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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO. 4104 OF 2016

AND

CRL.M.P.NOS.2121 & 2122 OF 2016

N. Ravi

... Petitioner

Versus

State by

1. The Inspector of Police,
CBCID, Cyber Crime Cell,
Chennai - 600032.

2. Dr.J.K.K.Munirajan

... Respondent

[R2, is impleaded as per the order of this Court,
dated 07.04.2016 made in Crl.M.P.No.4201 of 2016.]

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in the charge sheet filed in C.C.No.40 of 2013, on the file of the learned XI - Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.G.A.Thiyagarajan

For R1 : Mr.E.Raj Thilak,
Government Advocate (crl.side)

For R2 : M/s.Dass Viswa Associates

ORDER

This Criminal Original Petition has been filed by the petitioner, to quash the charge sheet filed in C.C.No.40 of 2013, pending on the file of the learned XI - Metropolitan Magistrate, Saidapet, Chennai.

2.The case of the petitioner is that he is working as Marketing Manager in J.K.K.Rangammal Charitable Trust, Kumarapalayam, Namakkal District, since 2009. The educational



trust runs five colleges, one hospital and research centre. The nature of job of the petitioner is to enroll students into all the colleges run by the Trust. According to the petitioner, he has computer in his house with BSNL internet connection with land line 0424-2430343. According to the petitioner, during June 2010, M.G.R. University, debarred Muniraja Medical College from admitting the students due to administrative lapses. In this context, the petitioner had sent bulk SMS intimating the debarring of the institution with a malicious intention to bring disrepute to the educational institution purportedly to improve his marketing business. In this context, the second respondent-defacto complainant has given a complaint based on which the case in Crime No.40 of 2013 was registered against the petitioner/first accused and one Mohana Sundaram, Administrative Officer of Rangammal Charitable Trust/second accused. After investigation, charge sheet has been filed in C.C.No.40 of 2013 before the learned XI Metropolitan Magistrate, Saidapet, Chennai against the accused 1 and 2 for the alleged commission of offences under Section 66-A of Information Technology Act read with Section 469 of the Indian Penal Code.

3. Seeking to quash the Charge sheet in C.C.No.40 of 2013, the the Petitioner/A-1 and Mohanasundaram/A-2 have filed CrI.O.P. No.3912 of 2013 before this Court. When the Criminal Original Petition was taken up for hearing by this Court, it was represented by the counsel for the petitioners that he is not pressing the relief as against the petitioner/A-1 herein. Therefore, this Court, while dismissing CrI.O.P.No.3912 of 2013 against the petitioner/A-1, and allowed CrI.O.P No.3912 of 2013 in so far as, it relates to Mohanasundaram/A-2. For better appreciation, the order dated 18.11.2014 passed in CrI.O.P.No.3912 of 2013 is extracted hereunder:-

"8. Before going into the factual aspects of the matter, let us have a look into Section 66A of the Information Technology Act and Section 469 IPC under which the second petitioner/Second accused has been prosecuted. Section 66A of the Information Technology Act reads as follows:

"66-A Punishment for sending offensive message through communication service, etc., - Any person who sends by means of a computer resource or a communication device,

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance,



inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, persistently by making use of such computer resource or a communication device;

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(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,

shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation: - For the purposes of this section, term "electronic mail" and "electronic mail message", means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message.

Section 469 IPC reads as follows:

"469. Forgery for purpose of harming reputation:- whoever commits forgery intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine".

9. A reading of these provisions would go to show that if only the message sent through the SMS is false, these offences would be made. But in this case, there is no controversy or dispute that between 25.05.2010 and 30.06.2010, the J.K.K.Muniraja Colleges were debarred by the Tamil Nadu Dr.MGR Medical University from admitting students for the academic year 2010-2011. Thus the message (SMS) is a true message and the same cannot be said to be false. Therefore, it is not offensive and the said statement also cannot be stated to be false.

10. The contention of the learned Additional Public Prosecutor that the second petitioner has got no authority to send such message cannot be accepted because the second petitioner has got



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freedom of speech and expressions guaranteed under Article 19 of the Constitution of India to express the truth to anybody whom he likes. In view of the said position, I find that absolutely there is no case made out against the second petitioner and therefore, this case is liable to be quashed so far as it related to the second petitioner.

11. In the result, this Criminal Original Petition is dismissed as not pressed in so far as the first petitioner/first accused is concerned. This Criminal Original Petition is allowed and the case in C.C.No.40 of 2013 on the file of the learned XI - Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed so far as it relates to the second petitioner/ second accused. Consequently, connected miscellaneous petitions are closed."

4.The contention of the petitioner is that during the pendency of CrI.O,P.No.3912 of 2013, he resigned his post as Marketing Manager in J.K.K. Rangammal Charitable Trust, Kumarapalayam, Namakkal District and joined employment in another Trust. In the mean time, without getting the consent of the petitioner, the counsel, who was engaged to lead the case of the petitioner and the second accused, before this Court in CrI.O.P.No.3912 of 2013, has informed this Court that the petitioner herein is not pressing the relief of quashing the proceedings in C.C.No.40 of 2013. Therefore, without going into the merits of the contentions raised on behalf of the petitioner, this Court dismissed CrI.O.P.No.3912 of 2013 in so far as the petitioner herein and allowed the CrI.O.P.No.3912 of 2013 by quashing the proceedings in C.C.No.40 of 2013, as against the second petitioner/A2 alone. The petitioner has not made any endorsement for withdrawing CrI.O.P.No.3912 of 2013 however, based on the representation of the counsel engaged to conduct the case in CrI.O.P.No.3912 of 2013, this Court dismissed CrI.O.P.No.3912 of 2013 on 18.11.2014. Therefore, the learned counsel for the petitioner prayed this Court to extend the benefit of the order dated 18.11.2014 passed in CrI.O.P.No.3912 of 2013 in favour of the petitioner herein and seeks to quash the proceedings in C.C.No.40 of 2013 as against the petitioner herein.

5.This Court after hearing the parties consent had come to the conclusion that the second petitioner therein had sent message about JKK Muniraja College that "it was unrecognized by MGR University for the academic year 2010 to 2011". It was held that the message sent by the second petitioner therein does not fall within the purview of Section 66-A of the Information



Technology Act. Even though it was contended that the second petitioner therein was not an authorized person to send any message, this Court held that as per Article 19 of the Constitution of India, the second petitioner therein has a right to express the truth to anybody whom he likes.

6. Now, this petition is filed by the petitioner herein to quash the proceedings in C.C.No.40 of 2013 on the ground that when Crl.O.P.No.3912 of 2013 was heard by this Court, his counsel, without his consent, had not pressed for the relief against him. which resulted in dismissal of Crl.O.P.No.3912 of 2013 against him. Now, by referring the order dated 18.11.2014 passed in Crl.O.P.No.3912 of 2013 quashing the proceedings in C.C.No.40 of 2013 as against the second petitioner therein/A2, the petitioner is seeking the very same relief, to quash the proceedings against him.

7. The learned counsel for the petitioner submits that the present petition is filed for quashing the proceedings in C.C.No.40 of 2013 on the same grounds which are raised by the petitioner/A2 in Crl.O.P.No.3912 of 2013. This Court accepted the grounds raised by the petitioner/A2 in Crl.O.P.No.3912 of 2013 and quashed the proceedings in CC.No.40 of 2013 as against the second accused on merits. Therefore, the criminal proceedings in C.C.No.40 of 2013 on the very same grounds, is not maintainable either in law or on facts as against the petitioner herein. Apart from the aforesaid contention, the learned counsel for the petitioner did not raise any other grounds in this Criminal Original Petition.

8. The learned counsel appearing for the respondent would submit that the charge against the petitioner/N.Ravi, S/o. Nagarajan, for the offences under Sections 66(A), 66(D) of IT, Act, 2008 and 469 of IPC is different than that of the charge against the petitioner/A2. The charge against the petitioner herein is reads as follows:-

"Charge against the accused A1 Ravi S/o Nagarajan u/s. 66A, 66D of IT(A) Act-2008 and 469 IPC.

That on 2.06.2010 from 12:27:03 PM to 12:27:27 PM at No.45, Vetri Nagar, Muthampalayam HUI, Erode, from the computer system connected with Internet via BSNL land line Phone No. 424 - 2430343 and allocated IP address 117.240.230.3 by the BSNL ISP, the accused has sent an offence message (sms) "MGR UNIV HAS DERECONISED ALL UG & PG COURSES in J.K.K. MUNRAJA COLLEGES & DEBARRED FROM ADMITING NEW STUDENTS for 2010. MORE INFO VISIT



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tnmmu.ac.in/admisnoti2010.pdf" from the bulk sms code SS Trust to 836 mobile phone numbers including the witness Tmt. Deepa Srinivasan and etc. with intent to spoil the reputation of the complainant's educational institutions.

In the course of same transaction that on 3.06.2010 between 11:21:03 AM and 11:21:04 AM from the same place and same computer system, the accused has sent an offensive message "MGR Univ has derecognised all UG & PG courses in J.K.K. MUNRAJA COLLEGE & DEBARRED FROM ADMITTING NEW STUDENTS 4 2010 MORE INFO VISIT tnmmu.ac.in/admisnoti2010.pdf" from the bulk sms code SS Trust to 30 mobile phone numbers of the witnesses.

In the course of same transaction that on 3.06.2010 at 1:35:03 PM the accused has sent an offensive message "MGR Univ has derecognised all UG & PG courses in J.K.K. MUNRAJA COLLEGE & DEBARRED FROM ADMITTING NEW STUDENTS for 2010. MORE INFO VISIT tnmmu.ac.in/admisnoti2010.pdf" to 5 more mobile numbers.

In the course of same transaction that on 4.06.2010 at 6:26:15 AM from the IP address 117.201.21.242, the accused has sent an offensive message "MGR Univ has derecognised all UG & PG courses in J.K.K. MUNRAJA COLLEGE & DEBARRED FROM ADMITTING NEW STUDENTS for 2010. MORE INFO VISIT tnmmu.ac.in/admisnoti2010.pdf" to another 14 mobile numbers.

In the course of same transaction that on 4.06.2010 at 9:47:02 AM from the IP address 117.240.230.3, the accused has sent an offensive message "MGR Univ has derecognised all UG & PG courses in J.K.K. MUNRAJA COLLEGE & DEBARRED FROM ADMITTING NEW STUDENTS for 2010. MORE INFO VISIT tnmmu.ac.in/admisnoti2010.pdf" to 42 mobile numbers.

In the course of same transaction that on 4.06.2010 between 2:30:22 PM and 2:30:31 AM from the IP address 117.240.230.3, the accused has sent an offensive message (sms) "MGR Univ has notified on website 2 permanently derecognise all UG & PG courses in J.K.K. Munraja Colleges since running on illegal poromboke Land cannot be rectified" to 372



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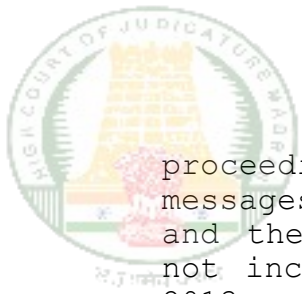
mobile phone numbers.

In the course of same transaction that on 4.06.2010 at 08:01 PM from the IP address 117.207.99.47 the accused has sent an offensive sms message "Because of MGR UNIV derecognition order we are cancelling all the admissions made for 2010 - 11. Kindly get refund of booking amount if paid, before 5th evening" from the bulk sms code Muniraju to 372 mobile phone numbers as if sent by the complainant Tr.J.K.K Munirajah.

Thus it appears that the accused Ravi S/o. Nagarajan had committed offences of sending offensive messages through communication service, cheating by personation by using computer resource and forgery for the purpose of harming reputation punishable U/s. 66(A), 66 (D) of Information Technology (Amendment) Act, 2008 and Sec 469 of IPC."

9.The learned Government Advocate (crl.side) appearing for the first respondent submitted that on going through the above said charge sheet filed against the petitioner herein, it is clear that he has not only sent message about the derecognition of the affiliation granted by the MGR University through his system, he has also sent false messages against the JKK College that it was permanently unrecognized and the same is running illegally in the Poromboke land. It is also the charge that the petitioner has created fake image that by an order of MGR University, the college admissions were cancelled for the academic year 2010-2011. He also mentioned in the message that the persons, who had already got admissions, can get the amount refunded by mentioning a particular date and time for refund of the amount. Such messages were forwarded to many persons. It is forged one and the messages are offensive in nature. The message relating to the college running in a land, illegally occupied or it is a Poromboke land cannot be rectified. Therefore, the learned Government Advocate for the first respondent would submit that the proceedings against the petitioner cannot be quashed by relying the proceedings quashed against the second petitioner therein, in Crl.O.P.No.3912 of 2013 and prayed for dismissal of the petition.

10.This Court has taken note of the order dated 18.11.2014 passed by this Court in Crl.O.P.No.3912 of 2013, wherein this Court has held that the charge as against the second accused is that he had sent some messages, which are, in fact true and correct, hence, this Court was inclined to quash the criminal



proceedings against the petitioner/A2. On the other hand, the messages sent by the petitioner herein are defamatory, untrue and they were sent to many contacts. Therefore, this Court is not inclined to interfere with the proceedings in C.C.No.40 of 2013 as against the petitioner herein. The contention of the counsel for the petitioner is that the benefits extended to the second accused in the order dated 18.11.2014 passed in CrI.O.P.No.3912 of 2013 must be extended to the petitioner also cannot be accepted. In any event, this petition to quash the proceedings in C.C. No. 40 of 2013 cannot be allowed on the facts of the case and the charges levelled against the petitioner and the charges against the petitioner have to be proved during the trial. However, the petitioner is at liberty to raise all his defence before the Court below, during the trial. The correctness of the allegations against the petitioner with respect to commission of offence under Section 66(A) of Information Technology Act, and Section 469 of IPC., are to be dealt with by the Court below at the time of trial. Hence, the Trial Court is directed to complete the trial on or before February, 2022.

11.With the above direction, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

klt

To

1.The learned XI - Metropolitan Magistrate, Saidapet, Chennai.

2.The Inspector of Police, CBCID, Cyber Crime Cell, Chennai - 600032.

3.The Public Prosecutor, High Court, Madras.

+1cc to M/s.Dass Viswa Associates, Advocate, S.R.No.39242

CrI.O.P.No.4104 of 2016
and

CrI.M.P.Nos.2121 & 2122 of 2016

SR II (CO)
PM/25/10/2021