

Calcutta High Court

HON'BLE JUDGE(S): **BIBEK CHAUDHURI, J**

TRIDIB SARKAR V. STATE OF WEST BENGAL

CRR - 202 of 2022, decided on 26/04/2023

Criminal P.C. (2 of 1974) , S.482— Quashing of charge sheet - Prima facie case - Theft of identity - Allegation that accused persons used identity of informant and ordered various products online with cash on delivery option - During investigation, online merchants such as flipkart, snapdel, myntra were requested to share IP address of relevant orders placed before them on basis of cash on delivery - From IP location and IP address it was ascertained that accused was using computer - From broadband application form identity and photograph of accused was also revealed to IO - Prima facie case made out - Charge sheet liable to be quashed. Information Technology Act (21 of 2000) , S.66(c)—

(Para 5, 6, 7)

Name of Advocates

B. K Bose for Petitioner; Rudradipta Nandy, Ld. APP Ms. Sonali Das for Respondent.

1. **ORDER :-**The petitioner is a retired government employee. One Dr. Pankaj Kumar Debnath, the defacto complainant and opposite party No.2 herein lodged a written complaint with the Officer- in-Charge of Barrackpore Cyber Crime Police Station stating, inter alia, that sometimes on or about middle of March, 2015 the defacto complainant got a phone call from Chandannagar Police Station and he was informed by the Police Officer attached to Chandannagar Police Station that by using his name, phone number and the address some unknown person sent a letter containing death threat to one A. Banerjee. Subsequently, during the month of May, 2015 it was again informed to him that the said A. Banerjee received some letters containing threats in various manners and in those letters the name of the defacto complainant was used as the sender. The defacto complainant had no knowledge about such threat letters. He also does not know any person named A. Banerjee and accordingly he lodged a General Diary in the local Police Station vide General Diary No.1491 dated 14 May, 2015. On and from 10 May, 2015 some unknown person started placing online purchase order by cash on delivery mode in different online merchants by using name, phone number and address of the defacto complainant. The said matter was also informed to the Barrackpore Cyber Crime Police Station vide GDE No.105 of 2015 dated 15 May, 2015. The defacto complainant further came to know from the postal department that some articles had been posted by using his name, phone number and address. He also came to know

from the Director of Public Grievances that some unknown person using his name, phone number and address made certain grievances against the Headmaster of the School where the defacto complainant is an Assistant Teacher. Subsequently, on 17 August, 2015 the defacto complainant came to know from Chitpur Police Station that by using his name, phone number and address some unknown person sent a fake letter to one Saibal Banerjee and on the basis of a complaint submitted by the said Saibal Banerjee a case under Section 380 of the IPC was registered against him. Since the defacto complainant never sent any such letter he duly informed the entire fact to the local Police Station. Subsequently, on 25 July, 2015, pursuant to an investigation conducted by the CID, West Bengal, the defacto complainant came to know that a letter containing threats was sent to the Chief Minister of the State of West Bengal using the name, phone number and address of the defacto complainant. Finally, the defacto complainant lodged a complaint with the Officer-in-Charge of Cyber Crime Police Station at Barrackpore on 23 September, 2015. On the basis of the said complaint police registered FIR Case No.11 of 2015 dated 23rd September, 2015 under Section 500/506 of the IPC read with Section 66(C) of the Information Technology Act.

2. During investigation the petitioner received a notice under Section 41A of the Code of Criminal Procedure and he came to know that he has been implicated in the above mentioned case. It is alleged by the petitioner that he has been falsely implicated in the case. However, he surrendered before the learned Additional Chief Judicial Magistrate, Barrackpore on 19 December, 2015 and enlarged on bail on the same date. On completion of investigation police submitted charge-sheet against the petitioner on the above mentioned penal provisions. After filing of the charge-sheet, the petitioner preferred an application under Section 482 of the Cr.P.C before this Court for quashing of the above mentioned FIR case and G.R Case No.5572 of 2015 which arose out of the said FIR case. The application filed by the petitioner before this Court was registered as CRR No.1008 of 2019. The said revision was disposed of by the Hon'ble Tirthankar Ghosh, J. vide order dated 12 March, 2020 with the following order:-

"Pursuant to the order passed by this Court, a report has been placed before this Court by the Central Forensic Science Laboratory. However, no supplementary charge-sheet has been filed till date before the learned Judicial Magistrate, 1st Court, Barrackpore who is in seisin of the matter.

In view of the submissions advanced by the learned Public Prosecutor that within a week from date supplementary charge-sheet would be filed before the learned

Judicial Magistrate, 1st Court, Barrackpore, I am of the opinion that the petitioner must be afforded an opportunity of availing the documents and papers along with the reports on which the prosecution intends to prove its case. If the petitioner is dissatisfied, the petitioner is at liberty to challenge the same at appropriate stage.

As the learned Public Prosecutor has submitted regarding the time period for submission of the supplementary charge-sheet no direction is passed by this Court. However, the petitioner will be at liberty to draw the attention of the court of the learned Judicial Magistrate in respect of the orders passed and pray for remedies which are available in the code.

With the aforesaid observations, CRR 1008 of 2019 is disposed of.

The I/C, Cyber Crime Police Station, Barrackpore Police Commissionerate is present in court. His further appearance before this court is dispensed with.

The report submitted by the Director, C.F.S.L be kept with the record.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities."

3. In view of direction passed by this Hon'ble Court in CRR NO.1008 of 2019, police submitted supplementary charge-sheet on 17th March, 2020 containing CSFL report before the court of the learned Judicial Magistrate, 1st Court at Barrackpore. It is submitted by the petitioner that the CSFL report in respect of the computer of the petitioner which was searched during investigation clearly stated that "none of the search hits could be construed as relevant". Therefore, the allegation of theft of identity of the defacto complainant by the petitioner proves to be a false allegation and charge under Section 66(C) of the Information Technology Act, 2000 has not been made out. As the petitioner was not involved in theft of identity of the defacto complainant he also cannot be held liable under Sections 500/506 of the IPC. Therefore, the petitioner has prayed for quashing of the charge-sheet.

4. The learned Advocate for the petitioner submits that the petitioner is a retired government employee. He was never involved in the alleged offence on which charge-sheet was submitted against him. The learned Advocate for the petitioner submits that the petitioner is an innocent person because the allegation against the petitioner is that the petitioner sent threat letters, online purchase orders etc using the name, address and phone number of the defacto complainant through his computer. The computer of the petitioner was seized and it was scientifically examined. Bit stream image of hard disk was prepared by the scientific experts of CSFL and the said bit stream image was searched for key words. However, none of

the search hits could be construed as relevant. Thus, the basis allegation that the petitioner sent letters containing threat calls to one A. Banerjee, the Headmaster of School and also to the Chief Minister of this State has not been proved by scientific examination. When the charge under Section 66(C) of the Information Technology does not have any leg to stand, the charge under Sections 500/506 of the IPC also cannot stand.

5. Mr. Rudradipta Nandy, learned Advocate for the State of West Bengal, on the other hand submits on production of case diary that the online merchants such as flipkart, snapdeal, myntra were requested to share the IP address of the relevant orders placed before them on the basis of cash on delivery. The IP address of the computer was duly sent to the police authority and from IP location and IP address it was ascertained that the petitioner had been using the computer having the said IP address.

6. This was ascertained from the broadband application form submitted by the petitioner wherefrom his identity and photograph was also revealed to the Investigating Officer.

7. On careful perusal of the material in the case diary, this Court is of the view that it would not be prudent to quash the charges-sheet filed in connection with Barrackpore Cyber Crime Police Station No.11 of 2015 rd dated 23 September, 2015 under Sections 500/506 of the IPC and 7 Section 66(C) of the Information Technology Act corresponding to G.R Case No.5572 of 2015 pending before the learned Judicial Magistrate, 1st Court at Barrackpore.

8. For the reasons stated above the instant revision is dismissed on contest however, without cost.

9. Case diary be returned to the learned P.P-in-Charge.

Petition Dismissed