

THE FAKE NEWS EVIL: ANALYZING MANISH KASHYAP CASE

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INTRODUCTION

Tripurari Kumar Tiwari also known as Manish Kashyap, son of Udit Tiwari is a Youtuber. He is a resident of Mahnawa village in Majhauliya district west Champaran Bihar. He has a youtube channel named “SachTak News¹” and is a self-proclaimed journalist with around 67.8 lakh subscribers. In 2019, Manish was arrested for attacking Kashmiri shopkeepers selling woolen clothes in Patna. He also fought the general assembly election from Chanpatia in the year 2020. On 2nd March 2023, Manish posted a video through his youtube channel stating that migrant labours of Bihar were being brutally beaten and killed in Tamil Nadu. Then on 4th March, he posted three more videos about the same incident in which he talked about himself going to Tamil Nadu and getting a full report of the matter himself in the other video he interviewed the workers who were returning from Tamil Nadu and asked them about the problems faced by the Bihar migrant labours in Tamil Nadu. In the interview, labours told that they had seen news and videos that were being circulated online through Whatsapp and other social media platforms. They were terrified for their lives and their family members also asked them to return to Bihar as soon as possible. Although they had no intention of returning the fear of being beaten and murdered became the main driving force behind their return to Bihar from Tamil Nadu.

Later it was discovered that videos posted by him on 2nd March 2023 in which he showed that Bihar labours were being brutally beaten and killed in Tamil Nadu only because they were from Bihar and spoke “Hindi” and not “Tamil” (the local language of Tamil Nadu), was fake and there was no truth behind it. Many other videos were also posted and different articles were also published in different newspapers and also on their online platforms. Hindustan, Jagran, Amar Ujala, and Dainik Bhaskar were among them. These platforms soon after the discovery that the news was fake² deleted their posts and also apologized for the same. Other than Manish Kashyap some other offenders include Yuvraj Singh Rajput and

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¹ Sach Tak News (Directed by Manish Kashyap, Youtube 2018) <<https://youtube.com/@SACHTAKNEWS>> accessed 16 June 2023

² ‘Rumours of Attacks on Migrants in Tamil Nadu Viral with Unrelated Videos’ (BOOM, 3 March 2023) <<https://www.boomlive.in/fact-check-tamil-nadu-migrant-attacks-biharis-videos-viral-fake-news-nitish-kumar-21243>> accessed 16 June 2023

Rakesh Tiwari who runs the “Prayas News³” Youtube channel. Bihar Police’s Economic Offences Unit (EOU) on 6th March launched FIR against all three of them and sent notices to them demanding their cooperation.

FACTS OF THE CASE

Manish Kashyap posted several videos on his Youtube channel “SachTak” on 2nd March 2023 claiming that the labours who migrated from Bihar to Tamil Nadu to earn a living for themselves were being brutally beaten and killed only because they were from a different state and spoke “Hindi”. This video was later discovered to be scripted and fake. Charges were filed against Manish Kashyap for uploading fake videos and creating a nuisance in both states (Bihar as well as Tamil Nadu). When Bihar police along with its Economic Offences Unit reached his home to attach his properties Manish surrendered at the Jagdishpur police station of Bettiah in the West Champaran district.

Manish already had seven criminal cases registered against him in Bettiah and many in other districts of Bihar. According to Bettiah SP Upendra Nath Pandey, Manish has been booked under IPC sections 153⁴, 153A, 153B, 505B, 505C, 468, 471, 120B, and section 67 of the Information Technology⁵ (I.T. Act) along with National Security Act⁶ (NSA)⁷. Manish is also guilty of uploading an old photo where he was in handcuffs and misusing the same for his propaganda. Manish was arrested on 18th March 2023 when he surrendered at a police station in Bettiah. On 5th April 2023, the Madurai district court remanded Manish to judicial custody and he was sent to Madurai central prison. Manish also has 8 criminal cases pending against him and is also accused of attempting to murder under section 307⁸ of the IPC (Indian Penal Code).

Manish Kashyap had approached the Supreme Court on 8th April 2023⁹ where he challenged the multiple FIRs lodged against him in both states (Bihar as well as Tamil Nadu) for

³ Prayap News (Directed by Rakesh Tiwari, Youtube 2018) <<https://youtube.com/@PRAYASNEWS>> accessed 16 June 2023

⁴ Indian Penal Code 1860, s 153

⁵ Information Technology Act 2000, s 67

⁶ The National Security Act 1980

⁷ ‘Fake Migrant Worker Attack Videos: YouTuber Manish Kashyap’s Aide Held in TN’ (The Siasat Daily, 22 March 2023) <<https://www.siasat.com/fake-migrant-worker-attack-videos-youtuber-manish-kashyaps-aide-held-in-tn-2552579/>> accessed 16 June 2023

⁸ Indian Penal Code 1860, s 307

⁹ ‘Supreme Court Of India’ (Case Status | SUPREME COURT OF INDIA, 8 April 2023) <<https://main.sci.gov.in/case-status>> accessed 16 June 2023

allegedly making and posting a video on Youtube containing fake news regarding the violence against Bihar migrant labours in Tamil Nadu. Manish Kashyap's plea before the Supreme Court was seeking interim bail, removal of NSA, and clubbing of multiple FIRs registered against him in the states of Bihar and Tamil Nadu.

The case was filed as a Criminal Writ Petition¹⁰ in Supreme Court on 5th April 2023 and registered on 8th April 2023. The opposition parties to this case were the Union of India (through the Secretary North Block, Central Secretariat, New Delhi), the State of Bihar (through the chief secretary), State of Tamil Nadu (through the Chief secretary).

LEGAL ISSUES

- Whether the multiple FIRs filed in the state of Bihar as well as Tamil Nadu should be clubbed. (Contention put forward by the Petitioner).
- Whether the petitioner be granted interim bail. (Contention put forward by the Petitioner).
- Whether the petitioner be detained under the National Security Act (NSA). (Contention put forward by the Petitioner).
- Whether the petition should be dismissed for no violation of fundamental rights under Article 32.¹¹ (Contention put forward by the Respondents).
- Whether the petitioner's motive was to create a feeling of hatred and dismay between the two states and create a nuisance. (Contention put forward by the Respondents).

OBSERVATIONS OF THE SUPREME COURT

The Supreme Court in the case against digital media journalist Manish Kashyap observed that the court is not inclined to exercise jurisdiction under Article 32. The court declined to grant any relief in the matter related to National Security Act (NSA) and said he may approach the High Court for the removal of the NSA. Senior Advocate Maninder Singh submitted that the state of Tamil Nadu has invoked the NSA on Manish Kashyap to which the Hon'ble Chief

¹⁰ 'Supreme Court Of India' (Case Status | SUPREME COURT OF INDIA, 8 April 2023)

<<https://main.sci.gov.in/case-status>> accessed 16 June 2023

¹¹ Constitution of India 1950, art 32

Justice of India D.Y. Chandrachud said “You are allowed to pursue the remedies regarding the NSA in the High Court”¹².

Maninder Singh also submitted that there were several newspapers and other media outlets also involved who reported the news on the same matter and said “If this boy has to be under NSA then every newspaper has to be under NSA for the same”. Major news platforms like Hindustan, Dainik Bhaskar, The Times of India, Amar Ujala, and Jagran also posted the news about the same matter so why they have been spared and not Manish? A case under 153A¹³ and 505¹⁴ of the Indian Penal Code 1860 was registered against the editor of Dainik Bhaskar¹⁵ and OP India’s CEO Rahul Roushan and editor Nupur Sharma but they have not been charged with National Security Act (NSA) same as Manish. In response to this argument Chief Justice D.Y. Chandrachud said, “You have the remedy to move to the High Court against the NSA”. Maninder Singh also pleaded to the court for the clubbing of multiple FIRs saying that in many of the cases earlier it has been seen that all the FIRs on the subject have to go where the first FIR was registered. In response to this statement, the lawyer representing the state of Bihar said that the three FIRs are of different incidents because one video was created in Bihar and shown as if it was created in Tamil Nadu. Another FIR was registered because Manish misused his old photo in which he was in handcuffs. The lawyer also said that Manish has contested elections in the past and has many pending cases against him which clearly states that he is a habitual offender. Kapil Sibal (advocate from the side of the respondents) said that transfer would mean quashing the FIR in Tamil Nadu.

On 21st April, 2023 the Supreme Court directed the state of Tamil Nadu to respond to the additional relief sought by Manish Kashyap against the invocation of NSA. The Chief Justice of India expressed his displeasure related to NSA saying “Why this vengeance against this man?”¹⁶

¹² Ramey Krishan Rana, ‘Breaking: Supreme Court Dismisses Plea of Youtuber Journalist Manish Kashyap, Asks Him to Approach High Court’ (Verdictum, 8 May 2023) <<https://www.verdictum.in/court-updates/supreme-court/national-security-act-tamil-nadu-youtuber-journalist-manish-kashyap-1475368?infinitescroll=1>> accessed 16 June 2023

¹³ Indian Penal Code 1860, s 153A

¹⁴ Indian Penal Code 1860, s 505

¹⁵ Umesh Kumar Ray, ‘The Fake WhatsApp Videos That Made Bihar’s Workers Escape Tamil Nadu’ (BOOM, 10 March 2023) <<https://www.boomlive.in/boom-reports/bihar-migrants-escape-tamil-nadu-fake-whatsapp-videos-21294?infinitescroll=1>> accessed 16 June 2023

¹⁶ Ramey Krishan Rana, ‘Breaking: Supreme Court Dismisses Plea of Youtuber Journalist Manish Kashyap, Asks Him to Approach High Court’ (Verdictum, 8 May 2023) <<https://www.verdictum.in/court-updates/supreme-court/national-security-act-tamil-nadu-youtuber-journalist-manish-kashyap-1475368?infinitescroll=1>> accessed 16 June 2023

DECISION

As a result, the Supreme Court headed by the Bench of three judges, Hon'ble Chief Justice D.Y. Chandrachud, Justice Pamidighantam Sri Narasimha, and Justice J.B. Pardiwala on 21st April 2023¹⁷ upon hearing the counsel declared that apart from the relief which has been sought in the Writ Petition under Article 32, the petitioner has sought to challenge the validity of the order of detention under the National Security Act. The court allowed the petitioner to make the necessary changes to the petition. On the request of Mr Siddhartha Dave, senior counsel appearing on behalf of the petitioner, the court directed that pending further orders the petitioner shall not be moved from the Central jail, Madurai, Tamil Nadu. The court granted the respondents the liberty to file their response to the additional relief which have been sought in the amended petition by the petitioners.

On 8th May 2023¹⁸ upon hearing the counsel the Supreme Court passed the final judgment regarding the case and dismissed the case. The court held that "We are not inclined to exercise the jurisdiction under Article 32 of the Constitution. The petition is accordingly dismissed." The court further stated that the petitioner is at liberty to pursue his remedies according to the law in respect of the order of detention under the National Security Act (NSA) 1980. The court then disposed of all the other pending related to the same matter.

ANALYSIS AND CONCLUSION

Charges were filed against Manish Kashyap for uploading fake videos and creating a nuisance in both states (Bihar as well as Tamil Nadu). Manish Kashyap had approached the Supreme Court on 8th April 2023 where he challenged the multiple FIRs lodged against him in both states for allegedly making and posting a video on Youtube containing fake news regarding the violence against Bihar migrant labours in Tamil Nadu. Manish Kashyap's plea before the Supreme Court was seeking interim bail, removal of NSA, and clubbing of multiple FIRs registered against him in the states of Bihar and Tamil Nadu. The court declined to grant any relief in the matter related to National Security Act (NSA) and said he may approach the High Court for the removal of the NSA. Senior Advocate Maninder Singh

[updates/supreme-court/national-security-act-tamil-nadu-youtuber-journalist-manish-kashyap-1475368?infinitemscroll=1](https://main.sci.gov.in/case-status)> accessed 16 June 2023

¹⁷ 'Supreme Court Of India' (Case Status | Order Sheet | SUPREME COURT OF INDIA, 21 April 2023)

<<https://main.sci.gov.in/case-status>> accessed 16 June 2023

¹⁸ 'Supreme Court Of India' (Case Status | Order Sheet | SUPREME COURT OF INDIA, 8 May 2023)

<<https://main.sci.gov.in/case-status>> accessed 16 June 2023

submitted that the state of Tamil Nadu has invoked the NSA on Manish Kashyap. The case under 153A and 505 of the Indian Penal Code 1860 was registered against the editor of Dainik Bhaskar and OP India's CEO Rahul Roushan and editor Nupur Sharma but they have not been charged with National Security Act (NSA) same as Manish.

Justice J.B. Pardiwala on 21st April 2023¹⁹ upon hearing the counsel declared that apart from the relief which has been sought in the Writ Petition under Article 32²⁰, the petitioner has sought to challenge the validity of the order of detention under the National Security Act. ” The court further stated that the petitioner is at liberty to pursue his remedies according to the law in respect of the order of detention under the National Security Act (NSA) 1980. The Supreme Court directed the state of Tamil Nadu to respond to the additional relief sought by Manish Kashyap against the invocation of the NSA.

A bench headed by the Chief Justice of India DY Chandrachud and Justice PS Narasimha challenged the detention of Manish Kashyap under the National Security Act (NSA) and issued a notice to both the governments i.e. Tamil Nadu and Bihar stating the same. Kashyap is presently facing multiple FIRs against him in both Tamil Nadu and Bihar. Bihar's counsel nominated Kashyap as a “habitual lawbreaker” and brought to the court's notice that his acts aren't just confined to making videos but he has some serious cases against him including a case under Sec 307 of the Indian Penal Code. The apex court also asked the state government not to move Kashyap from Madurai jail to another captivity in view of the multiple FIRs against him before last week, the court had issued a notice to the Centre, Tamil Nadu and Bihar governments on Kashyap's plea seeking clubbing of the FIRs lodged against him.

The Supreme Court then formulated a conclusion after evaluating the matters and the legislative provisions under which the petitioner's FIRs were filed. Section 153A of the Indian Penal Code makes it illegal “to incite enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony”. The Supreme Court held that there has been no violation of the petitioner's fundamental rights so it cannot grant any relief under Article 32 of the Indian Constitution 1950. The Supreme Court further held that multiple FIRs against Manish Kashyap are on different matters so they cannot be clubbed. The court directed Manish to

¹⁹Supreme Court Of India' (Case Status | Order Sheet | SUPREME COURT OF INDIA, 21 April 2023)

<<https://main.sci.gov.in/case-status>> accessed 16 June 2023

²⁰Constitution of India 1950, art 32

seek remedies concerning the invocation of the National Security Act²¹ (NSA) from the High Court.



²¹The National Security Act 1980