

Cyber Crime Police Station vs Shivalinga on 11 July, 2024

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YUNUS A
ATHANI

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Date: 2024.07.11
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Presented on : 18-10-2023

Registered on : 18-10-2023

Decided on : 11-07-2024

Duration : 0 years, 8 months, 24 days

IN THE COURT OF XLV ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, BENGALURU
AT: BENGALURU

Present:- Sri. Mohammed Yunus Athani,
B.A.,L.L.B.
XLV Addl. Chief Judicial Magistrate,
Bengaluru.

Dated this the 11th day of July, 2024

C.C.No.26946/2023

Complainant:
The State,
By Police Inspector,
Cyber Crime Police Station,
Bengaluru.

(By Sr. Assistant Public Prosecutor)
-V/S-

Accused:
Shivalinga S/o Papashetty,

C.C.No.26946/2023

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Age: 40 years,
R/o: No.6, Near Shreeram Temple,
Chalaghatta, Yamaluru Post,
Bengaluru.

(By Sri B. S. Janardhana Swamy, Advocate)

Date of incident	08/04/2019
Date of report	08/04/2019
Date of arrest of accused	02/05/2019
Date of release of accused on bail	06/05/2019
Period of accused in J.C.	05 days
Name of the complainant	Hemavathi W/o K. Krishnamurthy
Date of commencement evidence	of 10/07/2024
Date of completion evidence	of 10/07/2024
Offences charged	U/Sec.66A of Information Technology Act, 2000 and Sec.354B of I.P.C..
Opinion of the Judge	Accused not found guilty.

JUDGMENT

The Police Inspector, Cyber Crime Police Station, Bengaluru, has filed the final report against the accused, for the offences punishable U/Sec.67, 67A of Information Technology Act, 2000 and Sec.354B, 354D of I.P.C.

2. The brief facts of the prosecution case are as under:

It is case of the prosecution that, the accused being relative of C.W.1 had borrowed an amount of Rs.1,00,000/-

C.C.No.26946/2023 from her. When she demanded the accused to repay the borrowed amount, the accused called C.W.1 to his home, by threatening made her to be naked and recorded her obscene video. Thereafter, on 08/04/2019 at 10:30 p.m., the accused has uploaded the said video on the facebook through his facebook account <https://www.facebook.com/shiva.linga.798> and outraged her modesty. Thereby the accused has committed an offence punishable U/Sec.67, 67A of Information Technology Act, 2000 and Sec.354B, 354D of Indian Penal Code.

3. On the basis of first information statement lodged by the complainant, a case is registered against the accused, for the offence punishable U/Sec.67, 67A of Information Technology Act, 2000 and Sec.354B, 354D of Indian Penal Code. The accused was arrested and produced before the Court. The accused was remanded to judicial custody for 14 days. Meanwhile, on application filed by the accused through his counsel the accused was enlarged on bail. After conducting investigation, the investigation officer has filed the final report against the accused, alleging commission of offences U/Sec.67, 67A of Information Technology Act, 2000 and Sec.354B, 354D of Indian Penal Code.

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4. On receipt of prosecution papers, the cognizance of above offences is taken against the accused and summons was issued to him. Accordingly, the accused has appeared to the Court. In compliance of Sec.207 of Cr.P.C., the copy of final report and other prosecution papers were supplied to the accused. As no material to frame charge for the alleged offences punishable under Sec.67 of Information Technology Act, 2000 and Sec.354D of Indian Penal Code was found in the entire material placed on record by the prosecution, the charge only for the offence punishable U/Sec.67A of Information Technology Act, 2000 and Sec.354B of Indian Penal Code is framed, read over and explained to the accused in the language known to him. The accused has denied the charge, pleaded not guilty and claimed to be tried.

5. In order to substantiate its case and to bring home the guilt of the accused, the prosecution has examined one witness as P.W.1 and got marked one document as Ex.P.1. The P.W.1, who is the first informant/victim in the case, has herself turned hostile to the case of prosecution. As the material witness to the case of prosecution has herself turned C.C.No.26946/2023 hostile to the case of prosecution, examining the remaining witnesses shown in the charge-sheet would not have served any purpose to the case of prosecution. Hence, in order to save the valuable time of the Court, the prayer of learned Senior Assistant Public Prosecutor for issuance of summons to rest of the witnesses shown in the charge-sheet is rejected and evidence of prosecution side is taken as closed. As there are no incriminating circumstances in the evidence of P.W.1, recording of statement of accused as contemplated U/Sec.313 Cr.P.C., is dispensed.

6. I have heard the arguments of both the sides and perused the entire material available on record.

7. The following points arise for my consideration:

POINTS

1. Whether the prosecution proves beyond all reasonable doubt that, on 08/04/2019 at 10:30 p.m., the accused has uploaded the obscene video of C.W.1 on the facebook through his facebook account <https://www.facebook.com/shiva.linga.798> and thereby C.C.No.26946/2023 committed an offence punishable U/Sec.67A of Information Technology Act, 2000 ?

2. Whether the prosecution proves beyond all reasonable doubt that, on the above date, time and place of offence, the accused has uploaded the obscene video of C.W.1 on the facebook through his facebook account <https://www.facebook.com/shiva.linga.798> and outraged her modesty and thereby, the accused has committed an offence punishable U/Sec.354B of Indian Penal Code ?

3. What order ?

8. My findings on the above points are as under:

Point No.1: Negative.

Point No.2: Negative.

Point No.3: As per the final order for the following:

REASONS

9. POINT No.1 & 2: As both these points for consideration are inter-connected with each other, in order to avoid repetition of facts and circumstances of the case and for better appreciation of evidence on record, I take both the points together for common discussion.

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10. In order to prove its case and to bring home the guilt of the accused, the prosecution has examined one witness as P.W.1 and got marked one document as Ex.P.1. The P.W.1 is the first informant/victim in the case.

11. The P.W.1, who is the first informant/victim in the case, has herself not supported the case of prosecution. She has clearly deposed in her evidence that, the accused being her relative had borrowed an amount of Rs.1,00,000/- from her and when she demanded the accused to repay her amount, there was a oral quarrel between her and the accused. Further she has deposed that, the accused has neither captured her obscene video, nor he has uploaded the same on the facebook. Further she has deposed that, the accused has never outraged her modesty and no incident as alleged by the prosecution has taken place in between her and the accused. Further, she has deposed that, she has not lodged any complaint against the accused. On account of non-payment of borrowed amount by the accused, she went to the Police Station and requested the Police to advise the accused. At that time, the Police have obtained her signature on Ex.P.1. It is pertinent to note that, C.C.No.26946/2023 though P.W.1 has identified her signature on Ex.P.1, she has clearly deposed that, she does not know the contents of said document and she has not lodged any complaint against the accused. Though, the learned Senior Assistant Public Prosecutor treating P.W.1 as hostile witness has cross- examined her in length, nothing worth has been elicited from her mouth, which supports the case of prosecution.

12. As the material witness to the case of prosecution i.e., the first informant/victim has herself turned hostile to the case of prosecution, there is absolutely no incriminating evidence against the accused in the case. There is absolutely no evidence on record to show that, the accused had called P.W.1 to his home and recorded her obscene video. Likewise there is absolutely no evidence on record to show that, on 08/04/2019 at 10:30 p.m., the accused has uploaded the obscene video of P.W.1 on the facebook through his facebook account <https://www.facebook.com/shiva.linga.798> and outraged her modesty. It is pertinent to note that, the P.W.1 has clearly deposed in her evidence that, no incident as alleged by the prosecution has taken place between her and the accused and she has not lodged any complaint against the accused.

C.C.No.26946/2023 Therefore, in such circumstances and for the reasons stated above, there is no other option before this Court except to hold that, the prosecution has utterly failed to prove the

charges leveled against the accused, beyond all reasonable doubt. As such, the accused is entitled for acquittal. Accordingly, I answer Point No.1 & 2 in Negative.

13. Point No.3: In view of above conclusion, I proceed to pass the following order:

ORDER Acting U/Sec.248(1) Cr.P.C., the accused is acquitted for the offence punishable U/Sec.67A of Information Technology Act, 2000 and Sec.354B of I.P.C.

The bail bond and surety bond executed by the accused stand canceled.

The mobile phone seized in the case is ordered to be released in favour of the accused, after expiry of appeal period.

C.C.No.26946/2023 (Dictated to the Stenographer, directly on the computer, transcript revised, corrected and then pronounced by me in the open Court on this the 11 th day of July, 2024) (Mohammed Yunus Athani) XLV A.C.J.M., Bengaluru.

ANNEXURE List of witnesses examined on behalf of prosecution P.W.1: Smt. Hemavathi W/o K. Krishnamurthy.

List of documents exhibited on behalf of prosecution Ex.P.1: First Information Statement List of material objects marked on behalf of prosecution

- NIL -

List of witnesses examined and documents marked on behalf of accused

- NIL -

XLV A.C.J.M., Bengaluru.

C.C.No.26946/2023 (Order pronounced in open Court vide separate judgment)
ORDER Acting U/Sec.248(1) Cr.P.C., the accused is acquitted for the offence punishable U/Sec.67A of Information Technology Act, 2000 and Sec.354B of I.P.C.

The bail bond and surety bond executed by the accused stand canceled.

The mobile phone seized in the case is ordered to be released in favour of the accused, after expiry of appeal period.

XLV A.C.M.M., Bengaluru.