IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.224/2016

Aditya Mehta,
aged 29 years, Occ. Proprietor,
Wicked Leaks Incorporation,
Residing at Aditya Villa, Mamn Wadi,
Sion-Trombay Road, Chembur,
Mumbai-400 071. .....**APPLICANT**

...V E R S U S...

1. The State of Maharashtra through
Police Station Officer, P.S. Chandrapur,
Dist. Chandrapur.

2. Mr. Sandeep Rajurkar,
ACC Cement Ltd. Nagar Colony,
Quarter No. 6, Taluka Chandrapur,
Chandrapur, 442502. ...**NON APPLICANTS**

Mr. H. S. Chitaley, Advocate for applicant.
Mr. M. J. Khan, A.P.P. for non applicant No.1-State.
Mr. Mahesi Rai, Advocate for non applicant no.2.

CORAM:- V. M. DESHPANDE &
ANIL S. KILOR, JJ.
DATE: 16.10.2020

J U D G M E N T (Per: V. M. Deshpande, J.)

1. This is an application under Section 482 of the Code of Criminal Procedure for quashing the First Information Report No. 126/2015 dated 22.07.2015 registered with Police Station, Ghuggus, District Chandrapur for an offence punishable under Section 420 of the Indian Penal Code and under Section 66A and 66B of the Information and Technology Act, 2000.

2. Notice for final disposal was issued on 30.03.2016 and it was ordered that until further orders, no coercive steps should be taken against the applicant. On 25.11.2016, the application was admitted for final hearing, after hearing the parties to the application.

3. Today, when application was taken up for final hearing, the applicant is represented by learned counsel Mr. H. R. Chitlay. Non applicant no.1-State is represented by learned A.P.P. Mr. M. J. Khan, wheres non applicant no.2 is represented by learned counsel Mr. Mahesh Rai.

4. We have heard respective counsel in detail. Also perused the application and reply filed on behalf of non applicant no.1-State. In spite of the opportunities being granted, for the reasons best known to the non applicant no.2, he chose not to file reply. Therefore, Mr. Rai, made only oral submissions.

5. As per the reply filed by non applicant no.1-State, non applicant no.2 lodged a report wherein it is alleged that on 28.05.2015 he has seen an advertisement on internet of one

Wammy Titan 4 Full HD Huge Battery Octa Core Phone. Therefore, he placed the order to Wickedleak Inc. Ltd. Shopping company vide order No.006942 on 01.06.2015 and opted for cash on delivery. Reply further states that thereafter non applicant no.2-complainant received a letter from Post Office at Cement Nagar. Accordingly, he visited the Post Office, made payment of Rs.14,990/- and taken delivery of parcel from the post office. However, when he opened the parcel at his house, instead of cell phone, he has received one HP Power Bank 7500 mah. As per the reply, the complainant, thereafter made a phone call to the Customer Care of the shopping company. As per the reply, complainant felt cheated. Therefore, he lodged the complaint.

6. Learned counsel for the applicant invited our attention to an e-mail addressed on June 11, 2015, which reads thus:

> *"Dear Sir,*
> *Today I received consignment E Biller ID:4740 which was created for wammy titan4 smart phone as mentioned in the trailing Mail through Speedpost. My order No. is #6942.*
> *I have paid Rs.14990 for that consignment to post office. When I have opened the BOX got surprised to get HP Power Bank in place of Wammy titan4 smart phone.*

Pic is attached.

Kindly arrange to replace the HP Power Bank with wammy titan4 smart phone on urgent Basis."

The aforesaid e-mail is not disputed by learned counsel for non applicant no.2 during his oral submission. Perusal of the aforesaid would show that the said e-mail was sent on 11.06.2015 and when opened the box, he noticed power bank instead of phone. However, the FIR speaks something different. It states that the first informant went to the post office of Cement Nagar on 12.06.2015, shown him letter, paid charges of Rs.14,990/- and when he came to home he found that it was not the mobile phone but a power bank.

7. Learned counsel for the applicant would submit that there was some mistake bona fide and therefore on 22.02.2016, a communication was sent to non applicant no.2 along with Demand Draft No. 00946 for an amount of Rs.14,990/-. The said demand draft was duly encashed by the complainant. Even in paragraph no.4 of the reply filed by State, the State has specifically stated so. Paragraph no.4 reads thus:

"4. it is further submitted that during the course of investigation the Investigating Agency also visited the office of the Wicked Leaks Inc. Company,

> *Mumbai and notice was given to the applicant namely Aditya Siddharth Mehta proprietor of the Company to appear before the Investigating Officer and subsequently next day the applicant has forwarded the Demand Draft of HDFC Bank worth Rs.14,990/- in favour of the complainant, it was also en-cashed by the complainant. The Investigating Agency has collected the Xerox copy of the said Demand Draft. The Investigating Agency has also recorded the statement of the complainant wherein he has categorically admitted the fact about the receipt of the said Demand Draft from the applicant."*

Thus, the entire amount is already received by the complainant.

8. Be that as it may, the applicant cannot be prosecuted for an offence punishable under Sections 66A and 66B of the Information and Technology Act in view of the authoritative pronouncement of the Hon'ble Apex Court in **Shreya Singhal .Vs. Union of India;** reported in ***AIR 2015 Supreme Court 1523***, wherein the Hon'ble Apex Court has struck down Section 66A of the Information and Technology Act in its entirety.

Insofar as Section 66B is concerned, it reads thus:

> *"66B. Punishment for dishonestly receiving stolen computer resource or communication device:-*

Whoever dishonestly receive or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both."

There are no allegations in the FIR that the applicant dishonestly received or retained any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device.

9. In that view of the matter, in absence of all these allegations, Section 66B of the Information and Technology Act is not at all attracted. Consequently, FIR for the offence punishable under Section 66B is also required to be set aside.

10. In so far as offence punishable under Section 420 of the Indian Penal Code is concerned, inducement on the part of the accused should be there. The FIR is completely silent in respect of inducement by the applicant. The FIR states that on 28.05.2015 the complainant has seen advertisement and pursuant to that on 01.06.2015, he gave the order. Cheating is defined under Section

415 of the Indian Penal Code. Material ingredients for cheating are that the accused must dishonestly induce the person to deliver any property, which is totally absent here. As it can be seen from the FIR, the applicant has already refunded the amount by demand draft which was already encashed by the non applicant no.2. Therefore, it appears that merely for some negligence, the applicant should not face rigors of trial for an offence punishable under Section 420 of the Indian Penal Code. Hence, we pass the following order.

O R D E R

(i) The application is allowed.

(ii) First Information Report No.126/2015, registered with Police Station, Ghuggus, District Chandrapur for an offence punishable under Section 420 of the Indian Penal Code and Sections 66A and 66B of the Information and Technology Act, 2000, is quashed and set aside.

Rule is made absolute.

JUDGE **JUDGE**

kahale

Yogesh Kahale

Digitally signed by Yogesh Kahale
Date: 2020.10.21 14:30:12 +0530