



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.06.2021

CORAM :

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR
Crl.O.P.Nos.15680, 20063 & 26201 of 2019
and
Crl.M.P.Nos.7787, 10270 & 14022 of 2019

Naresh Malhotra
Director, Alpha Delta Risk Solutions,
Flat No.13, Aditya Sadan,
Ashoka Road, New Delhi - 110 001.

... Petitioner /Accused 6
in Crl.O.P.No.15680 of 2019

1.Sandip Mukherjee
Director of M/s.Aptivaa
Consulting Solutions Pvt. Ltd.

2.Alok Tiwari
Director of M/s.Aptivaa
Consulting Solutions Pvt. Ltd.

... Petitioners/Accused 4&5
in Crl.O.P.No.20063 of 2019

Aman Sinha

... Petitioner /Accused 3
in Crl.O.P.No.26201 of 2019

Vs.

1.State of Tamil Nadu,
By Inspector of Police,
CCB II, Chennai.

2.Bahwan CyberTek Private Limited,
Represented by its Director,
148, Rajiv Gandhi Salai (OMR),
Okkiyam, Thoraipakkam,
Chennai - 600 097.

... Respondents
in all petitions

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records in Crime No.86 of 2019 pending investigation on the file of the 1st respondent police and quash the same.



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For Petitioner : Mr.T.N.Rajagopalan
for M/s.Thriyambak J Kannan
in Crl.O.P.Nos.26201, 20063 of 2019

: Mr.S.Bageerathan
in Crl.O.P.No.15680 of 2019

For R1 : Mr.A.Damodharan
Counsel for Govt. of Tamil Nadu(Crl.Side)
in all petitions

For R2 : Mr.Aniruth Krishnan
in all petitions

C O M M O N O R D E R

These Criminal Original Petitions have been filed with a common prayer to quash the proceedings in Crime No.86 of 2019 against the petitioners/accused for the offences under Sections 408 & 420 IPC and Sections 43, 65 and 66 of the Information Technology Act, 2000.

2.The entire case is mainly on the theft of source-code of the software said to have been developed by the de facto complainant/2nd respondent. Two suits have been originally filed by the de facto complainant before this Court in C.S.(Comm. Div.)Nos.192 of 2019 and 580 of 2018 for permanent injunction restraining the accused from using the source-code of the software developed by the de facto complainant. Meanwhile, a criminal case in Crime No.86 of 2019 was registered against the accused for the offences under Sections 408 & 420 IPC and Sections 43, 65 and 66 of the Information Technology Act, 2000.

3.Five of the accused have moved a petition for Anticipatory Bail before this Court in Crl.O.P.No.17630 of 2019 and this Court, vide order dated 12.07.2019, has granted Anticipatory Bail to them on condition that they deposit a sum of Rs.1 Crore to the credit of Crime No.86 of 2019. It is submitted that the accused have deposited the said amount before the Judicial Magistrate Court, Alandur, on 05.09.2019.

4.The learned counsel for the petitioners/accused submitted that the parties had reached a compromise and they had filed a memo of compromise in the suits, wherein the accused/defendants have agreed that they will not use the source-code or trade-mark of the software belonging to the de facto complainant/plaintiff and the plaintiff/de facto complainant has agreed to withdraw all the cases and complaints filed by them against the accused, and also agreed for the return of the deposited amount of Rs.1 Crore to the accused. Recording the same, the suits were



decreed in terms of the memo of compromise. The learned counsel would submit that, now, the petitioners/accused have filed affidavits stating the aforesaid facts and have undertaken not to use the source-code of the software or trade-mark of the de facto complainant and prayed for quashing of the F.I.R. in Crime No.86 of 2019.

5.Mr.Aniruth Krishnan, learned counsel appearing for the 2nd respondent/de facto complainant, submitted that, at the instance of the de facto complainant, who was the plaintiff in C.S.(Comm. Div.)Nos.192 of 2019 and 580 of 2018 before this Court, an F.I.R. was lodged in Crime No.86 of 2019 for the offences stated above. The entire case is mainly a result of breach of trust between the parties and it is also submitted that, now, the parties have reached a compromise and a memo of compromise has been filed in the suits, wherein the de facto complainant has agreed to withdraw all the complaints filed by them against the accused. Now, all the accused have given an undertaking and filed their affidavits to the effect that they will not use the source-code of the software belonging to the de facto complainant.

6.Heard the learned counsel on either side and perused the materials available on record.

7.On a perusal of the affidavits filed by the accused, it is seen that a compromise has been reached between the parties and the de facto complainant has agreed to withdraw all the complaints filed against the accused. The offences alleged against the accused under Sections 408 and 420 IPC are compoundable with the permission of the de facto complainant. The other offences alleged against the accused are under Sections 43, 65 and 66 of the Information Technology Act. Section 43 of the said Act deals with "Penalty and compensation for damage to computer, computer system, etc." and it provides for compensation for damages. Section 65 provides for a punishment of imprisonment upto three years for tampering with computer source documents. Section 66 deals with computer related offences and it also provides for a punishment of imprisonment upto three years. However, the entire dispute appears to be civil and commercial in nature. Moreover, now the parties have reached a compromise between them. Though the provisions under Section 65 and 66 of the Information Technology Act provides for punishment of imprisonment upto three years, since the entire dispute arises out of commercial transactions, it is purely civil in nature, and when the parties themselves have compromised the matter, continuance of prosecution against the accused is nothing but a futile exercise, and in fact, it will not serve any purpose to anyone and it is unlikely to end in conviction. In such view of the matter, continuance of



prosecution against the accused in Crime No.86 of 2019 would be nothing but abuse of process of law, and therefore, the same is liable to be quashed.

8. Accordingly, the proceedings in Crime No.86 of 2019 on the file of the 1st respondent police is quashed and these Criminal Original Petitions are allowed.

9. In terms of the compromise entered between the parties, the accused are entitled to withdraw the sum of Rs.1 Crore, deposited by them in pursuance of the order passed by this Court in Anticipatory Bail application in CrI.O.P.No.17630 of 2019.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mkn/ssr

To

1.The Judicial Magistrate,
Alandur.

2.The Inspector of Police,
CCB-II, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+3ccs to Mr.Thriyanbak J.Kannan, Advocate SR.No.27423,27422,27421

CrI.O.P.Nos.15680, 20063
and 26201 of 2019

RVR(CO)
B.VC(15.07.2021)