



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.2908 OF 2024**

Ashwinkumar Pandhari Sanap,  
Age: 43 years, Occu.: Labour,  
R/o. Kingaon Raja, Tq. Sindhkhedraja,  
Dist. Buldhana,  
At Present: Rajput Layout, Buldhana,  
Tq. And Dist. Buldhana

**.. Applicant**

***Versus***

1. The State of Maharashtra  
Through the Police Inspector,  
Hingoli City Police Station, Hingoli,  
Tq. And Dist. Hingoli.
2. Pandit Jagannath Tare,  
Age: 38 years, Occu.: Police Constable,  
R/o. Mangalwara Bazar, Vanjarwada,  
Tq. And Dist. Hingoli.

**.. Respondents**

...  
Mr. Bhushan S. Dhawale, Advocate for the applicant.  
Mr. M. K. Goyanka, APP for the respondent No.1 – State.

...

**CORAM : SMT. VIBHA KANKANWADI &  
ABHAY S. WAGHWASE, JJ.**

**DATE : 19 AUGUST, 2024.**

**ORDER [Per Smt. Vibha Kankanwadi, J.]**

. Heard learned Advocate for the applicant. Applicant is arrayed as an accused in Crime No.427 of 2024 registered with

Hingoli Police Station on 27.06.2024 at 15.30 hours. At that time, the offence was registered under Section 66A and 66B of the Information Technology Act, 2000 (for short "I.T. Act" and Section 500 of Indian Penal Code. The said FIR has been lodged by respondent No.2. It is to be noted that though the respondent No.2 is a police constable, yet the FIR has been lodged by him in his personal capacity, not as a representative of the State. He alleges that the applicant was the husband of his sister. There was divorce between the applicant and his sister two years ago and the sister had lodged FIR for the offence punishable under Sections 307, 498-A, 504, 506, 325 of Indian Penal Code. According to respondent No.2, message was given to the relative of respondent No.2 by the applicant around 5.35 p.m. on 26.05.2024 which has caused defamation of the family, wherein it is alleged that respondent No.2 used to take obscene videos of the applicant and his ex-wife and was to post it in the group and further allegations have been made defaming the family.

2. Taking into consideration the contents of the FIR, when offence under Section 66A of the I.T. Act has been registered, the said Section has been held unconstitutional by Hon'ble Supreme Court in ***Shreya Singhal Vs. Union of India, [AIR 2015 SC***

**1523].** The registration itself ought not to have been made under that Section. It is unfortunate that still the offences are being registered under that Section. Section 66B of the I.T. Act provides for punishment for dishonestly receiving stolen computer resource or communication device. The facts of the case were not attracting the said Section at all. Therefore, the registration of the offence under those two Sections of the I.T. Act was illegal, however, it has been then pointed out that now by arresting the applicant it is stated that the offence that is attracted is Section 67A of the I.T. Act. Section 67A of the I.T. Act prescribes punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. The punishment prescribed is “.....which may extend to five years and with fine which may extend to ten lakh rupees for the first offence and in the event of second or subsequent conviction, it may extend to seven years and also with fine...” The prosecution has not come with the case that it is the second offence of the applicant. Still, it appears that the applicant was arrested and was produced before the learned Magistrate. Now, the applicant is contending that the arrest is illegal. As regards Section 500 of Indian Penal Code, in view of Section 199 of the Code of Criminal Procedure there is

restriction for the Court to take cognizance of the offence unless there is a complaint made by the aggrieved person. In short, when it is the case of defamation, a private complaint should be filed. Of-course, if it is with other Sections, then FIR may lie. By communication dated 06.08.2024, it appears that Police Inspector, Hingoli Police Station has tried to say that Section 66A and 66B are inadvertently invoked and then on the same day, the applicant was produced before the Magistrate. But if we see the remand yadi as per Section 187 of Bharatiya Nagarik Suraksha Sanhita, 2023, it shows that the applicant came to be arrested at 00.31 hours on 06.08.2024, in the midnight. That means, at the time of arrest, the FIR were containing Section 66A and 66B of the I.T. Act. Under the said circumstance, we are of the opinion that certainly some wrong things have taken place and it can be seen at the *prima facie* stage also. Therefore, we direct the applicant to add the Investigating Officer and Police Inspector, Hingoli Police Station by their names as party respondents. Amendment to be carried out within two days. After the amendment is carried out, issue notice to the respondents. Learned APP waives notice for respondent No.1 – State. We also issue notice to respondent Nos.2, 3 and 4, as to why they should

not be asked to compensate the applicant, returnable on  
02.09.2024.

**[ ABHAY S. WAGHWASE ]**  
**JUDGE**

**[ SMT. VIBHA KANKANWADI ]**  
**JUDGE**

scm