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A Critique on Syed Asifuddin and Ors. v. State of Andhra Pradesh and Anr. [2006]

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Abstract

A petition was filed in the High Court of Andhra Pradesh under Section 482 of CrPC, 1937 for some relief of quashing the F.I.R. done against them. A case was filed against the petitioners by Reliance Infocomm Ltd., Hyderabad under various sections of IPC, the Information Technology Act, and the copyright act. The Reliance company launched a mobile phone of Rs.10,500 with a service bundle for three years and with the payment of Rs.3,350 only, this scheme helped them to sell so many phones and they made good profit with the scheme. The rival companies now got jealous of them and they used some wrong or illegal ways to steal the users from Reliance, they launched their low-cost tariff plans and did the publicity of their plans, and attracted the customers towards themselves. This made some customers change their services from Reliance to TATA Indicom. And due to this, Reliance went into loss, and then they filed a case against the employees of TATA Indicom for stealing their customers using wrong and illegal ways.

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Facts of the Case

In this case, a petition under section 482 of CrPC was filed in the Andhra Pradesh High court for quashing FIR against the petitioner. The Reliance company under the Dhirubhai Ambani pioneer Scheme started a new offer in which they would sell a digital handset of the third-generation model with some eye-catching tariff plans, in an affordable amount of Rs. 10,500 and also can pay Rs. 3,350 for three years as installments. This scheme turns out to be a great success, many customers got attracted by the scheme and bought the digital handset but due to this, the other service provider suffered losses. To regain the losses the rival companies of Reliance started using illegal ways to attract customers to themselves, they started calling and messaging the customers by providing them with better tariff plans and also telling them that they can change their services any time from the Reliance. The employees of the TATA Indicom hacked and tampered with the CDMA digital phones belonging to the customer and the Reliance because for three years they both are the owner of the digital handset. They brought the digital handset to their stores in the name of changing the service, they hacked the phones and also there was a special agreement between the mobile producing companies Samsung and LG, that the specially produced mobiles will only be used by Reliance. Then Reliance filed a case against the employees of TATA Indicom under section 409², 420³, and 120B⁴ of Indian Penal Code, 1860, section 65⁵ of the Information Technology Act, and section 63⁶ of the Copyright Act.

Issues Raised

- I. *Whether a telephone handset is a computer under Section 2(1) of the Information Technology Act?*
- II. *Are the petitioners liable under Sections 409,420 and 120B of the Indian Penal Code?*

² Criminal breach of trust by public servant, or by banker, merchant or agent.

³ Cheating and dishonestly inducing delivery of property.

⁴ Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

⁵ Tampering with computer source documents.

⁶ Offence of infringement of copyright or other rights conferred by this Act.

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Arguments of the Parties

Arguments by the Petitioners

The petitioners argued that a subscriber can always change from one service provider to another and he can go to the service provider with his phone to change the services. The handset provided to the customers by Reliance Infocomm is capable of accommodating two separate lines and both the service can be activated on the handset. The mere activation of the services in any mobile does not amount to a crime. The employees of TATA Indicom haven't deceived the customers fraudulently or dishonestly, they just provided their tariff plans to the customers, the customers themselves went to TATA Indicom for changing their services so they are not liable under section 420. The telephone handset does not come under the definition of section 65 of the Information Technology Act hence it's also not applicable in this case.

Arguments by the Respondent

When any cognizable offenses under the various provisions of the different statutes are registered and the investigation is pending, the court cannot quash the F.I.R at the stage of the investigation. The police after doing the preliminary investigation have concluded that the petitioners have committed offenses consisting of highly technical aspects and until and unless the evidence is not provided the FIR should not be quashed.

Judgment

The court ruled that the offenses under section 409,420 and 120B of the Indian Penal Code, 1860 has been quashed because there was no sufficient evidence in regards to these offenses whereas in offenses under section 65 of Information Technology Act, 2000 and section 63 of the Copyright Act, 1957 the court has dismissed the petitions. After all, getting access to the computer code can be used as a piece of evidence, and hence they can be liable under section 65 of the Information

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Technology Act. The court directed the police to complete the investigation within three months and present a final report to the metropolitan magistrate to take cognizance of the case. In the end, the FIR was not quashed because there is no proper justification in doing so, for an F.I.R to be quashed the probation should be illegal or wrong which was not the case here, and hence their petitions were rejected.

Analysis

This case was a case where the offenses consisted of so many technical aspects. The petitioners here asked for quashing the F.I.R against them because some of the sections were not applicable for them like section 420,409 of IPC because there was no fraudulent intake of any property or material from the customers. The customers came there only to change their services and the petitioners also only changed the service. But as a matter under section 65 of the Information Technology Act, it is a matter of concern as to whether mobiles phones come under the definition of computer sources or if tampering with the handset is equal to tampering with the computer. They hacked the devices of the customers and also came in between the agreement of mobile producing companies and Reliance and legally the customers and the Reliance both were the owners of the handset until 3 years, so they are required to take permission from both the owners.