

Mohammed vs State (Feb 2010, Gujarat High Court)

Summary : Section 67 of Information Technology Act analyzed and held it is not applicable to the case of threatening email received by Chief Minister of Gujarat, hence ordered to be deleted from the matter.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD SPECIAL CRIMINAL APPLICATION No. 1832 of 2009

HONOURABLE MR.JUSTICE AKIL KURESHI

Mohammed vs State on 22 February, 2010 [SCR.A/1832/2009

ORAL JUDGMENT

Rule.

Learned APP Mr. R.C. Kodekar waives service of Rule for respondent, State of Gujarat.

1. Petitioner is original accused. A complaint was filed on 25.02.2003 before Satellite Police Station, Ahmedabad stating that the complainant while discharging his duties had on 30.12.2002 opened electronic mail box of the Hon'ble Chief Minister. While scanning through the mails received, he found one mail which reads as follows:

Dear Sir, After having look at your website Narendramodi.org. i would like to express my thoughts which are as under Thoughts (feedback) We will not take cool untill we will finish u and yr associates vhp, bajrangdal and rss, within the end of this february 2003 we will finish first u then advani and then by togadia and ashok singal. Just wait and be ready for the fight to hell. We are before u.

yours truly thrike-kasas ahmedabad Email:

tehrikakasas@yahoo.com

2. It was, therefore, alleged that by sending the said mail, serious offences have been committed which should be inquired into.

Investigation was carried out and ultimately investigating agency was of the opinion that petitioner had send the said mail. Charge-sheet was filed, therefore, for offences punishable under Section 507 of Indian Penal Code and Section 67 of The Information Technology Act, 2000.

Petitioner filed an application Exh.8 dated 19th August 2007 in said Criminal Case No.2908/2003 contending inter-alia that no case is made out against the petitioner. Both charges should, therefore, be dropped.

This application Exh.8 came to be turned down by the learned 8th Additional Senior Civil Judge & JMFC, Ahmedabad (Rural) observing inter-alia that looking to the nature of allegations and rise in such crimes in the society, it is not possible to discharge the accused without recording evidence. Same was, therefore, dismissed.

Petitioner is, therefore, before this Court challenging the said order of the learned Magistrate.

3. Learned counsel for the petitioner at the outset stated that the petitioner limits his request for deleting Section 67 of the Information Technology Act and does not press for discharge also for offence under Section 507 of Indian Penal Code. I have, therefore, heard learned advocates appearing for the parties only on this limited issue.

4. Contents of the complaint I have already briefly noted. As per the investigating agency, the petitioner had sent the above referred e-mail containing certain offending materials. Question is, even accepting the allegations of the investigating agency as true, whether offence under Section 67 of Information Technology Act can be stated to have been made out. Section 67 of Information Technology Act reads as follows:

Publishing of information which is obscene 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 five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

5. It can thus be seen that Section 67 seeks to punish publication of information through electronic form which is obscene in nature. Though term obscene has been used in the title of the section, in the main body of the section it is provided that any publication or transmission 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 shall be punished with specified penalty.

6. Term lascivious is not defined in the Act, however, in the Webster's Third New International Dictionary (Unabridged), word 'lascivious' is explained as inclined to lechery or tending to arouse sexual desire .

7. It can thus be seen that under Section 67 of the Information Technology Act, what is sought to be punished as publication or transmission of materials that is obscene in nature so as to be lascivious or which tends to deprave and corrupt persons who are likely to have access to the same.

8. Nothing in the said e-mail can be stated to be obscene or such material as can be categorized as lascivious or such which would deprave or corrupt person's mind who may have access to such mail. Ex-facie offence under section 67 is, therefore, not made out. The said provision is, therefore, required to be deleted against the petitioner.

9. Learned APP for the State, however, submitted that competent Court can alter charge at any stage of the proceedings. I have confined my observations and conclusions only with respect to Section 67 of Information Technology Act since no other provision of the said Act is pointed out to me which would apply. It will be open for the leaned Magistrate to proceed in accordance with law while conducting the trial for the remaining offence bearing in mind above observations.

10. In the result, petition is disposed of by directing deletion of Section 67 of Information Technology Act against the petitioner. Trial for rest of the charges shall proceed in accordance with law. Rule is made absolute to the above extent.

(Akil Kureshi, J.)