused and trying to make the public believe that the same is a piece of evidence which is admissible before a Court’ [pg. 245];
* ‘printing photographs of an accused and thereby facilitating his identification’ [pg. 246];
* ‘criticizing the investigative agency based on half-baked information without proper research’ [pg. 246];
* ‘pronouncing on the merits of the case, including pre-judging the guilt or innocence qua an accused or an individual not yet wanted in a case, as the case may be [pg. 246];
* recreating/reconstructing a crime scene and depicting how the accused committed the crime [pg. 246];
* predicting the proposed/future course of action including steps that ought to be taken in a particular direction to complete the investigation [pg. 246]; and
* leaking sensitive and confidential information from materials collected by the investigating agency [pg. 246];
* acting in any manner so as to violate the provisions of the CTVN Act, the CTNV Rules or the Program Code thereby inviting contempt of court; and
* ‘indulging in character assassination of any individual and thereby mar his reputation’ [pg. 246].

With these findings and guidelines, the Court disposed of the five PILs without any order as to costs.

**Decision direction**

The Court contracted expression by directing news broadcasters to refrain from publishing certain kinds of content and gave specific guidelines as to the manner in which they should report other content related to legal proceedings. That said, the judgment sought to protect other competing rights such as the right to a fair trial of accused persons as well as the right of reputation and privacy of other stakeholders in a legal proceeding.