

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.891 OF 2013

ORDER:

Aggrieved by an order dated 12.04.2013 passed in CrI.M.P. No.551 of 2013 in C.C. No.558 of 2011 on the file of the Judicial Magistrate of First Class Special Mobile Court, Kurnool, wherein and whereunder an application filed for dismissal of the complaint on ground of territorial jurisdiction was rejected, the present Criminal Revision is filed.

The facts in issue are as under :

The complainant is working as Medical Officer, Primary Health Centre, Itikyala, Mahaboobnagar District, whereas the petitioner/accused is working as Medical Officer, Primary Health Centre, Manopadu, Mahboobngar District. Both are residing in Kurnool and are acquainted with each other. They got their respective internet connections at their residences. Basing on a report lodged with Cyber Crime P.S., D.D., Hyderabad, alleging that she received obscene messages from the petitioner/accused to her e-mail address a case in Crime No.112 of 2009 came to be registered for the offence punishable under Section 509 IPC. The said crime was transferred to Kurnool III Town P.S., on the point of jurisdiction and in turn the same was registered as Crime No.186 of 2009. Then the S.D.P.O., Allagadda took up investigation and seized the laptop of the petitioner/accused and sent the same to F.S.L. The police after investigation filed a final report in the Court of the Additional Judicial Magistrate of First Class, Kurnool, treating the case as "Action Dropped." Thereafter, the informant filed a protest petition, pursuant to which the Court recorded her sworn statement and on the basis of material available on record took the case on file for the offence punishable under Section 67 of the Information Technology Act and u/s.509 IPC. The accused filed the present application questioning jurisdiction of the said court to try the offence under Section 67 of the Information Technology Act (herein after referred to "the Act"). Aggrieved by the order of the rejection, the present criminal revision is filed under Sections 397 and 401 Cr.P.C.

The learned counsel for the petitioner submits that as per Section 46(1) of the Information Technology Act, the Central Government shall, subject to the provisions

of Sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an enquiry in the manner prescribed by the Central Government. It is alleged that it is only the adjudicating officer who has to try the cases registered under Section 67 of the Act and not by the Court. According to him, the scope of adjudicator extends to the offence under Chapter XI of the Act also in case it results any loss to any person. On the other hand, the learned counsel for the respondent opposed the application contending that the Judicial First Class Magistrate (Special Mobile Court) has jurisdiction to try the case.

A perusal of the docket order shows that the present complaint was taken on file for the offence punishable under Section 67 of the Act and Section 509 IPC.

Section 67 under Chapter XI of the Act reads as under :

Wherein it prescribes punishment 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 46 of the Act is as under :

“For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, (direction or order made thereunder which renders him liable to pay penalty or compensation,) the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

From a reading of Section 46 of the Act it is clear that the Central Government shall subject to the provisions of sub-section (3) appoint any Officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for the purpose of adjudging issues under that chapter.

Section 46(1A) of the Act refers to the exercise of jurisdiction by the adjudicating officer with regard to claim for injury or damage not exceeding rupees five crore and if it is beyond five crore, the same shall vest with the competent court.

Chapter IX does not contemplate any punishment/imprisonment which can be imposed by the adjudging authority. It has got the power to impose penalties and compensation/damages only. Further, the adjudicator appointed under Section 46 has got the power for adjudging the issues falling under that chapter i.e., Chapter IX, which deal with penalty and compensation for damage to computer, computer system etc.

Therefore, the argument of the learned counsel for the petitioner that the power of adjudicating by the authority appointed by the Central Government extends even to the offences falling under Chapter VII of the Act cannot be accepted for more than one reason. Firstly Section 46 contemplates power to the adjudicating authority to deal with violations falling under chapter IX and secondly 67 of the Act prescribes punishment for dealing with publishing or transmitting obscene material in electronic form.

It is true that the Information Technology Act is silent as to the jurisdiction of the Court to try the offence falling under Chapter XI. But it is to be noted that if the Act is silent, one should fall back on the Cr.P.C., for the purpose of finding out the jurisdiction of the Court to try the offence. The said fact is not disputed by the learned counsel for the petitioner. Having regard to the punishment which can be imposed, it cannot be said that the Magistrate Court has no jurisdiction to try the offences punishable under Sections 509 IPC and Section 67 of the Information Technology Act. The record also discloses that earlier the petitioner filed CrI.P.No.394 of 2012 before this Court seeking quashing of the proceedings on the ground that no offence is made out against the petitioner. This Court having considered the authorities on the subject dismissed the application. The objection which is raised now was never raised in the earlier application. Even Rule 220(E) referred to by the learned counsel for the petitioner does not apply to the case on hand since it gives power to the adjudicating officer to refer the matter to a criminal court if he is of the opinion that some imprisonment has to be imposed. In view of the above, I see no reason to interfere with the order passed by the trial court.

Accordingly, the Criminal Revision is dismissed.

As a sequel to it, miscellaneous petitions pending if any in this Criminal Revision, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:17.04.2015

GM

-

-

-