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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPLICATION NO.892 OF 2015

Pankaj Anand Aswar & Anr. ...Applicants
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Sachin Chandan for the applicants
Ms M.H.Mhatre, APP for the respondent No.1
Mr.S.C.Mangle for respondent No.2

CORAM : A.S.OKA, &
P.D.NAIK, JJ.
DATE : MAY 5, 2016

P.C.:

1 Rule. The learned APP waives service for the first respondent. The learned counsel for the second respondent waives service. Forthwith taken up for final disposal.

2 By this application under section 482 of the Code of Criminal Procedure, 1973 (for short 'the said Code') a prayer is made for quashing the FIR No.153 of 2014 registered with Dharavi Police Station for the offences punishable under sections 65, 66 and 67 of the Information Technology Act and 354A and 509 of the Indian Penal Code. It is pointed out in the application that the first applicant is working in an Information Technology company and the second applicant is a Doctor by profession.

3 The second respondent was having her consulting business which has its head office at Nagpur and a branch office at Andheri, Mumbai. After the marriage of the second respondent, she was handling the business from home through internet. She had taken cell phones from corporate line. She was carrying on business jointly with her uncle and her cousins. On 26th January 2014, the second respondent started receiving vulgar messages from the web site of Makaan.com. She informed her cousin Shri Mahendra Kakade to in turn inform the Office of the said web site. After few days, the second respondent started receiving calls on her cell phone during the odd hours in the night from an Adult Web Site.

4 The second applicant is the husband of the real sister of the second respondent. After few days, he received a message on his own cell phone in vulgar language from Makaan.com which was issued in the name of the second respondent. Even the father of the second respondent started receiving vulgar messages through his cell phone. Thereafter, the said Mahendra Kakade contacted Shri Sachin, an Officer of Makaan.com and instructed him not to send such type of messages. According to the case of the applicant, the said Sachin blocked the cell phones of the second respondent, second applicant and the father of the second respondent. Criminal Case No.RCC No.1449/PW/2015 was registered on the basis of the FIR No.153 of 2014 registered against the unknown person.

5 It appears that in July 2015, the first applicant who is a resident of Nagpur was arrested and thereafter, the second applicant was arrested.

6 The application proceeds on the footing that there was a compromise between the applicants and the second respondent in presence of the members of the family. The second respondent has filed an affidavit supporting the application by contending that on her own free will, she has entered into a settlement with the applicants.

7 We have perused the documents forming part of the charge sheet. There is statement dated 26th June 2014 recorded of the second respondent which is a part of the charge sheet. In that statement, she has stated that some one started sending vulgar messages in her name on the cell phone of the second applicant who is the husband of her elder sister. She stated that some unknown person was sending vulgar messages to the cell phone of the second applicant. There is a statement of her father in which he has not blamed anybody.

8 In the charge sheet, there is a statement of the wife of the second applicant in which she has stated that she has a dispute with the second applicant and in fact, the second applicant has forwarded vulgar messages to her brother.

9 After perusal of the charge sheet, we find that

there is no concrete material to show the involvement of the applicants in the act of sending vulgar messages to the second respondent or in the act of sending vulgar messages in the name of the second respondent.

10 Apart from the settlement, the first and second applicants have donated a sum of Rs.75,000/- each to NAAM Foundation which is a reputed charitable organization working for giving relief to drought affected farmers and their families.

11 The offences alleged are punishable under sections 65, 66 and 67 of the Information Technology Act and 354A and 509 of the Indian Penal Code. In a given case, these can be very serious offences which may affect the entire society. In the present case, FIR was registered against the unknown persons. As observed earlier, we do not find any material in the charge sheet about any role played by the applicants in sending vulgar messages on the cell phone of the second respondent and her father. Therefore, in the peculiar facts of the case, we are inclined to exercise power under section 482 of the Cr.PC for quashing the criminal proceedings.

12 Accordingly, we pass the following order:

(I) Rule is made absolute in terms of prayer clause (a) which reads thus:

“(a) That this Hon'ble Court be pleased to invoke its power under section 482 of Cr.P.C and quash and/or set aside the FIR bearing No.153 of 2014 registered by the Dharavi Police Station section 65, 66, 67 of I.T. Act and 354 (A) 509 of the Indian Penal Code Act, 1860 and proceedings being case RCC No.1449/PW/2015 pending before the file of the Metropolitan Magistrate, Kurla Court, Mumbai.”

(II) All parties concerned to act upon an authenticated copy of the Judgment and order.

(P.D.NAIK, J.)

(A.S.OKA, J.)