

IN THE HIGH COURT OF PUNJAB & HARYANA,
AT CHANDIGARH

CRM-M No. 15890 of 2015

Date of decision : November 8, 2016

Sewak Naudh Deep Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. S. C. Arora, Advocate and
for the petitioner.

Mr. R. S. Nain, AAG., Punjab

JITENDRA CHAUHAN, J (oral).

This petition has been filed under Section 482 Cr.P.C for quashing of FIR No. 16 dated 10.3.2015 under Sections 66-A of Information and Technology Act, 2000 at Police Station Ranger Nangal, Tehsil Batala District Gurdaspur along with other consequential proceedings arising thereto.

In the instant case the FIR has been registered at the instance of complainant/respondent No.2-Gurdeep Singh son of Piara Singh addressed to the Chairman Human Rights Commission, Punjab, Chandigarh with the allegations that the petitioner had sent indecent messages and threats from different mobile phones as a case FIR No. 63 dated 25.6.2010 under Section 406/498-A IPC was got registered against him, his mother and his father at Police Station Ranger, Nangal by the daughter of the

The accused-petitioner has been declared proclaimed offender in case FIR No. 63 dated 25.6.2010 under Section 406/498-A IPC.

Mr. R. S. Nain, learned AAG., Punjab states that the cancellation report has been prepared which is likely to be submitted shortly.

Learned counsel for the petitioner relies upon the paragraphs 5 and 119 of the judgment rendered by Hon'ble Supreme Court in Shreya Singhal Vs. Union of India JT 2015 (3) SC 225. The same are extracted hereinbelow:-

“5. The petitioners' various counsel raised a large number of points as to the constitutionality of Section 66A. According to them, first and foremost Section 66A infringes the fundamental right to free speech and expression and is not saved by any of the eight subjects covered in Article 19(2). According to them, the causing of annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will are all outside the purview of Article 19(2). Further, in creating an offence, Section 66A suffers from the vice of vagueness because unlike the offence created by Section 66 of the same Act, none of the aforesaid terms are even attempted to be defined and cannot be defined, the result being that innocent persons are roped in as well as those who are not. Such persons are not told clearly on which side of the line they fall; and it would be open to the authorities to be as arbitrary and whimsical as they like in booking such persons under the said Section. In fact, a large number of innocent persons have been booked and many instances have been given in the form of a note to the Court. The enforcement of the said Section would really be an insidious form of censorship which impairs a core value contained in Article 19(1)(a). In addition, the said Section has a chilling effect on the freedom of speech and expression.

Also, the right of viewers is infringed as such chilling effect would not give them the benefit of many shades of grey in terms of various points of view that could be viewed over the internet.

The petitioners also contend that their rights under Articles 14 and 21 are breached inasmuch there is no intelligible differentia between those who use the internet and those who by words spoken or written use other mediums of communication. To punish somebody because he uses a particular medium of communication is itself a discriminatory object and would fall foul of Article 14 in any case.

119: In conclusion, we may summarise what has been held by us above:

(a) Section 66A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2).

(b) Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 are constitutionally valid.

(c) Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material. Similarly, the Information Technology "Intermediary Guidelines" Rules, 2011 are valid subject to Rule 3 sub-rule (4) being read down in the same manner as indicated in the judgment.

(d) Section 118(d) of the Kerala Police Act is struck down being violative of Article 19(1)(a) and not saved by Article 19 (2)."

In view of the decision rendered by Hon'ble the Supreme Court in **Shreya Singhal's case (supra)**, Section 66-A of the Information and Technology Act, 2000 has been held to be unconstitutional. As such, this court feels that no useful purpose would be served in keeping the proceedings alive. Accordingly, the present petition is allowed. FIR No. 16 dated 10.3.2015 under Sections 66-A of Information and Technology Act, 2000 at Police Station Ranger Nangal, Tehsil Batala District Gurdaspur and all subsequent proceedings, emanating therefrom are quashed.

(JITENDRA CHAUHAN)
JUDGE

November 8 , 2016
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No