

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.13811 OF 2016

ORDER:

The petitioner/ accused filed the petition, impugning the order dated 03.08.2016 in CrI.M.P.No.3515 of 2016 in C.C.No.1305 of 2015 of the IV Additional Chief Metropolitan Magistrate-cum-Additional Mahila Magistrate, Vijayawada. On the report of the 2nd respondent, the Station House Officer, Machavaram Police Station representing through the State (1st respondent) registered for the offences punishable under Sections 506 and 509 I.P.C. Crime No.476 of 2010 and after investigation the police filed charge sheet that was taken cognizance for the offences supra. It was in the course of trial, from the application filed by the prosecution sought for incorporating Section 66-A of the I.T.Act, 2000 from the statements disclosed sending of wild messages from the mobile phone of the accused to that of the *de facto* complainant, the learned Magistrate after hearing and on contest allowed the application to incorporate said Section 66-A by the impugned order.

The Section 66-A itself was struck down as unconstitutional, by the expression of the Apex Court in *Shreya Singhal v. Union of India*¹.

¹ (2015) 5 SCC 1

Having regard to the above, when that Section is not in the statute book, question of incorporating the same after the same was struck down by allowing the application by the learned Magistrate concerned does not arise and thus the impugned order of the lower Court on its face is unsustainable. However, it is made clear that this no way prevent the prosecution agency or the *de facto* complainant to include any other I.P.C. offence if at all that attracts for the trial Court to consider.

Accordingly, this Criminal Petition is allowed by quashing the order dated 03.08.2016 in CrI.M.P.No.3515 of 2016 in C.C.No.1305 of 2015 on the file of IV Additional Chief Metropolitan Magistrate-cum-Additional Mahila Magistrate, Vijayawada.

Miscellaneous petitions pending if any, shall stand closed.

Date: 28-09-2016
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Dr. B. SIVA SANKARA RAO, J