

# State By Cyber Crime Police vs 2. Abubakar Siddique S/O Hayathulla on 27 January, 2017

IN THE COURT OF THE I ADDL.C.M.M, Bengaluru

Present: Smt. Hema Pastapur  
B.A.,LL.B.,  
I Addl. C. M. M, Bengaluru

C.C.No.24836/2009

Dated this the 27th day of January 2017

Judgment under section 355 of the Code of Criminal Procedure

Complainant:- State by Cyber Crime Police, C.O.D,  
Bengaluru.

(By Learned Senior Assistant Public Prosecutor)

VS

Accused:- 2. Abubakar Siddique s/o Hayathulla,  
age:34 years, r/o Champa Nagar,  
1st cross road, Sakaleshpur, Hassan district

(Accused no.2 by Shri V.S.S. Advocate and  
accused no.1, 3 to 7-split up on 11-4-2007)

Offences complained : U/secs 420 and 120(B) r/w sec 34 of the  
Indian Penal Code and u/sec 66 of the  
Information Technology Act.

Opinion of the Court : Accused no.2 is not found guilty  
2

C.C.No.24836/2009

Date of Judgment : 27.01.2017.

## JUDGMENT

That, the Deputy Superintendent of Police, Cyber Crime Police Station, C.O.D, Bengaluru, has filed the Final report against the accused for the offence punishable under sections 420 and 120(B) r/w section 34 of the Indian Penal Code and under section 66 of the Information Technology Act. .

1. That, the allegation of the prosecution is that the accused with their common intention to make wrongful gain by conspiring with each other have hacked the bank accounts of CWs2 to 6 and got transferred the amount of sum of Rs.67,349/- in their respective bank accounts and recharged the mobile phones and paid the post paid bills to the different subscribers.

2. That, on complaint being lodged the Cyber Crime Police, Bengaluru, have registered the case. That, the Investigating Officer after completion of investigation filed the Final report against the accused for aforesaid offences.

3. That, this court after taking the cognizance of the aforesaid offences issued summons to the accused no.2 and he appeared before this court. That, the provisions of section 207 of Code of Criminal Procedure, have complied here with. That, the charge of the accused no.2 has recorded and read over to him in language known to him and he has not pleaded guilty and claimed to be tried. That, after completion of prosecution side evidence, the statement of the accused no.2 as contemplated under section 313 of Code of Criminal Procedure, has recorded and read over to him in language known to him and he denied all incriminating evidence appearing against him and not chosen to lead either oral or documentary evidence on his behalf. That, the accused no.2 has stated that he studied upto 9th standard and he is not having the knowledge about computer.

4. That, I have heard the arguments and perused the materials placed on record. That, the following points arise for My consideration and determination:

1. Whether the prosecution has proved beyond all reasonable doubt that, the accused no.2 with his common intention to make wrongful gain by conspiring with other accused persons hacked the bank accounts of CWs2 to 6 and got transferred the amount in their respective bank accounts and recharged the mobile phones and paid the post paid bills to the different subscribers and thereby has committed the offence punishable under sections 420 and 120(B) r/w section 34 of the Indian Penal Code and under section 66 of the Information Technology Act?

2. What order?

5. That, the prosecution to prove its above case has got examined PWS1 to 9 and got marked the documents at EXsP1 to P16(a) and also got marked MOs1 to 4 and closed its side.

6. That, My answer to the aforesaid points are as under:-

Point No.1:- In the NEGATIVE Point No.2:- As per the final order for the following:-

## REASONS

7. Point No.1:- It is specific allegation of the prosecution that, all accused with their common intention to make wrongful gain by conspiring with each other have hacked the bank accounts of CWs2 to 6 and got transferred the amount of sum of Rs.67,349/- in their respective bank accounts

and recharged the mobile phones and paid the post paid bills to the different subscribers.

It is pertinent to note here that, the prosecution to prove its above case has got examined CW1-Smt.Umashankar Krishna w/o K.Krishnan - the Complainant as PW3. It is pertinent to note here that, PW3 in her examination-in-chief has deposed that in the year 2007 she received the complaints from their customers that unauthorisidely some amount has been transferred from their account through internet banking and after receiving the said complaints from customers she gone through the relevant statement of accounts to cross check the genuinity of the complaints and she found that money has been unauthorisidely transferred from the accounts of six customers towards unknown persons account and thereafter, she lodged the complaint in Cyber Crime Police Station as per EXP1.

8. It is pertinent to note here that, the prosecution to prove its above case has further got examined CW15-Shri Suresh s/o Kottanur Muniyappa-the Seizure mahazar witness as PW1. It is pertinent to note here that, PW1 in his examination-in-chief has deposed that in the month of December 2007 COD Deputy Superintendent of Police had visited Kalyannagar, Bengaluru and at that time the accused no.1 was also present and at that time the Investigating Officer took the computer output DATA and after obtaining hard disc from CPU he took the ash value of the same and seized the said hard disc.

9. It is pertinent to note here that, the prosecution to prove its above case has further got examined CW16-Shri Surender Singh s/o Krishna Singh-the another Seizure mahazar witness as PW2. It is pertinent to note here that, PW2 has turned hostile and not supported the case of the prosecution.

10. It is pertinent to note here that, the prosecution to prove its above case has further got examined CW25-Shri Hariprasad s/o Panduranga-the another Seizure mahazar witness as PW4. It is pertinent to note here that, PW4 in his examination-in-chief has deposed that on 11-11-2008 the Cyber Crime Police have brought one technician by name Mallikarjun to his cyber café and searched the computer, but, they have not got any informatin in said computer and for which the police have conducted the Seizure panchanama as per EXP4.

It is pertinent to note here that, the accused no.2 has not cross-examined PW4.

11. It is pertinent to note here that, the prosecution to prove its above case has further got examined CW17-Shri Ganeshgowda s/o B.Thimmaiah-another Seizure mahazar witness as PW5. It is pertinent to note here that, PW5 in his examination-in-chief has deposed that on 06-12-2007 the COD police have got seized from accused no.3 one packet diary, debit card of HDFC Bank and mobile phone and conducted the Seizure mahazar as per EXP5.

It is to be noted here that, the accused no.2 has not cross-examined PW5.

12. It is pertinent to note here that, the prosecution to prove its above case has further got examined CW19-Shri Shyam s/o Ashwathappa-another Seizure mahazar witness as PW6. It is pertinent to note here that, PW6 in his examination-in-chief has deposed that on 07-12-2007 the Cyber Crime

police have called him to their office and enquired him about the accused by name Joseph and on the same day they took him to Anu and Anil Cyber point along with one Manjunath and in the said Cyber point the police have seized one long book, one Latha Siddoji VISA paper and also checked the cyber system in the said point and drawn the Mahazar as per EXP6.

It is to be noted here that, the accused no.2 has not cross-examined PW6.

13. It is pertinent to note here that, the prosecution to prove its above case has further got examined CW47-Shri Ramani s/o Budalingama-the Executive Director of C-DAC as PW7. It is pertinent to note here that, PW7 in his examination-in-chief has deposed that in the month of January 2008 they have got a letter from Cyber Crime Police Station COD, Bengaluru and in which they have requested them for examining the seized hard disc and as per the request made by COD police they have examined the hard disc and given the Report as per EXP7.

14. It is pertinent to note here that, the prosecution to prove its above case has further got examined CW49-Shri K.E.Vasudevarao s/o K.P.Eshwarrao- the Investigating Officer as PW8. It is pertinent to note here that, PW8 in his examination-in-chief has deposed that he recorded the statements of Satish and Suresh Kumar and furnished to CW15 the certified copy of the seizure mahazar pertaining to Crime no.27/2007.

It is to be noted here that, the accused no.2 has not cross-examined PW8.

15. It is pertinent to note here that, the prosecution to prove its above case has further got examined CW15-Shri S.S.Muddegowda s/o Late Somegowda-the another Investigating Officer as PW9. It is pertinent to note here that, PW9 has deposed about the investigation conducted by him in present case.

16. It is pertinent to note here that, in the instant case the accused no.2 is facing the trial for the offences punishable under sections 420 and 120(B) r/w section 34 of the Indian Penal Code.

It is pertinent to note here that, for the offence of cheating under section 420 of the Indian Penal Code, there must be deception which should always precede the fraudulent or dishonest inducement and it must be established that the intention of the accused was dishonest at the time of making the promise. It is pertinent to note here that, mere deceit, fraudulent or dishonest inducement will not suffice to convict the accused under section 420 of Indian Penal Code.

It is pertinent to note here that, to establish a charge of criminal conspiracy under section 120(B) of Penal Code, the prosecution must prove an agreement between two or more persons to do cause to be done some illegal act or some act which is not illegal by illegal means and this fact can be proved by direct or circumstantial evidence. It is pertinent to note here that, the offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference with lack of support of cogent evidence.

17. It is pertinent to note here that, to held that the accused has committed the offence punishable under section 66 of the Information Technology Act, the prosecution has to prove that the accused has committed either of offence as mentioned in section 43 of the said Act. It is pertinent to note here that, under sections 66 and 43 of the Information Technology Act, runs as follows:

66. Computer related offences - If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extent to three years or with fine which may extend to fie lakh rupees or with both.

Explanation-For the purposes of this section-

(a) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860);

(b) the word fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860).

43. (Penalty and compensation) for damage to computer, computer system, etc- If any person without permission of the owner or any other person who is in- charge of a computer, computer system or computer network,

(a) accesses or secures access to such computer, computer system or computer network (or computer resource);

(b) downloads, copies or extracts any data, computer database or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer database or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network;

(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;

(j) steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage, (he shall be liable to pay damages by way of compensation to the person so affected).

Explanation- For the purposes of this section-

(i) "computer contaminant" means any set of computer instructions that are designed-

(a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or

(b) by any means to usurp the normal operation of the computer, computer system, or computer network;

(ii) "computer database" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

(iii) "computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;

(iv) "damage" means to destroy, alter, delete, add, modify or rearrange any computer resource by any means;

(v) "computer source code" means the listing of programmes, computer commands, design and layout and programmer analysis of computer resource in any form.

18. It is pertinent to note here that, in the instant case from perusal of entire evidence of PWs 1 to 9 it clearly appears that there is no iota of evidence against the accused no. 2 and he has been falsely implicated in present case. It is further pertinent to note here that, PW 7 in his cross-examination has deposed that in the above said hard disc he has not found any bank account name, bank password or any phone number. It is to be noted here that, in the instant case the prosecution has failed to prove the essential ingredients of sections 420 and 120(B) r/w section 34 of the Indian Penal Code and section 66 of the Information Technology Act. It is to be noted here that, in view of My above findings and without much discussion I hold that, the prosecution has failed to prove

beyond all reasonable doubt the guilt of the accused no.2 for the offence punishable under sections 420 and 120(B) r/w section 34 of the Indian Penal Code and under section 66 of the Information Technology Act. In view of the same, point no.1 is answered in the NEGATIVE.

19. Point No.2:- That, as discussed on point no.1, I proceed to pass the following:-

ORDER That, acting under section 248(1) of the Code of Criminal Procedure, the accused no.2 is acquitted for the offence punishable under sections 420 and 120(B) r/w section 34 of the Indian Penal Code and under section 66 of the Information Technology Act.

That, the bail and surety bonds of the accused no.2 are stands cancelled.

That, the accused no.2 shall comply with the provisions of section 437(A) of the Code of Criminal Procedure.

That, M.Os.1, 3 and 4 shall be destroyed after appeal period and M.O.2 shall be confiscated to the State after appeal period.

(Dictated to the stenographer, transcript thereof, computerized and then corrected by me and then pronounced in open Court on this the 27th day of January 2017).

Date:27.01.2017  
Place:Bengaluru

(Hema Pastapur)  
I Addl. C. M, Bengaluru.

#### Annexure

List of witnesses examined on behalf of the prosecution PW1: Suresh s/o Kottanur Muniyappa;

PW2:	Surendra Singh s/o Krishna Singh;
PW3:	Umashankar Krishna s/o K.Krishnan;
PW4:	Hariprasad s/o Panduranga;
PW5:	Ganeshgowda s/o B.Thimmaiah;
PW6:	Shyam s/o Ashwathappa;
PW7:	Ramani s/o Budalingama;
PW8:	K.E.Vasudevrao s/o K.P.Eshwarrao and
PW9:	S.S.Muddegowda s/o Late Somegowda.

List of documents marked on behalf of the prosecution EXP1: Complaint;

EXP1(a):	Signature of PW1;
EXP1(b):	Signature of PW9;
EXP2:	Documents in three sheets;
EXP3:	Complaint of CW2;
EXP3(a):	Signature of PW9;

EXP4: Seizure mahazar dated 11-11-2008;  
EXP4(a): Signature of PW4;  
EXP4(b): Signature of PW9;  
EXP5: Copy of Seizure mahazar dated 06-12-2007;  
EXP5(a): Signature of PW5;  
EXP6: Copy of Seizure mahazar dated 07-12-2007;  
EXP6(a): Signature of PW6;

EXP7: Long book and VISA paper of  
Latha Siddique;  
EXP8: True copy of Report of PW7;  
EXP8(a): Signature of PW4;  
EXP9: Copy of Mahazar;  
EXP10: FIR;  
EXP10(a): Signature of PW9;

EXsP11 and P12: Copies of account opening forms;

EXP13: Notice issued to CW2;  
EXP13(a): Signature of PW9;  
EXP14: Seizure panchanama dated 23-01-2009;  
EXP14(a): Signature of PW4;  
EXP14(b): Signature of PW9;  
EXP15: Report of CW32;  
EXP15(a): Signature of PW9;  
EXP16: Report of CW36 and  
EXP16(a): Signatures of PW9.

List of witnesses examined on behalf of the accused no.2 Nil List of documents  
marked on behalf of the accused no.2 Nil List of material objects marked on behalf of  
the prosecution M.O.1 : Hard disc;

M.O.2: Mobile;

M.O.3: HDFC Bank debit card and  
M.O.4: Packet diary.

Date:27.01.2017  
Place:Bengaluru

(Hema Pastapur)  
I Addl. C. M. M, Bengaluru.

27-01-2017  
State by Sr.APP.,  
Accused no.2 C/B  
For judgment.



(Judgment pronounced in the Open Court, vide separate order) ORDER That, acting under section 248(1) of the Code of Criminal Procedure, the accused no.2 is acquitted for the offence punishable under sections 420 and 120(B) r/w section 34 of the Indian Penal Code and under section 66 of the Information Technology Act.

That, the bail and surety bonds of the accused no.2 are stands cancelled.

That, the accused no.2 shall comply with the provisions of section 437(A) of the Code of Criminal Procedure.

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(Hema Pastapur) I Addl.CMM, Bengaluru.