

**SYED ASIFUDDIN V STATE OF ANDHRA PRADESH**

2005 Cri LJ 4314

CRIMINAL PETITION Nos. 2601  
and 2602 of 2003

- Sakshi Sahoo

**Court** – Andhra Pradesh High Court

**Bench** – V.V.S. RAO, J

**Decided on** – 29<sup>th</sup> July, 2005

**Relevant Sections** – Sections - 409, 420 and 120B of Indian Penal Code, 1860; Section – 65 of the Information Technology Act, 2000; Section – 63 of the Copyright Act, 1957.

**FACTS:**

A written complaint was filed on 31.05.2003, by the head of the sales and marketing wing of M/s. Reliance Info Comm limited, Hyderabad who is the second respondent in this case. After receiving the complaint the senior executive officer of Criminal Investigation Department(CID) on instructions by the additional director general of police , CID registered the crime number 20 of 2003 under the provisions of section 409, section 420 and section 120B of The Indian Penal Code,1860(IPC), section 65 of The Information Technology Act and section 63 of The Copyright Act. The complaint was about how the Tata Indicom employees manipulated the Reliance Info comm customers into similar other schemes provided by them. Under the scheme introduced by the Reliance Info comm was a handset worth ₹10,500. Initially the customer willing to pay for the service will pay ₹3,350 and the monthly outflow will be ₹600, along with 1-year warranty and 3 years of insurance. The only abiding condition was that it was technologically locked so that it would only work with the Reliance Infocomm services. If the customer decides to quit the service, then the customer

needs to pay the actual price of the handset along with the other service charges. It was so because the handset was a 3<sup>rd</sup> generation digital handset having feature one of a kind and for that the market responded in a remarkable way, which apparently affected the other service providers and hence led them to do illegal practices such as manipulating the customers of the second respondent by calling them from a random number and offering them other similar schemes at a reasonable and lower price than the Reliance Infocomm that is ₹3000 (₹500 less than the provided service by the reliance info comm) and an activation fee of ₹540. The calls were made by the employees of the Tata Indicom company from places that are Abids, Begumpet, Koti, Himayatnagar and Malak-pet. After the call if the customer of the second respondent agrees to the deal that is keeping the handset of the Reliance info comm but with other services they are asked to meet any of the business associates of the other service provider. At most they are asked to wait for 1 hour to 45 minutes and the conversion takes about 45 minutes to 1 hour. In the conversion process the ESN (Equipment Special Number) is hacked and then it is given back to the customer and he is asked to switch it off and then again switch it on to enjoy the new services. After receiving this complaint two investigating officers were sent to conduct a raid at the head office of the TATA Indicom situated in Khan Lathif Khan Estate, Hyderabad. The investigating officer arrested Raj Naren and Shaik Mustaffa who revealed the general manager and the manager of the marketing department knew about the re-programming of the handsets and he had purchased a handset from the Reliance Infocomm network, respectively. They also arrested Syed Asifuddin, Pattay Navin Kumar and Khaja/ Gareed Nawaj and Manoj. After investigating the report was presented in front of the court of XI, Metropolitan Magistrate, Hyderabad, 3.06.2003. The petitions were filed on 17.03.2003, in order to quash the FIR. And miscellaneous petition was also filed.

### **ISSUES: -**

1. Whether the investigation can be quashed by the court or not with offenses under sections 405,420 and 120B of the IPC?
2. Since the mobile identification number of the Reliance handsets are irreversibly integrated with the ESN and it was tampered and re-programmed by the TATA Indicom employees, will that be considered as altering the computer source code?

**RULE: -**

In this case, *State of West Bengal v. Swapan Kumar*, and *State of Haryana v. Bhajan Lal* it was stated that if a case has charges such as section 409, section 420 and section 120B of The Indian Penal Code, then a criminal trial cannot be conducted or it will surpass the judgement given by the Supreme Court of India. In such cases the court can quash the investigation on the basis of the information provided by the police and if the FIR does not imply a cognizable offence then the police has no power to investigate the case.

In the case, *R.P. Kapoor v. State of Punjab*, ; *State of Haryana v. Bhajan Lal*, 1992 Cri LJ 527 (SC) (supra) and *State of Tamil Nadu v. Thirukkural Permal* it was stated until the police investigation is proven to be illegal or will lead to exploitation of justice the investigation cannot be quashed, this was the reference that was made from these cases in the present case.

**APPLICATION: -**

After hearing the arguments of both the side that is the petitioner and the respondent the court first decided to deal with the issues separately and then deal with the case of prosecution on the basis of prima facie conclusion.

At first the court tried to understand the meaning of the term computer from the section 2(1) of the Information Technology Act that is, any electronic, magnetic or optical device used for storage of information received through satellite, microwave or other communication media and the devices which are programmable and capable of retrieving any information by manipulations of electronic, magnetic or optical impulses is a computer which can be used as computer system in a computer network. And then proceeded to understand the term computer source code that is, computer source code or source code, or just source or code may be defined as a series of statements written in some human readable computer programming language constituting several text files but the source code may be printed in a book or recorded on a tape without a file system, and this source code is a piece of computer software.

The court observed that through prima facie by interfering with the ESN of the Reliance company handset users it attracts the section 65 of The Information Technology Act, but

there is no legislation with regard to protect the computer source code. The disjunctive word "or" is utilized by the Legislature between the expressions "when the computer source code is required to be kept" and the other expression "kept up by law for the present in power" and, hence, both the circumstances are unique. The Court, in this case, hurries to include that whether a wireless administrator is keeping up computer source code, involves proof. Most definitely, passing by the claims in the protest, it turns out to be certain that the subsequent respondent is in reality keeping up the computer source code. In the event that there is claim against any individual including the candidates, positively an offense under Section 65 of I.- T. Act is made out. In this manner, the wrongdoing enlisted against the applicants can't be suppressed as to Section 65 of the I.- T. Act.

Coming to section 63 of The Copyright Act,1957 perusing the clauses 2(o), (ffc) and sections 13 and 14 together one will presume that there is altering of data by the applicants prompting encroachment of the copyright of the Reliance organization and considered the contentions present for sake the subsequent respondent.

### **CONCLUSION: -**

The crime number 20 of 2003 which was charged under section 409, section 420 and section 120B are quashed and also the criminal petitions filed under the section 65 of The Information Technology Act and section 63 of The Copyright Act were also dismissed and the CID under whom the complaint was registered is asked to complete the investigation and then file a final report in the Metropolitan Magistrate Court who will take the cognizance of the case and within three months from this judgement.