

Case :- APPLICATION U/S 482 No. - 38967 of 2022

Applicant :- Nandini Sachan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Uday Narain Singh

Counsel for Opposite Party :- G.A., Om Prakash

Hon'ble Shekhar Kumar Yadav,J.

Heard Mr. Uday Narain Singh, learned counsel for the applicant, learned A.G.A. for the State, Mr. Om Prakash, learned counsel for opposite party no.2.

This application under Section 482 Cr.P.C. has been filed by applicant for quashing the cognizance order dated 03.08.2022 passed by Judicial Magistrate as well as charge sheet dated 24.7.2022 as well as entire proceedings of Criminal Case No.13440 of 2022 arising out of Case Crime No.217 of 2022, under Section 67 of Information Technology (Amendment) Act, Police Station Nawabad, District Jhansi pending in the court of Chief Judicial Magistrate, Jhansi. Further prayer has been made to stay the further proceeding of above mentioned criminal case.

In short, the facts in brief are that the impugned FIR has been lodged by the informant on 31.5.2022 against the applicant and unknown persons alleging that 1 to 2 months ago, some unknown persons with different mobile numbers and I.Ds., obtained photo of the informant from social media and while tempering with the photo as well as while using abusive words, viral the same on internet for which the informant has also given an application before cybre thana.

Submission of learned counsel for the applicant is that the applicant has been falsely implicated in the present case just to pressurize and harass the applicant, in fact, no such incident has taken place. The real fact is that the son of opposite party no.2, namely, Ankit Nagpal and applicant were doing training in the year 2021 at HDFC Bank at Bangalore and during the training period, the son of opposite party no.2 proposed to the applicant and when the applicant denied for the same, the opposite party no.2 tried to harass and obstructed in her marriage. It is further alleged that after completing the training, the victim returned back to her home but the son of opposite party no.2 continuously calling the applicant and also send vulgar message with social media platform, thereafter, the applicant lodged the FIR on 11.02.2022 bearing Case Crime No.64 of 2022, under

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Sections 354-ka, 354 gha, 506 IPC against the son of opposite party no.2 in which after instigation charge sheet has been submitted against the son of opposite party no.2 on 28.3.2022. Further submission is that the present FIR is a counterblast to the FIR lodged by the applicant against the son of opposite party no.2. After investigation, the investigating officer has submitted charge sheet against the applicant under Section 67 of Information Technology (Amendment) Act in illegal and arbitrary manner and the learned Magistrate took cognizance on a printed proforma vide its order dated 03.03.2022 and summoned the applicant to face trial. Further submission is that in catena of judgments of this Court has held that the summoning order on printed proforma without application of judicial mind could not be passed. No ingredient of Section 67 of I.T. Act are existing under the facts and circumstances case, therefore, no offence is made out against the applicant but the court below has utterly failed to consider as no prima facie case is made out against the applicant. He also pointed out certain documents in support of his contention.

Per contra, supporting the impugned cognizance order, learned AGA as well as learned counsel for opposite party no.2 vehemently opposed the contention raised by learned counsel for the applicant and have submitted that during investigation, the investigating officer found that some person including the applicant, who is also a lady, is involved in the aforesaid illegal activities, therefore, submitted charge sheet against the applicant after recording statement under section 161 Cr.P.C. of the witnesses. These witnesses have clearly alleged in their statements that applicant as well as other accused persons are involved in the offence in question. They have further stated that since the offence is below 7 years, the police has no right to arrest the applicant in compliance of Sections 41 and Section 41-A of the Code of Criminal Procedure. However, it is prayed that the application of the applicant may be dismissed, as the applicant has committed a serious crime.

I have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record.

For appreciation of the arguments of the learned counsel for the applicant, Section 67 of the Act is reproduced as under:-

"67. Punishment for publishing or transmitting obscene material in electronic form:

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely,

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having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to two three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

67-A. Punishment for publishing or transmitting of material containing sexually explicit act, etc.in electronic form:

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

Exception: This section and section 67 does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or

(ii) which is kept or used bona fide for religious purposes.

67-B Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form.

Whoever,-

(a) Publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or

(c) cultivates, entices or induces children to on line relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or

(d) facilitates abusing children on line or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees;

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Provided that the provisions of section 67, section 67A and this section does not extend to any book , pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-

(i) The publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bonafide heritage or religious purposes

Explanation: For the purposes of this section, "children" means a person who has not completed the age of 18 years.

67-C Preservation and Retention of Information by intermediaries:

(1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.

(2) Any intermediary who intentionally or knowingly contravenes the provisions of sub section (1) shall be punished with an imprisonment for a term which may extend to three years and shall also be liable to fine."

Perusal of above quoted section 67 of Information Technology Act, it is very unfortunate that under the above mentioned Act, the accused shall only be punished on first conviction with imprisonment of either description for a term, which may extended to two to three years with fine and in the event of second or subsequent conviction which imprisonment of either description for a term which may extend to five years also with fine, which may extend to 10 lakh rupees.

Having examined the matter in its entirety, here it would be apposite to mention that this Court is of the view that it is beyond the shadow of doubt that social media is a global platform for exchange of thoughts, opinions and ideas. The internet and social media has become an important tool through which individuals can exercise their right to freedom of expression but the right to freedom of expression comes with its own set of special responsibilities and duties. It does not confer upon the citizens the right to speak without responsibility nor does it grant unfettered licence for every possible use of language.

As per statement of witnesses, namely, Shyam Sunder Nagpal, husband of opposite party no.1, Suneel Kathuriya, brother of opposite party no.2 and also independent witness, namely, Govind Srivastava, there is clear cut allegation against the applicant. They have fully supported the prosecution story. It is an admitted fact that the both parties i.e. applicant and son of opposite party no.2 known to each other and both have worked

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in the same office during training at Bangalore.

Upon perusal of F.I.R. and the allegations made therein as well as material against the applicant, as per prosecution case, the cognizable offence against the applicant is made out. Perusal of charge sheet submitted against the applicant shows that after investigation, the investigating officer has submitted charge sheet after collecting cogent and reliable evidence against the applicant and thereafter the learned Magistrate has rightly summoned the applicant to face trial.

Having considered the submissions made on behalf of the parties and perused the order impugned as well as material brought on record and also considering the above mentioned provisions of section 67 Information Technology Act, it is clearly established that the offence under Section 67 I.T. Act is attracted in the present case, therefore, I am of the view that no ground for quashing the proceedings of aforesaid case is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C. as the same do not suffer from any illegality or infirmity.

The application lacks merit and is, accordingly, **dismissed**.

Order Date :- 24.1.2023

Ajeet