

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3982 OF 2015

Dr.Sanjay Prabhakar Gadekar. .. Petitioner
Vs
The State of Maharashtra and Another. .. Respondents

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Shri Abhijeet A. Desai for the Petitioner.
Ms.R.M.Gadhvi, Additional PP for the Respondent No.1.
Shri D.V. Saroj for the Respondent No.2.
Respondent No.2 present in person.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 9TH MARCH 2017

PC.

1. On 16th February 2017, a notice for final disposal was issued. On the last date, the submissions of the learned counsel appearing for the parties were partly heard.

2. Rule. The learned APP waives service for the first Respondent. Taken up for final disposal.

3. The second Respondent is the first informant at whose instance a First Information Report (FIR) was registered alleging commission of an offence punishable under Sections 504, 507 and 509 of the Indian Penal Code read with Section 66(A) of the Information

Technology Act, 2000 (for short “the IT Act”). After completion of the investigation, a chargesheet was filed by the Police. By an order dated 19th August 2014, the learned Metropolitan Magistrate, 29th Court, Dadar, Mumbai, framed a charge against the Petitioner only for the offence punishable under Section 66(A) of the IT Act. The prayer in this Writ Petition is for quashing the FIR and the proceedings of the criminal case. Reliance was placed by the Petitioner on the decision of the Apex Court in the case of *Shreya Singha v. Union of India*¹ by which the Apex Court held that Section 66(A) of the IT Act is violative of Sub-clause (a) of Clause (1) of Article 19 of the Constitution of India which is not saved by Clause (2) of Article 19 of the Constitution of India. Therefore, the Apex Court proceeded to strike down Section 66(A) of the IT Act.

4. On the last date, there were two submissions made by the learned counsel appearing for the second Respondent. The first submission was that it is open for the learned Metropolitan Magistrate to frame charges under other penal provisions as well. The second submission was that the decision of the Apex Court in the case of *Shreya Singhal* is rendered on 24th March 2015 and the charge for the offence punishable under Section 66(A) of the IT Act was framed on 19th August 2014.

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5. As far as the first submission is concerned, the second Respondent has today tendered across the bar an Application made by the learned APP on 2nd March 2017 before the learned Magistrate. The copy of the said Application is taken on record and marked "A1" for identification. By the said Application, it is contended that though the chargesheet was filed for the offences punishable under Sections 504, 507 and 509 of the IPC, inadvertently, the charge has been framed only under Section 66(A) of the IT Act. The prayer in the said Application made before the learned Magistrate is that the charges under Sections 504, 507 and 509 of IPC be framed against the present Petitioner. On the said Application dated 2nd March 2017, the learned Magistrate has directed the Petitioner to submit his say.

6. Under Section 216 of the Code of Criminal Procedure, 1973, there is a power vesting in the Court to alter or to add any charge at any time before the judgment is pronounced. The said power is subject to the safeguards provided in Sub-sections 2 to 5 thereof. Therefore, the learned Magistrate will have to decide the Application dated 2nd March 2017 made by the learned APP in accordance with law.

7. The decision of the Apex Court in the case of *Shreya Singhal* holds that Section 66A of the IT Act is violative of the

fundamental rights and, therefore, it is ordered to be struck down. In view of the said binding decision, in any case, the Petitioner cannot be tried on the basis of the charge framed for the offence punishable under Section 66(A) of the IT Act. In fact, in view of the said decision of the Apex Court in the case of ***Shreya Singhal***, the order dated 19th August 2014 framing charge under Section 66(A) of the IT Act has become inoperative as the Section 66(A) of the IT Act is no longer on the statute book.

8. In the circumstances, we dispose of the Petition by passing the following order:

ORDER :

- (a) We hold that in the light of the decision of the Apex Court in the case of ***Shreya Singhal v. Union of India***, the order dated 19th August 2014 (Exhibit-B to the Petition) has been rendered inoperative and the Petitioner cannot be prosecuted on the basis of the charge framed for the offence punishable under Section 66(A) of the IT Act;
- (b) We direct the learned Magistrate to decide the

Application dated 2nd March 2017 filed by the learned APP under Section 216 of the Code of Criminal Procedure, 1973 in accordance with law;

- (c) All contentions of the Petitioner on the said Application are kept open;
- (d) The Rule is made partly absolute on above terms with no order as to costs;
- (e) We make it clear that we have not made any adjudication on merits of the controversy.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)