IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2283 OF 2010

1. U.S.A. Cable Networks,]
a registered Partnership firm, having its office]
at New Supermarket, 1st Floor, Shivaji Chowk,]
Ulhasnagar – 421003, Dist. Thane.]
And the following are its members]
2. Rajkumar Mohanram Savani]
3. Lachman Tejumal Ghambani]
4. Sonu Bachumal Chapr]
5. Dinesh Jayantilal Patel]
6. Sunder Aasandas Mangtani]
7. Gopi Radhomal Nagdev]
8. Ramesh Thanwardas Chetnani]
9. Narayan Bhagwandas Vasanthani]
10. Sachanand Atmaram Karira]
11. Manohar Kungumal Gabra]
12. Hargun Govindram Kriplani]
All having addresses as above]
Petitioners Members of U.S.A. Cable Networks] ...Petitioners

V/s.

1. State of Maharashtra]
through the Public Prosecutor, High Court (A.S.),]
Mumbai]

2. Commissioner of Police, Thane]
Office of the Commissioner of Police, Thane]

3. Assistant Commissioner of Police,]
Ulhasnagar Division, Office of the]
Assistant Commissioner of Police, Powai Chowk,]
Ulhasnagar-3, Dist. Thane]

4. Hardas Hazarimal Tharwani]
residing at Tharwani Villa, C-1 Block Road,]
Ulhasnagar-1, Dist. Thane] ...Respondents

Mr. Subhash Jha with Mr. Atal Dube i/by M/s. Law Global for the Petitioners

Mr. H.J. Dedhia, A.P.P., for the State

Mr. Rajesh S. Datar for Respondent No. 4.

CORAM: A.M. KHANWILKAR AND A.R. JOSHI, JJ.
DATE: 1ST MARCH, 2011

JUDGMENT: (Per A.M. Khanwilkar, J.):-

The petitioners have pressed for three broad reliefs by way of this petition under Article 226 of the Constitution of India. The first relief is to quash F.I.R. No. II-106/10 dated 6th July, 2010 registered at Central Police Station, Ulhasnagar, District Thane. The second relief is to direct respondent No. 3 to forthwith remove the seal put by the Central Police Station, Ulhasnagar, on the control room of the petitioners on 6th July, 2010. The consequential relief claimed by the petitioners is to direct respondent No. 3 to compensate the petitioners in the sum of Rs.1 crore on account of deprivation of their fundamental rights due to sealing of the control room of the petitioners on 6th July, 2010, which resulted in completely closing down the business of the petitioners.

2. Insofar as the second relief is concerned, the petitioners had simultaneously moved the lower Court for the same relief. It is not in dispute that the lower Court has allowed the said application preferred by the petitioners and directed the local police to forthwith remove the seal put on the control room of the petitioners. That order was passed on 18th January, 2011. Accordingly, it is common ground that the seal on the control room has now been removed on 20th January, 2011. In that sense, the second relief does not survive for consideration. However, on the basis of plea regarding wrongful sealing of the control room and in any case, unauthorised continuance of sealing of the control room on and after 25th September, 2010 till it was removed on 20th January, 2011, the petitioners are entitled for compensation. This is the third relief claimed by the petitioners.

3. Insofar as power of seizure of equipments used for operating the cable television network by the local police is concerned, the same flows from Section 11 of the Cable Television Networks (Regulation) Act, 1995. Section 11 reads thus:-

> "**Power to seize equipment used for operating the cable television network**.-
>
> (1) If any authorised officer has reason to believe that the provisions of sections 3, 4A, 5, 6 or 8 have been or are being contravened by any cable operator, he may seize the

> equipment being used by such cable operator for operating the cable television network.
>
> (2) No such equipment shall be retained by the authorised officer for a period exceeding ten days from the date of its seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure has been made, has been obtained for such retention."

4. In the present case, after registration of F.I.R., the local police proceeded to seal the control room, as the F.I.R. was in respect of offence punishable due to contravention of Rule 6(1)(d), (i), (m) and 6(2) of the Cable Television Networks Rules, 1994 (hereinafter referred to as "the said Rules" or "Rules of 1994"), read with Sections 5 and 16(1)(b) of the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as "the said Act" or "the Act of 1995"). As required by sub-section (2) of Section 11, within 10 days from such sealing of equipments, the local police moved the concerned Court for allowing them to continue the seal for a period exceeding 10 days. On that application, the Additional Sessions Judge, Kalyan, vide order dated 20th September, 2010 passed below Exhibit 1 in M.A. No. 29 of 2010, authorised the local police to continue the seizure up to 24th September, 2010. It is not in dispute that the authorised officer, thereafter, did not move the concerned Court for continuance of the seizure beyond 24th September, 2010.

5. In the context of this relief, it was argued that the seizure order was passed by the Assistant Commissioner of Police. He had no authority to pass such order, as the expression "authorised officer" appearing in Section 11 has been defined under Section 2(a) of the Act. The said definition reads thus:-

> "S.2(a) 'authorised officer' means, within his local limits of jurisdiction,-
>
> (i) a District Magistrate, or
> (ii) a Sub-divisional Magistrate, or
> (iii) a Commissioner of Police,
>
> and includes any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may be determined by that Government;"

Indeed, this definition refers to the officers such as the District Magistrate, Sub-Divisional Magistrate or Commissioner of Police. But that does not mean that other officers of the Government, other than the specified designations in clauses (i) to (iii), cannot be authorised to exercise powers under Section 11 of the Act. Inasmuch as the definition of the authorised officer is an inclusive term, which includes any other officer notified in the Official Gazette by the appropriate Government to

be an authorised officer for such local limits of jurisdiction as may be determined by that Government.

6. In exercise of powers under Sections 11(1) and 19 of the Act of 1995, the State Government has issued a notification in the name of the Governor under the signature of Deputy Secretary to Government, Home department (Special), Mantralaya, Mumbai, dated 21st August, 1996, which is stated to be published in the Official Gazette to notify the officers of the Government who can discharge the powers and duties of the authorised officer under the Act of 1995. This notification, amongst others, refers to Assistant Commissioners of Police as having been authorised for the purpose of Sections 11 and 19, but within their respective jurisdictions. As aforesaid, in the present case, the seizure order has been initially issued by the Assistant Commissioner of Police and the same was extended by the Sessions Court until 24th September, 2010. Suffice it to observe that the argument of the petitioners that the Assistant Commissioner of Police was not empowered to exercise powers under Section 11 of the Act is devoid of merits.

7. The next argument of the petitioners, in the context of the third relief, is that, even if the Assistant Commissioner of Police can be

said to be authorised officer to exercise power to seize equipment used for operating the cable television network, however, in the fact situation of the present case, the act of the Assistant Commissioner of Police is a colourable exercise of power. According to the petitioners, the action of sealing the control room could, at best, be resorted to only when the offending activity is so disturbing as would affect the public tranquility and not merely because the programme relayed by the television network is affecting the reputation or character of an individual, which would, at best, be a law and order issue. This argument clearly overlooks the purport of sub-section (1) of Section 11 of the Act. It stipulates that the power of seizure of equipments can be exercised by the authorised officer, if he has reason to believe that the provisions of Section 3, 4A, 5, 6 or 8 of the Act have been or are being contravened by any cable operator. Section 3 mandates that no person shall operate a cable television network, unless he is registered as a cable operator under the Act. Section 4A makes it obligatory for every cable operator to transmit or re-transmit programme of any pay channel through an addressable system. Section 5 stipulates that no person shall transmit or re-transmit through a cable service any programme, unless such programme is in conformity with the prescribed programme code. The prescribed programme code can be culled out from Rule 6 of the said Rules.

Section 6 of the Act postulates that no person shall transmit or re-transmit through a cable service any advertisement, unless such advertisement is in conformity with the prescribed advertisement code. The prescribed advertisement code can be culled out from Rule 7 of the said Rules. Lastly, Section 8 mandates that every cable operator shall re-transmit compulsorily transmission, re-transmitting the compulsory Doordarshan channels. In the present case, the F.I.R. is registered in respect of transmission of promos, which, according to the complainant, is not in conformity with the prescribed code.

8. Reverting back to the sweep of Section 11, if the complaint pertains to contravention of any of the specified provisions by the concerned cable operator, the authorised officer, if has reason to believe that such contravention has occurred, can proceed to seize equipment used for operating the cable television network. In the present case, the complaint registered does refer to contravention of Section 5 read with Section 16(1)(b) of the Act. The concerned Assistant Commissioner of Police, in his affidavit, has stated that, on receipt of the written complaint regarding the display of offending programme, which defamed the complainant and his friends and family members, he proceeded to issue seizure order, as it was a case of repetition of the offending Act, in spite

of instructions given to the petitioners to refrain from transmitting any programme or channel, which is not in conformity with the prescribed programme code. Going by the affidavit of the concerned Assistant Commissioner of Police, it is noticed that, as he had reason to believe that specified provisions have been contravened by the petitioners, he was within his powers to pass an order of seizure, in exercise of powers under Section 11(1) of the Act. In our opinion, therefore, the act of the Assistant Commissioner of Police in issuing seizure order resulting in sealing of the control room of the petitioners cannot be said to be colourable exercise of power as such. We are not impressed by the argument of the petitioners that only if the display of programme was to result in affecting public tranquility, the power under Section 11(1) of the Act can be exercised by authorised officer. Section 11(1) does not provide for such inhibition. Indeed, the power can be exercised by authorised officer, if he has reason to believe that the cable operator has contravened any of the specified provisions. As the F.I.R. refers to contravention of Section 5 read with Section 16(1)(b) of the Act, the only circumspection that was required to be observed by the authorised officer was to satisfy himself that the promos transmitted by the petitioners through their cable network service was not in conformity with the programme code specified in the said Rules, as the grievance of the

complainant was about defamatory promos relayed by the petitioners. It would certainly attract Rule 6(1)(d), (i) and (m), subject to proving the ingredients thereof. Indeed, at the stage of issuing seizure order, the authorised officer must have reason to believe that the cable operator was contravening the specified provisions. The programme code specified in Rule 6 mandates that no programme should be carried in the cable service, which, amongst others, contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths; or criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country; or contains visuals or threats which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups. Keeping in mind the programme code specified in Rule 6, it is not possible to countenance the argument of the petitioners that only if the relay of programme were to affect the public tranquility, the power under Section 11 can be invoked by the authorised officer.

9. The next argument, in the context of the third relief, is that, at any rate, the Sessions Court had permitted sealing of the control room only until 24th September, 2010. However, the seal on the control room was continued even thereafter until 20th January, 2011. The continuance

of sealing beyond 24th September, 2010 was completely in disregard of the mandatory provisions contained in Section 11(2) of the Act. The petitioners would thus argue that, even if the initial seizure order passed by the Assistant Commissioner of Police is accepted as valid and proper, the fact remains that the continued sealing of control room of the petitioners beyond 25th September, 2010 till 20th January, 2011, by no standard, can be said to be proper and under authority of law. In that, the Sessions Court, vide order dated 20th September, 2010, permitted continued seizure only till 24th September, 2010. Admittedly, neither the authorised officer nor the local police moved the concerned Court for continuing the seizure of the control room of the petitioners. To this extent, the petitioners may be justified in contending that no order for continued sealing of the control room on and from 25th September, 2010 till 20th January, 2011 was in existence.

10. However, the explanation offered by the authorised officer and the local police is that, since the petitioners had approached this Court by way of present writ petition filed on 26th July, 2010, they were under *bona fide* impression that the question regarding the continuance of sealing of the control room was *sub judice* before this Court. However, during the pendency of the writ petition, having realised that it

was necessary to take out formal application before the concerned Court for continuance of sealing of the control room of the petitioners, such application was filed before the concerned Court on 24th November, 2010. This fact has been stated by the Assistant Commissioner of Police in his communication dated 25th November, 2010 to the legal notice received from the petitioners' advocate dated 22nd November, 2010. Indeed, the said application was finally rejected by the concerned Court on 18th January, 2011; and immediately thereafter, the seal on the control room of the petitioners was removed on 20th January, 2011. We would not express any final opinion on this explanation offered by the authorised officer and the local police, as the main proceedings are pending before the lower Court. This controversy can be addressed in the said proceedings. Depending on the finding of the Court of competent jurisdiction on the said rival plea of the parties, only thereafter it may be possible to consider the relief claimed by the petitioners to compensate them in the sum of Rs.1 crore, as their business was completely stopped because of the continuance of sealing of the control room even after 25th September, 2010 till 20th January, 2011.

11. We are inclined to take this view also for the additional reason that, to answer this controversy, this Court may inevitably have to

examine the disputed facts. Besides, on what basis the petitioners are claiming compensation in the sum of Rs. 1 crore, is also a matter not spelt out in the writ petition at all. No foundation to justify the claim for compensation of an amount of Rs.1 crore has been laid in the petition. No material facts in that behalf are forthcoming. At any rate, the petitioners would not be entitled for any compensation between the initial seizure order till 24th September, 2010, inasmuch as the petitioners have allowed the order passed by the Sessions Court dated 20th September, 2010 to attain finality. Taking over all view of the matter, therefore, in our opinion, the relief for awarding compensation to the petitioners in the sum of Rs.1 crore, as prayed, cannot be entertained in this petition. We leave that question open to the petitioners, to be pursued in other appropriate proceedings.

12. That takes us to the first relief claimed by the petitioners of quashing of F.I.R. No. II-106/2010 dated 6th July, 2010 for offence punishable under Section 5 read with Section 16(1)(b) of the Act and Rule 6(1)(d), (i), (m) and 6(2) of the Rules. In this context, mainly four points were urged before us. Firstly, the offence in question is a non-cognizable offence. Therefore, neither F.I.R. could have been registered, nor any further steps should have been taken by the local police.

Secondly, before registration of F.I.R., in the fact situation of the present case, a preliminary inquiry was necessary. Thirdly, the complaint made by the private respondent is *mala fide*, frivolous and motivated. Fourthly, the Monitoring Committee for screening the complaint is constituted by the authorised officer, whose acts of commission and omission itself were to be inquired into by the Committee. It is argued that respondent No. 3, Assistant Commissioner of Police, played into the hands of respondent No. 4 (complainant).

13. Revering back to the first point that the offence complained of is a non-cognizable offence, reliance is placed on Section 16 of the Act, in particular sub-section (2) thereof. Section 16 reads thus:-

> "**Punishment for contravention of provisions of this Act**.-
>
> (1) Whoever contravenes any of the provisions of this Act shall be punishable,-
>
> (a) for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both;
>
> (b) for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to Rs. 5,000.

> (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the contravention of section 4-A shall be a cognizable offence under this section."

Going by Section 16(1)(b), as is applicable to the present case, it will have to be treated as a cognizable offence – as it is punishable by sentence up to five years. However, according to the learned counsel for the petitioners, sub-section (2) should be so construed to mean that all offences referred to in the Act of 1995 are non-cognizable offences, except the offence under Section 4A, which alone has been treated as cognizable offence under this Act. This argument deserves to be stated to be rejected. We shall deal with this a little later.

14. Reliance is also placed on Section18 of the Act, which reads thus:-

> **"Cognizance of offences**.- No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by any authorised officer.**"**

Insofar as Section 18 is concerned, the same will have no bearing on the question whether the offence under the Act of 1995 should be treated as cognizable or non-cognizable offence. Section 18, however, is a

provision requiring the Court to take cognizance of any offence punishable under the Act only upon a complaint in writing made by any authorised officer. That is a provision enabling the Court to take cognizance of offences under the Act of 1995.

15. Be that as it may, if the offence referred to in the written complaint is a cognizable offence, the officer in-charge of the police station was bound to reduce the information into writing as per the mandate of Section 154 of the Code. The provisions of the Act of 1995 would, however, require the authorised officer, in the present case, the Assistant Commissioner of Police, to investigate the matter, and if he desires to proceed further on the basis of information gathered by him, file a complaint in writing before the Court of competent jurisdiction.

16. The question whether the offences under the Act of 1995 are cognizable or non-cognizable, as the case may be, will have to be examined from the other provisions of the Act of 1995. However, except Section 16, there is no other provision which would throw light on this aspect. Insofar as Section 16(2) is concerned, in our opinion, it is a *non-obstante* provision whereby offence or contravention under Section 4A of the Act, which otherwise would have been a non-cognizable offence,

has been treated as cognizable offence. The scheme as to the other offences under the Act of 1995, should be treated as cognizable offences or otherwise, will have to be, therefore, examined on the basis of the provisions of the Criminal Procedure Code.

17. Section 4 of the Code provides for trial of offences under the Indian Penal Code and other laws. The same reads thus:-

> " **Trial of offences under the Indian Penal Code and other laws.--**
>
> (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

18. Section 5 of the Code reads thus:-

> "**Saving.--** Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in fore, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. "

On plain reading of the above provisions, it would appear that, if the other laws such as the Act of 1995 do not expressly specify as to whether

the offences provided therein are cognizable or non-cognizable, the provisions in the Code would apply.

19. Part II of Schedule I of the Code provides for classification of offences against other laws. The same reads thus:-

" II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable.	Court of Session.
If punishable with imprisonment for 3 years, and upwards but not more than 7 years	Ditto	Ditto	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable.	Bailable.	Any Magistrate."

(emphasis supplied)

20. Applying the classification provided in the Code to the offences under the Act of 1995, in cases where the imprisonment would extend up to three years, the same would be non-cognizable offence. However, if the punishment with the imprisonment of three years and upwards, but not more than seven years, it will have to be treated as

cognizable offence. Insofar as the first offence under the Act of 1995 referred to in Section 16(1)(a) is concerned, the same is punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both. However, for every subsequent offence, by virtue of Section 16(1)(b), it would be punishable with imprisonment for a term which may extend to five years and with fine which may extend to rupees five thousand. In the present case, the complaint is in respect of contravention of Section 5 read with Section 16(1)(b) of the Act. Thus, it would be a case of cognizable offence. In the circumstances, no fault can be found with the local police for having registered F.I.R. in respect of such offence, being a cognizable offence. After investigation of the case, the matter would proceed before the Court of competent jurisdiction upon a complaint in writing to be made by the authorised officer. Suffice it to observe that there is no merit in the submission that F.I.R. could not have been registered, as the offence referred to therein was a non-cognizable offence.

21. The counsel for the petitioners placed reliance on the exposition in the case of ***Jeewan Kumar Raut & Anr. v. Central Bureau of Investigation***, reported in (2009) 7 S.C.C. 526. According to him, the

provisions of the Transplantation of Human Organs Act, 1994 are, more or less, similar. It was argued that even the Act of 1995 is a special statute and considering Section 16(2) read with Section 18 of the Act, it ought to be held that the in-charge police officer of the local police station is not competent to investigate into the matter, as the investigation will have to be done only by the authorised officer. Indeed, the scheme under Section 18 of the Act of 1995 is somewhat similar to Section 22 of TOHO of 1994. Even in Section 18 of the Act of 1995, it is provided that no Court shall take cognizance of an offence under the said Act, except on a written complaint made by the specified officer. Notably, this reported decision is not an authority on the proposition that registration of F.I.R. in connection with offences under the Act of 1995, even if it is a cognizable offence, is impermissible. This decision, however, is an authority on the proposition that the investigation on a complaint made by a third party will have to be done by authorised officer, who alone can file written complaint before the Court of competent jurisdiction. Further, this judgment deals with the challenge regarding applicability of sub-section (2) of Section 167 of the Code in a case where cognizance has been taken under Section 22 of the THO of 1994 on a complaint. That issue has been considered in the context of

the provisions of the Act of TOHO of 1994 and of the Criminal Procedure Code. In paragraph 32, the Court proceeded to observe thus:-

> "For the views we have taken, we are of the opinion that *stricto sensu* sub-section (2) of Section 167 of the Code would not apply in a case of this nature. Even assuming for the sake of argument that sub-section (2) of Section 167 of the Code requires filing of a report within 90 days and the complaint petition having been filed within the said period, the requirements thereof stand satisfied."

22. Again, it would be useful to refer to paragraph 34 to 37 which read thus:-

> "34. A distinction between a remand of an accused at pre-cognizance stage vis-a-vis the post-cognizance stage is apparent. Whereas the remand at a pre-cognizance stage is to be made in terms of sub-section (2) of Section 167 of the Code, an order of remand of an accused at post-cognizance stage can be effected only in terms of sub-section (2) of Section 309 thereof. This aspect of the matter has been considered by this Court recently in *Mithabhai Pashabhai Patel v. State of Gujarat*, (2009) 6 SCC 332
>
> 35. Before parting, however, we must place on record that we have not been called upon to consider the constitutionality of the provisions of TOHO and in particular Section 22 thereof. Thus, fairness in procedure as adumbrated in Article 21 of the Constitution of India as also the restrictions on liberty imposed by reason of the statute having regard to the fact situation obtaining herein has neither been argued nor is required to be determined. We have made these observations keeping in view the dichotomy in the matter of application of TOHO vi-a-vis the provisions of the Code. If a complaint petition is filed, the procedure laid down under Chapter XV of the Code can be taken recourse to despite the fact that the same has been filed after full investigation and upon obtaining the remand of the accused from time to time by reason of orders passed by a competent Magistrate.
>
> 36. We are, however, not oblivious of some decisions of this Court where some special statutory authorities like the authorities under the Customs Act have been granted all the powers of the Investigating Officer under a special statute

> like the NDPS Act, but, this Court has held that they cannot file charge-sheet and to that extent they would not be police officers. [See *Rajesh Chandra Mehta v. State of W.B.*, AIR 1970 SC 940 and *Raj Kumar Karwal v. Union of India*, (1990) 2 SCC 409.]
>
> 37. In the present case, however, the respondent having specially been empowered both under the 1946 Act as also under the Code to carry out investigation and file a charge-sheet is precluded from doing so only by reason of Section 22 of TOHO. It is doubtful as to whether in the event of authorisation of an officer of the Department to carry out investigation on a complaint made by a third party, he would be entitled to arrest the accused and carry on investigation as if he is a police officer. We hope that Parliament would take appropriate measures to suitably amened the law in the near future."

Accordingly, this judgment will be of no avail to contend that the registration of F.I.R. in relation to offence under the Act of 1995 is impermissible.

23. The next grievance of the petitioners is that a preliminary enquiry ought to have preceded the registration of F.I.R. in the fact situation of the present case. It is well established position that, if the oral or written complaint received by the police officer discloses commission of cognizable offence, he has no option but to register the F.I.R. under Section 154 of the Code. Only in excepted category of cases, a preliminary enquiry would be permissible. This legal position has been authoritatively answered by the Full Bench of our High Court in the case of **Sandeep Rammilan Shukla v. State of Maharashtra & Ors.**, reported in 2009 (1) Mh.L.J. 97. In any case, the reply-affidavits

dated 26th August, 2010 filed before us by the Assistant Commissioner of Police and by the Commissioner of Police, Thane, dated 18th November, 2010 clearly point out that the F.I.R. came to be registered only after being satisfied about the allegations contained in the written complaint given by respondent No. 4. Even if we were to accept the argument of the petitioners that, as a general rule, it was necessary to conduct preliminary enquiry before registration of F.I.R., we fail to understand as to how that argument can be taken forward for quashing of the F.I.R. It is not the case of the petitioners that the statutory provision obligates conduct of preliminary enquiry before registration of F.I.R. Accordingly, we find no merit in this submission.

24. That takes us to the argument canvassed before us that the F.I.R. in question is *mala fide*, frivolous and motivated. The F.I.R. is registered on the basis of complaint which discloses that the petitioners had transmitted promos which were not in conformity with the prescribed programme code, such as specified in Rule 6(1)(d), (i), (m) and Rule 6(2) of the Rules. We may place on record that, the argument of the original complainant, respondent No. 4 before us, is that the F.I.R., as registered, discloses offence relating to contravention of Section 5 read with Section 16(1)(b) of the Act of 1995 and Rule 6(1)(d) and

6(1)(i) of the Rules of 1994. The material facts in that behalf can be discerned from the F.I.R. In that view of the matter, the question of quashing of F.I.R. does not arise. The truthfulness of the said allegations is being investigated and the authorised officer, upon being satisfied, would be competent to file a written complaint before the Court of competent jurisdiction, as provided in Section 18 of the Act; and, on filing such complaint, the matter will have to then proceed in accordance with law. The question of quashing of F.I.R., in the fact situation of the present case, does not arise.

25. The fact that such promos were, in fact, transmitted on the cable television network of the petitioners has not been denied by the petitioners. The argument of the petitioners, however, is that the said promos do not pertain to respondent No.4 at all, and in any case, the same were not of such nature that it would affect the public tranquility. Once the transmission of the offending promos is not disputed, the question whether the contents of the said promos transmitted on the cable television network of the petitioners did or did not contain anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths or result in criticism, *mala fide* or slandering any individual or

person or certain groups, segments of social, public and moral life of the country, etc., is a matter for investigation and trial. The F.I.R. refers to the relevant facts, which, in our opinion, *prima facie*, indicate contravention of the programme code within the meaning of at least Rule 6(1)(d) and (i) of the Rules.

26. The argument of the petitioners that the attempt of the complainant was to strangulate the business of the petitioners by registering such *mala fide*, frivolous and motivated complaint also does not commend to us, inasmuch as the record indicates that this was not the first occasion on which such offending promos were transmitted on the cable television network of the petitioners. Even in the past, the complainant had registered protest and complained about such promos and that the petitioners were directed to forbear from transmitting the same again. In spite of that, if the petitioners continued to transmit the offending promos on their cable television network unabated, the complainant cannot be blamed for resorting to remedy under the provisions of law; and, as aforesaid, the Assistant Commissioner of Police was within his powers to order seizure of equipment used for operating the cable television network, which was used by the cable operator in contravention of the specified provisions of the Act.

Accordingly, we are not impressed by the argument of the petitioners that, in the fact situation of the present case, the F.I.R. deserves to be quashed on the ground that it is *mala fide*, frivolous and motivated.

27. The argument of the petitioners is that whether the offending promos would contravene the programme code is a matter which ought to be examined by expert body such as Censor Board. However, the Act of 1995 does not envisage such expert body who would form opinion about the appropriateness of the transmission to be relayed from the cable television network of the cable operator. According to the petitioners, in such a situation, that question could be examined by the Monitoring Committee constituted under the order issued by the Government of India, Ministry of Information and Broadcasting (Broadcasting Wing) dated 19th February, 2008 under the signature of Joint Secretary (Broadcasting). The fact that no expert body, such as Censor Board, has been established under the provisions of the Act of 1995 to regulate the transmission of programmes and advertisements on the cable television network operated by the concerned cable operator will be of no avail to the petitioners to further their argument regarding the quashing of the F.I.R. Once it is held that the registration of F.I.R. in respect of the allegations contained in the

complaint made by respondent No.4 was possible, the argument under consideration will be of no use. Even if no expert body has been established, and if there is no provision for establishment of expert body under the Act of 1995, Rules 6 and 7 of the Rules of 1994 provide for the Guidelines as to what should be the contents of the programme and the advertisement to be transmitted through the cable television network of the concerned cable operator. The benchmark has been provided in these Rules. Suffice it to observe that the F.I.R. in question cannot be quashed on the basis of the argument under consideration.

28. Insofar as the constitution of the Monitoring Committee as per the order issued by the Government of India dated 19th February, 2008 is concerned, we have already adverted to that aspect in the earlier part of this judgment, and noted that the fact that the authorised officer is competent to nominate members on the Committee for enforcement of the provisions of the Act will not militate against the registration of the F.I.R. in question. We do not think it necessary to elaborate further, except to observe that, considering the relief of quashing the F.I.R., it is not necessary to go into the question as to whether the constitution of the Monitoring Committee is proper or otherwise. Suffice it to observe that

the Monitoring Committee is constituted as per the Guidelines issued by the Government of India.

29. In addition to the above-mentioned reported judgments, at the end of the hearing, the counsel for the petitioners handed in a compilation of five other reported judgments, and submitted that the said judgments may be taken into account for answering the controversy on hand.

30. The first amongst the said judgments is the case of ***Pratibha Naithani v. Union of India & Ors.***, reported in AIR 2006 Bom 259. The moot question examined by the Division Bench of our High Court in the said case was whether the cable operators or the cable service providers are free to telecast the "certified adult films" by C.B.F.C. despite the restriction in Clause (o) of Rule 6(1) of the Cable Television Networks Rules, 1994 that no programme shall be carried in cable service which is unsuitable for unrestricted public exhibition. The Court rejected the argument that the stipulation contained in Rule 6(1)(o) was unconstitutional. The Court held that the restriction under Rule 6(1)(o) upon the cable operator and the cable service provider that no programme should be carried in the cable service, which is not suitable for

unrestricted public exhibition, cannot be said to violate their right to carry on trade and business. The Court directed the cable operators and cable service providers not to relay the films other than films sanctioned for unrestricted public exhibition by the C.B.F.C. We fail to understand as to how this judgment would further the argument of the petitioners that registration of F.I.R. for contravention of Section 5 read with Section 16(1)(b) of the Act of 1995 and Rule 6(1)(d)(i), (m) and Rule 6(2) of the Rules of 1994 would be impermissible.

31. The next judgment is in the case of ***Bobby Art International & Ors. v. Om Pal Singh Hoon & Ors.***, reported in (1996) 4 S.C.C. 1. The challenge considered in this decision was in relation to order passed by the Appellate Tribunal in an appeal filed under Section 5-C of the Cinematograph Act, 1952 pertaining to film on the life of Phoolan Devi. The Tribunal granted 'A' Certificate, subject to certain excisions and modifications. The High Court interfered with the said decision of the Tribunal. In appeal before the Hon'ble Apex Court, the decision of the High Court was reversed, and, instead, the order of the Tribunal was restored, meaning thereby the 'A' Certificate issued to film "Bandit Queen" upon the conditions imposed by the Appellate Tribunal was revived. Even this decision will be of no avail to answer the

controversy on hand, in particular whether registration of F.I.R. in relation to contravention of provisions of Section 5 read with Section 16(1)(b) of the Act of 1995 and Rule 6(1)(d), (i), (m) and Rule 6(2) of the Rules of 1994 would be impermissible.

32. The third judgment is in the case of ***Raj Kapoor & Ors. v. State & Ors.,*** reported in (1980) 1 S.C.C. 43. The Court was called upon to consider two questions as may be discerned from paragraph 8 of the reported judgment. The first question was of jurisdiction and consequent procedural compliance, the other of jurisprudence as to when, in the setting of the Penal Code, a picture to be publicly exhibited can be castigated as prurient and obscene and violative of norms against venereal depravity. In a separate, but concurring judgment, in paragraph 25 of the reported judgment, another Judge of the Division Bench formulated questions that required to be considered, (a) a petition filed by the appellants under Section 482 of the Code of Criminal Procedure could be treated by the High Court as a revision petition under Section 397 of the Code, and (b) assuming it can be regarded as a revision petition, whether the High Court was right in rejecting it on the ground that the certified copy of the Metropolitan Magistrate's Order summoning the appellants was not filed with it. In our considered

opinion, even this judgment is not an authority on the proposition that registration of F.I.R. in the fact situation of the present case was not permissible.

33. The fourth judgment is the case of ***K.A. Abbas v. The Union of India & Anr***., reported in 1970 (2) S.C.C. 780. In the said matter, the petition was for declaration that provisions of Part II of the Cinematograph Act, 1952 together with the Rules prescribed by the Central Government, February 6, 1960, in the purported exercise of its powers under Section 5-B of the Act are unconstitutional and void. Even this decision, in our considered opinion, will be of no avail to the petitioners, to further their argument that registration of F.I.R., in the fact situation of the present case, was impermissible.

34. The last judgment is in the case of ***Amitabh Bachchan Corporation Ltd. v. Mahila Jagran Manch & Ors.***, reported in (1997) 7 S.C.C. 91. In that case, the writ petitioners had sought direction to restrain the original respondents (appellants before the Supreme Court) from holding the "Miss World-1996" contest anywhere in India, including Bangalore, to restrain the Ministry of External Affairs from issuing visas to the contestants, etc., to restrain the State of Karnataka

and its Departments from extending any facility or co-operation for holding the Beauty Pageant, recover charges for the use of the Press Conference Hall at Vidhan Soudha from the original respondent (appellant before the Supreme Court) and further to tender an apology for announcing the event from Vidhan Soudha. The learned Single Judge dismissed the writ petition, being misconceived, and the allegations on the basis of which it was founded were preposterous and the Beauty Pageant to be held at Bangalore would not be offensive to our sense of morality and decency; nor could it be seen as obscene in the eye of law. The Division Bench of the High Court, however, reversed the decision of the Single Judge and allowed the writ petition. That decision of the Division Bench was set aside by the Hon'ble Apex Court on the opinion that the Division Bench should not have entertained the writ petition. Suffice it to observe that even this decision does not take the matter any further for the petitioners to contend that registration of F.I.R., in the fact situation of the present case, was impermissible.

35. We, however, make it clear that we are not expressing any opinion on the merits of the case, nor would this decision come in the way of the petitioners to pursue other appropriate remedies as may be available to them, as per law.

36. In view of the above, the reliefs claimed by the petitioners in the present petition alluded to cannot be granted. The petition is, therefore, dismissed, with the above observations.

A.R. JOSHI, J. **A.M. KHANWILKAR, J.**