

(2007) 11 MAD CK 0138

In the Madras High Court

Case No : Writ Petition (MD) No. 10208 of 2005 and M.P. No. 10905 of 2005

S. Sekar

APPELLANT

Vs

The Principal General Manager (Telecom), (B.S.N.L.) Bharat
Sanchar Nigam Ltd., The Sub Divisional Engineer (G),
(B.S.N.L.) Bharat Sanchar Nigam Ltd. and Inspector of Police,
District Crime Branch

RESPONDENT

Date of Decision : 14-11-2007

Acts Referred:

Information Technology Act, 2000 — Section 43, 46, 46(5)
Penal Code, 1860 (IPC) — Section 406, 420, 468

Citation : (2007) 11 MAD CK 0138

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : K.P.S. Palanivel Rajan, for the Appellant; M.D. Poornachari, for
Respondent Nos. 1 and 2 and So. Paramasivam, Additional Govt. Pleader, for the
Respondent

Judgement

G. Rajasuria, J.—This petition has been filed to declare 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.

2. Heard both sides.

3. The facts giving rise to the filing of this petition as stood exposted from the
averments in the affidavit accompanying the writ petition would run

thus:

The petitioner is an employee of the second respondent, B.S.N.L, working as a
Telecom Technical Assistant (Switch). It so happened that while

he was working in SIPCOT MBM Main Exchange, Keeranur, the B.S.N.L. higher
officials suspected him and others for having committed

offences in manipulating the computer system and thereby causing loss to B.S.N.L. The F.I.R. in crime No. 1 of 2004 was came to be registered

on 06.01.2004 by the Police, Pudukottai, for the offences u/s 406, 420 and 468 I.P.C. and 43(g) of the Information Technology Act, 2000.

4. The main thrust of the grievance of the petitioner in this case is that when there is a special enactment namely, the Information Technology Act,

2000, which is in operation relating to the alleged misconduct attributed as against the petitioner, there is no question of invoking the penal sections

under the Indian Penal Code. It is also his specific plausible argument that Section 43(g) of the Information Technology Act, 2000, has been

invoked without any basis.

5. Per contra, the second respondent filed the counter which was adopted by the first respondent also, denying and refuting the allegations and the

averments highlighting that the F.I.R. registered was proper and the Police is investigating into the matter properly.

6. 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?

7. The learned Counsel for the petitioner correctly and properly placing reliance on Chapter IX of the Information Technology Act, 2000, and

more specifically on Section 46 of the Act, 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, etc. The appropriate authority is the one contemplated

u/s 46 of the Information Technology Act, 2000 and not the criminal court or any other court. He would draw the attention of this court that the

procedure to be adopted is only CPC as per Section 46(5) of the Act relating to proceedings under Chapter IX of the Act. It is therefore crystal

clear that the police was wrong in invoking Section 43(g) of the Information Technology Act, 2000, and specify the same in the F.I.R. and to that

much portion, the Act of the Police is declared to be wrong and ultra vires the Chapter IX of the Information Technology Act, 2000.

8. The learned Counsel for the petitioner would develop his argument further to the effect that when Information Technology Act, 2000 itself

contemplates penal provisions, there is no question of invoking I.P.C. offences, for which the learned Counsel for the B.S.N.L. would correctly

and convincingly submit that it is for the criminal court at the appropriate stage to give a finding as to whether any offence under I.P.C. has been

made out or not and it is not for the Writ court to make a declaration as to whether I.P.C. offences have been prima facie found committed by the

accused or not.

9. Hence, agreeing with the submission made by the learned Counsel for B.S.N.L., I would like to observe that it is for the Police to investigate

thoroughly into the matter and add 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. The Section 43(g) of the Information Technology Act, 2000, invoked

by the police and specified in the F.I.R is declared void. Accordingly, the Writ petition is ordered. No costs. Consequently, connected M.P.is

closed.