

VOLUME 1 | ISSUE 2**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH****CASE COMMENTARY ON JAGISHA ARORA v. STATE OF UTTAR
PRADESH, 2019**

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INTRODUCTION

Right to freedom of speech and expression is one of the fundamental rights which has been guaranteed to every citizen of India by the supreme law of the land- the Constitution; by this right one gets the liberty to express their own thoughts and convictions without getting penalized. Our Constitution reflects this natural right which is conferred to individuals from their birth. Even as per the Universal Declaration of Human Rights, "*the convention talks about freedom of opinion without any restrictions and also says that an individual also has a right to spread his ideas and thoughts through any media*". However this right to some extent is restricted to avoid conflicts for the general welfare. To protect the public order limitations have been imposed in the sub-clause 2 of article 19. The right not being absolute in nature provides the government to frame laws which are reasonable, but the political discourse of our country is now largely concerned about safeguarding this freedom and restricting free speech. This authority is often misused by the decision making authorities from case to case basis.

BACKGROUND OF THE CASE

The present case of Jagisha Arora shares the same fate where the authority to restrict freedom of speech was misused. The hurdles of freedom of expression were placed by the cyber laws and the Information Technology Act. In contemporary times, social media has provided the users with easily accessible platforms which work as an avenue for citizens to reflect upon different issues. Social media in present scenario works as a medium to influence people as well as public

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opinion and gain public support in certain matters. Through an internet connection and social media account people are now able to exchange ideas and information.

Prashant Kanojia, the spouse of Jagisha, in the year 2019, posted from his social media account a sarcastic post filled with humour for the Chief Minister of UP, Yogi Adityanath. The comment came as a result of a video in which a woman alleged that she had been talking to the CM through video calls for a year and wanted to marry him. The video was shared by Prashant from his Facebook account with a sarcastic remark which asked the minister to marry the girl, if he could chat via video calls then why not tie the knot? Further Prashant stated that Yogi shouldn't fear about the society and confess his love for that girl. In his comment he said we are with you and we will get you married - "*Yogi ji video chatting kar sakate ho, to ishq ka izahaar kyon nahn? Yogi ji aap daro nahn, mat socho samaaj kya kahega bas bhaag jao ham sab aapakee shade karava denge.*" (Yogi ji, if you can chat via video call, why can't you confess your love? Yogi ji, don't be afraid, don't think what the society will say, just elope. We are all with you, we will get you married) ('Abuse of Law': Twitter Slams Arrest of Delhi Journalist, 2019). As a result of this comment the freelance journalist was arrested from his house in Delhi by Uttar Pradesh Police with an accusation of spreading false rumours about the CM on 8th of June 2019.

From the above comment one can clearly understand that nothing was against public morality, indecent, obscene or defamatory which could be restricted by the sub-clause 2 of article 19. The arrest made on such a comment was nothing but a blatant abuse of authority and law, as well as a direct attack on an individual's freedom of speech.

Jagisha, the wife moved to the Supreme Court of India with the "Habeas Corpus" petition seeking the release of her husband. The case was presented before the vacation bench of justices Indira Banerjee and Ajay Rastogi by Advocate Nitya Ramakrishnan (Live Law.in, 2019).

The FIR was filed against the freelance journalist at a Police Station situated in Hazaratganj, Lucknow; under the section 500, 505 and 67 of IPC and IT Act respectively. Sections quoted in the FIR were in contradiction to the freedom guaranteed by the constitution. Clause 500 of IPC prescribes for punishment of an accused for the offence of defamation whereas section 67 of Information and Technology act prescribes for punishment of offences done through online means. However, the comment made by Prashant was nothing which could have been regarded

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as derogatory or indecent if made against any person, rather it suggested that one should not fear the society and follow their heart. Sadly Yogi ji couldn't take it as light heartedly as it was written.

Talking about the judgement of Supreme Court in the case of Jagisha Arora v. State of Uttar Pradesh, the Apex court condemned the action taken by the state government and asked them to release Prashant with immediate effect. The judgement was further countered by the UP Government which said the petition should have been filed in the high court before filing it in the Supreme Court. "The apex court should not have entertained the writ petition if it was not approached to the high court in first instance, they contended".

Slamming all the arguments, the Supreme Court opined that the petitioner's husband should not have been deprived of his liberty and should be released by the government. It further questioned the objective of such arrest and asked the government on what provisions of law was Prashant arrested?

Answering to the arguments presented by the state government, the Supreme Court said that the judicial magistrate had ordered to keep Prashant in judicial custody of about 13/14 days for putting a social media post, which was not justified and was a glaring case of deprivation of liberty. It further stated that the Supreme Court would not sit back on the grounds of technicality and can mould the provisions to do complete justice. (Jagisha Arora vs The State Of Uttar Pradesh , 2019)

The order did not approve the posts made by Prashant and only served as a relief to the accused for the excessive action taken against him. Although it asked to continue with the other proceedings the order was only for the immediate release of Prashant.

Case Analysis

The Supreme Court relied on its power conferred by Article 142 of the Indian Constitution to provide justice in any matter or cause pending before it and any subsequent judgement has to be enforced throughout the territory of our country. Therefore article 142 vests upon the Supreme Court of India unfettered independent jurisdiction to adjudge cases keeping in view the public interest and complete justice. Apex court has to look while passing such judgement that it does

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not violate any other provisions of law which is in force². It was very wise of the honourable Court to judge the case in question on reasonable grounds and administered justice aptly.

It was a great step taken to shield the personal liberty of the accused and therefore the Hon'ble Supreme Court was justified in giving such a judgement, the state had quoted the case of State of Maharashtra v. Tasneem Rizwan Siddiquee³, which questioned the validity of approaching the Supreme Court when it was already settled by the High Court of Uttar Pradesh. The argument questioned the maintainability of the writ petition. However it is a settled practice that due to the pressure of increasing cases in the Supreme Court, High courts are approached first, but in the present case it was the abuse of authority conferred to the High court which consequently violated the fundamental right.

Conclusion

The Supreme Court's judgement has once again restored the people's faith in the constitutional laws of our country which at many times are subjected to the arbitrary use by the people in authority. This case was also no different, from any other case. Prashant was arrested by the Uttar Pradesh police over a sarcastic comment which did not fall in any of the restrictions imposed under sub-section 2 of article 19. Rights without restriction can become a menace for a society or a nation, but the question is about the reasonability of such restrictions. The restriction put should not violate other rights of citizen and therefore we can say that the judgement was to release Prashant was reasonable and justified. The judgement conformed with the constitutional laws which authorises Supreme Court to take cognizance of cases under article 142 for matters concerning public order and justice. This case also was a heated debate wherein the nation witnessed widespread condemnation of the actions of the U.P Government and its arbitrary use of power. The social media platforms were flooded with tweets and posts criticising such a step. The judgement is more likely to influence similar nature of cases in future as it has clearly set the bar that any action taken should not be severe than the offence done, hence for offences done on similar lines this case will act as a guiding light.

²Academy of Nutrition Improvement v. Union of India, (2011) 8 SCC 274: JT 2011 (8) SC 16: (2011) 7 SCALE 307

³ SCC ONLINE: <https://www.google.com/amp/s/www.scconline.com/blog/post/2019/06/11/sc-grants-bail-to-journalist-prashant-kanojia-arrested-for-making-objective-comments-against-up-cm/amp/>

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