

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No.1263 of 2014
(under Section 482 Cr.P.C.)

Dr. Dinesh Pratap Singh & anotherApplicants
Versus	
State of Uttarakhand & othersRespondents

Hon'ble Sudhanshu Dhulia, J. (Oral)

1. Mr. S.S. Yadav, Advocate, present for the applicant.
2. Mr. S.S. Adhikari, Brief Holder, present for the State/respondent nos.1 & 2.
3. Mr. Ramji Srivastava, Advocate, present for the respondent no. 3 & 4.
4. A First Information Report was lodged against the applicant for the offence under Section 66A of Information Technology Act, 2000 and Section 505 of I.P.C. at Police Station Doiwala, Dehradun, consequently a charge sheet was filed on 31.05.2014. Section 66A of the Information Technology Act, reads as under:-

“66A Punishment for sending offensive messages through communication service, etc.- Any person who sends, by means of a computer resource or a communication device,-

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such message, shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation:- For the purposes of this section, terms “electronic mail” and “electronic mail message” means

a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.”

5. In a recent judgment of the Hon’ble Apex Court in ***Writ Petition (Criminal) No.167 of 2012 (Shreya Singhal Vs. Union of India, decided on 24.03.2015)*** has declared Section 66A of the Information Technology Act, as ultra vires to be in violation of Article 19 (1) (a) of the Constitution of India. Therefore, in any case the proceedings of Section 66A of Information Technology Act cannot go on.

6. Considering the nature of offence, the applicants will be at liberty to move an application for discharge in respect of Section 66A of the Information Technology Act. As regarding the offence under Section 505 of I.P.C., since it is a non cognizable offence the applicants would be at liberty to move a proper application under Chapter XX of Cr.P.C., including application under Section 258 of Cr.P.C. on grounds of insufficient evidence or any other ground available to him.

7. It is, however, made clear that the applicants shall not be arrested, unless the learned Magistrate records reasons for doing so.

8. With the above order, the application under Section 482 of Cr.P.C. stands disposed.

(Sudhanshu Dhulia, J.)
29.05.2015