

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.995 of 2019****Order reserved on :20.12.2019****Order delivered on: 03.01.2020**

Mohd. Hyder Ali, S/o Mohd. Hanif Ansari, aged about 32 years, R/o Ittbhatta Bhatgaon, PS Bhatgaon, Dist. Surajpur (CG)

----- Petitioner**Versus**

State of Chhattisgarh, Through the Station House Officer, Police Station Bhatgaon, Dist. Surajpur (CG)

----- Respondent

For Petitioner : Mr.Goutam Khetrapal and Mr.Jitendra
Shrivastava, Advocates

For Respondent : Ms Ashtha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1.This writ petition is directed against the order of the revisional Court by which the revision preferred by the petitioner has been rejected affirming the order framing charge passed by the Chief Judicial Magistrate, Surajpur on 5.4.2019 in Criminal Case No.871/18 for offences punishable under Section 295A of the Indian Penal Code (hereinafter called as 'IPC') and Sections 67 & 67A of the Information Technology Act, 2000 (hereinafter called as 'IT Act 2000').

2. Crime No.18/2018 was registered against the petitioner for offences punishable under Sections 295A of the IPC and 67 & 67A of the IT Act 2000 with an allegation that on 22.1.2018 he posted objectionable photographs i.e. half naked girls and commented against Hindu religion in an objectionable manner, by which the police registered the aforesaid offences against him and proceeded to submit the charge-sheet before the Chief Judicial Magistrate, Surajpur and the said Court on 5.4.2019 framed the charges against the petitioner for offences punishable under Sections 295A of the IPC and 67 & 67A of the IT Act 2000, against which, revision was filed, which was dismissed by the revisional Court by the impugned order.

3. Mr.Goutam Khetrapal, learned counsel for the petitioner, would submit that learned Chief Judicial Magistrate was absolutely unjustified in framing the charges under Sections 295A of the IPC and 67 & 67A of the IT Act 2000 in view of the report submitted by the Chhattisgarh Police Cyber Lab on 31.5.2018 and even otherwise, in view of decision rendered by the Supreme Court in the matter of Sharat Babu Digumarti v. Government (NCT of Delhi)¹, the

¹ 2017 (2) SCC 18

petitioner cannot be prosecuted under Section 295A of the IPC and simultaneously also for offence under Section 67 & 67A of the IT Act 2000, as such, the order framing charge deserves to be set aside.

4. Ms Ashtha Shukla, learned Panel Lawyer for the respondent/State, would submit that scope of interference in order framing charge is minimal and during the course of framing of charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. She relied upon the decision of the Supreme Court in the matter of State of Rajasthan v. Fatehkaran Mehdu².

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

6. The first submission is that the trial Magistrate on 5.4.2019 framed the charge against the petitioner upon an allegation that on 22.1.2018 he posted

² (2017) 3 SCC 198

objectionable photographs i.e. half naked girls and commented against Hindu religion in an objectionable manner from his own ID in the Facebook and thereby framed the charges under Sections 295A of the IPC and 67 & 67A of the IT Act 2000, whereas there is no material for framing charges against him and therefore, it deserves to be set aside.

7. The Supreme Court in the matter of **Fetehkaran Mehdu** (supra) has held that at the stage of framing of a charge, the court is concerned not with proof of allegation, rather it has to focus on material and form an opinion whether there is strong suspicion that accused has committed an offence, which if put to trial, could prove his guilt. Framing of charge is not a stage, at which stage final test of guilt is to be applied.
8. Learned Chief Judicial Magistrate taking into account the material available on record has reached to the conclusion that there is sufficient material against the petitioner for framing charges for the aforesaid offences and accordingly framed the charges.
9. Next submission is that in view of decision rendered by the Supreme Court in **Sharat Babu Digumarti** (supra) the petitioner cannot be prosecuted for

offence punishable under Section 295A of the IPC and 67 & 67A of the IT Act 2000, simultaneously in that case, Their Lordships were considering whether the appellant therein who had been discharged under Section 67 of the IT Act 2000 would be proceeded under Section 295 of the IPC and answered the issue in negative, but in the instant case, offence has been registered against the petitioner under Section 295A of the IPC and 67 & 67A of the IT Act 2000, as such, this decision is also not helpful to the petitioner.

10. The petitioner has next relied upon with the enquiry report submitted by the Chhattisgarh Police Cyber Lab on 31.5.2018. The report states that he retrieved the entire audio, video, images, text, application etc. from the Vivo mobile of the petitioner, but no data is available and according to the Cyber Cell, there is no change/manipulation in the electronic evidence. the petitioner is at liberty to raise such pleas during the course of trial and that will be considered by the trial Court in accordance with law.

11. In view of aforesaid analysis, I do not find any merit in this writ petition. Accordingly, the writ petition is dismissed reserving liberty in

favour of the petitioner to take all such pleas available to him under the law during the course of trial. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-