

Court No. - 92

Case :- APPLICATION U/S 482 No. - 27024 of 2017

Applicant :- Dhanesh Jindal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shyam Lal, Ashutosh Yadav

Counsel for Opposite Party :- G.A., Krishna Dutt Tiwari, Sunil Kumar Upadhyay

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Ashutosh Yadav, learned counsel for the applicant, Sri S.K. Upadhyay, learned counsel for the opposite party no.2 and Sri Kamlesh Kumar Tripathi, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet no.39 of 2017 dated 07.02.2017 as well as the entire proceedings in Case No. 2888 of 2017 (State of U.P. vs. Dhanesh Jindal), arising out of Case Crime No. 365 of 2016 u/S 66 & 67 of I.T. Act and Section 501 I.P.C., P.S.- Gal Saheed, District- Moradabad, pending in the court of learned Chief Judicial Magistrate, Moradabad.

3. Learned counsel for the applicant submits that the opposite party no.2 is the brother-in-law (Bahnoi) of deceased sister of the applicant. The deceased sister has died due to burnt injuries on 14.06.2016, for which an F.I.R., being Case No. 741, dated 20.06.2016, was lodged by the mother by the applicant against in-laws of the sister of the applicant including the opposite party no.2. It is further stated that the applicant herein has further filed a complaint case against the opposite party no.2, wherein the opposite party no.2 was summoned by the Chief Judicial Magistrate, Ist Class, Ujjain.

4. Learned counsel for the applicant submitted that the instant F.I.R. has been lodged by the opposite party no.2 as a counterblast to the said cases filed by the applicant and the mother of the applicant against the opposite party no.2.

5. Learned counsel for the applicant further submits that in the instant case, the F.I.R. was lodged for the offences u/S 66 & 67 of the I.T. Act, and Section 501 of the I.P.C. Learned counsel for the applicant submits that even assuming all the allegations stated in the F.I.R., as true, no offence u/S 66 & 67 of the I.T. Act, is made

out. So far as Section 501 I.P.C., is concerned, learned counsel for the applicant submits that in terms of Section 199 of Cr.P.C., the Magistrate cannot take the cognizance of the said offence without there being a complaint case filed by the opposite party no.2, otherwise also the offence u/S 501 I.P.C. is a non-cognizable offence, therefore, the Magistrate could not have taken cognizance of the said offence without there being a complaint case filed by the opposite party no.2. On the aforesaid submissions, learned counsel for the applicant prays for quashing of the entire proceedings, charge-sheet, summoning order as well as the entire proceedings of the said case.

6. Learned counsel appearing for the opposite party no.2, after reading the provisions of Section 66 & 67 of I.T. Act, submits that from the allegations made in the F.I.R. no offence u/S 66 & 67 of the I.T. Act is made out against the applicant herein. Learned counsel for the opposite party no.2 further admits that the Magistrate cannot take the cognizance for the offences u/S 501 I.P.C., without there being complaint case filed by the opposite party no.2.

7. Learned counsel for the State also submits that no offence u/S 66 & 67 of the I.T. Act is made out even from the complete reading of the allegations made in the F.I.R., against the applicant herein.

8. Having heard the submissions made by learned counsel for the parties, this Court has carefully perused the record of the case. Section 66 of the I.T. Act, for the purpose of determination of this case, it will be relevant to note the provisions of Sections 43, 66 & 67 of the I.T. Act, and it will be further relevant to note the provisions of 501 I.P.C., and Section 199 of the Cr.P.C., which reproduced as under:

Section 43, 66 & 67 of the Information Technology Act, 2000

43 [Penalty and compensation] for damage to computer, computer system, etc. -If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network,-

(a) accesses or secures access to such computer, computer system or computer network 46 [or computer resource];

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network,

47 [(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;]

47 [(j) steal, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;] 48 [he shall be liable to pay damages by way of compensation to the person so affected]. Explanation.- For the purposes of this section,-

(i) "computer contaminant" means any set of computer instructions that are designed-

(a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or

(b) by any means to usurp the normal operation of the computer, computer system, or computer network;

(ii) "computer database" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

(iii) "computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;

(iv) "damage" means to destroy, alter, delete, add, modify or rearrange any computer resource by any means;

49 [(v) "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.]

66. Computer related offences.—If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

67. Punishment for publishing or transmitting obscene material in electronic form.—Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees."

Section 501 of I.P.C.

"501. Printing or engraving matter known to be defamatory- Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Section 199 in The Code Of Criminal Procedure, 1973

199. Prosecution for defamation.[\(1\)](#) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence: Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court make a complaint on his or her behalf.

[\(2\)](#) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who at the time of such commission, is the President of India, the Vice- President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

[\(3\)](#) Every complaint referred to in sub- section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the caused of the offence alleged to have been committed by him.

[\(4\)](#) No complaint Under sub- section (2) shall be made by the Public Prosecutor except with the previous sanction-

[\(a\)](#) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;
(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub- section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

9. Section 66 of the I.T. Act relates to any dishonest or fraudulent act committed by any person as has been described in Section 43 of the I.T. Act. Section 43 of the I.T. Act provides that any damage to computer or computer system is committed by any person. However, in the instant case, there is no allegation with regard to damage to any computer system as alleged in the F.I.R. or in the charge-sheet. Therefore, the offence u/S 66 of the I.T. Act is not made out.

10. Section 67 of the I.T. Act relates to publishing or transmitting obscene material in electronic form. However, as per the allegations at the most, the applicant has been alleged to have transmitted some defamatory material and not the obscene material in electronic form. Therefore, the offence u/S 67 of the I.T. Act is also not made out against the applicant herein.

11. So far as Section 501 of the I.P.C. is concerned, for which as per Section 199 Cr.P.C., the cognizance can be taken only on the complaint of the complainant i.e., opposite party no.2. However, no F.I.R. can be lodged for Section 501 I.P.C. Therefore, in the considered view of this Court, having gone through the F.I.R. and the statements of the opposite party no. 2, the recorded u/S 161 Cr.P.C., and the material, which has been transmitted through the group chats etc., no offence u/S 66 & 67 of I.T. Act is made out against the applicant and the learned Magistrate cannot take the cognizance for the offence u/S 501 I.P.C.

12. Further, from the record it appear that the applicant is the resident of Ujjain and the instant case has been lodged at Moradabad, otherwise also the Magistrate could not have taken cognizance without following the procedure u/S 202 Cr.P.C., i.e., without conducting an inquiry. Therefore, from the record it is apparent that no such as enumerated u/S 202 Cr.P.C., has been conducted by the Chief Judicial Magistrate, Moradabad, Therefore, in the considered view of this Court, the order dated 04.03.2017, passed by the Judicial Magistrate taking cognizance in the matter for offences u/S 66 & 67 of I.T. Act and Section 501

I.P.C., is not sustainable in law. Therefore, the same is hereby **quashed**. Since, no offence u/S 66 & 67 I.T. Act is made out, therefore, the entire proceedings of the instant case against the applicant is hereby **quashed**. The instant application is **allowed**. The opposite party no. 2 is at liberty to proceed for any offence u/ S 501 I.P.C., against applicant herein in accordance with law.

Order Date :- 7.11.2023

Shubham Arya