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ITEM NO.2

COURT NO.2

SECTION PIL

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRL.M.P. NO.11600 & 11601/2013 in  
WRIT PETITION (CRL.) NO(s). 167 OF 2012

SHREYA SINGHAL

Petitioner(s)

VERSUS

U.O.I.

Respondent(s)

(With appln(s) impleadment, directions and office report)

Date: 16/05/2013 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN  
HON'BLE MR. JUSTICE DIPAK MISRA  
(VACATION BENCH)

For Petitioner(s) Mr. Soli J. Sorabji, Sr. Adv.  
Ms. Manali Singhal, Adv.  
Mr. Ninad Laud, Adv.  
Ms. Ranjeeta Rohtagi, Adv.  
Mr. Santosh Sachin, Adv.

For Respondent(s) Mr. Siddharth Luthra, ASG  
Mr. D.S. Mahra, Adv  
Mr. A.K. Mishra, Adv.  
Mr. Aditya Singla, Adv.  
Mr. Gurmohan Singh Bedi, Adv.  
Ms. Asha Gopalan Nair, Adv  
Mr. Sarfraz A. Siddiqui, Adv.  
  
Mr. D. Mahesh Babu, Adv.  
Mr. Nikhil Jain, Adv.  
Mr. B. Ramakrishna Rao, Adv.  
  
Mr. V.G. Pragasam, Adv  
  
Mr. Mohit D. Ram, Adv  
Mr. Apar Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

This application has been filed seeking various reliefs. However, in view of the fact that the applicant-Ms. Jaya Vindhyaalaya has already been granted bail by the learned competent court, the urgency in this matter does not survive. All the issues may be considered after the re-opening of the Courts.

However, Mr. Siddharth Luthra, learned Additional Solicitor General of India has pointed out that in view of the existing fact situation Union of India has issued Advisory dated 09.01.2013, which reads as under:-

"No. 11(6)/2012-CLFE  
Government of India/Bharat Sarkar  
Department of Electronics and Information  
Technoogy/Electroniki aur Soochna Praudigiki Vibhag

Dated the 9th January, 2013

To,

1. Chief Secretaries of all States and Union Territories
2. Director General of Police of all States and Union Territories

Subject: Advisory on implementation of Section 66A of the Information Technology Act, 2000.

Dear Sir/Madam,

Cyber space is a complex environment resulting from the interaction of people, software, hardware and services on the Internet supported by communication technology, devices and connectivity resulting in distribution of information worldwide.

In the recent years, web and social media have emerged as one of the important public communication channels. It brings social groups together in one virtual place and enables interaction in real time. Owing to numerous benefits brought out by technological advancement, cyberspace is the common tool used by citizens, civil society, businesses and Governments for communication and dissemination of information. Cyberspace has distinct and unique characteristics compared to physical space. The cyberspace is virtual, borderless and offers complete anonymity. Anyone can post his/her comments/views on social sites. Messages/communications can be made from one-to-one, one-to-many, many-to-one and many-to-many persons/devices spread out all across the globe. These services offer great advantage in accessing and posting the information and expressing the views in our day to day life. However, cyberspace also has the potential to be misused for variety of purposes such as spreading hate mails, posting inflammatory, harmful and offensive information in the form of images, videos, photos and text. Provision for addressing such offenses exists in section 66A of the Information Technology Act, 2000.

2. Recently certain incidents have been reported wherein section 66A of the Information Technology Act, 2000 has been invoked solely as well as with other sections of Indian Penal Code against certain persons for posting/communicating certain content which was considered by the police to be harmful. Such action attracted lot of media attention and resulted in protest from the civil society, citizens and Members of Parliament in different parts of the country. Due diligence and care may be exercised while dealing with cases arising out of the alleged misuse of cyberspace.

3. State Governments are advised that as regard to arrest of any person in complaint registered under section 66A of the Information Technology Act 2000, the concerned police officer of a police station under the State's jurisdiction may not arrest

any person until he/she has obtained prior approval of such arrest, from an officer, not below the rank of the Inspector General of Police in the metropolitan cities or of an officer not below the rank of Deputy Commissioner of Police or Superintendent of Police at the district level, as the case may be.

4. It is requested that appropriate instructions may be issued in the matter to all concerned.

Yours sincerely,

-sd-

(Dr. Gulshan Rai)

Group Coordinator & Director General

Tel: 011-24368544"

In the facts and circumstances of the case, we direct all the States/Union Territories to ensure compliance to the Advisory till further orders of this Court before effecting arrest under the said Act.

A copy of this order be sent to the Chief Secretaries of all the States/Union Territories.

| (NARENDRA PRASAD)

| COURT MASTER

| | (M.S. NEGI)

| | COURT MASTER

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