**Summary and outcome**

In a petition filed by the State of Tamil Nadu, seeking cancellation of bail granted to the respondent-a Youtuber who made derogatory remarks against the Chief Minister of Tamil Nadu, the Madurai Bench of the Madras High Court has held that internet intermediaries are not expected to insist for first information report or any court orders to remove the videos which are in violation of their guidelines. If content is not blocked or removed after being brought to the intermediaries’ knowledge, the intermediaries are said to have committed an offence under Section 69A (3) of the Information Technology Act, 2000.

**Facts**

The first respondent (R1) was a Youtuber alleged of making certain derogatory remarks against the former Chief Minister of the state of Tamil Nadu. A complaint was lodged against the respondent for the commission of the offences punishable under the Indian Penal Code (the criminal code covering substantive aspects of criminal law in India) read with Section 67 of the Information Technology Act, 2000.

Consequently, R1 moved an application seeking bail. During the course of hearing of such application, R1 filed an affidavit of undertaking, admitting to his mistake and undertaking to not indulge in such activities in future instances. On the basis of the undertaking, the Court, vide order dated 06.08.2021, granted bail to R1.

It was the State/Petitioner’s case that despite the undertaking, R1 continued to make derogatory statements against the Chief Minister of Tamil Nadu. Hence, the present application was filed by the State seeking cancellation of the bail granted to R1. The Petitioner contended that R1 constantly engaged in repeating the offence of making derogatory remarks, intentionally, in order to increase engagmentwith his Youtube videos which ultimately brought him more pecuniary remuneration on account of large viewership. The Court was intimated that R1’s bail was solely premised on his undertaking that he would not indulge in such activities.  However, R1 violated the terms of the bail and continued to commit impugned acts, thus committing civil contempt. The State also cited instances where R1’s false rumours had affected reputation of companies against which such false statements were made.

The State further submitted that as per Section 69A of the Information Technology Act, 2000, an intermediary was mandatorily required to block content pursuant to a request for such blocking by the Central Government or its authorised officers. In the event the intermediaries failed to comply with such blocking orders, statutorily, they would be liable for punishment and would also lose the protection offered to intermediaries under Section 79(3)(b) of the Act. However, the State indicated that there were certain difficulties faced by the cyber crime wing in enforcement of the aforesaid provisions, including: (a) In some cases, first information reports (FIRs) are not registered due to unwillingness of the complainants; (b) even after registering FIRs, the intermediaries required court orders for takedown of content which were difficult to obtain in a timely manner. The intermediaries would only block the content temporarily and insisted on court orders for permanent blocking; (c) intermediaries based out of other countries were more oriented towards their country's laws and certain intermediaries did not even respond to the blocking request of the cyber wing; (d) content circulated through WhatsApp and other instant messaging platforms could not be blocked since they were directly circulated between users; (e) difficulty in receiving the creativity log and other details from WhatsApp, Facebook, Instagram, YouTube, etc., in a timely manner; (f) LED intervention into the private profiles (locked profile) of the suspects is difficult due to their privacy settings, thus, affecting investigations in such cases.

R1 submitted that he had realised his mistake and would not commit the same again. Additionally, he argued that R1 was not the only one making such content on social media. Several people were promoting such kinds of activities and were getting substantial income from YouTube on the basis of viewership. YouTube encouraged such defamatory videos and depending upon the views, both YouTube and the channel holders made money. (para. 10)

The court, in view of the seriousness involved, appointed Mr KK Ramakrishnan, Advocate, to act as an amicus curiae. As per the amicus, the main lacuna in the Information Technology Act was the absence of a provision requiring intermediaries to seek a license for operating as an intermediary. Owing to this and in view of the laws in place which require intermediaries to undertake due diligence while discharging its duties under the Act, intermediaries such as YouTube had formulated community guidelines for users. Any person who finds any content violating such community guidelines could report to YouTube, which would issue a warning first, followed by termination of the account in case of non-compliance.

**Decision overview**

Pugalendhi, J delivered the judgment in favour of the Petitioner State.

Article 21 of the Constitution of India guarantees the right to life as a fundamental right of every citizen. Right to life also includes within its ambit the right to live with dignity. [Maneska Gandhi v. Union of India [AIR 1978 SC 597]] . With the rise and access of the internet, cybercrimes such as making derogatory statements that affect the dignity of a citizen are also on the rise. The Court noted that the intermediaries operating in India are bound by laws in force in India. In view of the laws in place, intermediaries have framed user guidelines and policies. The intermediaries contractually engage with user channels hosting content. In case of violation of conditions of the guidelines, it is the duty of intermediaries to remove or block the channel as per the terms of the agreement. Intermediaries should ascertain and block channels that host videos that are not in accordance with the guidelines, policies and in terms of the contract. It is not for the intermediaries to insist for FIRs or court orders directing removal of videos that are not in accordance with the terms and policies. In the event the intermediaries fail to remove or block content even after acquiring knowledge, the intermediaries would be liable of committing offence under Section 69A of the Information Technology Act. (para. 21)

Court observed that the contents of R1’s video violated the terms and conditions of the intermediary. The investigating agency ought to have brought the same to the knowledge of the intermediary i.e., YouTube. If the intermediary failed to remove the videos, even after bringing such violation to their knowledge, the investigating agency could also institute criminal cases against the intermediaries.  The Court relied on the apex courts decision in *Pravasi Bhalai Sangathan v Union of India* (2014) 11 SCC 477highlight that while laws were in place, effective enforcement of such laws was crucial.

The Court concluded that R1 was repeatedly involved in the commission of internet offences with the intention to grab more views and to earn more money. The Court was satisfied that R1 was in complete violation of terms and conditions stipulated in the earlier order which ganyed bail to R1 on the basis of his undertaking. The Court ultimately passed an order to cancel R1’s bail.

**Decision direction**

The decision restricts freedom of speech and expression. The decision that intermediaries are bound to restrict access/ block content upon gaining knowledge without the requirement of a court mandated takedown order has a wide and far-reaching impact. The judgment appears to be an overreach in requiring the intermediaries to take action pursuant to knowledge, quite contrary to the Information Technology Act 2000 read with Rules that only mandate intermediaries to block access to content pursuant to a court order or direction from a central government agency. The direction requiring intermediaries to block access to content pursuant to gaining knowledge, poses threat to free speech by curtailing it in an unreasonable manner.