

Case :- U/S 482/378/407 No. - 5244 of 2021

Applicant :- Harsh Kadam @ Hitendra Kumar

Opposite Party :- State Of U.P. Thru Prin. Secy. Home And Anr.

Counsel for Applicant :- Dinesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Dinesh Kumar Shukla, learned counsel for the petitioner and Sri Aniruddh Kumar Singh, learned AGA for the State.

2. In view of the proposed order, notice to opposite party no.2 is hereby dispensed with.

3. By means of this petition, the petitioner has assailed Charge Sheet No.01 of 2019 dated 2.9.2019 and summoning order dated 25.1.2020 issued by Special Chief Judicial Magistrate, Lucknow in Criminal Case No.81347 of 2019 (State Vs. Harsh Kadam) arising out of Case Crime No.0221 of 2019, under Section 66A of the Information Technology (Amendment) Act, 2008, Police Station Naka Hindola, District Lucknow with further prayer to stay the proceedings of aforesaid criminal case.

4. Contention of learned counsel for the petitioner is that the impugned FIR is misconceived inasmuch as the petitioner has not committed any offence as alleged in the FIR, therefore, the charge sheet which has been filed under Section 66A of the Information Technology (Amendment) Act, 2008 (hereinafter referred to as "IT Act, 2008" for short) is patently unwarranted and uncalled for. Therefore, the charge sheet in question may be quashed and the summoning order dated 25.1.2020 issued by the Special Chief Judicial Magistrate, Lucknow may also be quashed.

5. Sri Aniruddh Kumar Singh, learned AGA, has submitted that vires of Section 66A of the Information Technology Act, 2000 has been assailed before the Apex Court in re; **Shreya Singhal vs. Union of India**, reported in (2015) 5 SCC 1, whereby the Apex Court vide judgment and order dated 24.3.2015 vide para 119 has struck down Section 66-A of the Information Technology Act, 2000 treating the same being violative of

Article 19 (1) (a) of the Constitution of India. Relevant portion of para-119 of the aforesaid judgment is being reproduced herein below:-

"119. In conclusion, we may summarise what has been held by us above:

Section 66A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2).

Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules, 2009 are constitutionally valid."

6. Sri Aniruddh Kumar Singh has also submitted that even in the bare Acts it has been indicated that Section 66A of the Act has been struck down by the Hon'ble Supreme Court vide order dated 24.3.2015 in re; **Shreya Singhal** (supra).

7. Therefore, as per Sri Singh, when the aforesaid provision of law has been struck down by the Apex Court vide judgment and order dated 24.3.2015, as to how any FIR could have been lodged in the year 2019. He has further submitted that when the FIR could have not been lodged under this section, as to how the charge sheet could have been filed in the same section. Further, when neither the FIR nor the charge sheet could have been filed in the present case, the learned Magistrate should have not issued summoning order.

8. In view of the above, I find that the aforesaid contention of Sri Singh is absolutely correct inasmuch as when the FIR could have not been lodged under Section 66A of the IT Act, 2008 for the reason that the aforesaid provision of law has been struck down by the Apex Court on 24.3.2015, as to how the charge sheet has been filed and the summoning order has been issued.

9. I put my note that this case is a clear-cut example of non-application of mind by the Investigating Officer who has filed charge-sheet on 2.9.2019 in a particular section i.e. Section 66A of the IT Act, 2008 which has already been struck down by the Apex court in re; **Shreya Singhal** (supra) on 24.3.2015 and by the learned court below who has taken cognizance of that charge-sheet without verifying that legal aspect which was incumbent upon him.

10. Therefore, I hereby quash the charge sheet which has been filed against the petitioner under Section 66A of the Information Technology (Amendment) Act, 2008 as well as the summoning order dated 25.1.2020 passed in the aforesaid criminal case.

11. This order shall be circulated to all the District Courts vis-a-vis shall be provided to the Director General of Police, U.P. so that no FIR be lodged under Section 66A of the IT Act, 2000 and in case any FIR has already been lodged after 24.3.2015 when the decision of the Apex Court in re; **Shreya Singhal** (supra) has come, no court to take cognizance on the charge sheet which has been filed under Section 66A of the IT Act, 2000.

12. The Senior Registrar of this Court shall ensure circulation of this order to the aforesaid authorities and after receiving the aforesaid order, the required exercise shall be carried out by the aforesaid authorities with promptness.

13. Before parting with, I appreciate the fair assistance being given by Sri Aniruddh Kumar Singh, learned AGA.

14. The petition is accordingly **allowed**.

15. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 13.12.2021

RBS/-