

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.4996 of 2016

ORDER:

1. This Criminal Petition is filed by the petitioner- accused under Section 482 Cr.P.C., to quash the proceedings in Crime No.66 of 2016 on the file of Cyber Crime Police Station, Hyderabad registered for the offences punishable under Section 67 of IT Act, 2008 and Sections 506 and 509 of IPC.

2. Respondent 1, who is the mother of the petitioner and Respondent 2 who is the sister- in- law of the petitioner are the de facto complainants. The petitioner-accused, who lives in Saudi Arabia is the second son of the 1st respondent. The main allegations in the complaint are that the accused with the cooperation of some of their family members, started defaming the complainants and started a negative campaign against them through Whatsapp and voice messages. Since 2006, the accused was making abusive phone calls to their family members from unknown numbers. He used to threaten through voice messages and he used very abusive data and language against the de facto complainants and their family members. On the complaint given by respondents Nos.1 and 2, the above crime was registered.

3. Learned Counsel for the petitioner submitted that the allegations made against the petitioner in the complaint prima facie do not constitute a cognizable offence, and the said allegations would constitute only a non-cognizable offence, and therefore, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of Cr.P.C. It is submitted that there are civil disputes between the parties regarding the property left by the petitioner's father, who had given divorce to the 1st respondent, and that with a view to grab the share of the petitioner herein in the property of his

father, the complainants-respondents Nos.1 and 2 herein colluded with each other and filed the present false complaint against the petitioner.

4. Learned Public Prosecutor submitted that there is a prima facie against the petitioner and therefore, this petition is liable to be dismissed.

5. The 1st respondent is the mother and the 2nd respondent is the sister-in-law of the petitioner. From the complaint, it is apparent that as the 1st respondent failed to give a share of property to the petitioner, he used to send abusive and threatening messages and he used to make abusive phone calls in order to harass the family members of the de facto complainants. On the complaint lodged by the de facto complainants, a case in Crime No.66 of 2016 was registered and the petitioner was arrested. The mobile of the petitioner was also seized.

6. It is the contention of the learned Counsel for the petitioner that the allegations made against the petitioner constitute an offence, which is non-cognizable in nature and that in view of the civil disputes between the parties, a false complaint was lodged.

7. From the material on record, it is apparent that the seized phone of the petitioner was sent to FSL for report. It is the case of the prosecution that the petitioner sent abusive messages to his family members, whereas it is the case of the petitioner that no prima facie case is made out against the petitioner for any cognizable offence and the allegations made against the petitioner would constitute a non-cognizable offence, which cannot be investigated into, without permission of the Court. It is the case of the prosecution that the petitioner is still sending abusive messages to all his relatives. Admittedly, there are civil disputes between the parties. Merely because there are property disputes, his alleged unlawful acts against his own family members cannot be said to be

lawful. The report of the FSL is awaited. At this stage, this Court cannot into the merits of the case.

8. Further, it is pertinent to note that the above crime was registered for the offence under Sections 67 of the IT Act, 2008 and Sections 506 and 509 IPC. The offence under Section 509 I.P.C is a cognizable one. Under section 155 (4) Cr.P.C, if a case relates to two or three offences, of which any one of them is cognizable, the case shall be deemed to be a cognizable case irrespective of the fact that the other offences are non cognizable one. Simply because there are non cognizable offences in the present F.I.R., it cannot be said that it requires permission from the Court concerned for the purpose of proceeding with the investigation. Therefore, the contention of the learned Counsel for the petitioner that the allegations would constitute non-cognizable offence, which cannot be investigated into without permission of the Court concerned, does not hold any water.

9. In the above circumstances, this Court is not inclined to quash the proceedings against the petitioner in the above crime.

10. Accordingly, the Criminal Petition is dismissed. Miscellaneous Petitions filed in this Criminal Petition, if any, shall stand dismissed.

RAJA ELANGO,J

Dated: 11.07.2017
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11.7.2017

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