

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WP(C).No. 18834 of 2015 (D)

PETITIONER :

M/S. SPIRAL INFORMATION SYSTEMS
CC NO.34/1149, (BMRA 17) BALAKRISHNA MENON ROAD
EDAPPALLY, ERNAKULAM 682 024
REPRESENTED BY ITS MANAGING PARTNER N.A.AUGUSTINE.

BY ADVS.SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
SRI.K.AMAL NATH NAIK
SMT.DEEPTI SUSAN GEORGE
SRI.ARJUN RADHAKRISHNAN NAIR
SMT.ANUSREE SURESH

RESPONDENTS :

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1. THE ASSISTANT COMMISSIONER OF POLICE
OFFICE OF THE ASSISTANT COMMISSIONER OF POLICE
THRIKKAKARA, ERNAKULAM 682 021.
 2. THE SUB INSPECTOR OF POLICE
KALAMASSERY POLICE STATION, SOUTH KALAMASSERY
ERNAKULAM 683 104.
 3. CENTRE FOR DEVELOPMENT OF ADVANCED COMPUTING (C-DAC)
P.B NO.6520, VELLAYAMBALAM
THIRUVANANTHAPURAM 695 033.
 4. RESHIMON K.R
S/O.K.A.RAJAN, KAROOTVEEDU, MUPPATHADAM P.O
ALUVA, ERNAKULAM 683 103.

R1 BY GOVERNMENT PLEADER SMT.SAREENA GEORGE
R4 BY ADVS. SRI.K.R.VINOD
SMT.M.S.LETHA
MS.JENCY SUSAN JOSE
SRI.V.SRI NATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-09-2015, ALONG WITH WPC. 25808/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 18834 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE LEGAL NOTICE DATED 3.1.12 SENT BY THE PETITIONER TO THE 4TH RESPONDENT.

EXHIBIT P2. COPY OF THE REPLY NOTICE DATED 16.1.12 SENT BY THE 4TH RESPONDENT TO THE PETITIONER.

EXHIBIT P3. COPY OF THE FIR DATED 10.3.12 IN CRIME NO.468/12 REGISTERED BY THE KALAMASSERY POLICE STATION.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.RAMAKRISHNAN, J.

W.P.(C).Nos.18834 & 25808 of 2015

Dated this the 10th day of September, 2015

J U D G M E N T

W.P.(C).No.18834/2015 was filed by the petitioner for directing the 4th respondent to conduct proper investigation and to expedite the investigation. W.P.(C).No.25808/2015 was filed by the same petitioner against the same respondents seeking direction to the 2nd respondent to include certain offences also in the First Information Report, under Article 226 of the Constitution of India.

2. It is alleged in both the petitions that, the petitioner is a partnership firm registered under the Indian Partnership Act, 1932 and engaged in the business of software development and export, consultancy and software solutions. The petitioner is represented by its Managing Partner. The petitioner is a reputed Software Development and Solution company and they are having contact with several reputed companies of this nature all over the world and they are based their development out of Republic of South Africa. The 4th respondent had joined the services of the petitioner as a Software Developer and Software Tester in the year 2003 and in the same year two other persons by name Jyothish.P and Jithin.E were also joined in the services of the petitioner respectively as Software Developer and Software Tester. During the course of their employment, the 4th respondent along with the above said persons

had worked on an Enterprises Software/Enterprises Management Solutions in the name and style "Accent" developed by the petitioner. It was a Product developed and perfected by the petitioner over a period of five years by spending more than ₹75 lakhs. Though the Software Product was primarily meant for application in the telecommunication industry, it could be customised to suit the need of any organisation or business enterprise. During the year 2008, due to the distinct and useful features of the Software Product, the petitioner was receiving several trade enquiries which materialsied into business and he gained clients/customers of good reputelike M/s.Bharati Airtel Limited (Airtel). From 2008 onwards, as part of his employment Sri.Cinoj Valookaran was assigned with marketing the Software Product of the petitioner. In September 2009, when the said Cinoj was negotiating with the principal and responsible officers of M/s.Indus Towers Limited, a telecommunications infrastructure company, he informed the petitioner that, he along with the 4th respondent, Sri.Jyothish and Sri.Jithin were planning to resign from the services of the petitioner stating personal reasons. They have left the services of the petitioner for the reason stated in the resignation letter. During the second half of the year 2010, to the utter shock and surprise of the petitioner, they came to know that the 4th respondent had stolen and unauthorisedly taken the Source

Code of the Software Product developed by the petitioner and were selling it after making minor modifications that did not affect the originality of the computer programme forming the core of the Software Product. The petitioner sent Ext.P1 notice to the 4th respondent and others and they sent a reply denying the allegations, which is produced as Ext.P2. Thereafter, the petitioner filed a private complaint before the Judicial First Class Magistrate Court, Aluva wrongly shown as Ernakulam and it was forwarded to the 2nd respondent for investigation under Section 156(3) of the Code of Criminal Procedure ('Cr.P.C.' for short). Based on the same, Ext.P3 crime was registered against the 4th respondent and others as Crime No.468/2012 of Kalamassery Police Station under Sections 379, 406, 415, 420 & 149 of Indian Penal Code, 1860 and Sections 43, 65 & 72 of Information Technology Act, 2000. Since he was not satisfied with the investigation, he had filed W.P.(C).No.18834/2015 seeking the following reliefs :

- a) issue a writ of mandamus or any other appropriate writ, direction or order commanding respondent NO.3 to complete the analyses of the material objects seized in pursuance to Ext.P3 FIR within a time frame that may be fixed by this Hon'ble Court;
- b) issue a writ of mandamus or any other appropriate writ, direction of order commanding respondent No.2 to include offences punishable under section 66 of the Information Technology Act, 2000 and section 63 of the Copyright act, 1957 in the scope of investigation conducted pursuant to Ext.P3 FIR;

- c) issue a writ of mandamus or any other appropriate writ, direction of order commanding respondent No.2 to arrest the 4th respondent, interrogate him, complete the investigation and to submit the police report within a time frame that may be fixed by this Hon'ble Court;
- d) issue a writ of mandamus of any other appropriate writ, direction or order commanding respondent No.3 to copy the information contained in the seized articles onto more dependable tangible media and to hand over such copies to the petitioner;

3. Since he was not satisfied with the manner in which the crime was registered without including proper penal provisions, he filed W.P.(C).No.25808/2015 to incorporate Section 66 of Information Technology Act, 2000 and Section 63 of Copyright Act, 1957 seeking the following relief :

- a) Issue a writ of mandamus directing respondent NO.2 to include offences punishable under section 66 of the Information Technology Act, 2000 and section 63 of the Copyright Act, 1957 in the scope of investigation conducted pursuant to Exhibit P1 FIR.

4. The 4th respondent appeared through counsel Sri.K.R.Vinod. Respondents 1 and 2 were represented by the State Attorney Sri.Vijayaraghavan. The 3rd respondent is only a formal party who was to conduct the examination of the software. So notice to them is dispensed with. Respondents 1 and 2 filed a statement in W.P. (C).No.18834/2015 wherein they have stated that, the alleged Software was seized and produced before Court and on the basis of their request those hard disk containing the disputed data were sent

to Forensic Science Laboratory, Thiruvananthapuram for proper examination and submitting a report. Since huge amount is required for conducting such an examination, they have moved the authorities for sanction. Only after getting necessary sanction, they can be able to get the report and complete the investigation.

5. The learned counsel for the 4th respondent submitted that, there is already a civil suit instituted before the District Court, Ernakulam as O.S.No.16/2012 under the Copyright Act for a negative declaration that the Software developed by the 4th respondent and the petitioner concern are one and the same and the 4th respondent cannot claim any copyright over the disputed Product. In that suit, an interim injunction was granted and after hearing both the sides, that injunction was confirmed. That was challenged by the petitioner before this Court and the same was also dismissed. Thereafter, the 4th respondent filed a petition before the District Court for sending the disputed Softwares of both the parties for expert opinion. On the basis of the Panel submitted by both the counsel, an expert was appointed by the District Court. The petitioner herein is not co-operating with the expert for comparing the disputed Softwares to arrive at a conclusion regarding the identification of the products claimed to be that of the petitioner and the 4th respondent are one and the same. The counsel for the petitioner submitted that, since the original data will

have to be collected from South Africa, they wanted only some time for collecting the same and producing it before the expert and that, the allegation that they are not co-operating with the expert is not correct.

6. The counsel for the petitioner also submitted that, since necessary penal provisions were not incorporated in the First Information Report, they were compelled to file W.P.(C). No.25808/2015 for giving direction to the 2nd respondent to incorporate the same.

7. It is an admitted fact that, the petitioner is a partnership firm engaged in developing Softwares. They claimed that the 4th respondent was an employee under them earlier and he joined the service as Software Developer and Software Tester along with two other persons namely Jyothish.P and Jithin.E and one Cinoj was appointed for marketing purposes and the disputed Software was developed at the cost of the petitioner. When they were putting it in the market through the said Cinoj, it appears that they joined together for conducting similar institutions and resigned from the concern of the petitioner and started marketing the Product of the petitioner as their own after committing theft of the Software Code from the petitioner's concern, is the allegation. Anyhow, it is seen from the submission made by the counsel for the 4th respondent that, a civil suit has already been filed in respect of the ownership of

the Copyright of the disputed Product and that is pending. However, this Court is not going into those aspects as criminal act is also possible, if it is proved that, the alleged Software Product claimed by the petitioner has been stolen and misused by any other person. Pendency of a civil suit is not a bar for continuation of the criminal proceedings, if any criminal offence has been made out either under the provisions of Indian Penal Code or under the provisions of the Copyright Act or Information Technology Act. It seen from the statement filed by the 2nd respondent through the State Attorney that, it is not a case where either no investigation or proper investigation were conducted by them. They have already conducted search and obtained certain data in respect of the disputed Software and produced it before the Judicial First Class Magistrate Court, Aluva. They also moved an application for sending those hard disk with the data to the Forensic Science Laboratory for examination. Without getting an expert opinion on that, it is not possible for them to proceed with the investigation as well. So it is not a case of not conducting proper investigation by the investigating agency in the crime registered on the basis of a private complaint filed by the petitioner, which was forwarded to the police for investigation.

8. It is seen from the statement filed by the 2nd respondent that, the authorities of the Forensic Science Laboratory had

informed the investigating agency that, an amount of ₹40,000/- is required for conducting proper examination of the details required, as the data collected in the hard disk are voluminous in nature. Since the District Police Chief has no power to sanction more than ₹ 20,000/- for such purposes, necessary steps have been taken for getting sanction for the amount required before the District Police Chief and that is pending. So under the circumstances, this Court feels that, there is no necessity to issue a direction to the investigating agency to expedite the investigation, since the investigation is required scientific investigation as well, which may take time.

9. As regards the other writ petition is concerned, this Court cannot direct the investigating agency to register a crime for the particular offences or conduct investigation in a particular manner. It is for the Station House Officer who received the complaint to incorporate the required penal provisions in the First Information Report which he was able to decipher from the allegations made in the complaint and conduct investigation in accordance with law. Even if all the penal provisions were not incorporated at the time of registering the crime or during the course of investigation, if it is revealed that such offences were also committed, they are at liberty to include those penal provisions also either under the Indian Penal Code or under the relevant statutes and to file final report

incorporating all the penal provisions which they feel that the accused have committed, before the concerned Court. If ultimately final report filed is not incorporating the relevant penal provisions, according to the petitioner, they will get an opportunity to file a protest complaint or to approach the Magistrate Court for appropriate relief, either seeking further investigation for those offences as well or even maintaining an independent private complaint incorporating those provisions. If such a private complaint is filed, it is for that Magistrate to consider and pass appropriate orders, in accordance with law. So under the circumstances, the prayer in W.P.(C).No.25808/2015 as such cannot be granted by this Court invoking the power under Article 226 of the Constitution of India and the same has to be dismissed with liberty to the petitioner to move the appropriate Court, if they are not satisfied with the outcome of the final report incorporating the necessary penal provisions either under the Indian Penal Code or under the relevant statutes claimed by them.

10. As regards W.P.(C).No.18834/2015 is concerned, considering the statement filed by the 2nd respondent through the State Attorney, this Court feels that, there is no necessity to issue any direction to expedite the investigation as they are conducting investigation in the proper direction and they have also stated the reason for the delay in proceeding with the investigation as well. So

under these circumstances, giving direction to the 2nd respondent to expedite the proceedings before the District Police Chief for getting necessary allotment and also to proceed with the investigation and to complete the same will be sufficient. So the said writ petition is disposed of giving direction to the 2nd respondent to take steps to expedite the request pending before the District Police Chief for getting sanction for getting the amount required for obtaining the expert report. After getting the amount required, obtain the report from the Forensic Science Laboratory or from the concerned expert, expedite investigation and file final report in the case, as expeditiously as possible.

With the above directions and observations, W.P.(C). No.18834/2015 is disposed of while W.P.(C).No.25808/2015 is dismissed.

Sd/-
K.RAMAKRISHNAN, JUDGE.

AV