

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 717 of 2015**

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KETAN BABULAL SHAH & 17 other(s)

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR P P MAJMUDAR(5284) for the Applicant(s) No.

1,10,11,12,13,14,15,16,17,18

MR VISHAL T. PATEL(6518) for the Applicant(s) No.

1,10,11,12,13,14,15,16,17,18

MR JIGAR G GADHAVI(5613) for the Respondent(s) No. 2

MR NITIN T GANDHI(5620) for the Respondent(s) No. 2

MR LB DABHI, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 18/04/2023

ORAL ORDER

1. By way of this application filed under Section 482 of Cr.P.C., the applicants herein are seeking quashment of First Information Report, being M. Case No.1 of 2014 registered with Ellisbridge Police Station, District: Ahmedabad for the offences punishable under Sections 294(b), 500 and 501 of the Indian Penal Code and Sections 66, 66A, 66E and 66F of the Information Technology Act.
2. Facts and circumstances giving rise to file present application are that, the applicants and respondent no.2 are belonging to Jain Community. Due to internal dispute of accounts of the trust, the relations between the parties

were not cordial. It is in this context, on 22.08.2014, messages against the respondent-complainant posted on facebook and also circulated in the whatsapp group of the community. Aggrieved with the posting and circulation of the messages, respondent no.2-complainant alleges against the applicants that, the contents of the messages circulated on social media are defamatory in nature and posted and circulated with intend to harm his reputation in the society and in person also. He had approached the police station for filing the complaint, but, it could not registered by the police. Thus, he has approached the Jurisdictional Court i.e. Court of Metropolitan Magistrate, Ahmedabad and filed a private complaint for the offences as referred above. The complaint was registered as C.M.A. No.406 of 2014. The Additional Chief Metropolitan Court No.22 thought it fit to investigate the matter by police and accordingly, the complaint was sent to be investigated by the concerned police station and order to this effect under Section 156(3) of Cr.P.C. was passed on 15.11.2014.

3. Dissatisfied with the impugned order, the applicants have preferred the present application, *inter-alia* stating that, the alleged messages do not fall under the definition of defamation as defined under Section 499 of the Indian Penal Code. The applicants no.2 to 18 have not published any message which clearly suggests that, the intention is only to harass the applicants and therefore, the criminal

proceedings would amount to abuse of process of law and Court.

4. This Court has heard learned counsel Mr. P.P. Majmudar appearing for and on behalf of the applicants, Mr. Jigar Gadhvi, learned counsel appearing for the complainant and Mr. L.B. Dabhi, learned Additional Public Prosecutor for the respondent-State.
5. Mr. Majmudar, learned counsel for the applicants relying on the decision of the Apex Court rendered in case of *Subramanian Swamy vs. Union of India reported in (2016) 7 SCC 221*, submitted that, in case of criminal defamation neither can any FIR be filed, nor, can any direction be issued under Section 156(3) Cr.P.C. He would further submits that, section 199 of Cr.P.C. envisages filing of the complaint in a Court, whereas, in the facts of the present case, though the complaint is filed before the Court, however, the Court lost sight of the settled law that, in the case of defamation, Court cannot direct the police officials to investigate the matter under Section 156(3) of Cr.P.C. and therefore, on this count only, the complaint deserves to be quashed. He has urged that, Section 66A of the Information Technology Act has been struck down by the Apex Court. Section 66E would also not applicable as there is no allegation that, the applicants have published or transmits the image of private area of complainant and therefore, when privacy of the complainant is not violated, the invocation of

Section 66E is not applicable to the facts of the present case.

6. On the other hand Mr. Jigar Gadhvi, learned counsel for the complainant and Mr. L.B. Dabhi, learned State counsel vehemently opposed the application and contended that, the trial Court has not committed any error of law while exercising its discretion. Looking to the facts and circumstances of the present case, it is submitted that the principles laid down in the case of Subramanian Swamy (supra) would not rescue to the case of the applicants.
7. Having heard learned counsel for the respective parties and on perusal of the material placed on record, it is not in dispute that, the trial Court vide order dated 15.11.2014, entrusted the investigation of the complaint, as contemplated under Section 156(3) of Cr.P.C. to police officials of Ellisbridge Police Station. On receiving the complaint, the FIR came to be registered as M. Case No.1 of 2014 for the offences as referred above.
8. Having regard to the facts and circumstances of the present case and considering Section 199 of Cr.P.C. and ratio laid down in case of Subramanian Swamy (supra), the trial Court could not have passed the order under Section 156(3) of Cr.P.C. directing the investigation into matter. During the pendency of the application, Section 66A of the I.T. Act has been struck down by the Apex

Court and therefore, the invocation of Section 66A by the complainant is also bad in law.

9. For the foregoing reasons, the impugned order dated 15.11.2014 directing investigation under Section 156(3) of Cr.P.C. for the alleged offences as referred above is quashed. The complaint so far Section 66A of the I.T. Act is concerned, is not tenable in the eye of law. So far the complaint under Sections 294(b), 500 and 501 of the Indian Penal Code as well as Sections 66, 66E and 66F of the Information Technology Act are concerned, the matter is remanded back to the trial Court as if the complaint is filed under Section 199 of the Cr.P.C. and the trial Court shall decide the matter afresh on the issue of process in accordance with law. It is clarified that during the pendency of this application, the applicants no.2, 6 and 10 have already expired. It is made clear that, this Court has only held that, the Magisterial Court has no jurisdiction to take resort to the provision under Section 156(3) of the Cr.P.C. This Court has not examined the merits of the case. Direct service is permitted.

(ILESH J. VORA,J)

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