



2024:DHC:4846



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 01.07.2024

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CRL.M.C. 5977/2019 & CRL.M.A. 40995/2019

VIKRANT GUPTA

..... Petitioner

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the petitioner :Mr. Ajit Nair and Mr. Pankaj Sharma,
Advocates.

For the Respondents : Mr. Utkarsh, APP for the State.
Mr. Dayan Krishnan, Senior Advocate with
Mr. Karan Luthra, Mr. Sukrit Seth and Mr.
Naman Gowda, Advs. for R-2.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of FIR No.124/2014 dated 16.10.2014, for offence punishable under Section 67 of the Information and Technology Act, 2000 ('IT Act'), registered at Police Station Economic Offenses Wing.

2. The present FIR was registered on a complaint filed by Respondent No. 2. It was alleged that the petitioner had been sending obscene, threatening and defamatory messages to Respondent No. 2's

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wife and his friends and relatives. It was alleged that the petitioner had sent various messages threatening to intensify the obscene/outrageous communication to outrage the modesty of Respondent No.2's wife and also tried to extort ₹2 Crores from Respondent No.2.

3. The complainant / Respondent No. 2 had sought registration of the FIR under Sections 66A/67/67A of the IT Act and under Sections 354D/385/506/509 of the Indian Penal Code, 1860 ('IPC').

4. From a bare perusal of the FIR, it is apparent that various vulgar and obscene messages had been sent by the petitioner to the wife of Respondent No. 2. *Prima facie*, the messages are highly derogatory and do not merit reproduction in the present order.

5. On 21.01.2015, Respondent No. 2 also filed a Civil Suit, being CS(OS) No. 214/2015, seeking restraint orders against the petitioner.

6. During the pendency of the civil suit, the petitioner and the Respondent No. 2 and his wife settled the dispute and entered into a Settlement Deed / Memorandum of Understanding dated 03.11.2016, whereby the petitioner admitted to having maligned the reputation of Respondent No. 2 and his wife and also admitted to having abused them through the SMS, emails, WhatsApp etc.

7. The petitioner undertook that in future, he would not circulate, transmit, communicate any such messages. The petitioner also offered an unconditional apology for his acts. The relevant extract of the Settlement Deed dated 03.11.2016 (hereafter '**the Settlement Deed**') are reproduced as under:



"1. That the First Party undertakes that in future, the First Party shall not circulate/transmit/communicate any message to/ in respect of the Second Party and/or Third Party, and their two daughters either directly or to the public at large, through SMS, Email, whatsapp, facebook or any other electronic mode or in writing or verbally which would amount to maligning the reputation or extending any threats or abuses to the Second Party and/or Third Party, or about their two daughters, or shall not circulate any SMS, email or any message via any other mode, print media, facebook, mobile, whatsapp etc. either to the Second & Third Party or their children or to any person regarding the Second Party or Third Party or their children.

2. That the First Party shall also offer unconditionally apology to the Second Party and Third Party for having extending certain messages maligning the reputation of the Second Party and Third Party and their two daughters and further undertakes not to repeat the same in future and also agrees that the First Party shall not in future make any claims, complaints and grievances against the Second Party and/or Third Party and their two daughters before any public authority, police authorities or either before any court / tribunal or before any authority discharging any sort of public function and shall not try to malign the image and reputation of the Second party and/or Third Party and their daughters in any manner and shall not interfere in the day to day life of the Second party and/or Third Party and their daughters.

3. That the First Party gives an unconditional undertaking that First Party shall not hurl any abuses or send any defamatory or derogatory SMS or abuses by any mode upon the Second Party and /or Third Party and their two daughters or in the public at large or through any other mode in future or any point of time. In future if the First Party ever tries to hurl any abuses or send any defamatory or derogatory SMSs or any abuses upon the Second Party and/or Third Party and their daughters by any mode or tries to defame the Second Party and Third Party and their daughters in front of public, then in that eventuality the First Party shall be held guilty of committing contempt of Court and shall render himself liable for being punished



under Contempt of Court Act, 1971 for having violated and breached an express undertaking given to this Hon'ble Court.

4. That the First Party further acknowledges of having executed the apology letter dated 29th September, 2008 wherein the First Party has withdrawn all his allegations leveled against the Second Party.

5. That the First Party also agrees and undertakes to withdraw all the allegations and averments made in the legal notice dated 10/9/2013 issued on behalf of the First Party through Shri Yogesh Chhabra, Advocate and also undertakes to withdraw the allegations and averments made in the legal notice dated 19/10/2013 issued on behalf of the First Party through Shri Vatsal Kumar, Advocate. The First Party agrees to withdraw both the said legal notices and undertakes that in future the First Party shall not file any claim, action or any case with regard to the sale of the First and Second floor including the roof rights of property bearing P-15, Connaught Circus, New Delhi by the Second Party and shall not file any other claims or actions against the subsequent purchaser of the said property and all the claims, actions of the First Party qua the aforesaid property stand duly extinguished in law and the First Party shall not file any case or litigation claiming any share in the said property being first, second and roof rights of property bearing No. P-15, Connaught Circus, New Delhi or either for rendition of account or for partition or for claiming any amount or any right qua the said property being first, second with roof property bearing No. P-15, Connaught Circus, against the Second Party or against any other property belonging to the Second Party and/or Third Party nor shall challenge or assail the sale deed executed by the Second Party regarding the Second and roof rights of the property bearing No. P-15, Connaught Place, New Delhi. All the claims of the First Party against the Second Party and/or Third Party qua the self acquired properties or ancestral properties, if any, shall stand extinguished in law and in case in future the First Party institutes any claim, suit, action or any case claiming any share/partition or any monetary claim qua any movable or immovable assets whether self acquired or



ancestral of the Second Party and/or Third Party, the same shall have to be withdrawn or shall stand dismissed.

6. That the parties agrees that the First Party, Second Party and Third Party shall jointly move an application for recording of the consent terms and conditions under Order 23 Rule 3 Code of Civil Procedure, 1908 before the Hon'ble Court and the present MOU shall be annexed along with the said application filed before the Saket Court in the pending suit bearing No. CS (OS) No. 66/2016 and all the parties undertake to remain bound by the terms and conditions as incorporated in the present MOU and the said suit shall be disposed off by passing a decree in terms of the consent terms as recorded in the present MOU. The copy of the present MOU Deed shall also be filed in the Economic Offences Wing in FIR No. 124/2014.

7. That the parties to the present Agreement/MOU undertake that they shall duly perform and abide by all the terms and conditions as contained in the present agreement and in case of breach by any party in respect of any of the terms and conditions as envisaged hereinabove, the parties are liable to be punished under the provisions of Contempt of Courts Act, 1971 as the present MOU shall be duly filed in the Hon'ble Saket Court, New Delhi.

8. That neither the Parties nor even any of their representatives, executors, assigns, successors, administrators, etc. would at any time, even in future, challenge these terms and conditions, on any ground, whatsoever, and/or in any manner, whatsoever, and would always remain bound by them.

9. It is clearly understood by the Parties that they are entering into and executing this Full and Final Settlement Deed bona fide, voluntarily and of their own free will and consent, without any force, pressure, duress, threat, fraud, coercion, misrepresentation, collusion or undue influence, whatsoever, and the Parties accepts this Full and Final Settlement Deed as fair, just and equitable and also as final; conclusive and binding on them, their representatives, executors, assigns, successors, administrators, etc. and they have further bound themselves to do all what would be necessary to give full and complete effect to it. Further, the parties have further confirmed and undertaken that they were given sufficient time and



opportunity to consult their legal counsels of their choice and it is only after said consultations with the counsels of their choice, after full understanding of the effect of the terms and conditions of the present settlement deed. Therefore along with the parties, the counsel of the parties, have also signed the present settlement in token/acknowledgement of the fact that the parties were having proper and sufficient legal assistance and parties have signed the same with their free will and consent.

10. All the disputes and differences between the parties have been fully and finally settled. Nothing shall be now due from either party to the other on any account, whatsoever, except under the present Settlement Deed.

11. This Settlement Deed/MOU shall be drawn up in duplicate original copies and each party to this MOU should, be provided with a signed original for Its records.”

8. Pursuant to the settlement, a joint application under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 was filed by the parties before the learned Civil Court and the suit was disposed of as settled in terms of the Settlement Deed by order dated 28.11.2016. The petitioner thereafter filed a writ petition, being WP(Crl.) 3627/2016, before this Court seeking quashing of the present FIR.

9. During the course of the proceedings before this Court, a Closure Report was filed by the State on 31.07.2017 as Section 66A of the IT Act was struck down by the Hon'ble Apex Court, whereafter the Writ Petition was dismissed as withdrawn *vide* order dated 12.12.2017 with liberty to the petitioner to approach the Court if necessity arises.

10. However, Respondent No.2 filed a protest petition against the Closure Report in April, 2018. The IO thereafter filed a supplementary



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chargesheet against the petitioner for offences under Sections 506/509 of the IPC and Section 67 of the IT Act.

11. The learned Trial Court took cognizance on the said chargesheet and summoned the petitioner *vide* order dated 29.05.2019 which led to filing of the present petition.

12. The learned counsel for the petitioner submitted that the petitioner had since realised his mistake and had also sought forgiveness from Respondent No. 2 and his wife and tendered an unconditional apology to them for his conduct.

13. He submitted that in order to bring a closure to the dispute, the parties had entered into the Settlement Deed. He submitted that it was categorically mentioned in the Settlement Deed that the petitioner undertakes not to circulate any scandalous or defamatory messages which may malign the reputation of Respondent No. 2 or his family.

14. He submitted that the petitioner had also sent legal notices dated 10.09.2013 and 19.10.2013 to Respondent No.2 and his father, wherein he had made certain claims regarding his alleged share in respect of certain properties. He submitted that the petitioner had withdrawn all claims *qua* the said properties and had not filed any case or litigation claiming any share or claim in the same as per the Settlement Deed.

15. He further submitted that a joint application seeking disposal of the suit was filed before the learned Trial Court by Respondent No. 2 and the petitioner whereby the parties had agreed that the Settlement

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Deed would be filed with the Economic Offences Wing in the present FIR.

16. He submitted that the petitioner and Respondent No. 2 are brothers and the dispute in question was essentially a family dispute for which the petitioner has already unconditionally apologised.

17. He lastly submitted that the State ought not to have filed the supplementary chargesheet after having taken a stand that no case was made out.

18. The learned counsel for Respondent No. 2 submitted that the petitioner had sent highly scandalous, vulgar and offensive messages to Respondent No. 2 and also to his wife.

19. He submitted that messages were sent to the public at large wherein sexual innuendoes were made against Respondent No. 2 and his wife and their minor daughters. The petitioner had also extended death threats to Respondent No. 2 and his family.

20. He further submitted that Respondent No. 2 had never consented to the quashing of the FIR and the only intention was to submit a copy of the Settlement Deed with the police authorities.

21. He submitted that the supplementary chargesheet was rightly filed after considering the new material which came pursuant to the FSL reports.



ANALYSIS

22. It is not disputed that the parties are real brothers. The petitioner during the course of the arguments has not denied that he circulated the messages, which on the face of it, are highly scandalous, vulgar and offensive.

23. I have perused the contents of the messages. It has not been denied by the petitioner that the said messages were in fact sent by him and the same, in the opinion of this Court, is a crime under various provisions of the IPC as well as the IT Act.

24. From a perusal of the settlement on record, it is apparent that the petitioner has been venting out frustration and in the process committed a crime and crossed the line of decency. The same cannot be termed as mere banter between the family members.

25. The Court, however, cannot lose sight of the fact that the parties had voluntarily entered into a settlement pursuant to which an application seeking disposal of the suit was filed by Respondent No. 2 and the petitioner. Respondent No. 2 had filed the suit seeking mandatory injunction against the petitioner from circulating and sending the messages.

26. As noted above, the petitioner has acknowledged his mistakes and had tendered unconditional apology. It is apparent that the petitioner had since realised his mistake and has also withdrawn all the claims in regard to the properties which originally belonged to the family as per the petitioner.



27. The parties had also agreed that a copy of the settlement would be placed before the Economic Offenses Wing. Even though Respondent No. 2 claims that the same was only for the information of the police authorities, but it is apparent that the purpose of the same was to inform the police that they have settled their disputes. It is also an admitted fact that the petitioner had filed a petition for quashing of the FIR on an earlier occasion as well and the same was withdrawn on a statement given by the State that a Closure Report had been filed in the present case.

28. The State had on an earlier occasion filed a Closure Report stating that Section 66A of the IT Act has been declared unconstitutional by the Hon'ble Apex Court and, therefore, no offence is made out. Thereafter, the State, however, filed a supplementary chargesheet alleging that certain other material has come to their knowledge. In the supplementary chargesheet, the State referred to some more messages sent by the petitioner and alleged the commission of offences under Sections 506/509 of the IPC and Section 67 of the IT Act.

29. All the messages sent by the petitioner were brought to the knowledge of the State by the complainant / Respondent No. 2 and, therefore, they were always in the knowledge of the State. Thus, there is merit in the arguments of the petitioner that there was no additional material which led to the change of mind of the State Authorities.

30. It is also significant to note that the settlement was not a letter of apology written by the petitioner but was a Settlement Agreement.



Had the same been a letter of apology, as sought to be contended by the Respondent No. 2, it would have been worded in the said manner.

31. In terms of the Settlement Deed, Respondent No. 2 had agreed to withdraw the suit and the petitioner had also undertaken to withdraw all the allegations and claims in regard to certain properties. Therefore, the parties had agreed to undertake certain obligations.

32. During the course of arguments, the learned counsel for the petitioner had reiterated that the petitioner had strictly abided by the terms of the Settlement Deed and the petitioner does not have any claim on the properties he had sought to claim on an earlier occasion.

33. The petitioner after having admitted to his guilt had entered into a settlement. The document was also filed before the civil court. No person, in the opinion of this Court, would sign a document admitting his guilt and allow the criminal proceedings to continue since the same would inevitably lead to conviction on confession.

34. By way of the Settlement Deed, the petitioner has categorically admitted his guilt and has tendered an unconditional apology. Now to contend that the petitioner should suffer the trial and face the conviction on the basis of the confession, in the opinion of this Court, cannot be the intention of the parties. The person would not sign a settlement which in effect is his conviction warrant. Therefore, in the opinion of this Court, the parties had settled their disputes and had agreed at the time of signing the agreement that all the pending



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litigations in regard to the messages, including the proceedings arising out of the present FIR, should come to an end.

35. Even otherwise, the High Court while exercising the power under Section 482 of the CrPC is required to have an equitable justice oriented approach. Allowing the continuance of the present proceedings, when the accused / petitioner has admitted his guilt, has tendered unconditional apology to the complainant who happens to be his real brother and also discharged his obligations in the Settlement Deed, would be an abuse of process of the Court. The same would not only save judicial time but also bring a closure to an animosity and litigation between the real brothers.

36. In view of the above, the present petition is allowed and the FIR No.124/2014 and all proceedings emanating therefrom are quashed.

AMIT MAHAJAN, J

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