

Pesala Sivashankar Reddy vs The State Of Andhra Pradesh on 11 December, 2024

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
+CRIMINAL PETITION No.8201 OF 2014
%10.12.2024

#Between:

Pesala Sivashankar Reddy.

...PETITIONER/ACCUSED

AND

1. The State of Andhra Pradesh

...RESPONDENT/COMPLAINANT:

Counsel for the Petitioner:

1. Y. L. SIVA KALPANA REDDY Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR The Court made the following:

<Gist:

>Head Note:

? Cases referred:

1. 2024:PHHC:127296

2. 2024 SCC Online Ker 4682

3. 2024 LiveLaw (SC) 243

4. 2014 4 SCC 257

5. 2015 SCC Online SC 648

6. 2022 Live Law (SC) 538

7. 2024 SCC Online Ker 5260 This Court made the following:

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI *HON'BLE SRI
JUSTICE HARINATH.N + CRIMINAL PETITION No.8201 OF 2014 %10.12.2024

#Between:

Pesala Sivashankar Reddy.

...PETITIONER/ACCUSED AND

1. The State of Andhra Pradesh ...RESPONDENT/COMPLAINANT: Counsel for the Petitioner:

1. Y. L. SIVA KALPANA REDDY Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR DATE OF ORDER PRONOUNCED: 10.12.2024
SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE HARINATH.N

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
Yes/No

2. Whether the copies of order may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair copy of the order?

Yes/No _____ JUSTICE HARINATH.N APHC010510832024 IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI [3457] (Special Original Jurisdiction) TUESDAY ,THE TENTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR PRESENT THE HONOURABLE SRI JUSTICE HARINATH.N CRIMINAL PETITION NO: 8201/2024 Between:

Pesala Sivashankar Reddy ...PETITIONER/ACCUSED AND The State Of Andhra Pradesh ...RESPONDENT/COMPLAINANT Counsel for the Petitioner/accused:

1. Y L SIVA KALPANA REDDY Counsel for the Respondent/complainant:

1. PUBLIC PROSECUTOR The Court made the following Order:

The petitioner is arraigned as Accused No.1 in Crime No.411 of 2024 at Kankipadu Police Station, Krishna District, registered under Sections192, 196, 336(4), 340(2), 353(2), 61(2), 111(2)(b) B.N.S, 67 of Information Technology Act, 2000-2008.

2. It is alleged that the de facto complainant noticed a posting on the social media platform Facebook on 08.11.2024 posted by the petitioner. The posting related to defamatory content concerning the Deputy Chief Minister and the Chief Minister of the State, with the intention to defame both. The petitioner is alleged to have used abusive language in the said posting. The posting is further alleged to have caused political disturbance that could lead to escalated violence. A complaint was lodged by the de facto complainant.

3. The learned counsel for the petitioner submits that the petitioner has been made an accused in two other crimes for the same postings. However, in those cases, the petitioner was not alleged to

have committed offenses under Section 111(2)(b) of the Bharatiya Nyaya Sanhita (BNS), 2023. The learned counsel for the petitioner submits that to attract an offense under Section 111, the mandate of the section requires, the petitioner to be accused of two other offenses where charge sheets are filed against the petitioner within a preceding period of ten years and the Court must have taken cognizance of such offenses. It is also submitted that the acts against the petitioner do not constitute organized crime as defined under Section 111 of Bharatiya Nyaya Sanhita (BNS), 2023. It is also submitted that Section 67 of Information Technology Act cannot be applicable to the facts of the case.

4. The learned counsel for the petitioner placed reliance on the judgments of Suraj Singh @ Noni vs. State of Punjab¹ and Muhmmad Rasheed vs. State of Kerala².

2024:PHHC:127296

5. The learned Public Prosecutor submits that more than 35 cases have been registered across the state against various persons for similar abusive postings on social media. The learned Public Prosecutor further submits that the applicability of Section 111(2)(b) of the Bharatiya Nyaya Sanhita (BNS), should be decided by the Courts. It is also submitted that interim protection has been granted in all cases to petitioners who approached the Court seeking anticipatory bail.

6. The primary contention of the learned counsel for the petitioner that section 111 of Bharatiya Nyaya Sanhita (BNS) would not be applicable to the facts of this case requires consideration of this Court.

"A dedicated section to combat organized crime, ensuring no room for unlawful activities orchestrated by syndicates which pose a grave threat to the internal security of the country has been added.

- Section 111(1) BNS 2023 defines organized crime, covering a range of offenses including kidnapping, robbery, vehicle theft, extortion, contract killing, cyber-crimes, human trafficking and more.

- Offences which were either not clearly defined or non- existing in the previous statute have been kept as a separate section 112-(Petty Organised Crime) clearly 2024 SCC Online Ker 4682 defining it like snatching, shoplifting, betting or gambling & selling examination papers.

- It further explains organised crime syndicates and continuing offence and activities committed individually or by organized crime syndicates, using violence, threats, or coercion, are now punishable.

- Economic Offences have also been defined which includes a spectrum of crimes such as criminal breach of trust, forgery, counterfeiting of currency-notes, hawala transactions, mass-marketing fraud, and schemes to defraud institutions.

Stringent Punishment: 111(2) • In case the offence leads to the loss of life, the perpetrator shall face either the death penalty or life imprisonment, coupled with a mandatory fine of not less than Rs. 10 lakhs.

• Additionally, provisions exist for individuals aiding in the commission of organized crimes, member of an organised syndicate, intentionally harbours or conceals any person committing organised crime, proceeds of organised crime, outlining appropriate punishments. It is a cognizable and non-bailable offence, triable by Sessions court".

7. Section 111 of Bharatiya Nyaya Sanhita (BNS) reads as follows:

"Organized crime 111. (1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organized crime.

Explanation. --For the purposes of this sub- Section,-- (i) "organised crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;

(ii) "continuing unlawful activity" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence;

(iii) "economic offence" includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution organization for obtaining monetary benefits in any form.

(2) Whoever commits organized crime shall,-- (a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees;

(b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be

liable to fine which shall not be less than five lakh rupees.

(3) Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(4) Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(5) Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees: Provided that this sub-Section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(6) Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.

(7) If any person on behalf of a member of an organized crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees".

8. The Hon'ble Supreme Court in the matter of State of Maharashtra vs. Shiva Alias Shivaji Ramaji Sonawane and others³ was dealing with the Maharashtra Control of Organised Crime Act, 1999 (Mcoc) Act and the offense of organised crime of the said act. The Hon'ble Supreme Court has held that only if an organized crime is committed by the accused after the promulgation of Mcoc Act that he may be seen in the light of previous charge sheet which is taken cognizance by the competent court, would have committed an offense under Section 3 of the Act. 2015 SCC Online SC 648

9. The Hon'ble Supreme Court in the matter of Mohamad Iliyas Mohamad Bilal Kapadiya vs. The State of Gujarat⁴ held that to invoke the provisions of Gujarat control of terrorism and organized act crime, 2015 in respect of an act of organized crime more than one charge sheet should be filed in the preceding ten years. Section 111 of B.N.S is analogous to the organized crime acts of various states which were dealt with by the Hon'ble Supreme Court.

10. The Hon'ble High Court of Kerala in the matter of Mohammed Hashim vs. State of Kerala 5 . The learned Judge of the Kerala High Court has emphasized that Section 111 can be invoked only if more than one charge sheet has been filed for such offenses in the preceding ten years before a competent court and such charge sheets are taken cognizance by the court.

11. This Court agrees with the observations of the Kerala High Court and admittedly, no charge sheet is filed against the petitioner for similar offenses in any court of law in the preceding ten years as such, cause for invocation of Section 111 of B.N.S. has to be dealt appropriately by the investigating officer during the course of investigation of the crime. 2022 Live Law (SC) 538 2024 SCC Online Ker 5260

12. Insofar as application of the provisions of Section 67 of the Information Technology Act, the law has evolved over a period of time. Section 67 of the Information Technology Act reads as follows:

"Section 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, 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 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".

13. The Hon'ble Supreme Court in the matter of Apoorva Arora and another vs. State (Government of NCT of Delhi and another 6 has dealt with the evolution of the law insofar as the applicability of Section 67 of the Information Technology Act. The Hon'ble Supreme Court has considered the 2024 LiveLaw (SC) 243 various judicial precedents which considered the applicability of the Hicklin test to determine whether the book 'lady Chatterley's Lover' was obscene in the decision of Ranjit D. Udeshi v. State of Maharashtra as per the Hicklin test, a material is obscene if it tends to deprave and corrupt the minds of those who are open to such immoral influences and into whose hands the publication is likely to fall.

14. The Hon'ble Supreme Court has also considered in the judgment Aveek Sarkar & Anr vs State Of West Bengal And Anr 7 , the Hon'ble Supreme Court held that the Court held that while judging a photograph, article or book to be obscene, "regard must be had to the contemporary morals and national standards and not the standard of a group of susceptible or sensitive persons". The Court held that the Hicklin test must not be applied as it "judged for obscenity based on isolated passages of a work considered out of context and judged by their apparent influence on most susceptible readers, such as children or weak-minded adults." Even in the United States, where the test was first formulated, the courts no longer apply the Hicklin test and instead apply the test formulated in

Rohith v. United States where the US Supreme Court held that sex-related material is obscene only when it has the tendency of exciting lustful thoughts when judged from the perspective of an average person by applying the community 2014 4 SCC 257 standards test. Similarly, in Canada, the dominant test is the 'community standards problem test' as per which a work qualifies as obscene when the exploitation of sex is its dominant characteristic and such exploitation is undue. Taking note of these jurisprudential developments, the Court in Aveek Sarkar markedly moved away from the Hicklin test to the "community standard test" where the material is considered as a whole to determine whether the specific portions have the tendency to deprave and corrupt. The Hon'ble Supreme Court has allowed the appeal by holding that no offense of publication or transmission of any material in electronic found, which is obscene, lascivious, or appeals to prurient interest, and/or having the effect of tending to deprave and corrupt persons, as provided under Section 67 of the IT Act is made out.

15. Considering the allegations and after hearing the submissions of the learned Public Prosecutor, this Court is inclined to grant bail to the petitioner and hereby allows the application on the following conditions:-

i) The petitioners shall be released on bail in the event of arrest on furnishing a personal bond of Rs.10,000/- with two sureties for a like sum, to the satisfaction of the Station House Officer, Kankipadu Police Station.

ii) The petitioners shall cooperate with the investigation as and when required.

16. With the above conditions, the criminal petition is allowed.

Miscellaneous petitions, if any pending, in the Criminal Petition, shall stand closed.

____ JUSTICE HARINATH.N 10.12.2024 NKA HONOURABLE SRI
JUSTICE HARINATH.N (Allowed) Date: 10.12.2024 NKA