

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition Nos.5020 and 5993 of 2014

%23.04.2015

Criminal Petition No.5020 of 2014

Between:

Cognizant Technology Solutions India Pvt. Ltd

Rep. by its Executive Vice Chairman,

Tamil Nadu

and another.Petitioners

AND

Iridium Interactive Ltd. Hyderabad

Rep. by its Manager Administration

Mr.M.Vinod Kumar.

and another. Respondents

! Counsel for Petitioners : M/s. Sangeeta Bhaskar

^ Counsel for Respondent No.1 : M/s. P. Radha Krishna

^ Counsel for Respondent No.2 : Public Prosecutor

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> Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.5020 & 5993 of 2014

COMMON ORDER:

In these two petitions filed under Section 482 Cr.P.C, the Accused Nos.1 and 2—petitioners in CrI.P.No.5020 of 2014 and A.3

to A.11—petitioners in CrI.P.No.5993 of 2014 seek to quash the proceedings in C.C.No.1757 of 2013 on the file of III Additional Chief Metropolitan Magistrate, City Criminal Courts at Hyderabad.

2) On the private complaint filed by the complainant, the learned III Additional Chief Metropolitan Magistrate took cognizance of the case for the offences under Sections 406, 418, 409, 420 and 120-B IPC against the accused.

3) The brief facts of the case are that the complainant entered into a contract with Google India Private Limited on 14.05.2010 for providing services including designing and development of websites and to assist Google develop “Getting Global Business Online” etc., which was terminated on 31.07.2013. While so, the Google India Private Limited wanted to have a single partner to look after the global operations and preferred the accused No.1 (Cognizant Technology Solutions India Private Limited) to deal with all other players in the field. Accused Nos. 1 and 2 authorised its employees—A.3 to A.11, who started negotiating with one of the Directors of the complainant company namely B.Bharathi. The complainant in good faith submitted the confidential employee data to the accused on 24.04.2013 by email pending settlement of the terms and conditions of the contract with accused No.1 and after receiving the data, the accused No.1 backed out of the agreement as expressed through Accused No.8 vide email dated 30.05.2013. Accused Nos.1 to 11 started alluring and poaching the employees of the complainant company bypassing the complainant. One of such employee, who was poached by the accused was Mr. David, who revealed about the efforts made by the accused to the complainant.

Investigation is reported to be pending.

4 a) Denying FIR allegations, learned counsel for petitioners argued that talks with complainant and accused were continuing and at that time the complainant had only provided the billing rate and CTC associates and it had not provided any specific details, names and contact numbers of its employees and subsequently, as no

consensus was reached on payment terms, the accused company backed out of the contract. Therefore, the question of accused company obtaining confidential information relating to the employees of the complainant company and later on alluring and poaching the employees does not arise. So far as the episode of David is concerned, the said David attended a walk-in interview to get the job in the company of accused and therefore, the question of accused poaching either David or some other employees is a myth.

b) Learned counsel alternatively argued that even assuming that the complainant company shared confidential data of its employees with accused company and accused tried to bait the employees of the complainant, that act will not amount to any offence because inviting the skilled and expert employees of one organization by another organization by offering better package will not amount to an offence under any of the laws. On such offer the employees may or may not be willing to leave their present employment to join in another organization. He vehemently argued that trial Court erred in taking cognizance of the case though the complaint allegations did not make out any offence and therefore, continuation of criminal case will amount to abuse of process of law. He thus prayed to quash the proceedings.

5) Per contra, learned counsel for 1st respondent/complainant argued that accused company contacted the complainant through a number of e-mails and accused made representations as if they are going to have a contract with the complainant i.e. Google Company and when the talks were in the mid way the accused sought for the confidential employees data and out of trust and hope that accused will enter into a contract the complainant entrusted the confidential data of its employees and but for the deceptive inducement of the accused, the complainant would not have parted with such confidential data and having obtained the said data, the accused cheated the complainant company not only by backing out from the contract talks but also poached on the expert employees of complainant and grabbed some of its employees and thereby many project works of the complainant

came to grinding halt in the mid way and complainant suffered loss of money and reputation and therefore, the criminal case is very much maintainable against the accused. He thus prayed to dismiss the petitions.

6) In the light of above rival arguments, the point for determination is:

“Whether there are merits in these petitions to allow?”

7) **POINT:** Briefly stating the grievance of the complainant is that the accused company on a false promise that it will enter into a contract with the complainant induced it to deliver the confidential data relating to its employees and later backed out of contract work and on one hand and poached the employees of the complainant and thus caused loss of money and reputation to the complainant. Now, the question is even if the compliant allegations are uncontroverted, whether any offence is made out against the accused. When the facts are carefully analyzed and applied to the ingredients of the offences alleged, it would appear that complainant could not make out any of the offences alleged against accused. What the complainant allegedly furnished to the accused is confidential particulars of its employees. It must be noted that the employees are working under the complainant under certain terms of contract. The relationship between complainant and its employee is only a master—servant relationship but not the owner—property relationship. If any employee in pursuit of better job opportunities leaves the company, he cannot interdict them. Of course, if there exists a contract between complainant and its employees requiring them to work for certain number of years under him and any of them prefers to leave in the midway, he may impose penalty against such scuttler. However, by no stretch of imagination he can claim any violation of his legal right against the new employer. In a commercial era of cut throat competition where one organization prefers to dominate others by hook or crook and where human relations are eclipsed by monetary considerations, it is too naive to expect unshaken fidelity and loyalty from the employees. That apart no law is laid down prohibiting one

organization inviting the employees of another organization to its fold by offering lucrative pay packages. So, complainant cannot harp that accused committed any offence. As already stated, it may at best take action against its own employees if the service contract between them permits such action. It is all because the employees are not the property of the complainant. It is with this premise the ingredients of offence have to be scrutinized. The trial Court, it appears, took cognizance of the case for the offences under Sections 406, 418, 409, 420 and 120B IPC.

a) Section 406 IPC concerns with offence of criminal breach of trust. Criminal breach of trust occurs when a person who is either entrusted with property or got the dominion over the property, and dishonestly misappropriates or converts to its own use that property or if he dishonestly uses or disposes the property in violation of any direction of law prescribing the mode in which such trust is to be discharged. So, the offence of criminal breach of trust can be perpetrated only when a person is entrusted with property. As already stated supra, furnishing of employees data by no stretch of imagination can be said to be the delivery or entrustment of property. Without delivery of property offence under Section 406 IPC cannot be perpetrated.

b) Similarly, without delivery of property the offence under Section 409 IPC also cannot be committed because the offence under Section 409 can be said to be committed only when a property is entrusted to specific class of persons such as public servant, banker, merchant, factor, broker, attorney or agent and if they commit criminal breach of trust in respect of that property. So, without entrustment of property the offence under Section 409 IPC also cannot be committed.

c) Then, the offence under Section 418 IPC is concerned, it says that whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which cheating relates, he was bound, either by law, or by legal contract to protect is said to have committed the offence. Here also when the act

of the accused attracting the employees of complainant does not amount to cheating, the question of his causing wrongful loss to the complainant does not arise. For the same reason, the offence under Section 420 IPC also do not attract. So, at the outset, even if the complaint allegations are uncontroverted, they do not constitute any offence on the part of accused. Therefore, continuation of criminal proceedings will certainly amount to abuse of process of law and hence liable to be quashed.

8) In the result, these two Criminal Petitions are allowed and proceedings in C.C.No.1757 of 2013 on the file of III Additional Chief Metropolitan Magistrate, City Criminal Court at Hyderabad are hereby quashed against all the accused.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 23.04.2015

Note: L.R.Copy to be marked Yes /No

Murthy