

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.4582/2015

Suman

Vs.

State of M.P.

Shri Gulab Sharma, learned counsel for the applicant.

Smt. Mamta Shandilya, learned P.L. for the respondent/State.

ORDER

(Passed on 15/07/2015)

This application is filed under section 482 Cr.P.C. for quashing of charges under sections 384 & 506 part II of IPC and section 66-A of Information Technology Act.

2. Brief facts giving rise to this application are that the complainant was a tenant about year back in the house of the present applicant. They were having good and cordial terms with each other. They vacated the house and after vacating the house the present applicant started using obscene language on phone against the complainant. He also demanded rupees five lacs and said that he had some photographs of the complainant and that

photographs he would give to her husband. Subsequently, he placed one envelop on a Paan shop nearby and asked the complainant from mobile No.882785693 that the envelop is at the paan shop which she should collect and when the envelop was collected and opened by husband of the prosecutrix they found objectionable photographs of the complainant. The present accused threatened that he would upload the photographs on Internet and in the background of these facts, complaint was lodged and a Crime No.520/2014 under sections 384 & 506 part II IPC and section 66-A of Information Technology Act. The Magistrate after framing charges under aforesaid sections and aggrieved by this, the present applicant filed a revision before the Sessions Court which was made over to Additional Sessions Judge cum Special Judge, District Jhabua. By the impugned order dated 30.04.2015 passed in Criminal Revision No.20/2015 the learned Additional Sessions Judge considered provisions of section 240 Cr.P.C. and found no irregularity committed by the learned Magistrate and therefore the revision was dismissed.

3. Before this Court, this application is filed under section 482 Cr.P.C. challenging aforesaid two orders passed by the learned courts below. The learned counsel for the applicant did

not challenge the charges under section 384 and 506 part II IPC, however, so far as the charge under section 66-A Information Technology Act is concerned, he cites judgment of Hon'ble Apex Court in **Shreya Singhal vs. Union of India; AIR 2015 SC 1523** in which Hon'ble Apex Court declared section 66-A of Information Technology Act as unconstitutional in its entirety being violative of Article 19(1)(a) of Constitution of India. The learned counsel for the applicant prays that on the basis of above order of Hon'ble Apex Court charge under section 66-A of Information Technology Act must be quashed.

4. After going through the order of Hon'ble Apex Court in case of **Shreya Singhal (supra)**, I find that this application deserves to be allowed because the courts below did not take into consideration the order passed by the Hon'ble Supreme Court in the aforementioned case.

5. The impugned orders of courts below so far as they relate to charge under section 66-A of Information Technology Act are set aside. The matter is remanded back to the Court of concerning Magistrate with direction that after hearing both the parties on this point and after taking into consideration the order of Hon'ble Apex Court in case of **Shreya Singhal (supra)**, the learned Magistrate should decide the matter afresh. The

Magistrate is at liberty to proceed against the present applicant in any other provisions of the Act which has not been declared unconstitutional by the Apex Court.

6. With this observation and direction, this application stands disposed of.

(ALOK VERMA)
JUDGE