Source Code Theft

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Summary of the case

Tata Indicom employees were arrested for manipulation of the electronic 32-bit number (ESN) programmed into cell phones that were exclusively franchised to Reliance Infocomm. The court held that such manipulation amounted to tampering with computer source code as envisaged by section 65 of the Information Technology Act, 2000.

Background of the case:

Reliance Infocomm launched a scheme under which a cell phone subscriber was given a digital handset worth Rs. 10,500 as well as service bundle for 3 years with an initial payment of Rs. 3350 and monthly outflow of Rs. 600. The subscriber was also provided a 1 year warranty and 3 year insurance on the handset.

The condition was that the handset was technologically locked so that it would only work with the Reliance Infocomm services. If the customer wanted to leave Reliance services, he would have to pay some charges including the true price of the handset. Since the handset was of a high quality, the market response to the scheme was phenomenal.

Unidentified persons contacted Reliance customers with an offer to change to a lower priced Tata Indicom scheme. As part of the deal, their phone would be technologically "unlocked" so that the exclusive Reliance handsets could be used for the Tata Indicom service.

Reliance officials came to know about this "unlocking" by Tata employees and lodged a First Information Report (FIR) under various provisions of the Indian Penal Code, Information Technology Act and the Copyright Act.

The police then raided some offices of Tata Indicom in Andhra Pradesh and arrested a few Tata Teleservices Limited officials for re-programming the Reliance handsets.

These arrested persons approached the High Court requesting the court to quash the FIR on the grounds that their acts did not violate the said legal provisions.

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Issues raised by the Defence:

1. Subscribers always had an option to change from one service provider to another.

2. The subscriber who wants to change from Tata Indicom always takes his handset, to other service providers to get service connected and to give up Tata services.

3. The handsets brought to Tata by Reliance subscribers are capable of accommodating two separate lines and can be activated on principal assignment mobile (NAM 1 or NAM 2). The mere activation of NAM 1 or NAM 2 by Tata in relation to a handset brought to it by a Reliance subscriber does not amount to any crime.

4. A telephone handset is neither a computer nor a computer system containing a computer programme.

5. There is no law in force which requires the maintenance of "computer source code". Hence section 65 of the Information Technology Act does not apply.

Findings of the court

1. If the phone cannot find any control channels to listen to, the cell phone displays "no service" message as it is out of range.

2. When cell phone receives SID, it compares it to the SID programmed into the phone and if these code numbers match, cell knows that it is communicating with its home system. Along with the SID, the phone also transmits registration request and MTSO which keeps track of the phone's location in a database, knows which cell phone you are using and gives a ring.

1. So as to match with the system of the cell phone provider, every cell phone contains a circuit board, which is the brain of the phone. It is a combination of several computer chips programmed to convert analog to digital and digital to analog conversion and translation of the outgoing audio signals and incoming signals.

2. This is a micro processor similar to the one generally used in the compact disk of a desktop computer. Without the circuit board, cell phone instrument cannot function.

3. When a Reliance customer opts for its services, the MIN and SID are programmed into the handset. If someone manipulates and alters ESN, handsets which are exclusively used by them become usable by other service providers like TATA Indicom.

Conclusions of the court

1. A cell phone is a computer as envisaged under the Information Technology Act.

2. ESN and SID come within the definition of "computer source code" under section 65 of the Information Technology Act.

3. When ESN is altered, the offence under Section 65 of Information Technology Act is attracted because every service provider has to maintain its own SID code and also give a customer specific number to each instrument used to avail the services provided.

4. Whether a cell phone operator is maintaining computer source code, is a matter of evidence.

1. 5. In Section 65 of Information Technology Act the disjunctive word "or" is used in between the two phrases

2. "when the computer source code is required to be kept"

3. "maintained by law for the time being in force".

Thank You