

**HIGH COURT OF TRIPURA
AGARTALA
WP(Crl.) NO.02 OF 2023**

Whatsapp LLC

..... Petitioner(s)

V E R S U S

The Union of India

..... Respondent(s)

For Petitioner(s) : Mr. Mukul Rohatgi, Sr. Advocate.
Mr. Raju Datta, Advocate.
Mr. T. Karia, Advocate.

For Respondent(s) : Mr. S.S. Dey, Advocate General.
Mr. B. Majumder, Deputy SGI.
Mr. S. Ghosh, Addl. P.P.
Ms. A. Chakraborty, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE T. AMARNATH GOUD**

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26/09/2023

The present writ petition has questioned the *vires* of the Information Technology(Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, apart from laying down a challenge to the impugned order dated 27th May 2023, passed in case No. 2023 NCC 044 by the learned Judicial Magistrate First Class, Court No.6, Agartala, West Tripura(*Annexure-1 to the writ petition*). However, Mr. Mukul Rohatgi, learned Sr. counsel assisted by Mr. Raju Datta, learned counsel and Mr. T.

Karia, learned counsel appearing for the petitioner does not press the first prayer for the present in view of the order dated 9th May, 2022 passed by the Apex Court, in a batch of **Writ Petition(s)(Civil) No(s). 799/2020** in **Skand Bajpai and anr., Vs. Union of India & ors.**, whereby further proceedings pending before the High Court in respect of the challenge to the instant Rules of 2021 has been stayed. Learned Sr. counsel for the petitioner submits that a similar challenge is also pending on the part of the petitioner in Delhi High Court which is also subject matter of the transfer petition.

As regards the second prayer, learned Sr. counsel for the petitioner has referred to the FIR which is at Annexure 18, page-240 of the writ petition instituted under Sections 468/469/471/500/504/120(B) IPC and 66-D of the I.T. Act bearing West P.S. NCC No.2023, FIR No. 044 of 2023 dated 25/05/2023. He then refers to the application made by the investigating officer on 27.05.2023 (*Annuxure-20 to the writ petition*) wherein a request has been made to the learned Court to issue an order to the Nodal Officer of WHATSAPP LLC for providing the originator of WHATSAPP chat containing the fake resignation letter of Hon'ble the Chief Minister of Tripura. It is submitted that Rule 4(2) of the I.T. Rules 2021 prescribes the conditions under which such a judicial order can be issued by a Court of competent jurisdiction upon a significant social media intermediary for disclosing the first originator of the message. The proviso

thereto indicates that such an order shall only be passed, for the purposes of prevention, detection, investigation, prosecution or punishment of an offence relating to sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order, or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material, punishable with imprisonment for a term of not less than five years. The second proviso further provides that no order shall be passed in cases where other less intrusive means are effective in identifying the originator of the information.

Learned Sr. counsel for the petitioner submits that no grounds of public order or imminent threat to public order have been made out in the application made by the investigating officer on 27th May 2023 (*Annexure-20 to the writ petition*) nor has the learned Judicial Magistrate in the impugned order of the same date referred to any such tangible threat to public order which requires invocation of Rule 4(2) to direct the petitioner to disclose the first originator of the alleged fake content. Learned Sr. counsel for the petitioner, therefore, submits that the invocation of Rule 4(2) by the learned Court at the instance of the investigating agency right 2(two) days after the institution of the FIR is without recording proper satisfaction as to the threat of public order, if any, relating to the alleged offence. As such, he prays that an interim protection may be granted.

Mr. S.S. Dey, learned Advocate General assisted by Mr. S. Ghosh, learned Addl.P.P., appearing for the State-respondent has objected to the interim prayer. He submits that the petitioner being an intermediary under the I.T. Act and the 2021 Rules framed thereunder does not have any *locus standi* to object to the disclosure of the first originator of the message as per directions of the learned Trial Court. None of the accused persons has approached this Court objecting to such disclosure.

Upon consideration of the rival submission of the parties and the relevant Rule 4(2) of the Intermediary Rules 2021 and after going through the application of the Investigating Agency dated 27.05.2023 and the impugned order dated 27th May 2023, it appears that the learned Trial Court has not specifically dealt with the issue relating to the extent of threat to the public order as contemplated under Rule 4(2) as regards the prayer for disclosure of the first originator of the message only after 2(two) days of the institution of FIR. Reference is made to the decision in the case of **Justice K.S. Puttaswamy (Retd.) & Anr. Vs. Union of India & Ors.**, reported in **(2017) 10 SCC 1** on Right to Privacy. As such, the petitioner has been able to make out a case of interim relief.

Respondent-Union of India is represented through Mr. B. Majumder, learned Dy.SGI. Respondent No.2, the State of Tripura is

represented by learned Advocate General and Mr. S. Ghosh, learned Addl. P.P.

Let notice be issued upon respondent No.3 under ordinary process and speed post for which requisites be filed by Friday.

The matter be listed on **05.12.2023**. In the meantime, there shall be a stay of the impugned order dated 27.05.2023. It is made clear that investigating agency is free to carry on with the investigation as regards the alleged offence.

(T. Amarnath Goud), J

(Aparesh Kumar Singh), CJ

