

(2019) 12 KAR CK 0021
In the Karnataka High Court
Case No : Criminal Petition No. 8249 Of 2014

Sunil Bharti Mittal And Ors

APPELLANT

Vs

N.Naresh Kumar

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 91, 92, 92(1), 92(2), 92(3), 200, 202, 482
Indian Penal Code, 1860 — Section 34, 406, 503, 504, 506, 506(B), 507
Information Technology Act, 2000 — Section 66A, 72, 72A
Evidence Act, 1872 — Section 123, 124
Indian Telegraph Act, 1885 — Section 5(2)
Indian Telegraph (Amendment) Rules, 2007 — Rule 419A

Citation : (2019) 12 KAR CK 0021

Hon'ble Judges : R. Devdas, J

Bench : Single Bench

Advocate : C.V. Nagesh, Satyanarayana Chalke, Manjunath B.R., Mahesh Shetty

Final Decision : Allowed

Judgement

1. This petition is filed under Section 482 of Code of Criminal Procedure, with a prayer to set aside the order of the Magistrate, taking cognizance and to quash all further proceedings in C.C.No.66882/2014 pursuant to PCR No.117/2013 on the file of the Addl. Chief Judicial Magistrate Bangalore Rural District, Bangalore for the offences punishable under Sections 406, 504, 506(B) IPC and Sections 72-A and 66-A of Information Technology Act, 2000.

2. A private compliant under Section 200 Cr.P.C. was lodged by the Respondent No.1 stating that the Complainant is a customer of 'Airtel' Service Provider for the prepaid sim-card of the complainant. It is the case of the complainant that accused No.5 is the wife of complainant and there is a family dispute between the complainant and accused No.5. The complainant had filed divorce petition against his wife and the same was pending consideration before the Family Court at Bengaluru. It is stated in the complaint that after the dispute arose between

husband and wife, the complainant changed his earlier mobile phone number and was using a different number. It is alleged by the complainant that the wife colluded with the petitioners herein to collect the complainant's call details between 1/10/2012 to 09/10/2012. It is stated in the complaint that the complainant received certain calls from anonymous persons enquiring about the complainant's identity and whereabouts since 10/10/2012. The complainant is said to have lodged a complaint before the Commissioner of Police on 25/10/2012 and before the Joint Commissioner of Police and jurisdictional Police, Soladevanahalli.

3. The complainant further states that in this regard the complainant communicated through several e-mails between 27/10/2012 to 03/11/2012 to petitioners herein. It is also stated that complainant had several telephonic conversations with petitioner No.4 who was the then Nodal Officer of Bharati Airtel Limited, No.55, Divyashree Towers, Bannerghatta Main Road, Bangalore-29.

4. The complainant seems to have raised a issue with the petitioner No.4 herein that they had disclosed his call details to 3rd parties without the consent of the complainant. However it is also stated in the complainant that petitioner No.4 denied having received any such complaint and service provider would not disclose the call details without the authorization or the consent of the sim card holders. In short, the allegation made by the First Respondent complainant is that the petitioner's being service provider, have given call details of the complainant without his consent and therefore the accused persons are liable for punishment Under Sections 72, 72-A & 66-A of Information Technology Act, 2000 and also under section 406 of IPC.

5. On the receipt of the complainant the Magistrate referred the complaint to the Soladevanahalli Police for investigation and report . Pursuant to the same, the Jurisdictional Police Registered a case in crime No.65/2013 for offences punishable under sections 406, 503, 506, 507 and 34 of IPC and under sections 66-A, 72 and 72-A of Information Technology Act, 2000 against the petitioners herein and wife of the complainant.

6. On investigation, the investigating officer submitted a 'B' final report to the Magistrate. The Magistrate on the basis of the protest petition filed by Respondent No.1, took cognizance of the offences in the complainant and thereafter posted the matter for recording of sworn statement of the complainant. After recording of the sworn statement of the complainant, the Magistrate directed the Assistant Commissioner of Police(North Division) Bangalore to further investigate into the matter and submit a report to the court. The Assistant Commissioner of Police submitted a report stating that there is no truth whatsoever in the allegations made by the complainant and the complaint is motivated, seeking to wreck vengeance against the wife of the complainant.

7. Despite two reports, the Magistrate passed an order dated: 31/10/2014 directing registration of the case against the petitioner. Being aggrieved by the

same the petitioners are before this court.

8. Sri C.V. Nagesh, learned Senior Counsel appearing for the petitioners would submit that this is a clear case of abuse of process of this court. The petitioner No.1 is the Chairman of the Bharati Airtel Limited, while the petitioner No.2 is the Managing Director and both of them take care of the affairs of the company sitting at New Delhi. It is submitted that on the face of it, it is clear that petitioner No.1 and petitioner No.2 have nothing to do with the complaint made by the complainant. Similarly petitioner No.3 is a chief executive officer and the petitioner No.4 is Nodal Officer of the company sitting at the office in Bennarghatta Main Road, Bengaluru.

9. Learned senior counsel further submits that in a criminal proceedings, the question of vicarious liability would not arise. Moreover, it is submitted that if a Police Officer, during the course of investigation of the case requires the call details of a person, then the concerned officer of the Service Provider is required to give such information. On the contrary, if such information is not made available to the Police Officer, then in all probability, the service provider can be hauled up for not providing the information and creating hurdles in the duty of a Police Officer. The learned Senior Counsel, while pointing out to the statement given by Accused No.5 i.e. wife of the complainant, would submit that on 10-10-2012, the concerned Police Officer, secured call details of her husband since she had made a complaint to the police that her husband had been missing. It is in this regard that the jurisdictional police had to secure the call details of the complainant since there was a complaint made by complainant's wife that the complainant has been missing from his residence.

10. Learned Senior counsel would submit that in fact Section 92(2) of Code of Criminal Procedure empowers the Police Officer to seek for such information from the postal or telegraphic authority, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub Section 1 of Section 92 Cr.P.C. The learned Senior Counsel would further submit that Sections 91 and 92(2) of Cr.P.C., were being invoked by the Police Officers till January, 2014. Sections 91(1) to 91(3) of Cr.P.C read as follows:-

91. Summons to produce document or other thing:

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes

such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed:

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872(1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

Since January 2014, the Ministry of Communication and Information Technology Department, Department of Telecommunications (Security Wing) of Govt. of India, has issued a circular dated 02.01.2014 to all Telecom Service Providers including Bharti Airtel Limited enclosing mandatory clauses of Standard Operating Procedure (SOP) of lawful interception and monitoring for Telecom Service Provider. It is pointed out from the Mandatory clauses, especially that clause 3.5 would provide, whenever a Legal Enforcement Agency asked for call detail recorder of a particular subscriber under Section 92 of Criminal Procedure Code, (Cr.PC) or under Section 5(2) of the Indian Telegraph Act, 1885 read with Rule 419A of Indian Telegraph (Amendment) Rules 2007, by providing the mobile or landline number etc., the Call Detail Records must be provided in a format prescribed by Department of Telecommunications giving out all the 13 details mentioned in Clause 3.5. Therefore, the learned Senior Counsel would submit that no fault can be found with the Service Provider. Moreover the Chairman and Managing Director are in no way involved in the day-to-day activities of the Branches in the country. He further submits that if the officer incharge of the branch were to decline to give any such information, then even the said Officer would be liable for penal action. The investigating officer having investigated into the matter and having filed 'B' report and moreover when Assistant Commissioner of Crime also went into the issue and submitted report to the Magistrate, the learned Magistrate could not have ignored the report.

11. The learned counsel has also pointed out that when a person is beyond the jurisdiction of the Court, then as provided in Section 202 of Cr.P.C, the Magistrate is required to postpone the issue of process against the accused or enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

12. Having heard the learned Sr. counsel and perusing the petition papers, this Court finds that on plain reading of the complaint, it is evident that the offences sought to be made out against the petitioners who are Service Providers, are not attracted. As rightly pointed out by the learned Senior counsel the service providers are duty bound to give information whenever required by a Police Officer who is investigating into the matter and the learned Senior counsel is right in his submissions that if such request is made by Police Officer and if the local Branch Officer does not disclose the information, then he may be liable for

criminal action and may be liable for penal consequences. The learned Magistrate was duty bound to look into these aspects and moreover, petitioners No.1 and 2, who are the Chairman and Managing Director of the Service Provider company, sitting at New Delhi, are in no way involved in the day- to-day activities of local branches across the country.

13. Incidentally in a matter involving the very same petitioner i.e., in the case of Sunil Bharati Mittal Vs. Central Bureau of Investigation reported in (2015) 4 SCC 609, the Apex Court has held that when a Company is accused, its Directors, can be roped in only if there is sufficient incriminating evidence against them coupled with criminal intent or a statutory regime attracts the doctrine of vicarious liability. Therefore, unless and until there is incriminating evidence against the Directors of a Company, coupled with criminal intent, criminal proceedings cannot be initiated against the Directors of a Company. It is clear from the complaint that no such allegation either of criminal intent or any incriminating evidence to allege personal motive against the petitioners herein are found.

For the reasons stated above, this Court is of the opinion that no case was made out against the petitioners and the learned Magistrate could not have proceeded to take cognizance of the complaint made by the first respondent herein. Consequently, the petition is allowed and the order taking cognizance by Addl. Chief Judicial Magistrate, Bangalore Rural District, Bangalore and all further proceedings in CC No.6882/2014 pursuant to PCR No.117/2013 are hereby quashed and set-aside as against the petitioners herein. It is ordered accordingly.