

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 59 OF 2018

VISHVANATH ATMARAM PAI PANANDIKER
@ VISHWAMBER ATMARAM PAI
PANANDIKER.,

... Applicant

Versus

ARUNA VISHVANATH PAI PANANDIKER., ... Respondent

Ms. Asha A. Desai, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 17th December 2018

ORAL ORDER:

The challenge in this petition, at the instance of the original complainant, is to the judgment and order dated 30.03.2017, passed by the learned Sessions Judge, in Criminal Revision Application No. 51/2016/I. By the impugned judgment, the learned Sessions Judge has set aside the order dated 13.08.2015, passed by the learned Judicial Magistrate First Class in Criminal Case No. 367/P/2014/I, issuing process against the respondent, under Section 66 of the Information Technology Act, 2000 (IT Act, for short) and under Section 500 of the Indian Penal Code (IPC, for short).

2. The petitioner and the respondent are husband and wife and on account of their strained relationship, they are staying separate from the year 2001. Admittedly, the respondent is

staying at Gurgaon from the year 2001 and even according to the petitioner, she has not moved out of Gurgaon since then.

3. On 01.02.2014, the petitioner received an email on his email ID, vapp07@gmail.com at 9:51 p.m., allegedly sent by the respondent from her email ID, arunapai2014@gmail.com. By the said email, the author had purportedly requested the members of the Pai Panandiker family to intervene and resolve the long standing dispute between the parties.

4. The petitioner had a suspicion that the email was sent by his nephew Raj Pai Panandiker, who has done graduation in Computer Engineering and who was having certain disputes with the petitioner.

5. Be that as it may, the petitioner filed the aforesaid private complaint, against the respondent before the Judicial Magistrate First Class, Margao. The learned Magistrate by an order dated 13.08.2015, issued process against the respondent, which was challenged by the respondent before the learned Sessions Judge, who has set aside the said order.

6. I have heard Ms. Desai, the learned Counsel for the petitioner and perused record.

7. Ms. Desai, the learned Counsel for the petitioner, in all fairness, submitted that the act of sending the email does not fall under any of the clauses as set out in Section 43 of the IT Act and therefore, no offence can be said to be made out under Section 66 of the IT Act. It is submitted that however, there is clear case made out for issuing process, under Section 500 of IPC and the respondent has attributed motive to the petitioner in the said email and a copy of the said email is shown to have been sent to the other members of the Pai Panandiker family and the contents of the email are clearly defamatory in nature.

8. On hearing the learned Counsel for the petitioner and on perusal of the email and the impugned order, I do not find that any case for interference is made out. As noticed earlier, allegedly, the contents of the email (even assuming to be defamatory) do not fall under any of the clauses as set out in Section 43 of the IT Act. In that view of the matter, Section 66 of the IT Act, which pertains to the computer related offences, would not be attracted. A bare perusal of the private complaint shows that even according to the petitioner, the respondent was not having a computer nor an email ID and she was also not familiar with sending emails. The petitioner claims that the respondent is based at Gurgaon and has not moved out of Gurgaon since the year 2001 and there was reasonable suspicion that the email was generated and sent from Goa. It can thus be

seen that there are no clear allegations that it was the respondent, who was the author of the email. Merely because the respondent had failed to respond to the letter asking whether, she had sent the email or not, would not be sufficient to even prima facie hold that it was the respondent, who had sent the email.

9. A perusal of the email only shows that the author of the email had requested the members of Pai Panandiker family to see that the long standing family disputes are settled. The learned Sessions Judge, in my considered view, is right in coming to the conclusion that the contents of the email cannot be said to be accusation made against the petitioner, so as to make an imputation, affecting the reputation of the petitioner.

10. The dispute if any between the parties, is essentially and predominantly of a civil nature, in as much as, the respondent is claiming her right, on the basis of succession, from her father-in-law namely Dr. Atmaram Pai Panandiker, who is better known as Baba, which is disputed by the petitioner. In that view of the matter, no case for interference is made out. The Criminal Revision Application is accordingly dismissed.

C. V. BHADANG, J.