R. C. C. No. 92/2017

State Vs. Laxman Biru Gorade etc. 5

CNR - **MHKO130016742016**

ORDER PASSED BELOW EXH.31
(Dt. 29/04/2023)

1. Accused No. 1 to 6 moved this application under section 239 of Cr.P.C. to discharge them from offence punishable U/Sec.65, 66, 66(C), 66(D), 66(E), 72 of the Information Technology Act, 2000 r/w. section 34 of IPC. (Hereinafter referred as 'I.T.Act').

2. According to accused persons, the Complainant is PAN card holder and she has submitted her income tax return up to 2015. It is averred that, she moved an application for the post of Police Patil of Shendur and qualified the exam. As per complainant, accused no. 2 also applied for exam. However, she could not succeed. According to complainant, PAN card information is hacked during period from 25/02/2016 to 27/02/2016. It is alleged against the accused that, accused have obtained the secret information of complainant and later on published. Hence, due to suspicion she lodged the report on 02/10/2016 having delay of 8 months. According to accused, there are no grounds to frame charge against them. Hence, accused no. 1 to 6 seeking discharge on various grounds those are as follows.

3. It is averred that, one Maruti Fadake, R/o. Radhanagari is released by police due to deficit evidence. Further, there is no whisper in respect to allegations against accused no. 6.

Accused no. 6 has no concern with informant or accused no. 1 to 6. According to accused, the documents filed on record does not indicate any nexus with accused no. 1 to 6 and they are falsely implicated in this crime with motive. According to accused, on perusal of documents the information in respect to contentions of this complaint is already submitted before S.D.O. on 09/02/2016 and complaint lodged by her in respect to hacking of her account during period of 25/02/2016 to 27/02/2016. It is submitted that, there is no explanation for delay in lodging the complaint. One Maruti Fadake who has collected alleged information by his E-mail ID is not relative or informant of accused no. 1 to 6. It is argued that, just because of election rivalry false report is lodged against them. Hence, by this application prayed to discharge the accused no. 1 to 6.

SAY OF PROSECUTION:-

4. Contrary, this application is opposed by learned A.P.P. vide say below Exh. 32 contending that, income tax return account of informant was hacked and personal data of informant's income tax were published on social media. According to prosecution, offence is committed by reseting password with entering mobile no.9503063995. Further, E-mail ID of marutifadake@gmail.com is also used by the accused. The complainant and her husband being IT engineers made proper search who and how income tax return account of complainant was hacked and it is knowledge by them on 25/02/2016 that the account of complainant was hacked by someone.

5. Therefore, they made several communications to

Google company, DYSP, Kolhapur and also filed writ petition before Hon'ble High Court for registration of F.I.R. Accordingly, on 02/10/2016, F.I.R. was registered. Hence, contention in discharge application about delay are false. Further, on 30/07/2016 her written complaint is also put up before Kagal Police Station. But, due to lack of knowledge of I.T.Act, soon after the report Police did not take cognizance. According to prosecution, informant was selected for the post of Police Patil. But, she never joined the post in question hence cheating would not arise. According to prosecution, the accused no. 2 due to grudge against complainant hacked the account of this complainant. Further, accused Surekha Gorade on 09/02/2016 submitted the information of this complainant before S.D.O. Accused no. 3 to 5 published the information received from the account of this complainant. Further, the complainant also take the screen shot of hacked account.

6. According to prosecution, accused no. 6 is Chartered Accountant and Suraj Powar is serving in the office of accused no.6. It is averred that, Maruti Teli and Suraj Powar both have changed the OTP by reseting password of complainant. Further, necessary ingredients in respect to accused no. 6 appeared in the statement of Suraj Powar. It is argued that, details in respect to hacking PAN account is also reveled by way of IP address of computer which belongs to Maruti Teli. Further, confidential information is published by way of whatsapp and newspaper and also by filing documents before S.D.O. According to prosecution, accused no. 1 and 2 are involved in this matter and accused no. 3 to 6 with their common intention committed the offence under

I.T.Act. Further, though there is deficit evidence against Maruti Fadake, he can be again prosecuted vide recourse of section 319 of Cr.P.C. Hence, submitted and argued to reject the application.

7. I have perused the record. Heard the Learned advocate of accused No. 1 to 6 and learned A.P.P.

8. Considering, section 66(E) of I.T.Act, there are no ingredients in this matter, concern to nudity and its circulation etc. Therefore, ingredients of section 66(E) of I.T.Act would not attract against these accused persons. Further, section 65 of I.T.Act relates to computer source code used for a computer, computer programme, computer system or computer network. So far as section 66 is concern the same is required to be read with section 43 of I.T.Act. Section 43 relates to offence by person other than owner or person in-charge of computer. At this stage, the owner of computer or person in-charge of the computer has not lodged the report. Be it so, by means of computer offence is allegedly committed in this matter and IP address is also detected. Therefore, though there are no sufficient ground at this stage to frame charge against accused under section 65 or 66 of I.T.Act, at the same way, the accused are not entitled from discharge of above offence as there is ill define situation to attract the ingredients of section 65 and 66 of I.T.Act. Therefore, this court at this juncture is neither inclined to frame charge under section 65 and 66 of I.T.Act, nor inclined to discharge the accused from above offences.

9. So far as section 66(C) & 66(D) of I.T.Act is concern

there are ingredients of use of mobile and use of E-mail ID. Further, collection of documents from income tax department, with statement of person in-charge of computer recorded under section 164 of Cr.P.C. indicates reasonable suspicion and credible information against the accused persons. Moreover, section 66(D) is in respect to cheating by personation by using computer resource. In this matter, there are allegations against accused that, complainant is cheated by the accused person by receiving her confidential information from her income tax return account.

10. Now, considering section 72 of I.T.Act, the said is required to be read with the relevant provisions of Income Tax Act. Section 72 of Information of Technology is in respect to breach of confidentiality. So far as application of section 66(C) and 66(D) is considered in this matter, ingredients of section 72 is also appearing against accused. Further, whether these ingredients are basically would fall within section 72 of I.T.Act or otherwise the same will be part of merit of the case. As section 66(C) and 66(D) of I.T.Act, ingredients are appearing in the matter, this court proceed to frame charge, against accused under sections 66(C), 66(D) and 72 of I.T.Act read with section 34 of IPC. Accordingly, accused are only entitled to discharge from offence punishable under section 66(E) of I.T.Act. So far as, applicability of section 65 and 66 is considered, the accused at this stage neither entitled for discharge nor this court is inclined to frame charge under that sections.

11. Considering, above discussion this court is inclined to frame charge against accused no. 1 to 6 for offence punishable

under section 66(C), 66(D) and 72 of I.T.Act read with section 34 of I.P.C. In the result, following order is passed.

ORDER

1. The application is partly allowed.
2. Accused no. 1 to 6 are discharge from the offence punishable under section 66(E) of Information Technology Act.
3. Accused no. 1 to 6 are neither entitled for discharge under section 65 and 66 of Information Technology Act, nor at this stage, this Court inclined to frame charge against accused no. 1 to 6.
4. For rest of the section 66(C), 66(D) and 72 of Information Technology Act is considered, the application in that respect is rejected.
5. Accused no. 2 is absent today, hence charge against accused no. 1 to 6 for offence punishable under section 66(C), 66(D) and 72 of Information Technology Act read with section 34 of I.P.C. will be framed on next date. All accused are directed to remain present before this Court without fail on next date.
6. Accordingly, application is disposed of.

Digitally signed by BHASKAR DEVIDAS GORE
Date: 2023.04.30 15:16:32 +0530

Kagal.
Date:- 29/04/2023.

(B. D. Gore)
Judicial Magistrate F.C.,
(Court No. 1), Kagal.