Neetu Singh v. Telegram FZ LLC

**Case Summary and Outcome**

The Plaintiffs herein filed the suit to prevent the violation of their Intellectual Property Rights and thereby seeking the information of the individuals involved in spread/sharing of the infringing material. The defendants herein defended their stand of not providing the information of the users based on various grounds which also included the Fundamental Right to Life and Personal Liberty, and Freedom of Speech and Expression as envisaged in the Indian Constitution. One of the primary defences raised was the Right to Privacy and Freedom of Speech and Expression. To these defences, the court was of the opinion that these rights cannot prevent an infringer from facing the consequences of illegal actions.

**Factual Background**

The Plaintiff herein, on finding the unauthorised use and sharing of the video lectures, books and other educational materials which they claimed to be protected, approached the Defendants for taking down the channels involved in such dissemination, which resulted in taking down of some of the channels. However, the issue was not totally resolved yet as some of such Telegram Channel were still present and more such channels were being created. Therefore, the Plaintiffs herein approached the High Court of Delhi seeking permanent injunction against the defendants and restriction from unlawful sharing of the copyrighted materials along with damages and cost. [para 3-6] While the unlawful channels were being taken down by the Defendants, the major issue which came up was regarding fresh creation of channels with different names but same output. To prevent this, the Plaintiffs herein sought disclosure of personal information of the individuals disseminating such infringing materials on the Defendants platform. Such disclosure of identity was refused by the Defendants citing Right to Privacy which was laid down in the case of *Justice K.S. Puttaswamy v. Union of India & Ors., (2017) 10 SCC 1* and Freedom of Speech and Expression as well as Privacy policy of Telegram along with Information Technology Intermediary Guidelines and Digital Media Ethics, 2021 (‘IT Guidelines’) of India and Personal Data Protection Act, 2012 (‘PDPA’) of Singapore. [para 9-11]

**Decision Overview**

The prime question involved in the litigation was whether the Defendants could be directed for disclosing the identity of the individuals involved in distribution of the infringing materials. [para 13]

 Defendants’ Contention in Brief: [para 14 and 20]

 1. Personal data of the channel creators cannot be shared.

2. As the servers of the Defendants are based in Singapore, the revelation of such data is barred as per the law of the Singapore.

3. The prerequisites as per the IT Guidelines which requires the disclosure of such personal information of the creators were not fulfilled.

4. Infringement of Freedom of Speech and Expression by barring creation of new channels from the creators.

With regard to the actions taken by the Defendants, the court observed that despite the injunction order, plaintiffs’ work is being distributed by the infringers under hidden identities and “Repeated blocking of the channels was proving to be insufficient.” [para 19] The court came to the conclusion that it is vested with the necessary jurisdiction to hear the matter, [para 27, 45(i)] and that the copyright of the Plaintiffs has in fact been infringed. [para 28 & 30]

With regard to the protection of copyrights, the court observed that “the significance of the protection and enforcement of such rights cannot be diminished, merely due to the growth of technology, which has made infringers easy to hide and conceal their illegal activities.” [para 39] The court also analysed the provisions of PDPA, and observed that one of the recognized exceptions to privacy under the Singaporean Statute is violation of law which allows the revelation of details of the persons involved in origin of the infringing materials. [para 45(ii)] The court also observed that an automatic protection is granted to the members of WTO countries, which includes Singapore as well, thus making the Plaintiffs work protected in Singapore as well by virtue of Singapore being a WTO country and a signatory to the Berne Convention. The court, taking into account the position of international law with regard to the protection granted to the Intellectual Property Rights, came to the conclusion that the defence of compliance with local laws will not shield Telegram from disclosing the information pertaining to the individuals and the channels which were sharing the infringing materials. [Para 45(iii)]

With regard to the Defendants’ submission that it is obligated not to disclose the details of the originator of the infringing material by virtue of it being an intermediary, the court opinionated that only taking down of the channels involved in sharing of the infringing materials was not sufficient of a remedy. The court stated that “the channels are clearly hydra-headed and are surfacing one after the other”. [para 45(iv)] Further, with regard to the IT Guidelines, the court after analysing *My Space Inc v. Super Cassettes Industries Ltd., (2017) 236 DLT 478 (DB)* was of the opinion that the guidelines do not absolve the defendants from protecting the IP rights of the owners. [para 45(v)] With regard to the nature of the infringement involved in the present case, the court stated that “the infringement has to be nipped in the bud, without which Courts would have to continue to repeatedly pass injunction orders against mushrooming channels containing infringing content. The Court cannot perpetually supervise such infringements and, thus, the origin and source of the infringing material has to be traced and such devices or persons involved in the infringement ought to face consequences in accordance with law, including being held liable for damages.” [para 45(vi)]

The court observed that the disclosure of the personal data of the individuals related to the infringing materials is not a protection granted as per the fundamental rights, primarily the right to privacy, of the individuals who were circulating the infringing material. [para 45(ix)]

The defendants had also contented the protection of right to privacy as under Article 21 of the Constitution of India as well as protection of freedom of speech and expression under Article 19(1)(a) of the Constitution of India. The court, however, stated that “the right to freedom of speech or the right to life including the right to privacy cannot be used by any person or entity, let alone an infringer, in order to escape the consequences of illegal actions.” [para 45(x)]

The court herein made a reference to *K.S. Puttaswamy* and observed that the requirement for compromising the privacy of an individual on behalf of the state is the presence of a law which rationalises the disclosure of personal information of an individual along with the need of such a disclosure with regard to the extent of the infringement of a right. The disclosure sought for protecting a right shall not be excessive and shall be proportionate to the remedy necessary to deal with the infringement. Further, in court’s opinion the Copyright Act 1957, sufficed all the requirements which were needed to make the defendants liable to disclose the identities of the individuals involved. [para 45(xi) to 45(xv)]

The court finally directed Telegram to disclose all the details including mobile numbers, IP addresses, email addresses, etc. of the channels/devices which were involved in spread of the infringing content to the court in a sealed cover. [para 48]

**Decision Direction**

The court’s decision paves a strong way towards the protection of the Intellectual Property Rights of an individual in an ever-changing technological world which poses sufficient challenges before the authorities responsible for protection of rights and enforcement of liabilities. The court’s direction that an individual cannot claim protection of privacy and speech in a digital regime when they are involved in an illegal act is a suitable manifestation of the law long prevailing in the sphere which is not completely based on digital technology to the sphere of law which is to a major extent, totally dependent upon digital technology.

**National and International Authorities**

Copyright Act, 1957

Information Technology Act, 2000

Information Technology Intermediary Guidelines and Digital Media Ethics, 2021

Personal Data Protection Act, 2012

Justice K.S. Puttaswamy v. Union of India & Ors., (2017) 10 SCC 1

My Space Inc. v. Super Cassettes Industries Ltd., (2017) 236 DLT 478 (DB).