

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28656 of 2017

Arising Out of PS.Case No. -262 Year- 2016 Thana -KISHANGANJ District- KISANGANJ

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Umesh Nandan Sinha, son of late Raj Nandan Prasad Sinha, resident of
Subhashpalli, P.S.- Kishanganj, District- Kishanganj.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Prabhat Sinha, Advocate

For State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-03-2018

This application under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been filed by the petitioner for quashing the order dated 17.08.2016 passed by the learned Chief Judicial Magistrate, Kishanganj in Kishanganj P. S. Case No. 262 of 2016 whereby the cognizance of the offences punishable under Sections 295-A, 153-A, 500, 501, 504, 505(2) and 506 of the Indian Penal Code for the (short 'IPC') and Section 66A of the Information Technology Act, 2000 (for short 'IT Act') has been taken and the petitioner has been summoned to face trial.

2. The first information report of Kishanganj P. S. Case No. 262 of 2016 was lodged on 27.06.2016 on the basis of written



complaint of one Sukh Sagar Nath alleging therein that he is the Chairman of the Press Club, Kishanganj and being so, he has formed a WhatsApp group for exchange of news items, in the name of Press Club, Kishanganj. On 27.06.2016, at about 7.39 pm, the petitioner being a member of the group posted one message which was indecent towards a particular community and provocative of communal tension.

3. The informant immediately removed the petitioner from the group, obtained the screen shot of the message and handed over the same for appropriate action to the officer-in-charge of the Kishanganj Police Station.

4. After institution of the first information report, the police investigated the same and on completion of investigation, a report under Section 173(2) of the Cr.P.C. was submitted in the court of learned Chief Judicial Magistrate, Kishanganj wherein culpability of the petitioner was found true. He was sent up for trial for the offences under Sections 295-A, 500, 501, 504-B, 153, 505(2) and 506 of the IPC and Section 66A of the IT Act.

5. After perusal of the police report and the documents submitted therewith, the learned Chief Judicial Magistrate, vide impugned order dated 17.08.2016, found a *prima facie* case under the aforesaid provisions of the IPC and IT Act to be made out and



summoned the petitioner to face trial.

6. Assailing the aforesaid order dated 17.08.2016, learned counsel for the petitioner submitted that the investigation was perfunctory and the fact that the mobile phone of the petitioner had already been lost prior to transmission of the offending message was not considered by the investigating agency during investigation. He submitted that the impugned order has mechanically been passed by the learned Chief Judicial Magistrate without application of judicial mind. Section 66A of the IT Act has already been held unconstitutional by the Supreme Court in **Shreya Singhal vs. Union of India [AIR 2015 SC 1523]** and the court below completely failed to appreciate the ratio laid down by the Supreme Court while passing the impugned order.

7. On the other hand, learned counsel appearing for the State submitted that the impugned order passed by the learned Magistrate does not suffer from any illegality. He submitted that offending message is the part of the first information report and a perusal of the same would clearly show that the same was sufficient to provoke a particular community and could have resulted in communal tension leading to communal riot.

8. I have heard learned counsel for the parties and perused the record.



9. It is true that the court below has failed to take into account the fact that Section 66A of the IT Act has already been struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2) of the Constitution of India by the Supreme Court in **Shreya Singhal vs. Union of India's** case (supra), but the same would not make the impugned order dated 17.08.2016 completely unsustainable in law. So far as the offences under the IPC are concerned, from the reading of the contents of the offending message, I am of the opinion that *prima facie* the ingredients of those offences are attracted. Merely on the submission of the learned counsel for the petitioner that investigation was perfunctory, the order of cognizance under the provisions of the IPC cannot held to be bad. The defence taken by the petitioner that the mobile in question through which an offending message was transmitted had gone missing before transmission of the message has not been established in course of investigation and it would not be appropriate for this Court at this stage to appreciate the defence for the purposes of quashing the order of cognizance. The defence of the petitioner can only be looked into at the appropriate stage in course of trial.

10. In view of discussions made above, the part of the impugned order dated 17.08.2016 passed by the learned Chief Judicial Magistrate, Kishanganj in Kishanganj P. S. Case No. 262 of



2016 whereby he has taken cognizance of the offence punishable under Section 66A of IT Act is set aside. As far as the offences of the IPC are concerned, the impugned order does not suffer from any illegality. Hence, the court below shall proceed with the case in respect of offences under the IPC in accordance with law.

11. With the aforesaid observation and direction, the application stands disposed of.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2018
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