

# Case Law on Sting Operations

## 1. Court On Its Own Motion v State

Citation: 146(2008)DLT429

Judges: Mukundakam Sharma (Chief Justice), Sanjiv Sharma

Date of judgment: 14 December 2007

Facts: On 30 August 2007, a television news channel called 'Live India' aired a programme based on a sting operation they had conducted that showed Ms. Uma Khurana, a teacher in a school run by the Delhi government, forcing a girl student into prostitution. Subsequent to the telecast, a crowd gathered at the school gate and started raising slogans demanding that Ms. Khurana be handed over to them. In the commotion and mayhem that followed some persons physically attacked the teacher and even tore her clothes. Shocked by this incident and subsequent to public outcry about it, the Directorate of Education, Government of Delhi, first suspended Ms. Khurana and later dismissed her from service. The Delhi Police also started an investigation.

The investigation showed that the girl who had been shown as a student who was allegedly being forced into prostitution by Ms. Uma Khurana was neither a school girl nor a prostitute but a budding journalist eager to make a name in the media world. The police found no evidence to show that Ms. Khurana was involved in a prostitution racket.

On 11 September 2007, the Ministry of Information and Broadcasting issued a show cause notice to Janmat TV-Live India stating that the telecast of the sting operation was deliberate and defamatory, containing false innuendos and suggestive half-truths. The show cause notice referred to Section 5 of the Cable Television Networks (Regulation) Act, 1995, read with provisions of the Cable Television Networks Rules, 1994, which specifies that no programme can be transmitted or retransmitted on cable services if it contains anything obscene, defamatory, deliberate or false, and/or if it contains suggestive innuendos and half-truths. The channel was also told that it was in violation of the Programme Code and Advertising Code. On 19 September, the I&B Ministry passed an order prohibiting transmission by Janmat TV-Live India.

In December 2007 the Delhi High Court took *suo moto* notice of media reportage around a television story that had come to be known as the Uma Khurana sting operation. The court examined the question of how the recurrence of such incidents could be stopped or

at least minimised so that innocent persons cannot be victimised and suffer loss of reputation.

Argument: The Court argued against the entrapment of a person even if it was to further the ‘public interest.’ It referred to a 1992 US Supreme Court decision (Keith Jacobson v. United States, reported in 503 US 540) which said that in cases where the US police arrested criminals by ‘entrapment’ the prosecution must establish beyond reasonable doubt that the defendant was predisposed to commit the criminal act prior to being approached by government agents.

Decision: The Court asked the Ministry of Information and Broadcasting to examine the proposed guidelines placed before it by the amicus curae<sup>1</sup>, and to include proposals they deemed fit in the current exercise to draft a statute or code of conduct to regulate sting operations.

According to these guidelines a channel proposing to telecast a sting operation had to obtain a certificate from the person who recorded or produced it saying that it was genuine to the best of his/her knowledge. There has to be a concurrent record in writing of the various stages of the sting operation. The channel has to obtain permission from a committee appointed by the Ministry of Information and Broadcasting to telecast the sting operation. While the transcript of the recordings could be edited, the films and tapes cannot be edited. Both edited and unedited tapes have to be produced before the Committee. The Chief Editor of the channel is responsible for self regulation and has to make sure that programmes are consistent with the Cable Network Rules, and comply with all other legal and administrative requirements under various statutes with respect to content of what is broadcast on the channel.

The guidelines further say that the subject matter of reports or current events cannot:

- a) deliberately present as true any unverified or inaccurate facts, so as to avoid trial by media
- b) present facts and views in such a manner as is likely to mislead the public about their factual inaccuracy or veracity – by mixing fact and fiction in such a manner that the public is unlikely to distinguish between the two
- c) present a distorted picture of reality by over-emphasizing or underplaying certain aspects that may trivialize or sensationalise content
- d) make public any activities or material relating to an individual’s personal or public affairs, or which invades a person’s privacy, unless it involves an identifiable, larger issue of public interest
- e) create public panic or unnecessary alarm that is likely to encourage or incite the public to commit crime or otherwise lead to disorder or be offensive to public or religious feeling.

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<sup>1</sup> The Amicus Curae or “friend of the court” is a lawyer appointed by the court to help the court in coming to a decision. In this case, senior advocates A.S. Chandhiok and Mr. S.S. Gandhi, were requested to assist the Court as Amicus Curiae in the matter.

The guidelines also stipulate that the media have to observe general community standards of decency and civility in news content, taking particular care to protect the interests and sensitivities of children and general family viewing. News should be reported with due accuracy. A greater degree of responsibility should be exercised by channels while telecasting programmes that would breach the privacy of individuals.

### **Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Others**

Citation: (2007)3SCC184

Judges: Y.K. Sabharwal (Chief Justice), K.G. Balakrishnan & D.K. Jain

Date of judgment: 10 January 2007

A private channel had telecast a programme on 12 December 2005 depicting 10 MPs of the House of the People (Lok Sabha) and one of the Council of States (Rajya Sabha) accepting money, directly or through a middleman, as consideration for raising certain questions in the House or for otherwise espousing certain causes for those offering the lucre. Following sting operations by a private TV channel that exposed such practices, the presiding officers of both houses of Parliament instituted inquiries that resulted in recommendations to expel the MPs concerned.

Another private channel telecast a programme on 19 December 2005 alleging improper conduct of another MP of the Rajya Sabha in relation to the implementation of the Member of Parliament Local Area Development Scheme ('MPLAD' Scheme). This incident was also referred to an Inquiry Committee.

The majority report of the Committee concluded that the evidence against the 10 members of the Lok Sabha was incriminate (i.e., strongly implied guilt); the plea that the video footages were doctored/morphed/edited had no merit; there was no valid reason for the Committee to doubt the authenticity of the video footage; the allegations of acceptance of money by the said 10 members had been established; their acts had a direct connection with the work of Parliament and constituted conduct on their part that was unbecoming of MPs, besides being unethical, and called for strict action.

The majority report also recorded the view that in case of misconduct, or contempt, committed by its members, the House can impose punishment in the nature of admonition, reprimand, withdrawal from the House, suspension from service of the House, imprisonment, and expulsion from the House. The report recorded deep distress over the acceptance of money by MPs for raising questions in the House and found that it had eroded the credibility of Parliament as an institution and as a pillar of democracy in this country. It recommended the expulsion of the 10 members from the membership of Lok Sabha, finding that their continuance as Members of the House would be untenable.

However, one member of the Committee recorded a note of dissent, reasoning that in his understanding of the procedure as established by law, no member could be expelled except for a breach of privileges of the House and that the matter must, therefore, be dealt with according to the rules of the Privileges Committee.

After the report was laid on the table of the House, a Motion was adopted by the Lok Sabha accepting the Committee's findings about the conduct of the members as unethical and unbecoming of MPs and about their continuance as members being untenable. The Motion resolved to expel the 10 members from membership of the House. On the same day -- i.e., 23 December 2005 -- the Lok Sabha Secretariat issued the impugned notification notifying the expulsion of those MPs with effect from same date.

The expelled Lok Sabha MPs challenged the constitutional validity of their respective expulsions through Writ Petitions/Transfer Cases in the Supreme Court.

Almost a similar process was undertaken by the Rajya Sabha in respect of the Member exposed by the sting operations exposing corruption in raising questions in the upper House. The matter was referred to the Ethics Committee of the Rajya Sabha. According to the majority report, the Committee found that the Member had accepted money for tabling questions in Rajya Sabha and the plea put forward by him in his own defence was untenable in the light of the available evidence. One member of the Committee, however, recorded a note of dissent, citing the following as reasons: that in his understanding of the procedure as established by law, no member could be expelled except for breach of privileges of the House and that the matter must, therefore, be dealt with according to the rules of the Privileges Committee.

The Report of the Ethics Committee was adopted by the Rajya Sabha, which concurred with its recommendation of expulsion. On the same date -- i.e. 23 December 2005 -- a notification was issued notifying the expulsion of the Member from membership of the House with immediate effect.

The second case (Writ Petition (C) No. 129/2006) related to alleged improper conduct in the implementation of the MPLAD Scheme. The concerned television programme was telecast on 19 December 2005. The Report of the Ethics Committee to which the matter was referred found, after viewing the unedited footage, that it was an open and shut case as the Member had unabashedly and in a professional manner demanded a commission for helping the so-called NGO set up projects in his home state/district and recommending works under MPLAD Scheme.

The Committee came to the conclusion that the conduct of the Member amounted to violations of the Code of Conduct for Members of the Rajya Sabha and that it was immaterial whether or not any money had changed hands and whether or not any commission was actually paid. It found that the Member had not only committed gross misdemeanor but that he had, by his conduct, also impaired the dignity of the House. In the Committee's opinion, the Member had acted in a manner inconsistent with the standards that the House is entitled to expect of its Members. Since his conduct had brought the House and its Member into disrepute, the Committee was of the view that he

had forfeited his right to continue as a Member and, therefore, recommended his expulsion from membership of the House. The Rajya Sabha accepted the recommendations of the Ethics Committee and a Motion agreeing with the recommendation was adopted on 21 March 2006, expelling the Member and bringing to an end his membership of the House. A notification to this effect was issued by the Rajya Sabha Secretariat on the same day.

The two Members of the Rajya Sabha also challenged the constitutional validity of their expulsions in the Supreme Court.

The main question before the Court was whether or not, in the exercise of its powers, privileges and immunities as contained in Article 105, the two Houses of Parliament are competent to expel their respective Members from membership of the House. The secondary questions were: if such a power exists, is it subject to judicial review and, if so, what would be the scope of such judicial review?

Argument: One of the petitioner's arguments was that the circumstances did not warrant the exercise by the Houses of Parliament of the power of expulsion since the persons behind the sting operations were driven by motives of self and profit. In this context, the petitioners referred repeatedly to the evidence, in particular, of Mr. Aniruddha Bahal before the Inquiry Committee of Lok Sabha, wherein he had conceded certain financial gains on account of arrangements with television channels for the telecast of the programme in question.

Decision: The Court rejected this argument. "We are not concerned here with what kind of gains, financial or otherwise, those persons made as had conceived or engineered the sting operations leading to the material being brought into the public domain through the electronic media. This was not an area of anxiety even for the Houses of Parliament when they set about probing the matter resulting ultimately in expulsions. The sole question that was required to be addressed by the Inquiry Committees and the Legislative Chambers revolved around the issue of misconduct attributed to the individual members bringing the House in disrepute."

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***NB: Last updated in July 2008***