



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2850 OF 2019

Mahesh Shivling Tilkari,
Age 42 yrs., Occ. Medical Practitioner,
R/o A-31, Vardhman Residency,
Sy.No.15, Ambegaon Pathar,
Near Pride English Medium School,
Katraj, Pune.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Station,
Ahmedpur, Dist. Latur.
- 2 Sachin Shivchandra Karaknale,
Age 35 yrs., Occ. Business,
R/o Nath Nagar, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

... Respondents

...

Mr. S.J. Salunke, Advocate for applicant
Mr. V.K. Kotecha, APP for respondent No.1
Mr. J.R. Patil, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

RESERVED ON : 03rd OCTOBER, 2024

PRONOUNCED ON : 22nd OCTOBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashing proceedings in Regular Criminal Case No.2/2019 pending before learned Judicial Magistrate First Class, Ahmedpur, Tq. Ahmedpur, Dist. Latur arising out of First Information Report vide Crime No.275/2018 dated 02.08.2018 registered with Police Station, Ahmedpur, for the offence punishable under Section 66(C) and 67 of the Information Technology Act, 2000.

2 Heard learned Advocate Mr. S.J. Salunke for applicant, learned APP Mr. V.K. Kotecha for respondent No.1 and learned Advocate Mr. J.R. Patil for respondent No.2.

3 Learned Advocate appearing for applicant vehemently submits that First Information Report has been filed by respondent No.2, who is the brother-in-law (wife's brother) of applicant. According to informant, applicant had created a fake Facebook account in the name of one Minal Basavraj Swami and Chandra Surnal and through the said fake Facebook account the applicant has defamed the informant and his family members, especially the wife of applicant. There was marital discord at that time between the applicant and his wife. If we consider the charge sheet, then it can be seen that there is absolutely no proper investigation. Only the screen

shots of Facebook, of which prints have been taken, are annexed after seizure and there are statements of two witnesses. Only on the basis of said material it cannot be said that the said Facebook posts were created by the applicant. Therefore, there is absolutely no evidence against the applicant and, therefore, it would be futile exercise to ask the applicant to face the trial.

4 We take the present case as a classic case, which is investigated in total ignorance of provisions of law and by a person, who appears to have not undergone training of detecting cyber crime. When it was specifically alleged in the First Information Report that two Facebook accounts have been fraudulently created, then the Investigating Officer ought to have got help of an expert to see from which IP address those accounts were created, whether any such electronic device of the said IP address is with the accused. Print of screen shots of Facebook material will not at any stretch of imagination would prove that the said post was created from an alleged fake account. Even if for the sake of argument we accept that there was dispute between applicant and his wife and the alleged post had a defamatory material in respect of informant, his family members including his sister i.e. wife of applicant; still we cannot reach the conclusion without any evidence that the applicant would have been the only person behind creation of such fake Facebook account.

5 Section 66(C) of the Information Technology Act deals with 'Punishment for identity theft'. It states that - *“Any one who, i) fraudulently or dishonestly uses another person’s electronic signature, password or any other unique identification feature; ii) he shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.”*

Here, from the contents of the First Information Report we cannot gather nor there is any other evidence to show that the applicant had used the electronic signature, password or any other unique identification feature of any other person.

6 Section 67 of the Information Technology Act deals with 'Punishment for publishing or transmitting obscene material in electronic form'. This section criminalizes material that is lascivious, appeals to prurient interest or has the effect of corrupting people who are likely to read, see or hear it. The post in the present case at the most can be taken as defamatory and as per the wife of the present applicant statement under Section 161 of the Code of Criminal Procedure some other post was given on the WhatsApp group by the applicant and thereafter the applicant had gone to her office and asked for pardon. He asked her to accompany him to their

house and then they both went to their house. And then she says that once again the applicant had given message on the mobile of friend of her brother stating that he and his wife are now separate. Thus, it is to be noted from her statement that she had pardoned the applicant in spite of such message. When such material has been collected, it would be futile exercise to ask the applicant to face the trial. Therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) Charge sheet i.e. proceedings in Regular Criminal Case No.2/2019 pending before learned Judicial Magistrate First Class, Ahmedpur, Tq. Ahmedpur, Dist. Latur arising out of First Information Report vide Crime No.275/2018 dated 02.08.2018 registered with Police Station, Ahmedpur, for the offence punishable under Section 66(C) and 67 of the Information Technology Act, 2000 stands quashed and set aside.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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