
(2013) 11 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 2426 of 2013

Kujana Venu

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2013) 11 AP CK 0004

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This Criminal Revision Case is directed against the order dated 3.10.2013 passed in CrI.M.P. No. 1073 of 2013 in C.C. No. 18 of 2013 by the Judicial Magistrate of First Class, Bichkunda, Nizamabad District.

2. Heard learned counsel appearing for the petitioner and learned Additional Public Prosecutor representing the respondent-State.

3. The de facto complainant is the Head Master of the Primary School at Shakthi Nagar of Jukkal Mandal. On the allegation of committing some irregularities, she was suspended. In the month of April, 2012, the de facto complainant went to the office of the District Education Officer, Nizamabad, for the purpose of seeking rectification of suspension. She wanted to give a representation and approached the petitioner, who is a Camp Clerk of the District Education Officer and sought for appointment of the District Education Officer. For two days, the petitioner did not give appointment, and insisted her to give her phone number. On that she gave her phone number. Thereafter, it is stated that the petitioner started blaming her character and sending vulgar messages through mobile.

4. According to the de facto complainant, the petitioner was also sending blank calls to her and was insisting her to come to Nizamabad for which she refused. Thus, it is said that the petitioner harassed and tortured her mentally. The de facto complainant gave a complaint to the District Education Officer at Bodhan. Thereafter, she lodged a report to the Sub-Inspector of Police, who in turn, registered a case against the petitioner in Cr. No. 61 of 2012 u/s 506 IPC and

Section 66-A of Information Technology Act. L.Ws. 7 and 9, who are the Inspectors of Police, investigated into the aforesaid offences and filed charge sheet against the petitioner. After filing of the charge sheet, the petitioner filed a petition before the trial Court u/s 239 Cr.P.C. to discharge him of the offences punishable u/s 509 IPC and Section 66-A of the Information Technology Act and the said petition was dismissed.

5. Learned counsel appearing for the petitioner contended that there is no material to show that the petitioner sent the messages to the de fact complainant and that the police did not record the statements of the Mandal Educational Officer, Niverthy, Hanmanth Rao, S.G.T. Deputy District Educational Officer, Bodhan." He further contended that even if the message sent by the petitioner is true, it does not attract the offence u/s 66-A of the Information Technology Act. The said message reads as under:

Some people have a nice eyes, some people have a nice smile and some of them have a nice face, but you have all of them with nice heart, good night.

6. To appreciate as to whether the offence u/s 66-A of the Information Technology Act is attracted against the petitioner or not, it is necessary to reproduce the said section, which reads as under:

Punishment for sending offensive messages 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: or

(c) Any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to device or to misled the addressee or recipient about the origin of such messages, shall e punishable with imprisonment for a term which may extent to three years and with fine"

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

7. In the instant case, the de facto complainant is a married woman. By sending the aforesaid message, the petitioner caused annoyance and inconvenience to her. Hence, clause "b" of Section 66-A of the Information Technology Act would get attracted.

8. From the above facts, it can be understood that the de facto complainant had

no prior acquaintance with the petitioner. As she met the petitioner, who is a Camp Clerk of the District Education Officer, for the purpose of seeking appointment of the District Education Officer and the petitioner insisted her to give her phone number and after obtaining her phone number, he started sending messages by blaming her character and also insisted her to come to Nizamabad alone. The Court below has taken into consideration the charge sheet, statements of the witnesses, copy of the message and the entire material available on record and dismissed the discharge petition.

9. For framing of charge the Court is required to look in to the final report and the documents filed along with it including the statements of the witnesses recorded u/s 161 Cr.P.C. The Court is not expected to weigh the evidence on record if a prima facie case is made out the Court is obliged to frame a charge. The concern of the Court is only to see whether there are reasonable grounds for presuming commission of offence by the accused. Even a strong suspicion can be the basis for framing the charge. The accused is entitled to be discharged only where no prima facie case is made out or the accusation itself is groundless.

10. The entire material which has been referred to above obviously indicate that the prosecution is able to make out a prima facie case against the petitioner for the offences u/s 509 IPC and Section 66-A of the Information Technology Act. The learned Magistrate therefore, in my considered view, rightly dismissed the discharge petition filed by the petitioner.

11. Therefore, the Criminal Revision Case is dismissed.