

(2021) 03 P&H CK 0357

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 29553, 30630, 38917 Of 2020, 7740 Of 2021

Ramandeep Singh @ Ramandeep Singh Aulakh And Another APPELLANT
Vs

State Of Punjab RESPONDENT

Date of Decision : 17-03-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 379, 381, 406, 408
Information Technology Act, 2000 — Section 43, 66, 66B, 78
Code Of Criminal Procedure, 1973 — Section 210

Citation : (2021) 03 P&H CK 0357

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : D.N. Ganeriwala, Rashmi Attri, Sunil Chadha, Lakshay Bector

Final Decision : Dismissed

Judgement

Heard.

The applications are allowed and reports and the documents, as prayed for, are taken on record.

The applications stand disposed of.

Main case

1. The petitioners herein seek anticipatory bail in FIR No. 29 dated 20.10.2020 registered under Sections 406, 408, 379, 381, 120-B/34 of the Indian Penal Code and Sections 43, 66, 66-B of the I.T. Act, 2000 at Police Station Punjab State Cyber Crime, District Mohali.

2. Brief facts, as culled out from the FIR, are that M/s TCY Learning Solutions Private Limited is leader in the field of education technology and test preparation including classroom and online coaching. The company has been in the business for more than a decade and had developed its own software for imparting

education. Petitioner No.1 had joined the Company in February, 2015 as Deputy Manager Marketing and subsequently resigned to set up another company along with Jagjit Singh (petitioner No.2) and one Rupinder Singh in the year 2018 and formed a Company in the name of M/s Exoways Web Technologies Pvt. Ltd. That there was leakage of its software. The complainant got to know from the market that a company under the brand name of "Fourmodules.in/Fourmodules.com" was providing software with similar look and use as that of the complainant. Therefore, the complainant in order to check theft from the employees created a fake client data which had fake E-mail Ids. The said data was posted on the server of the company and its access was open to the employees of the Company. The complainant was stunned when it received a promotional mail from Fourmodules.in/Fourmodules.com on an email ID which was fake and intentionally added in the fake client data which was posted on server of the company. The said Email ID was not used at any other place. It was created to find about the leakage in the complainant's company. The said data/email ID was posted on the server of the company and its access was open only to select few and accused No. 1 (Rahul Nagpal) was one of them. That the complainant investigated and found out that the software used by accused no. 3 to 5 with others is based on the Source Codes of the complainant's software (as taken from FIR).

3. On coming to know that the web applications used by the accused were identical to the same of the files of the complainant- company, a report was obtained from M/s Webrosoft Solution Pvt. Ltd., which compared the files of the complainant with the Fourmodules.in/Fourmodules.com. As per report submitted, the material of Fourmodules.in/Fourmodules.com is similar to that of the complainant- company. On the complaint so received from the complainant-company, investigation was conducted and thus the above said FIR came to be registered.

4. Mr. D.N. Ganeriwala, learned counsel appearing on behalf of the petitioners herein raises a three-fold arguments. It is submitted that the investigation is not being conducted by a police officer as per Section 78 of the Information Technology Act, 2000 as the investigation is to be done by a police officer not lower than the rank of Inspector, whereas the FIR has been registered at the behest of a Sub-Inspector. It is argued that there is a report of Stellar Data Solutions Pvt. Ltd. Dated 1.12.2020 (Annexure P/8) regarding analysis of WEBROSOFT's report relied by the complainant-company and the conclusion in the said report is "The aforesaid 10 images are open-source and freely available on the internet. Anyone can use/edit/modify these images since they are without copyright of the original author. Therefore, solely on the basis of these 10 images which are open-source and freely available on the internet cannot be the basis to arrive at a conclusion that 'complete website/web application has been copied.'"

5. It is also submitted that the FIR would not be maintainable in the light of the fact that the complainant-company has already filed a complaint, which is

pending in the court of Illaqa Judicial Magistrate, Ludhiana in the year 2019 on similar allegations, in which proceedings, the complainant is not stepping forward to adduce evidence and, therefore, the instant FIR is nothing but a sheer abuse of process of law.

6. The anticipatory bail stand contested by the learned Senior Counsel appearing on behalf of the complainant as well as the respondent- State.

7. Mr. Sunil Chadha, learned Senior Counsel would argue that the complainant-company had invested a huge amount of money for developing a software and the petitioners, who are former employees of the complainant-company, stole the technology and are now using the same software by forming a company under the name of FourModules.com. Thus, the accused have conspired to cause wrongful loss to the complainant. Learned Senior Counsel would also rely upon the report as submitted by M/s Webrosoft Solutions Private Limited, which has given an opinion that the software used by Fourmodules.in/Fourmodules.com is similar to that developed by the complainant company. It is further submitted that the complainant company had developed its software as far back as 2000, whereas Fourmodules.in/Fourmodules.com came into existence only on 27.1.2019 that is after its former employees had left the complainant company. As regards, the contention that the investigation is not being carried out by a police officer in terms of Section 78 of the I.T. Act, it is submitted that there is no such material available on the record to substantiate this plea. It is also submitted that merely because the FIR has been registered by a Sub-Inspector, it would not be a conclusive proof that the investigation is being conducted by a person not duly authorized to do so. Similarly, it is submitted that there is no bar of an FIR being registered on the same set of allegations as made out in the complaint. In fact, the complaint filed before the court, does not carry the necessary details of having set up a fake Ids to trace who were misusing the source code of the complainant company and in any case Section 210 of the Code of Criminal Procedure lays down the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. This section provides for clubbing of the same.

8. Ms. Rashmi Attri, AAG, learned counsel for the respondent- State would submit that in order to unearth the truth and for effective investigation of the matter, the custodial interrogation of the petitioners is necessary. The modus operandi adopted by the petitioners and the tool used in the commission of offence would only be ascertained on custodial interrogation of the petitioners herein. It is also submitted that the investigation is being conducted by a person of the requisite rank.

9. I have heard learned counsel for the parties and have also perused the pleadings of the case as well as the two reports relied upon by the petitioners as well as the complainant.

10. Even though, the report relied by the learned counsel for the petitioners,

concludes "The aforesaid 10 images are open-source and freely available on the internet. Anyone can use/edit/modify these images since they are without copyright of the original author.", however, the observations made in the said report to the extent "We do not have access to TCYONLINE application and it is not possible to ascertain if a software has been copied/stolen without comparing the Source Code, Database Architecture & Database. A detailed, deep & thorough comparison of both the Web Application is required to reach any conclusion" cannot be ignored. There is a categoric finding therein that it would not be possible to ascertain if the software has been copied/stolen when compared with the Source Code of TCYONLINE Application. Whereas, on the other hand, there is also a report of M/s Webrosoft Solutions Private Limited, which had done a comparison of two web applications for PTE and IELTS mock test modules found on <https://www.tcyonline.com> and <https://fourmodules.in> was carried out both visually and using professional file comparisons tools as appropriate. The two web applications were found to be using many identical files with same names and identical digital fingerprints, similar layouts and similar programming code snippets. The report of M/s Webrosoft Solutions Private Limited further holds "Further the final PTE Academic score report generated by PTE modules of both the web applications after the test is completed by the candidate also has strong similarities in appearance including title of the score card graph "Scaled Score" appearing exactly at the same position at value 26 of the 0-90 scale provided on both the web applications"

11. In somewhat similar circumstances, this Court in a judgment rendered in *Abhinav Gupta Versus State of Haryana* 2009 (2) RCR (CrL.) 108 has held that where cyber crime is involved and the complainant accuses its former manager of stealing its software data and a case is registered under the Information Technology Act, anticipatory bail ought not be allowed. The instant case involves complicated questions as to how the software was stolen and what modus operandi was used by the accused to do so, for which custodial interrogation is necessary.

12. Consequently, this petition is dismissed. However, it is made clear that any observations made herein above have been made only for the purpose of disposal of this petition, which shall have no bearing on the merit of the case.