

IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

M.A. NO. _____ OF 2021

IN

WRIT PETITION (CRIMINAL) NO. 199 OF 2013

IN THE MATTER OF:

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER/ APPLICANT

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

I.A. NO.....OF 2021

APPLICATION FOR DIRECTIONS

WITH

I.A. NO.....OF 2021

APPLICATION SEEKING EXEMPTION FROM FILING DULY
AFFIRMED AFFIDAVIT AND VAKALATNAMA

PAPER BOOK

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MS. APARNA BHAT

ADVOCATE ON RECORD FOR THE PETITIONER

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**APPLICATION FOR DIRECTIONS ON BEHALF OF THE
PETITIONER**

To,
The Hon'ble Chief Justice
And his Companion Judges of the
Supreme Court of India

The humble petition of the
applicant above-named;

MOST RESPECTFULLY SHOWETH:

1. The Applicant/Petitioner, People's Union for Civil Liberties (PUCL), is a civil liberties and human rights body formed in 1976 by Sh. Jayaprakash Narayan, Acharya Kriplani, Krishna Kant and others. Justice V.M. Tarkunde, Justice Rajinder Sachar, Rajni Kothari, K.G. Kannabiran and others were associated with PUCL as its President. Some of the landmark reported judgments in cases filed by PUCL are: Telephone tapping case (1997) 1 SCC 301, Fake police encounter in Manipur (1997) 3 SCC 463; Disclosure of

criminal background and assets by candidates, (2003) 9 SCC 490; Challenge to POTA (2004) 9 SCC 980; Encounter killings in Maharashtra, (2014) 10 SCC 635, among others, as well as the above-captioned Writ before this Hon'ble Court.

2. That in 2013, the Applicant/Petitioner became aware of the widespread abuse of Section 66A of the Information Technology Act ["IT Act"] to stifle dissent. The provision, which criminalised "offensive messages" was vague and overbroad, resulting in widespread chilling effect on protected speech. As a result, the Applicant/Petitioner moved a Writ Petition (Crl) No. 199 of 2013 under Article 32 *inter alia* challenging Section 66A of the IT Act as unconstitutional. The said petition was heard along with other petitions, the lead matter being *Shreya Singhal v. Union of India*, W.P. (Crl.) No. 167 of 2012. By its judgment dated 24.03.2015, reported as *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 ("**Shreya Singhal**"), this Hon'ble Court held that "*Section 66A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2).*" The Applicant/Petitioner craves leave to refer to the relevant paragraphs from the said reported judgment, if need be.

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3. That in spite of the judgment, it became clear from the newspaper reports that the said provision continued to be invoked by the State's investigative machinery as well as the judiciary, probably under the impression that Section 66A remained on the statute books. After checking relevant details, the Applicant/Petitioner also contacted the Internet Freedom Foundation ("IFF"), which had been working on this issue, for its inputs on the said matter. The Applicant was informed of a research paper titled '*Section 66A and other Legal Zombies*' by Apar Gupta and Abhinav Sekhri, which demonstrated widespread abuse of the Section 66A even after the judgment in *Shreya Singhal (supra)*.

4. That continued prosecutions under Section 66A are in blatant disregard of the judgment of this Hon'ble Court. A declaration of unconstitutionality results in rendering a provision void *ab initio* either wholly or in part, as the case may be. [*Deep Chand v. State of Uttar Pradesh*, AIR 1959 SC 648, para 13 (Subba Rao, J.), *Mahendra Lal Jaini v. State of Uttar Pradesh*, AIR 1963 SC 1019, para 24]. Since this Hon'ble Court did not restrict the effect of its decision in *Shreya Singhal* in any manner, Section 66A ceased to exist from the date of its insertion into the IT Act, i.e., 27.10.2009.

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Further, the judgment and final order in *Shreya Singhal* rendered all investigations, prosecutions, and convictions based on Section 66A illegal, and it forestalled any use of Section 66A after the decision was rendered, i.e., 24.03.2015.

5. The Petitioner/Applicant therefore approached this Hon'ble Court by way of M.A. No. 3220/2018 in W.P. (Crl.) No. 199/2013 *inter alia* seeking the following prayers:
 - (a) Direct Respondent No. 1 to ensure full compliance immediately with *Shreya Singhal* through issuance of appropriate circulars / advisories addressed to the Chief Secretaries of all States and Union Territories, and the Director Generals of Police of all States and Union Territories, or equivalent officers thereof for onward circulation to the Police Stations;
 - (b) Direct the Supreme Court Registry to dispatch a copy *Shreya Singhal v. Union of India* to all High Courts to pass appropriate orders in pending cases concerning Section 66A of the IT Act as well appropriate circulars, bringing *Shreya Singhal* to the notice of all district courts within their jurisdiction to prevent failures of justice;

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(c) Direct Respondent No. 1 to collect and furnish data for all prosecutions invoking Section 66A after 24.03.2015 before this Hon'ble Court in order to secure compliance with *Shreya Singhal*;

A true and correct copy of the MA No. 3220/2018 in W.P. (CrI) 199/2013 filed by the Applicant is **Annexure A-1** (Pages 21-31)

6. The said Application was taken up for hearing on 07.01.2019 where this Hon'ble Court issued notice and directed the Respondents to file a reply/counter-affidavit. A counter-affidavit dated 14.02.2019 was filed by Respondent No.1, in which it was stated that the Ministry of Electronics and Information Technology and Ministry of Home Affairs were both disseminating knowledge about *Shreya Singhal* by making the judgment available on its website, organising workshops and seminars, by writing letter dated 24.03.2015 to Chief Secretaries and Director Generals of Police of all States requesting compliance with the judgment, and by letters dated 14.01.2019 and 30.01.2019 to Chief Secretaries and Director Generals of Police of all States seeking confirmation of implementation of the judgment. A true and correct copy of the order dated 07.01.2019 is **Annexure --A-2 (Pages... 32**. A true

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and correct copy of the counter-affidavit dated 14.02.2019 filed by Respondent No. 1 is **Annexure A-3 (Pages 33-44)**.

7. That, when the matter came up for hearing, by way of Order dated 15.02.2019, this Hon'ble Court was pleased to dispose of the Application by directing that the copies of this Court's judgment in *Shreya Singhal* be made available by every High Court in this country to all District Courts. It was also directed that the Union Government was to make available copies of the judgment to Chief Secretaries of all State Governments and Union Territories. The Chief Secretaries were, in turn, directed to sensitise the police departments by sending copies of the judgment to the Director General of Police in each State. A true copy order dated 15.02.2019 passed by this Hon'ble Court in M.A. No. 3220/2018 in W.P. (Crl.) No. 199/2013 is annexed herewith as **AnnexureA-4 (Pages 45-46)**

8. That, shockingly, despite the above order dated 15.02.2019 and steps taken towards compliance thereof, the Applicant discovered that Section 66A of the IT Act has continued to be in use not only within police stations but also in cases before trial courts across

India. This information was available on a website — www.zombietracker.in (“**Zombie Tracker Website**”) — developed by a team of independent researchers belonging to the IFF and Civic Data Labs (“**CDL**”). The Zombie Tracker Website provides information of such cases and acts as a tool for convenient mapping of the use of Section 66A of the IT Act across India. The findings of the Zombie Tracker Website reveal that as on 10.03.2021, as many as a total of 745 cases are still pending and active before the Districts Courts in 11 States, wherein accused persons are being prosecuted for offences under Section 66A of the IT Act. The details are as follows:

S. No.	State/UT	Cases Registered before 24.03.2015	Pending Cases before 24.03.2015	Cases Registered after 24.03.2015	Pending Cases after 24.03.2015
1.	Andhra Pradesh	76	3	38	19
2.	Assam	46	7	59	15
3.	Delhi	3	1	28	14
4.	Jharkhand	43	19	291	99
5.	Karnataka	1	1	14	3
6.	Maharashtra	349	124	381	196
7.	Rajasthan	75	29	192	71
8.	Telangana	16	3	15	10
9.	Tamil Nadu	4	1	7	3

10.	Uttar Pradesh	22	15	245	116
11.	West Bengal	46	26	37	24
	Total	681	229	1307	570

A true and correct copy of the relevant pages of the website zombietracker.in is **Annexure A-5 (Pages... 47-49)**

9. That the Petitioner/Applicant contacted Internet Freedom Foundation (IFF) regarding the said website and was informed that the data has been gathered using the online E-Courts portal alone, as no government agency such as the National Crime Records Bureau collects data in this regard. While it may be that there are fewer cases than those initially reported by the Zombie Tracker Website, non-standardisation of data fields on the E-Courts portal and the fact that information for only 11 States was extracted render it equally likely that the actual cases in which Section 66A of the IT Act has been invoked may well be much higher than those initially reported.
10. The following examples are offered to illustrate the various kinds of harms being caused on account of the continued prosecutions under Section 66A:

- I. In *State v. Shekhar Rahul Nikam*, RCC No. 1119/2018 pending before Court of the Ld. 10th Addl. Chief Judicial Magistrate, Nashik, charges were framed solely under Section 66A of the IT Act *vide* order dated 28.02.2020, on the basis of “*offensive messages*” sent in 2010. Since Section 66A has been struck down and rendered *void ab initio* there was no legal basis to frame such charges. The case status for the matter suggests the trial is at the stage of evidence. A true and correct copy of the case details for RCC No. 1119/2018, pending before Court of the Ld. 10th Addl. Chief Judicial Magistrate, Nashik- *State v. Shekhar Rahul Nikam* with the accompanying order dated 28.02.2020 is **Annexure A-6 (Pages 50-51)**

- II. In *State v. Mohd. Sakir*, Cr. Case No. 296349/2016 before the Ld. Metropolitan Magistrate, Central at Tis Hazari Court, New Delhi, the relevant FIR No. 05/2013 P.S. Kotwali was registered solely under Section 66A of the IT Act as per the case details. While the FIR was registered prior to the judgment of this Hon’ble Court in *Shreya Singhal*, it is clear that several hearings took place after the said judgment. For instance, order dated 17.04.2017 records that the accused

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was asked to deposit Rs. 2000 as costs towards the DLSA. The accused was further directed to deposit Rs. 2000 against cancellation of NBW and the case was listed for consideration of charge *vide* order dated 05.12.2018. More shockingly, it is clear from order dated 03.09.2019 that the Ld. APP for the State himself submitted that such provision had been struck down by this Hon'ble Court. However, the Ld. Metropolitan Magistrate nevertheless issued a non-bailable warrant against the accused on the basis that it appeared that the accused was deliberately not appearing before the Court. Thereafter, the case was listed on several dates, including as recently as 28.01.2021. Thus, more than five years after the judgment in *Shreya Singhal* and despite being made aware of the same, the judgment has not been complied with.

A perusal of the available orders in this case reveals the impact of this continued violation in terms of costs for the accused, his appearances before Court and the strain on judicial time as well as State resources. In such a situation, there is no legal basis for keeping the case pending. A true and correct copy of the case details for Cr. Case No.

296349/2016 before the Ld. Metropolitan Magistrate, Central at Tis Hazari Court, New Delhi- *State v. Mohd. Sakir*, along with the accompanying/hyperlinked orders is **Annexure A-7 (Pages 52-53)**

- III. In *State v. Dilip Shetty*, Criminal Case No. 26/2015 pending before Court of the Ld. Addl. Civil Judge & J.M.F.C., Dakshina Kannada District, Karnataka, not only were charges framed under Section 66A of the IT Act, but a judgment was passed eventually acquitting the accused. While no longer pending, the matter indicates an absolute disregard of the judgment in *Shreya Singhal*. The judgment and final order dated 08.02.2021 considered the issue of Section 295A of the IPC and Section 66A of the IT Act as arising out of the same transaction, ignoring that the latter provision was struck down as unconstitutional. In fact, the judgment notes that recording of evidence commenced on 29.10.2015, well after the judgment in *Shreya Singhal*, and ended on 06.01.2021, indicating that judicial time and effort has been expended on examination of witnesses and on record. As a result, the accused, though enlarged on bail and ultimately acquitted, underwent a trial for over six years, after

the judgment in *Shreya Singhal*, at a significant personal cost to their liberty and cost to the state in terms of judicial time and resources. A true and correct copy of judgment and final order dated 08.02.2021 in *State v. Dilip Shetty*, Criminal Case No. 26/2015, decided by the Court of the Ld. Addl. Civil Judge & J.M.F.C., Dakshina Kannada District, Karnataka- *State v. Dilip Shetty* is **Annexure –A-8I (Pages54-82)**

- IV. In G.R. Case No. 844 of 2015 pending before the Court of the Ld. Judicial Magistrate, 2nd Court, Chandernagore, the court considered an application for further investigation *vide* order dated 04.06.2016. The contents of the order reveal, *firstly*, that an FIR was registered under Section 500/505 IPC and Section 66A of the IT Act on 22.06.2015 pursuant to orders passed under Section 156(3), CrPC. *Secondly*, even though police had filed a chargesheet under Section 500/505 IPC, the Ld. Trial Court directed further investigation *vide* the order dated 04.06.2016 to determine commission of offences under Section 66A of the IT Act. Thus, a judicial officer not only directed registration of FIR under Section 66A of the IT Act subsequent to it being struck down in *Shreya Singhal*,

but subsequently also directed police to conduct further investigation into allegations under Section 66A where police chose to not file any chargesheet for what was an unconstitutional provision. A true and correct copy of the order dated 04.06.2016 passed in G.R. Case No. 844 of 2015, pending before the Court of the Ld. Judicial Magistrate, 2nd Court, Chandernagore is **Annexure –A-9 (Pages 83-84)**

11. That in spite of the order passed by this Hon'ble Court on 15.02.2019 directing that copies of the judgment of this Hon'ble Court in *Shreya Singhal* should remain available with every High Court as well as all the District Courts and that the police departments in the entire country i.e. all States and UTs be sensitized about the said judgment, the facts mentioned above show that not only the investigations under Section 66A by the police are continuing but even in the trial courts, Section 66A application continues at different stages:

- I. Cases which are registered only under Section 66A, which ought to have been closed after the judgment was given in *Shreya Singhal*, are still continuing, even when the Court has taken cognizance of the said judgment.

- II. Courts have passed orders framing charges under Section 66A despite the provision having been struck down. Not only has this happened in cases where allegations under Section 66A are raised alongside other offences, but disturbingly the research reveals charges framed solely for an offence under Section 66A.

- III. Trials are ongoing in such cases in which only charges under Section 66A have been framed or have been framed together with other IPC offences. The net result is that an accused person is facing trial for a provision declared as unconstitutional. This causes not only prejudice in the trial, by requiring that the person answer to the charge under Sec. 66A, but also results in waste of judicial time. The wastage of judicial time and the resources of the system as well as accused persons, is made evident in how the rigours of a full-blown trial had to be endured to achieve an acquittal on merits for the taint of Section 66A to be removed.

- IV. In several cases, where Section 66A exists with other provisions, further investigation has been ordered by

merging those provisions under IPC with Section 66A. The Courts have even issued non-bailable warrants in these cases.

12. It is reasonable to believe that situations akin to those that have been highlighted by way of the above illustrative examples are being faced across the country and certainly in respect of the eleven states in respect of which data exists revealing pendency of cases where Section 66A has been invoked. The Applicant/Petitioner submits that the Respondent-Union of India should put on record the present situation with regard to invocation of Section 66A by the police during registration of FIR/investigation as well as the trials pending in the 11 States but also other States/UTs as the continued use of Section 66A of the IT Act is a direct violation of the fundamental rights under Articles 19(1)(a) and 21, including the right to fair trial, of the persons against whom the provision is invoked.

13. That in spite of the judgment and subsequent directions given by this Hon'ble Court, if non-compliance persists, it will be extremely difficult for individual litigants to seek protection and enforce their rights as litigants.

14. That in view of the above, the Applicant humbly submits that the urgent intervention of this Hon'ble Court is required to ensure that all States take steps to comply with the mandate of the judgment in *Shreya Singhal*. Therefore, in the peculiar facts and circumstances of the case as mentioned herein above, it is necessary as also expedient for the ends of justice to issue directions for necessary safeguards, including but not limited to the prayer below.

15. That the information relied upon is based on information available in the public domain, verified to the best of the Applicant's knowledge and belief. The present Application is filed *bona fide* and in the interest of justice.

PRAYER

It is, therefore, most respectfully prayed that in the interests of justice this Hon'ble Court may be graciously pleased to:

- (a) Direct Respondent No. 1, through the NCRB or any other agency, to collect all the data/information regarding FIRs/investigations where Section 66A has been invoked as well as pendency of cases in the Courts (District Courts/High Courts) throughout the country where proceedings under

Section 66A are continuing in violation of the judgment in *Shreya Singhal*;

(b) Direct the Registry of the Supreme Court to communicate to all the District Courts throughout the country (through respective High Courts) to take cognizance of the judgment in *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, by which Section 66A of the IT Act has been struck down in its entirety - in all proceedings where Section 66A has been invoked either at the stage of framing of charge or subsequent thereto, so that no person should suffer or face any adverse consequences which violate his Fundamental Rights under Article 21 of the Constitution.

(c) Direct the Registry of the Supreme Court to communicate to all the High Courts (through its Registrar) to collect the information from all the District Courts within its jurisdiction regarding pendency of cases under Section 66A at different stages and issue directions for due compliance of judgment of this Hon'ble Court in *Shreya Singhal*.

(d) Direct the Union of India through its Ministry of Home Affairs to issue an advisory to all the police stations not to

register cases under the repealed Section 66A of the Information Technology Act;

(e) Direct Union of India to publish in all leading news papers, both English and in the official vernacular informing the general public that section 66A of the Information Technology Act having been struck down by this Hon'ble Court is no longer law;

(f) And pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

SETTLED BY: **MR. SANJAY PARIKH,**

SENIOR ADVOCATE



APARNA BHAT

Advocate-on-Record for the Petitioner

Place: New Delhi

Filed on: . 13.04.2021

**IN THE SUPREME COURT OF INDIA
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AFFIDAVIT

I, Dr. V Suresh, [REDACTED]

[REDACTED]

[REDACTED] do hereby solemnly affirm and declare as under:-

1. I am the National General Secretary of the Petitioner in the above-mentioned Writ Petition and as such well-acquainted with the facts of the case and in that capacity, am fully competent to swear this affidavit.
2. I have read and understood the contents of the accompanying Application for Directions and I say that the contents thereof are true and correct to the best of my knowledge and belief.

3. I say that the Annexures -A-1 TO A-7 are true and correct copies of their respective originals.

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line and a diagonal stroke.

DEPONENT

VERIFICATION

Verified at [REDACTED] on this day of April , 2021 that the contents of paragraph 1 to 3 of my above affidavit are true to my knowledge and belief, and nothing false has been stated therein nor any material has been concealed thereof.

A handwritten signature in black ink, identical to the one above, consisting of a stylized 'R' followed by a horizontal line and a diagonal stroke.

DEPONENT