

S. SEKAR V THE PRINCIPAL GENERAL MANAGER
(TELECOM) (B.S.N.L.)

COURT: Madurai Bench of Madras High Court

CITATION: W.P. (MD) No.10208 of 2005 and M.P.No.10905 of 2005

DECIDED ON: 14 November 2007

BENCH: Mr. Justice G. Rajasuria

LAW APPLIED: [Information Technology Act, 2000](#)

FACTS OF THE CASE:

The petitioner of this case is one S. Sekar who was an employee of the second respondent at BSNL. This case has in itself 3 respondents, out of which the 1st respondent is the Principal General Manager, Telecom (BSNL) (Trichy), 2nd respondent is the Sub Divisional Engineer-G (BSNL) (Keeranur) and the 3rd respondent is the Inspector of Police from District crime batch of Pudukottai. S. Sekar was working as a Telecom Technical Assistant (Switch). It was said that, when he was working for SIPCOT (The State Industries Promotion Corporation of Tamil Nadu Limited) Main Exchange, Keeranur the higher officials suspected him for having committing offences in manipulating the computer system and causing a huge loss to BSNL. Then, FIR (First Information Report) was filed against him on 6th January, 2004 in Crime no. 1 of 2004 by the police officials in Pudukottai. Section 406¹ (Punishment for criminal breach of trust), Section 420² (Cheating and dishonestly inducing delivery of property), Section 468³ (Forgery for purpose of cheating) and Section 43(g)⁴ (Penalty and compensation for damage computer) had been registered upon him. The prayer made to the court is, “Writ Petition filed

¹ Section 406 of Indian Penal Code, 1860.

² Section 420 of Indian Penal Code, 1860.

³ Section 468 of Indian Penal Code, 1860.

⁴ Section 43(g) of Information Technology Act, 2000.

under Article 226⁵ of the Constitution of India to issue a Writ of Declaration declaring the FIR registered by the 3rd respondent in Crime No.1/2004 dated 06.01.2004 as null and void in so far as this petitioner is concerned.”

ISSUES RAISED:

1. One of the main issues raised by the petitioner’s side in this case is that when there is a particular enactment namely, information Technology Act, which is in functioning with regard to the ostensible misconduct ascribed as against the petitioner, there is no doubt of invoking Indian Penal Code. It was also argued that a particular plausible argument Section 43(g) of the Information Technology Act, 2000, has been invoked without any reason.
2. The point for consideration is as to whether the F.I.R. referred to supra, has to be declared null and void as prayed by the Writ petitioner?

RULE APPLIED:

Section 43(g)⁶ of the Information Technology Act, 2000 is challenged before the Madurai bench of Madras High Court. Section 43 of the IT Act, 2000 clearly prohibits securing unapproved or illicit access to downloading, duplicating, removing information or data, introducing computer virus or causing harm, helping someone to commit contravention, stealing internet hours, destroying or modifying any data in the PC are some of the acts which are prohibited under the clause. Section 43⁷ of the Act accommodates certain sets of acts; whenever carried out by any individual without the authorization of the proprietor or person in charge of a computer or computer network commits any of the acts provided under the sub-sections (a) to (j) of Section 43, the person is liable to pay damages by way of compensation to person affected. Chapter IX of the Information Technology Act provided for the penalties and

⁵ Article 226 of the Constitution of India.

⁶ Section 43(g) of the Information Technology Act, 2000 provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

⁷ Section 43 of the Information Technology Act, 2000 - [Penalty and compensation] for damage to computer, computer system, etc.

adjudication which included 5 sets of sections from [Section 43 to Section 47](#). The provision under Section 43(g) of the Act shows the intent of the governing body to accommodate risk on the person who is helping some other individual committing contravention of any of the provisions under The Information Technology Act, 2000, Rules and Regulations made there under. Let's analyze in detail whether Section 43 will be applied to this case or not.

ANALYSIS OF THE CASE:

One of the main elements for Section 43 of IT Act to be applied to any case is that, it has to be proved. In a similar case, *A. Shankar v. State of Tamil Nadu*⁸ A. Shankar was held liable for recording a call of his higher officials and leaking the same. He was charged under Section 43 of the IT Act and other sections under IPC. He was held liable because in this case, it is proved that A. Shankar is guilty of accessing and leaking the conversation.

It would be right to place reliance upon Section 46⁹ of the Act which would develop his argument to the effect that Chapter IX of the Information Technology Act, 2000, contemplates about the imposition penalty for damaging the Computer, Computer System and hence forth. The appropriate authority is the one that is viewed under Section 46 of the Information Technology Act, 2000 and not the criminal court or some other court. Accordingly, we can infer that the police wasn't right in invoking Section 43(g) of the Information Technology Act, 2000 and indicate the same in the FIR and it is also held that the act of the police is pronounced and proved to be wrong. When Information technology Act, 2000 itself considers penal provisions there is no question of invoking I.P.C. offences, for which BSNL would effectively and convincingly present that it is for the criminal court at the appropriate stage to give a finding as to whether any offense under IPC has been made out or not and it is not for the Writ court to make an announcement with regards to whether IPC offenses have been prima facie found committed by the accused or not.

⁸ W.P.No.186 of 2009 and W.P.Nos.1 & 2 of 2009

⁹ Section 46 of the Information Technology Act, 2000 – Power to adjudicate.

CONCLUSION:

Going by the views made by he learned counsel for BSNL, it was held that it is up to the police to investigate completely into the issue and include or delete the penal sections under the Information Technology Act, 2000, as well as I.P.C. and ultimately, it is for the criminal court which would be seized of the matter to decide on that. Section 43(g) of the Information Technology Act is said to be invoked by the police officials is declared to be void in this case. Accordingly, Writ petition was ordered and S. Sekar wasn't asked to pay any amount as compensation.



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