

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.17666 of 2016

and

Crl.MP No.8438 of 2016

1.Boominathan

2.M.Uma Maheshwari

.. Petitioners

Vs

1.State rep by

The Inspector of Police

City Crime Branch

Coimbatore.

2.R.Suresh Kumar

..Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Cr.No.19 of 2016 dated 09.05.2016 on the file of 1st respondent and quash the same.

For Petitioners

:

Mr.Aravind Pandian

Senior Counsel

for Mr.A.Selvendran

For R1

:

Mr.C.Emalias,

Addl.Public Prosecutor

ORDER

This petition has been filed to call for the records in Cr.No.19 of 2016 dated 09.05.2016 on the file of 1st respondent and quash the same.

2. Heard the learned Senior Counsel appearing for the petitioners and

the learned Additional Public Prosecutor appearing for the State.

3. On the complaint lodged by Suresh Kumar, the respondent police have registered a case in Cr.No.19 of 2016 on 19.05.2016 u/s 420 IPC and Sections 65, 66D of the Information Technology Act, 2000 against Boominathan and Uma Maheshwari, challenging which the accused are before this Court.

4. Mr.Aravind Pandian, learned Senior Counsel for the accused submitted that the *de facto* complainant and the accused were erstwhile partners in Amirta International Institute of Hotel Management & Catering Technology and they have fallen apart. Thereafter, there are several litigations pending between them in various forums. Under such circumstances, the learned Senior Counsel submitted that the present FIR is clearly an abuse of process of law and it is an attempt by the *de facto* complainant to circumvent the various injunction orders that have been granted by this Court in favour of the accused.

5. The parameters for quashing the FIR has been clearly laid down in the judgment of the Supreme Court in **State of Haryana v. Bhajan Lal [AIR 1992 SC 604]**. On a close reading of the FIR it is obvious that there is a partnership dispute between the *de facto* complainant and the petitioners and in that scenario, the *de facto* complainant has lodged the present complaint and pursuant to the directions issued by this Court in Crl.O.P.No.4107 of 2016, FIR has been registered.

6. On the reading of the FIR, it is seen that the *de facto* complainant

has made the following allegations:

"....We have entered into the MOU on 25.09.2014. As per the MOU, he cannot use our name and address. Presently they are running Chennai Amirta Institute of Hotel Management. To the shock and dismay, Mr.Boominathan hacking with a computer system using the technology, if Amirta International Institute of Hotel Management & Catering Technology name entered into internet search. The mobile numbers '8939200900, 8939200600, 8939200700, 9585900600, 8939300900' are displayed and the address No.104, Perambur High Road, Perambur, Chennai 600 011, also displays. If our institution name entered for such in the network diverted to Mr.Boominathan institutions name, phone number, branch address and other details of Mr.Boominathan's Chennai Amirta International Institute of Hotel management, all details displays. They are caused damages to my institutions and gained illegally and also they are committed fraud, hacking our network system and illegally using the technology, even Mr.Boominathan owns Chennai Amirta International Hotel Management name search on the web page displays our institutions' information. He illegally published through Just dial using our institutional name but all the addresses are Mr.Boominathan's institution's address. He fabricated and falsely created the messages published in the network through Just dial."

7. Mr.Aravind Pandian, learned Senior Counsel submitted that the petitioners have even issued a notice dated 01.06.2016 to "just dial" and "Sulekha.com" calling upon them to ensure that erroneous details are not hosted in the website, so as to mislead general public. He also submitted that the provisions of Sections 65 and 66D of the Information Technology Act, will not stand attracted on the allegation laid in the FIR.

P.N.PRAKASH, J.

gms/mk

8. In the considered opinion of this Court, there are prima facie materials in the FIR for the police to conduct investigation and therefore, disputed questions of fact cannot be gone into in a proceedings under Section 482 Cr.P.C. to either interdict the police investigation or to quash the same. However, since it is evident that the dispute is essentially between the erstwhile partners, it will serve the best interest of justice if a superior officer not less than the rank of an Assistant Commissioner is directed to conduct the investigation in Cr.No.19 of 2016 with regard to the allegations relating to the hacking of website.

9. In the light of the above, this petition to quash the FIR is dismissed and the Assistant Commissioner, Cyber Crime, is directed to conduct unbiased and fair investigation in Cr.No.19 of 2016 and if it is found that the petitioners had not committed any of the acts alleged, it is needless to state that the FIR should be closed expeditiously. Consequently, connected miscellaneous petition is closed.

11.08.2016

gms

To

1.The Inspector of Police
City Crime Branch,Coimbatore.

2.The Public Prosecutor
High Court of Madras, Chennai.

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