HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.79 of 2019

ORDER:

1) The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., questioning the order, dated 28.12.2018, passed in Crl.M.P.No.460 of 2018 in C.C.No.133 of 2016 on the file of the VI Additional Chief Metropolitan Magistrate, Hyderabad, wherein and whereunder an application for discharge filed by the revision petitioner/accused was dismissed.

2) A charge sheet came to be filed against the petitioner for the offences punishable under Sections 66 read with 43 (a) of the Information Technology Act and Section 471 of I.P.C. The allegations in the charge sheet are that the revision petitioner/accused is the nephew of the 1st respondent/*de facto* complainant. Some disputes arose in the family and both of them turned as enemies for the last two years. There are cases and counter cases vide F.I.R. Nos.86/2013, 87/2013 and 103/2013 at Tappachaputra Police Station and S.T.C.No.1583 of 2013 at Asifnagar Police Station, Hyderabad city, between the 1st respondent/*de facto* complainant and the revision petitioner/ accused. In furtherance of the family dispute and due to personal vendetta, the revision petitioner/accused created a fictitious e-mail ID wtsn55@rediffmail.com and by using such e-mail ID and other credentials ie., PAN, first name and last name etc., which he had

acquainted, filed a fake IT return with an intention to cause inconvenience and annoyance to the 1st respondent/*de facto* complainant. The acts committed by the revision petitioner/accused are liable to be punished under Sections 66-A of the information Technology Act, for sending information through computer resource with an intent to cause annoyance and inconvenience, Sections 66 read with 43 (a) of the Information Technology Act, for accessing the computer resources pertaining to the 1st respondent/*de facto* complainant that maintained in the servers of Income tax Department and 471 of I.P.C. for producing false electronic record i.e., (fake IT return) as genuine to the authorities of Income Tax Department. As the Supreme Court of India has struck down the Section 66-A of the Information Technology Act, the same is not taken on record. Hence, filed charge sheet for the offences under Sections 66 read with 43 (a) of the Information Technology Act and Section 471 of I.P.C.

3) Notice sent to the 1st respondent/*de facto* complainant was returned un-served as he claims to have refused to receive the same. Hence, heard learned counsel for the revision petitioner/ accused and learned Additional Public Prosecutor appearing for the 2nd respondent.

4) Learned Counsel for the revision petitioner/accused submits that the learned Magistrate erred in dismissing the petition for discharge filed under Section 239 of Cr.P.C., by acting as mouth

piece of prosecution irrespective of the weight and probabilities of the case. The learned Magistrate also erred in not considering the fact that there is an abnormal and un-explained delay in reporting the alleged crime. The learned Magistrate failed to see that the 1st respondent/*de facto* complainant is silent on the aspect of abnormal and un-explained delay in lodging the complaint. Further, the 1st respondent/*de facto* complainant has also acknowledged the fact that the alleged incident has taken place on 04.11.2013, but the same has been reported on 19.05.2014 i.e., more than 6 ½ months. The learned Magistrate also failed to consider the fact that there is a delay in recording the statements under Section 161 Cr.P.C. The learned Magistrate should have taken into account the tenor of the 1st respondent/*de facto* complainant in filing false cases and implicating various persons in criminal cases, including the father of the revision petitioner/accused. The case filed against the father of the revision petitioner/accused was dismissed for default due to non-appearance of the 1st respondent. The learned Magistrate should have seen that the offence alleged against the revision petitioner/ accused pertains to that of generating One Time Passwords. In fact, the registered mobile number of every Income Tax Assessee is linked and as such One Time Passwords are generated only by the concerned Income Tax Department. It is also submitted that none of the Sections will constitute the alleged offences against the revision petitioner/accused. Even taking the entire facts into consideration, Section 471 of I.P.C. has no application in the present case as per the allegations in the charge sheet. The alleged Income Tax Returns have not been signed by the revision petitioner and on mere suspicion, the 1st respondent/complainant filed the complaint.

5) Learned Additional Public Prosecutor, submits that *prima facie* allegations are made out against the revision petitioner/accused and after considering the entire material on record, the trial Court dismissed the discharge application. He further submits that though Section 66-A of the Information Technology Act was mentioned in the First Information Report, but in the charge sheet the said Section was deleted as the said Section has been struck down by the Apex Court.

6) A perusal of the statement of LW.10, who is working as support boy in M/s. SM Broad Brands of Thallagadda area, would show that the family of Mr.Wajid Khan (revision petitioner/accused) had their service with the user ID javeed77 and it is associated with the IP address 182.18.177.130. The statement of LW.3, who is the Deputy Commissioner of Income Tax, clearly shows that the income tax return was filed in electronic form through internet on 19.05.2013 and the IP address from which return was filed is 182.18.177.130. The allegation against the revision petitioner/accused is that due to personal vendetta, he created fake IT return in the name of the 1st respondent/*de facto* complainant and submitted the same through online by using the aforesaid IP address.

7) The issues as to whether the revision petitioner/accused created fake IT return in the name of the 1st respondent/*de facto* complainant or not and submitted the same through his IP address, are disputed questions of facts which have to be gone into only during the course of the trial. Hence, this Court is of the view that there is no illegality or irregularity in the order passed by the trial Court.

8) Accordingly, the Criminal Revision Case is dismissed at the admission stage. Miscellaneous petitions, if any, pending, shall stand closed.

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JUSTICE G. SRI DEVI

22.11.2019
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