

(2016) 08 RAJ CK 0047

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 1242 of 2016

Sikandar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 211, 212, 482
Penal Code, 1860 (IPC) — Section 295A, 504, 509

Citation : (2016) CriLJ 4445

Hon'ble Judges : Mr. P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. Rakesh Arora, Advocate, for the Petitioner; Mr. Vikram Singh Rajpurohit, Public Prosecutor, for the State

Final Decision : Dismissed

Judgement

Mr. P.K. Lohra, J.—Accused-petitioner has preferred this misc. petition under Section 482 Cr.P.C. to assail impugned order dated 29th of April 2016, passed by Addl. Sessions Judge, Jaitaran, District Pali (for short, "learned revisional Court"), whereby the learned revisional Court, while dismissing the revision petition, has affirmed order dated 17th of October, 2015, passed by Addl. Chief Judicial Magistrate, Jaitaran, District Pali (for short, "learned trial Court").

2. Succinctly stated, the facts giving rise to this misc. petition are that complainant Mahendra Singh submitted a written report to the SHO, Police Station Jaitaran on 12th of May 2015 stating therein that on 26th of March 2016 he received messages on his cell-phone from mobile No. 9829607418 which were also sent to Devaram and Motilal having mobile Nos. 9783900753 and 8442090507 respectively. In the written report, the complainant alleged that these messages have outraged the religious feelings of a class and same tantamount to insulting its religious beliefs. It is further stated in the report that the sender of the messages had intended to disturb religious harmony and

tranquility. The SHO concerned registered FIR No. 168/2015 for offences punishable under Section 295A, 504 and 509 IPC. The matter is investigated thoroughly and charge-sheet against petitioner for the aforesaid offences is submitted before the learned trial Court. The learned trial Court took cognizance of the offences against the petitioner and thereafter vide its order dated 17th of October 2015 framed charges. Being aggrieved by the framing of charges, the petitioner invoked the revisional jurisdiction under Section 397 Cr.P.C. and the learned revisional Court by the order impugned dated 29th of April 2015 rejected revision petition of the petitioner.

3. Learned counsel for the petitioner has vehemently argued that the messages which were sent from the mobile phone cannot be construed as offending so as to outrage religious feelings of the complainant or disturbing his religious beliefs. Learned counsel, therefore, urged that no offence under Section 295A is made out and the learned trial Court as well as the learned revisional Court has not at all cared to examine this vital fact. Learned counsel further submits that the order impugned warrants interference by this Court in exercise of its inherent powers to prevent abuse of process of the Court. Learned counsel has also submitted that from a bare reading of FIR and the material collected during investigation, offences under Section 504 and 509 are not made out, and therefore, the order passed by the learned trial Court as well as learned revisional Court is per se vulnerable and therefore cannot be sustained.

4. Per contra, learned Public Prosecutor has vehemently urged that the messages sent by accused-petitioner are not only objectionable but are also offending so as to constitute all the three offences. Learned Public Prosecutor submits that the learned trial Court has framed the charges after considering the charge-sheet and allied papers threadbare and the said order has also been examined by the learned revisional Court while exercising its power of judicial review, therefore, in that background the impugned order is not liable to be interfered with in exercise of inherent powers of this Court. Learned Public Prosecutor has also argued that circulating such messages by the petitioner in a sensitive area of Nimaj town was an affirmative attempt on his part to disturb communal harmony and therefore no interference is warranted. Learned Public Prosecutor lastly contends that inherent powers of this Court are though wide but are required to be exercised with great care and circumspection very sparingly and the present one is not a case wherein it is desirable to exercise power of second judicial review for preventing abuse of process of the Court or to otherwise secure ends of justice.

5. Heard learned counsel for the parties and perused the materials available on record.

6. The facts of the instant case make it abundantly clear that the message which was circulated by the petitioner through his mobile "fodh mLrk ckcq mLrk lax nhihdk xgyksr lEir xgyksr" is not an innocuous message. In common parlance, the sender of the messages intended to convey the receivers that he is entering into matrimony with a girl named therein. While it is true that the prevalent

taboos against inter-religious marriages in the present era needs to be deprecated but then one cannot be skeptical and ignorant about its repercussions in a communally sensitive area. The mindset of the people in general are still under the influence of orthodox notions and communal frenzy. That apart, a very vital fact is that the girl who is named in the message is having no nexus whatsoever with the petitioner and therefore depiction in the message that he is entering into matrimony with her is per se actuated with some ill motive. This sort of message has thus obviously offended the religious beliefs of the petitioner who happens to be closely related to the girl named in the message being her uncle. Therefore, in my considered opinion, no prudent man can infer that intention of the petitioner was bona fide and not to outrage religious feelings of the girl and her family members. As such, the contention of the petitioner that the message does not constitute offence under Section 295A is per se an ambitious plea, which cannot be countenanced in the backdrop of facts and circumstances of the instant case.

7. It is also noteworthy that the petitioner has used the sim-card which was in the name of one Mohd. Sakir s/o Alladiya and during investigation it is revealed that the said incumbent never purchased sim-card by submitting his identity proof. This sort of conduct by the petitioner is sufficient to constitute offence within the four corners of Section 504 IPC i.e. intentional insult with intent to provoke breach of the peace.

8. Adverting to Section 509, suffice it to observe that showing a lady as his fiancée or would be better half in a message, without any basis whatsoever, clearly tantamount to utter a word, make a gesture or an act intended to insult the modesty of a woman within the four corners of Section 509 IPC. The police, during investigation, has also unearthed a very vital fact when the petitioner divulged the information in his disclosure under Section 27 of the Indian Evidence Act, 1872 that he has purchased the sim of mobile No.9829607418. Taking into account all these materials, the learned trial Court has framed charges for the aforesaid offences against the petitioner in exercise of its discretion under Section 211 & 212 Cr.P.C. The charge is not an accusation made or information given in abstract, but an accusation made against a person in respect of an act committed or omitted in violation of a penal law forbidding or commanding it. Considering the true purport of "charge" in the backdrop of the instant case, indisputably, in my opinion, the learned trial Court has not committed any error much less manifest error of law while passing order dated 17th of October, 2015.

9. Be that as it may, the petitioner has made endeavour to question the said order before the learned revisional Court and his that effort has proved abortive. If the impugned order is examined in totality then it would ipso facto reveal that the learned revisional Court has also exercised its power of judicial review and recorded its definite finding that the order passed by the learned trial Court is just and proper warranting no interference.

10. The instant petition is filed by the petitioner to invoke inherent powers of this Court which are to be exercised with great care and circumspection very sparingly. For exercising inherent powers of this Court, the Court is required to see that it is necessary and expedient to do so for preventing abuse of process of any Court or otherwise to secure the ends of justice. In substance, no such infirmity is discernible from the impugned order and consequently I feel dissuaded to exercise inherent powers in the instant case so as to exercise second power of judicial review.

11. Resultantly, petition fails and the same is hereby dismissed summarily.