CNR No: PHHC010981072023
2026:PHHC:205999

IN THE HIGH COURT OF PUNJAB AND PUNJAB AT CHANDIGARH

CRM-M-38416-2023 (O&M)

M/s Amazon Seller Services Pvt. Ltd. and another …Petitioner(s)

Vs.

Union of India …Respondent(s)

Reserved on	**: 02.09.2026**
Pronounced on	**: 25.11.2026**
Whether full judgment is pronounced or operative part thereof	**: Full**

Coram: Hon'ble Mr. Justice N.S.Shekhawat

Argued by: Mr. Randeep S. Rai, Senior Advocate assisted by
Mr. Randhir Singh, Advocate and
Ms. Rubina Vermani, Advocate for the petitioners.

Mr. Avinav Chawla, Advocate and
Mr. Ravinav Chawla, Advocate
for the respondent.

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N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C., with a prayer to quash the impugned complaint titled as 'Union of India Vs. Amazon Sellers Services Private Limited and others, bearing CIS No Coma/5317/2023, dated 11.01.2023, filed under Sections 17, 18 read with Section 29 of the Bureau of Indian Standards Act, 2016 (hereinafter referred to as the BIS Act), in the Court of JMIC, Ludhiana (Annexure P-1) and the impugned summoning order dated 01.04.2023, passed by the Court of JMIC, Ludhiana (Annexure P-2), whereby the petitioners have been ordered to be summoned to

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face trial under Sections 17, 18 read with Section 29 of the BIS Act, alongwith all consequential proceedings arising therefrom.

2. Learned senior counsel for the petitioner has vehemently argued that petitioner no.1 is a company which manages and operates the online marketplace i.e. www.amazon.in, wherein lakhs of third-party sellers and buyers interact and conduct their transactions. In fact, petitioner no.1 is an online marketplace, which provides users access to a range of approximately 170 million products listed/offered for sale by approximately 3 lakhs registered sellers across a broad range of products. Petitioner no.2 is the Manager (operations) of the Ludhiana Fulfillment Centre of petitioner no.1. In fact, petitioner no.1 is also an E-commerce entity under the ambit of the 'Consolidated FDI Policy' devised by the Department for Promotion of Industry and Internal Trade under the Union Ministry of Commerce and Industry. As per the said policy, a marketplace is now a recognized concept wherein an E-commerce entity operating a marketplace is required to provide a neutral online platform to allow the sellers to interact with their customers, without exercising ownership over any goods or being involved in the manufacture or dealing in any goods. Consequently, petitioner no.1 can be termed as an "intermediary" as defined in Section 2(1)(w) of the Information Technology Act, 2000 (hereinafter referred to as the IT Act). Learned senior counsel further submits that while providing its services to their sellers, who are interested in selling their products on its online platform, petitioner no.1 enters into an Amazon Services Business Solutions Agreement (hereinafter referred to as the BSA) with each of the sellers listed on its online marketplace. As per clauses of the said agreement, the sellers are responsible for compliance of the applicable laws.

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3. In the present case, the impugned complaint (Annexure P-1) has been filed by the respondent-complainant under Sections 17, 18 and 29 of the BIS Act by alleging that on 11.01.2023, the officials of the respondent had conducted a raid at the premises of petitioner no.1. The raiding team collected all toys, which were stored by third-party sellers for sale without ISI marks and a search and seizure memo was separately prepared. In the impugned complaint, it was alleged that petitioner no.1 had stored the toys for sale and had exhibited for same for sale without ISI mark (BIS standard mark) and petitioner no.1 had violated Sections 17 and 18 of the BIS Act and also the Toys (Quality Control) Order, 2020, in day-to-day business from the premises of M/s Amazon Seller Services Private Limited. Learned senior counsel submits that after institution of the complaint, the impugned summoning order dated 01.04.2023 (Annexure P-2) was passed by the trial Court.

4. Learned senior counsel has vehemently argued that while issuing the summoning order, the Judicial Magistrate had failed to apply its judicial mind and the cognizance of the complaint has been taken mechanically. From a perusal of the impugned complaint (Annexure P-1), it is apparent that vague allegations have been levelled against all the Directors of the company, without specifying or naming any Director of the company. Still further, the respondent had alleged that the petitioners were engaged in the business of sale, store and exhibit for sale of the toys without bearing ISI marks. In fact, petitioner no.1 company operates solely, manages an online E-commerce marketplace, which allows third-party sellers to list their products online and at the same time, the customers can log in on the E-commerce marketplace and purchase the listed products. Sometimes the petitioners also provide storage facility to the sellers

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which are marked as the additional place of business for the seller only. Learned senior counsel further submits that as per Section 17 of the BIS Act, the responsibility of ensuring the compliance with law is attributed to a “person”. Section 2(25) of the BIS Act, 2016 defines a person as follows:-

> *"person means a manufacturer, an importer, a distributor, retailer, seller or lessor of goods or article or provider of service or any other person who uses or applies his name or trade mark or any other distinctive mark on to goods or article or while providing a service, for any consideration or gives goods or article or provides service as prize or gift for commercial purposes including their representative and any person who is engaged in such activities, where the manufacturer, importer, distributor, retailer, seller, lessor or provider of service cannot be identified."*

5. Learned senior counsel further submits that petitioner no.1 only provided an online platform and software tools, enabling third-party sellers on the marketplace to display and offer their goods for sale to end customers in India. Petitioner no.1 is not involved in manufacture, import, distribution, retail sale or lease of any of the products listed on its online marketplace by third-party sellers. Apart from that, even as per Section 18 of the BIS Act, it is the responsibility of the distributor and seller to ensure that the goods carrying the prescribed standard mark are purchased from the certified body/license holders and further that such goods carrying the mark, bear the requisite labels/details as specified by the Bureau. Petitioner no.1, being an online marketplace, entered into a standard Business Solutions Agreement with the sellers who are desirous of displaying their goods and offering them for sale. Even, none of the

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goods offered for sale on the online marketplace are owned, sold and stored for sale by petitioner no.1. Even, in the instant case petitioner no.1 had allowed the sellers to store their goods at its Fulfillment Centre as a part of “Fulfillment by Amazon – FBA” services provided under the BSA on principal-to-principal basis and were meant for sale from third-party sellers to the end customers. Apart from that, the liability to ensure compliance under the provisions of the Toys (Quality Control) Order, 2020, is also upon the person who manufactures, imports, distributes, sells, hires, leases, stores or exhibits for sale any goods. It is the sole responsibility of the seller to ensure that the products and goods comply with all the laws as per the BSA. By referring to the provisions of Section 79 of the IT Act, learned senior counsel submits that petitioners are intermediary and are protected from liability. In support of his arguments, learned senior counsel relies upon the law laid down by the Hon’ble Delhi High Court in ***My Space Vs. Super Cassettes Industries Limited, 2008, DLT 487*** and ***Snapdeal Private Limited versus State of Karnataka, 2021 SCC Online Kar 15706***.

6. On the other hand, counsel appearing on behalf of the respondent/complainant has vehemently argued that the complainant had conducted the inspection and had taken samples of all the materials to see whether the products confirm to the Indian standard and also to verify whether the standard mark had been used properly in relation to any article or goods in terms of the license. The raiding team found that petitioners had stored various varieties of toys without ISI mark (BIS standard mark) with different brand names for sale and exhibit for sale. Thus, the complaint was rightly filed against the petitioners for violation of Sections 17 and 18 of the BIS Act, 2016. Even,

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the trial Court had rightly summoned the petitioners as responsibility of ensuring the compliance with law is attributed to a person. Still further, in view of the BSA, the third-party sellers as well as the marketplace model of E-commerce have the responsibility to ensure that the products listed on E-commerce marketplace are properly labelled and are in compliance with the law of the land.

7. I have heard learned counsel for the parties and perused the record carefully.

8. In the present case, the main argument raised by the petitioners is that petitioner no.1 is an E-commerce entity and is an online marketplace, which is providing a neutral online platform to allow sellers to interact with their customers without exercising ownership over any goods or being involved in the manufacture or other related processes. Petitioner no.1 was simply an intermediary and the sellers were responsible for compliance of the applicable laws in view of the terms of the Amazon Services Business Solutions Agreements (BSA). Since, the petitioners are only intermediary under Section 79(1) of the IT Act, they have been afforded protection from liability. The provisions of Section 79 of the Information Technology Act, 2000 were substituted by the Information Technology (Amendment) Act, 2008, which came into force with effect from 27.10.2009, and reads as follows:-

> *"79.* ***Exemption from liability of intermediary in certain cases****.- (1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.*

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(2) The provisions of sub-section (1) shall apply if-

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not-

(i)initiate the transmission,

(ii) select the receiver of the transmission, and

(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribed in this behalf."

9. While interpreting the said provision and the contours of the safe-harbour principle, the Hon'ble Supreme Court of India held in the matter of ***Google India Private Limited versus Visaka Industries, (2020) 4 SCC 162***, as follows:-

*"**50**. At this juncture, it is apposite that we took a deeper look at what the Government of India has to say about Section 79.*

***51**. Section 79 is a safe harbour provision. Internet intermediaries give access to host, disseminate and index content, products and services originated by third parties on the internet. There are different kinds of intermediaries. They include:*

i. Internet Access and Service Provider (ISP). Examples are given in this category of Airtel, Vodafone, BSNL among others;

ii. Data Processing and Web Hosting Providers. Examples include Godaddy and Bigrock;

iii. Internet Search Engines and Portals like Google, Yahoo and Binge;

iv. E-mail hosts like gmail (Google) and yahoomail;

v. Then there are instant messaging platforms such as Whatsapp, Facebook Messenger, Skype, etc.;

vi. E-commerce intermediaries where the platforms do not take

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title to the goods being sold like Amazon India, Flipkart, etc.;
vii. Internet Payment Systems and Mobile Walleters like Paytm, etc.;
viii. There are also participative internet platforms.

***52**. The 2008 amendment introduced Chapter XII to the Information Technology Act. The amendment was in the background of the decision of the Delhi High Court in Avinash Bajaj v. State (NCT of Delhi).*
***53**. Intermediaries stand on a different footing being only facilitators of exchanges of information or sales. Prior to the amendment, the exemption provision under Section 79 did not exist and, therefore, an intermediary would have been liable for any third-party information or data made available by him as seen in the Bazeed (supra). After the amendment, intermediary is not liable under any Act if it satisfied certain requirements as detailed in Section 79.*
***54**. After referring to the decision in Shreya Singhal (supra), the Government of India has understood the position at law to be that Section 79 stands read down to mean that an intermediary would need to takedown information only upon receiving actual knowledge that a court order has been passed to remove or disable certain material and not otherwise. The further stand of the Government of India is thus there is a recognition that intermediaries and neutral 20 116/2005 DLT 427 41 platforms are only facilitating information. It is further pointed out on behalf of the Government of India that the interpretation placed by this Court in Shreya Singhal (supra) was not available to the High Court when it passed the impugned order in this case. Shreya Singhal makes it clear that an intermediary's liability will not arise unless it failed to take down material upon there being actual knowledge by court order or government communication. This safeguard has been put in place to avoid chilling affect on free speech. The intermediaries would, if a contrary view is taken, stand elevated to the status of super censors and denude the internet of it unique feature of a democratic medium for all to publish, access and read any and all kinds of information.*
***55**. Owing to the special unique characteristic of the internet, intermediaries are not in a position to know about a content which is posted on its platforms by itself and, therefore, the strict liability principle cannot be made applicable to internet intermediaries. It is the specific stand of the Government of India that even pre-amendment, an intermediary could not know the contents of what*

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is posted on its website and, therefore, be held liable in the absence of a takedown order by a court or Governmental Agency."

10. Still further, the Delhi High Court has held in the matter of ***Flipkart Internet Pvt. Limited versus State of NCT of Delhi, 2022 SCC Online Del 2439***, as follows"

*"**16.** "Intermediary" is defined under Section 2(1)(w) of the I.T. Act, which is as follows:*

> *—2(1)(w) —intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online- auction sites, online-market places and cyber cafes.‖*

***17**. Under Section 2(1)(za) of the I.T. Act, an originator does not include an "intermediary". That the e-market portals, like the petitioner, are intermediaries has been recognized by the courts. For the present petition, no different view is called for. [See - Google India Private Limited v. Visaka Industries, (2020) 4 SCC 162].*

***18.** xxxxxxxxxxxxxxxxx*

***19.** xxxxxxxxxxxxxxxxxx*

***20**. In other words, the obligation of the intermediary is to observe —due diligence‖ and —follow‖ the guidelines that may be prescribed by the Government in this behalf. Therefore, reference will have to be made to the I.T. Guidelines. What is —due diligence‖ to be observed by the intermediary has been provided under Rule 3(1), which reads as below:*

> *—3. Due diligence to be observed by intermediary -- The intermediary shall observe following due diligence while discharging his duties, namely: --*
> *(1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access-or usage of the intermediary's computer resource by any person.*
> *(2) xxx xxx xxx*
> *(d) infringes any patent, trademark, copyright or other proprietary rights;*
> *(e) to (i) xxx xxx (3) The intermediary shall not knowingly host or publish any information or shall not initiate the transmission, select the receiver of transmission, and select or modify the information contained in the transmission as specified in sub-rule (2):*

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> *provided that the following actions by an intermediary shall not amount to hosing, publishing, editing or storing of any such information as specified in sub-rule: (2) --*
> *(a) xxx xxx*
> *(b) removal of access to any information, data or communication link by an intermediary after such information, data or communication link comes to the actual knowledge of a person authorised by the intermediary pursuant to any order or direction as per the provisions of the Act;*
> *(4) The intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2).*
>
> *Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes;*
> *(5) The Intermediary shall inform its users that in case of non-compliance with rules and regulations, user agreement and privacy policy for access or usage of intermediary computer resource, the Intermediary has the right to immediately terminate the access or usage lights of the users to the computer resource of Intermediary and remove noncompliant information.*
>
> *(6) to (11) xxx xxx xxx*

21. *xxxxxxxxxxxxxxxxxx*

22. *xxxxxxxxxxxxxxxxxx*

23. *xxxxxxxxxxxxxxxxxx*

24. *xxxxxxxxxxxxxxxxxx*

25. *It is trite that the standard for fixing criminal liability is far higher than that under civil law, one requiring proof „beyond reasonable doubt" and not just a „balance of probabilities". For instance, to establish criminal liability for negligence, the standard of proof is set much higher than for „civil liability" under the law of Torts for negligence. There is no reason why that higher standard should not be available to courts to determine whether an intermediary would be liable under the criminal law for action or inaction. It would also stand to reason that when the intermediaries have been granted the ―safe harbour‖ qua civil liability, and when a higher standard of culpability is required for a criminal prosecution, such "safe harbour" should be available even in respect of criminal prosecution. Thus, unless an active role is disclosed in the commission of the offences complained of, the intermediary, such as the present petitioner, would be entitled to claim protection under Section 79*

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> *of the I.T. Act. In other words, the question must be answered in the affirmative that when compliance with the "due diligence" requirement under Rule 3 of the I.T. Guidelines is evident, ex facie, the exclusion of liability under Section 79 of the I.T. Act would include exclusion from criminal prosecution.*
>
> ***26.*** *Admittedly, the petitioner has complied with the Guidelines by putting it on their ―Terms of Use‖ (Annexure-P/2) under the title of the ―use of the platform‖ and ―selling‖, that the users cannot display what belongs to another person and over which they have no right; or which infringes upon or violates any third party"s rights, including but not limited to intellectual property rights, rights of privacy or rights of publicity; or promotes an illegal or unauthorized copy of another person"s copyrighted work; or infringes any patent, trademark, copyright, proprietary rights, third-party"s trade secrets, rights of publicity or privacy, or is fraudulent or involves the sale of counterfeit or stolen items; or which violates any law for the time being in force. Thus, ―due diligence‖ under Rule 3(2) of the I.T. Guidelines has been complied with."*

11. Now, adverting to the facts of the present case, I find sufficient force in the submissions made by learned senior counsel for the petitioners that petitioner no.1 is a marketplace E-commerce entity, which had merely acted as a third-party facilitator for buyers and sellers. Consequently, petitioner no.1 can very well be considered as an intermediary 'as defined in Section 2(w) of the IT Act whereas petitioner no.2 is the Manager (operations) of the Ludhiana Fulfillment Centre of petitioner no.1. On one hand, only the intermediary have been arrayed as an accused in the present case, whereas the sellers who had stored their goods at the Fulfillment Centre of petitioner no.1 were not arrayed as accused in the present case. Even otherwise, under the provisions of the Toys (Quality Control) Order, 2020, the liability under the Act to ensure the compliance of various provisions of the BIS Act is upon the person who manufactures, imports, distributes, sells, hires, leases, stores or exhibits for sale any goods, which is a different company. In fact, from the terms of the BSA, it

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is apparent that petitioners had taken all the precautions in the present case and had complied with the laws. Thus, this Court is of the firm view that registration of FIR against an intermediary i.e. the petitioners, has led to miscarriage of justice. Consequently, the complaint titled as 'Union of India Vs. Amazon Sellers Services Private Limited and others, bearing CIS No Coma/5317/2023, dated 11.01.2023, filed under Sections 17, 18 read with Section 29 of the Bureau of Indian Standards Act, in the Court of JMIC, Ludhiana (Annexure P-1); the impugned summoning order dated 01.04.2023, passed by the Court of JMIC, Ludhiana (Annexure P-2) and all consequential proceedings arising therefrom are ordered to be quashed by this Court qua the petitioners only.

12. Since the impugned complaint (Annexure P-1) and the summoning order in (Annexure P-2) are quashed only qua the petitioners, the respondent-complainant would be at liberty to ascertain the identity of those, who had infringed various provisions of law or were selling the products in violation of law.

(N.S.SHEKHAWAT)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/N

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