

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2307 OF 2021

Mr.Amit Ramakant Jain

...Petitioner

vs.

The State of Maharashtra & Anr.

...Respondents

WITH

WRIT PETITION NO. 4473 OF 2021

Salil Mehendale & Anr.

...Petitioners

vs.

Keito Tech Pvt.Ltd. & Anr.

...Respondents

WITH

WRIT PETITION NO. 4474 OF 2021

Aditya Aman & Ors.

...Petitioners

vs.

Keito Tech Pvt.Ltd. & Anr.

...Respondents

WITH

WRIT PETITION NO. 5707 OF 2021 (Not on board)

Shruti Manoj Jain

...Petitioner

vs.

Keito Tech Pvt.Ltd. & Anr.

...Respondents

Mr.Vikram Sutaria for Petitioner in Cri.WP 2307/2021.

Mr.Rajesh Pingale for Petitioners in Cri.WP 4474/2021, 4473/2021.

Mr.Niraj Patil for Petitioner in Cri.WP 5707/2021.

Mr.J.P. Yagnik, APP for State.

Mr.Lokesh D. Zade for Respondent No.1.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 2 FEBRUARY 2022

P.C. :

. All these writ petitions are arising out of FIR No.16/2021 dated 9 April 2021 registered at Cyber Police Station, Pune against the Petitioners on a complaint of Respondent No.2 for the offences punishable under Sections 408, 420 and 34 of IPC and Sections 43(b)(j) and 66 of the Information Technology Act, 2000, which is sought to be quashed and set aside by the present Petitioners.

2. The case of the prosecution is as under:

- (i) The First Informant and his father are directors of a company, namely, Keito Tech Pvt. Ltd., which deals in making various softwares and through which their customers can convert/store data in digital form and can use the same as per their convenience.
- (ii) The First Informant's company is the owner of the software, namely, Keito Capture Software and its source code and its approximate alleged cost is Rs. 31,50,00,000/-, however, the First Informant does not have any IPR certificate for the said source code allegedly own by him.
- (iii) There were various employees working in the First Informant's company and out of those employees, Mr. Rajendra Prasad Lavate, Mr. Aditya Aman, Mr. Nikhil Jain and Ms. Shruti Jain were amongst them.
- (iv) Mr. Rajendra Prasad was Senior Engineer and Mr. Aditya Aman was lead developer and above mentioned four persons have allegedly developed the said software /its source code.

- (v) The First Informant's company has non-disclosure agreement with his all employees including the aforesaid four employees.
- (vi) In the month of March 2020, entire country was under lock down and hence, aforesaid employees and other-employees were working from home and hence, they were allowed to take company laptops/desktops to their respective home.
- (vii) In February 2019, one Mr. Salil Mahendale, who was the Senior Director of company, namely, Automation INC, met the First Informant through Social Media software relating to business, namely, "Nord".
- (viii) Said Mr. Salil met the First Informant and asked for software for his business purpose.
- (ix) Said Mr. Salil introduced the present Petitioner to First Informant and on say of present Petitioner, the First Informant gave information/demo about his product "Keito Capture" (software).
- (x) On 2/05/2019, proposal quotation was sent to present Petitioner by the First Informant and on 3/05/2021 through Mr. Salil, said quotation was approved by the Petitioner herein.
- (xi) Services of the First Informant's company were for 6 months from 10/05/2019 till 10/11/2019 and that the said proposal was for trial and testing.

- (xii) Mr. Aditya Aman and Mr. Rajendra Lavate were appointed by First Informant's company to assist and support "Collotech LLP", i.e. company owned by the Petitioner herein which is a partnership firm.
- (xiii) Said two employees of First Informant's company had full access to source codes of the software to support & give service to the Petitioner's company.
- (xiv) Said Mr. Salil and the Petitioner herein further induced the First Informant to enter into main agreement.
- (xv) Nikhil Jain and Shruti Jain, employees of First Informant were introduced to First Informant by Aditya Aman and Rajendra Lavate.
- (xvi) On 10/11/2019, period for the trial and testing agreement came to an end and the First Informant approached the Petitioner, however, the Petitioner avoided the same.
- (xvii) Following employees left company of the First Informant on following dates for their respective reasons:
 - (a) Mr. Rajendra Lavate resigned from First Informant's company on 5/12/2019 & his services came to be terminated w.e.f. 3/02/2020.
 - (b) Mr. Aditya Aman resigned on 20/06/2020.
 - (c) Ms. Shruti Jain resigned on 2/07/2020 and her resignation came to be accepted on 21/8/2020.
 - (d) Mr. Nikhil Jain resigned by sending email on 28/09/2020.

- (xviii) The Petitioner herein sent notice of termination on 30/06/2020, however, after due negotiations, said notice was taken back by the Petitioner herein.
- (xix) In August 2020, the First Informant saw profile of Mr. Rajendra Lavate on Linkind and he read one message wherein he offered job for “Machine Learning Engineers” in one company, namely, Quorelens Technologies Pvt. Ltd., and he also asked to send email to himself to interested persons.
- (xx) The said company Quorelens Technologies Pvt. Ltd. came to be incorporated on 20/07/2020.
- (xxi) Mr. Salil Mahendale and the Petitioner herein paid an amount of Rs. 15,00,000/- during trial and testing agreement and thereafter Rs. 48,00,000/- were dues from them and out of which the Petitioner through Mr. Salil allegedly agreed to Rs. 23,72,348/-. However, on 18/08/2020, Mr. Salil asked for the source code of the software Keito Capture from First Informant, which he denied to give.
- (xxii) Thereafter, the First Informant, the Petitioner herein and said Mr. Salil had a conference call wherein the Petitioner herein and Mr. Salil asked for the source code once again.
- (xxiii) On 19/08/2020, said Mr. Salil Mahendale left the company Automation Anywhere & joined new company Qlytics LLC.
- (xxiv) The First Informant allegedly found out about Mr. Nikhil Jain’s breach of his agreement and his computer, etc. came to be sent for cyber forensic.

(xxv) On 27/10/2020, the basis of said report of forensic science auditor, the First Informant found out various illegal acts of said Mr. Nikhil Jain.

(xxvi) On 12/10/2020, said Mr. Salil has in connivance with Mr. Rajendra Prasad Lavate and Mr. Aditya Aman, started new company, namely, Cabot AI Pvt. Ltd. and giving the same service like the First Informant.

(xxvii) The Petitioner herein induced the First Informant that he needs his software and later on did not take it and cheated the First Informant.

3. Thereupon, the FIR was lodged, which was registered as Crime No.16/2021, which is sought to be quashed and set aside by the present Petitioners.

4. Heard learned Counsel for the respective parties.

5. Learned Counsel for the Petitioners submits that the parties have settled the dispute and accordingly, Respondent No.2 has filed affidavit stating therein that he has no objection if the proceeding arising out of FIR bearing Crime No.16/2021 is quashed and set aside. It is, therefore, prayed that in view of the settlement, the FIR in question be quashed and set aside.

6. Learned Counsel for Respondent No.2 is not disputing the fact of settlement and submits that his client is present virtually and he does not want to proceed against the Petitioners in the FIR in question.

7. After going through the contents of the FIR, we have no doubt that the dispute involved in the present matter is a private dispute and of a commercial nature. Moreover, no element of public law is involved and therefore, in view of the settlement, even if the trial is allowed to be conducted, no fruitful purpose would be served and the whole exercise would be futile.

8. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of **Madan Mohan Abbot vs. State of Punjab**, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforesaid fact-situation, the continuation of prosecution of the Petitioners in the instant case will amount to abuse of the process of Court and therefore, it is in the fitness of things to quash the FIR and proceeding in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored.

9. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of **Narinder Singh vs. State of Punjab** [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the criminal proceedings in question.

10. In that view of the matter, the writ petitions are allowed. The FIR registered vide C.R.No.16/2021 at Cyber Police Station, Pune against

the Petitioners for the offences punishable under Sections 408, 420 and 34 of IPC and Sections 43(b)(j) and 66 of the Information Technology Act, 2000 is hereby quashed and set aside.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

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