

ITEM NO.7

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Criminal) No(s).113/2016

KAUSHAL KISHOR

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH GOVT.OF U.P.HOME SECRETARY Respondent(s)

(FOR [AD-INTERIM ORDER AND DIRECTIONS] ON IA 14656/2016)

Date : 05-10-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

Amicus Curiae(s) Mr.F.S.Nariman, Sr.Adv.

Mr.Harish Salve, Sr.Adv.

For Petitioner(s) Mr.Rishi Kapoor, Adv.  
Ms.Manju Jetley, AOR

For Respondent(s) Mr.T.N.Singh, Adv.  
Mr.Upendra Mishra, Adv.  
Mr.Vinay Garg, Adv.

Mr.Ravi Prakash Mehrotra, AOR(NP)

Mrs.Nidhi Khanna, Adv.  
Mr.A.Puri, Adv.  
Mr.Prabhas Bajaj, Adv.  
Ms.Aarti Sharma, Adv.  
Mr.Akshay Amritanshu, Adv.  
Mr.Mukesh Kumar Maroria, AOR

Mr.Lakshmi Raman Singh, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Heard Mr.F.S.Nariman and Mr.Harish Salve, learned senior  
counsel, who have been assisting this Court as amicus curiae.

After some hearing, it is submitted by the learned senior

counsel that this is a matter of great importance and should be referred to the Constitution Bench under Article 145(3) of the Constitution. Mr.F.S.Nariman, learned senior counsel further submits that this Court has already framed four questions on 29.08.2016. The said questions are as follows:

- "(a) When a victim files an F.I.R. alleging rape, gang rape or murder or such other heinous offences against another person or group of persons, whether any individual holding a public office or a person in authority or in-charge of governance, should be allowed to comment on the crime stating that "it is an outcome of political controversy", more so, when as an individual, he has nothing to do with the offences in question?
- (b) Should the "State", the protector of citizens and responsible for law and order situation, allow these comments as they have the effect potentiality to create a distrust in the mind of the victim as regards the fair investigation and, in a way, the entire system?
- (c) Whether the statements do come within the ambit and sweep of freedom of speech and expression or exceed the boundary that is not permissible?
- (d) Whether such comments (which are not meant for self protection) defeat the concept of constitutional compassion and also conception of constitutional sensitivity?"

It is also submitted by him that the Constitution Bench may not restrict its advertence to the questions but may also include other questions. Mr.Nariman, learned senior counsel, has framed four questions, which are as follows:

- "1. Whether, and if so under what circumstances (if any) would a private individual or group of private individuals (including private corporations) be required to conform to the rigor and discipline of Article 21 (in the Fundamental Rights chapter) of the Constitution - whether as "State" as broadly defined, or otherwise;

2. In what cases/circumstances is it permissible in law for an individual or group of individuals to be proceeded against to protect a third person's fundamental right under Article 21 of the Constitution;

3. Whether and if so in what circumstances should private corporations whose activities have the potential of affecting the life and health of the people be subjected to the discipline of Article 21 - as opined (prima facie) in the Constitution Bench decision of this Hon'ble Court in M.C.Mehta vs. Union of India (1987);

4. Whether the acts and action of a public figure (i.e. A Minister of a Central or State Government) would be brought under, and be subjected to, the discipline of Article 21 of the Constitution, where it adversely effects the right of a third person to a fair investigation of a criminal case and/or to a fair trial of the case."

Mr.Harish Salve, learned senior counsel, has also framed three questions, which read as follows:

"1) Whether a statement made by a Minister, in relation to a matter of government business, is attributable to the government on account of the principle of Collective Responsibility inherent in the Westminster system of democracy and expressly recognised in Article 75(3) and Article 164(2) of the Constitution?

2) Whether a statement by a Minister, inconsistent with the rights of a citizen under Part Three of the Constitution, constitutes a violation of such constitutional rights and is actionable?

3. Whether the statement by a Minister, in relation to government business, which is violative of the constitutional rights of a citizen, can constitute a "Constitutional Tort" as being an action which is "improper abuse of public power" and thereby actionable in damages?"

Though we have mentioned the questions yet we may clarify that we are not referring any particular question(s) to the Constitution Bench but the matter in entirety.

The matter be placed before the Constitution Bench after taking necessary instructions from the Chief Justice of India.

(SATISH KUMAR YADAV)  
AR-CUM-PS

(H.S. PARASHER)  
ASSISTANT REGISTRAR