

# V Narendra Babu vs The State Of Andhra Pradesh on 31 January, 2022

**Author: Cheekati Manavendranath Roy**

**Bench: Cheekati Manavendranath Roy**

HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Writ Petition No.10882 of 2021

Order:

This writ petition under Article 226 of the Constitution of India is filed seeking a mandamus declaring the action of the 3rd respondent-Station House Officer of Kankipadu Police Station, Vijayawada City, in registering the FIR in Crime No.239/2021 for the offences punishable under Sections 120B, 403, 408, 420 and 477A of IPC and under Section 66C read with Section 43 of the Information Technology Act, 2008, against the petitioners on the basis of the report lodged by the de facto complainant, who is the 4th respondent, as unconstitutional and consequently to set aside the same.

2. Facts of the prosecution case, germane to dispose of this writ petition, as set out in the FIR, may be stated as follows:

(a) Varsity Education Management Private Limited (VEMPL, for brevity) is a company registered under the Companies Act, 1956. It has been doing business in providing education and coaching for competitive examinations to the students and also rendering educational services to various institutions under the name and style

"Sri Chaitanya" through its various branches. The de facto complainant is one of the directors of the said VEMPL. It is stated that VEMPL over the past 10 years and Sri Chaitanya over the past 35 years developed intellectual property which

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includes academic curriculum, study material, teaching methods, teaching points, pupil's activity, teacher's activity, questioning hypothesis, evaluation, teacher's ability, programmes, question bank, academic knowledge, experience driven programmes by utilizing faculty and resources throughout the country by spending several crores of rupees and stored and saved the said intellectual property for exclusive use of the said educational institutions in the hard disks of the computer systems in an encrypted storage by installing the best antivirus software with a strong password to prevent hacking or gaining access to the outsiders.

(b) Except the Executive Dean, Dean or Data Analyst of the branches of VEMPL, the said data stored in the computer system is not accessible to any other person.

(c) The said VEMPL, in the brand name of Sri Chaitanya, has established Gosala branches at Gosala campus of Vijayawada in the year 2014 and has been imparting education and giving coaching etc., to the students. The management of VEMPL, Sri Chaitanya group appointed accused 1 to 3 i.e. Mr. V.Narendra Babu (accused No.1) as an Executive Dean, Sri N.Srinivasa Rao (accused No.2) as a Dean and Sri G.Balakrishna Prasad (accused No.3) as a Data Analyst in the year 2014. They have entered into Employment Agreements with VEMPL which are being renewed from time to time and it is stated that they are still in force. Therefore, they have domain over the entire CMR, J.

infrastructure including the computers, hardware and software and they got exclusive access to them. The accused 1 to 3 have agreed in their Employment Agreements that they shall not use the confidential information entrusted to them by the employer at any time directly or indirectly to have personal commercial advantage or to do anything which is detrimental to the business or activities of the employer in any manner and that the said concepts, ideas etc., written or electronically developed by the employee during the course of his employment, exclusively belong to the company and also gave an undertaking to keep confidentiality of the same. Therefore, reposing confidence in the accused 1 to 3, the company has entrusted the said confidential and valuable computer data and details of the students in good faith to the accused 1 to 3 by providing passwords of the computer systems to them for the purpose of using the said data exclusively for the purpose of running the educational institutions, establishments and schools belonging to the employer and for using the same to impart education to the students studying in Gosala branches of Sri Chaitanya group.

(d) It is stated that while so, accused 1 to 3 stopped attending duties from 16-5-2021 abruptly and as such suspicion arose and when the computer infrastructure and software particulars were checked, it is noticed that accused 1 to 3 have misused and abused their position as employees of the said

educational institutions and their access to the CMR, J.

computer systems which were entrusted to them and dishonestly and mala fide entered into a conspiracy to steal the entire data to use it for their personal gain. Therefore, in pursuance of their common intention, they in collusion with each other, to have wrongful gain for themselves and to cause wrongful loss to the company and its institutions have misused the passwords of the computer systems of the institutions and gained access to the exclusive data of the educational institutions of the company and have stolen the entire data stored in the computer systems i.e. curriculum, study material, teaching methods, teaching points, teacher's activity, questioning hypothesis, evaluation, question bank, programmes, academic knowledge experience, driven programmes, devised by the company worth of Rs.100 Crores. They have also stolen the complete student data relating to the students of the educational institutions of the company.

(e) It is stated that the educational institutions of the company have completed 90% of the syllabus by 15 th May, 2021 and only revision syllabus remained uncompleted. So, after stealing the data of the company, accused 1 to 3 have floated a fictitious institution by imitating the name of Gosala branches of the company deceptively similar to the same under the name and style "Gosalites Medical Academy"

at Poranki Village. Accused 1 to 3 started using the said stolen data in the said Medical Academy in criminal breach of trust and they started luring the lecturers of the VEMPL CMR, J.

company by offering bribes and they also induced the students to join their institution by giving advertisements stating that the students need not pay the balance fee payable to the educational institutions of the VEMPL company and that the entire balance 10% of syllabus revision will be completed on payment of Rs.6,000/- per month to the company floated by accused 1 to 3. Accused 1 to 3 started using the same study material, curriculum, question bank, programmes etc., for completion of the said 10% revision by conducting zoom classes to the students by misusing the software data stolen from the educational institutions of the company. It is stated that they have also sent Short Message Services (SMSs) to several students through the mobile phone numbers which are listed in para-10 of the FIR informing the students that they need not pay the balance fee to the educational institutions of the company and they should remit a sum of Rs.6,000/- per month towards fee to the account of Gosalites Medical Academy and accordingly some of the innocent students remitted the said sum of Rs.6,000/- per month to the said account.

(f) Therefore, it is stated that accused 1 to 3 dishonestly and fraudulently committed theft of the data including the hard copies of study material, question banks etc., and misappropriated the same and converted the same for their use by using the same in their fictitious educational institution floated in the name of Gosalites Medical Academy.

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(g) It is stated in the descriptive particulars of the accused in the F.I.R. that A4 is the Vice-Principal and Partner and A5 is the Admin Officer and Partner of the said Gosalites Medical Academy.

(h) The aforesaid report was registered as a case in Crime No.239/2021 by the Sub Inspector of Police, Kankipadu Police Station, for the offences punishable under Sections 120B, 403, 408, 420 and 477A of IPC and under Section 66 read with Section 43 and Section 66C of the Information Technology Act, 2008 (the I.T. Act, for brevity).

(i) It is the said FIR which is now sought to be set aside/quashed in this writ petition.

3. The 3rd respondent-Station House Officer of Kankipadu Police Station, who registered the FIR, filed counter affidavit stating that the 4th respondent, by name M.Murali Krishna, lodged a report with him stating that he is the director of VEMPL, which is doing business in providing classes and coaching for competitive examinations to the students and educational services to various institutions under its branch "Sri Chaitanya" and other branches and Sri Chaitanya College established Gosala branches at Gosala campus in 2014 and that they have developed data relating to academic curriculum, study material, teaching methods, question bank etc., by spending crores of rupees and stored the same in their hard disk of their computer and that the petitioners, who are accused 1 to 3 who are the employees of CMR, J.

the said Sri Chaitanya group who got domain over the said data and both the computer hardware and software and that they all conspired together and stolen the aforesaid data of VEMPL and started making use of the said data in their educational institution to have wrongful gain for them and wrongful loss to VEMPL. It is stated that he has registered the said report as a case in Crime No.239/2021 for the offences punishable under Sections 120B, 403, 408, 420 and 477A of IPC and under Section 66 read with Section 43 and under Section 66C of the Information Technology Act, 2008 and has been investigating the same and that about four witnesses were examined and their statements were recorded. It is stated that it is mandatory on the part of the Investigating Agency to register the FIR when the report discloses commission of a cognizable offence as held by the Apex Court in the case of Lalita Kumar v. State of U. P.1 and as per the ratio of the said judgment, preliminary enquiry is required to be conducted only in (a) matrimonial, family disputes, (b) commercial offences, (c) medical negligence cases and (d) corruption cases, and the present case is not falling in the category of above cases and as such he has registered the FIR and investigating the same. It is stated that the investigation is at preliminary stage and if the Police are allowed to continue the investigation that they would be able to file final report under Section 173 of Cr.P.C after collecting 1 (2014) 2 SCC 1 CMR, J.

evidence and that the petitioners cannot maintain the writ petition to quash the proceedings at the initial stage of the investigation as the case is not falling within the parameters laid down by the Apex Court in State of Haryana v. Bhajan Lal<sup>2</sup> to quash the FIR. Therefore, it is prayed to vacate the interim order and allow him to proceed with the investigation.

4. The 4th respondent-de facto complainant filed his counter stating that there is no necessity to conduct any preliminary investigation in cases of like nature. It is stated that when the FIR discloses commission of a cognizable offence, the Police has to register an FIR and investigate the same as has been held by the Apex Court in Lalita Kumar,,s case (1 supra). It is pleaded that the petitioners did not make out any case to warrant interference of this Court to quash the FIR. Further pleaded that the petitioners have admitted that they have sent messages to the students of the complainant-institution and it clearly reveals theft of data from the complainant-institution and that the petitioners have also admitted in the Writ Affidavit that the laptops were given to them by the management of the complainant- institution VEMPL for conducting online classes. It is stated that the said laptops were fraudulently used and operated in the educational institution set up by them and the same were seized by the Police in the said educational institution of the petitioners. So, these acts committed by the petitioners in 2 1992 Supp (1) SCC 335 CMR, J.

using the software of the complainant-company, which are loaded in the laptops given to them in the educational institution set up by them, constitute an offence of criminal breach of trust. Finally pleaded that as the petitioners have established a fictitious institution in the name and style "Gosalites Medical Academy" and after receiving salaries from the complainant-institution for the month of April, 2021, as they stopped attending the duties from 15-5-2021 and as they are using the data that was created by the complainant- company in their fictitious educational institution which exclusively belongs to the complainant-company VEMPL and collecting money from the students at the rate of Rs.6,000/- per month, the said acts committed by the petitioners clearly constitute the offences for which the FIR was registered. Therefore, it is prayed to dismiss the writ petition and to vacate the interim order dated 04-6-2021.

5. Heard Sri Dammalapati Srinivas, learned Senior Counsel appearing for the petitioners; Sri V.Maheswar Reddy, learned Government Pleader for Home appearing for respondents 1 to 3; and Sri B.Adinarayana Rao, learned Senior Counsel appearing for the 4th respondent-de facto complainant.

6. Learned Senior Counsel for the petitioners would contend that at best the acts complained against the petitioners would amount to only breach of agreement which is a dispute of civil nature and the same cannot be converted CMR, J.

into a criminal liability and the petitioners are not liable for any prosecution. He would further contend that Section 2(o) of the I.T. Act defines "Data" and the same cannot be termed as "property" as required under Sections 408 and 420 of IPC and the facts of the case do not constitute any offence punishable under Sections 403, 408, 420 and 477A of IPC. It is then contended that when Special Act i.e., the Information Technology Act, 2008 covers the offence, the provisions of IPC are not applicable and the registration of FIR for the offences under Sections 120B, 403, 408, 420 and 477A of IPC is legally unsustainable. Learned Senior Counsel for the petitioners also contends that Section 81 of the I.T. Act gives overriding effect over the provisions of the IPC and on the said ground, the FIR registered for the IPC offences is not maintainable under law. Learned Senior Counsel for the petitioners finally contends that under Section 78 of the I.T. Act, officer not below the rank of Inspector of Police shall investigate the offence and as the FIR was registered by the Sub

Inspector of Police and as he has been investigating the crime that the investigation is vitiated for contravening the mandate under Section 79 of the I.T. Act.

7. Per contra, learned Government Pleader for Home would contend that the Data is also to be considered as property for the purpose of IPC offences. He would submit that even though the FIR was registered by the Sub Inspector of Police, who was the Station House Officer at that time, the CMR, J.

crime is being investigated by the Inspector of Police and as such the mandate of Section 78 of the I.T. Act is complied with and the investigation is not vitiated as contended by the learned Senior Counsel for the petitioners. He would submit that the allegations ascribed in the FIR clearly constitute the offences punishable under Section 66 read with Section 43 and under Section 66C of the I.T. Act. He would also submit that the allegations set out in the FIR also constitute the offences punishable under Sections 403 and 408 of IPC relating to criminal breach of trust and criminal misappropriation and also as there is conspiracy among accused 1 to 3 and other accused A4 & A5 to commit the said offences that an offence under Section 120B of IPC is also constituted. Therefore, he would submit that the matter requires investigation to find out the truth or otherwise of the said allegations and as the investigation is at nascent stage, the same cannot be interdicted and the FIR cannot be quashed. He would submit that no legal grounds are existing to quash the FIR.

8. Learned Senior Counsel appearing for the 4th respondent would submit that the mere existence of an arbitration clause or facts giving rise to a civil liability to claim damages cannot be a ground to quash the FIR when the facts of the case also constitute offences punishable under the I.T. Act and under the IPC. He then contends that when the acts committed by the accused constitute offences both CMR, J.

under the Special Enactment i.e., the I.T. Act and also the IPC and when the said offences are distinct and separate, there is no bar to prosecute the accused for the offences under the IPC also albeit they are also liable for prosecution under the I.T. Act. He would also contend that there is no conflict between the offences under the I.T. Act and the offences under the IPC and as such the bar under Section 81 of the I.T. Act has no application to the present facts of the case. He would contend that stealing data is an offence under the I.T. Act whereas misappropriating data and committing criminal breach of trust is an offence under the IPC and as such when the facts of the case constitute two separate and distinct offences, the accused are liable to be prosecuted for the offences both under the I.T. Act and the IPC. So, he would submit that the facts of the case in the judgment relied on by the petitioners reported in *Sharat Babu Digumarti v. Govt. of NCT of Delhi*<sup>3</sup> are distinguishable and they are not applicable to the present facts of the case. He would contend that the petitioners, who are admittedly employees of the company and who undertook to maintain confidentiality of the data developed by the company and its educational institutions in their Employment Agreement, committed breach of trust and have stolen the entire data of the company and its educational institutions and misappropriated the same for their use by 3 (2017) 2 SCC 18 CMR, J.

floating another educational institution, which is run by them along with accused Nos.4 and 5 and used the same in the said institution with a dishonest intention to have wrongful gain to them and to cause wrongful loss to the company and its educational institutions have committed the offences which are punishable under I.T. Act and IPC. Therefore, he submits that these facts clearly constitute the offences punishable under Section 66 read with Section 43 and under Section 66C of the I.T. Act and also the offences punishable under Sections 403, 408 and 420 of IPC. So, he would finally contend that when the facts of the case clearly constitute the aforesaid offences, the FIR cannot be quashed and the investigation shall be allowed to go on and the petitioners are liable for prosecution for the said offences. Therefore, he would pray for dismissal of the writ petition.

9. I have given my anxious and thoughtful consideration to the aforesaid rival submissions made by the learned Senior Counsel for the petitioners, learned Government Pleader for Home and the learned Senior Counsel for the 4th respondent.

10. At the outset, it is relevant to note that the fact that accused 1 to 3 are the employees of the company i.e. VEMPL is absolutely not in dispute. Admittedly, accused 1 to 3 have entered into separate Agreements with the said company which is styled as Employment Agreement. They are working as Executive Dean, Dean and Data Analyst. The fact that A4 is the Vice-Principal and Partner of Gosalites Medical CMR, J.

Academy and A5 is the Admin Officer and Partner of Gosalites Medical Academy is also not in dispute. Similarly, the fact that Sri Chaitanya Educational Institutions are the institutions relating to the aforesaid company is also not in controversy. It is significant to note that the petitioners have themselves unequivocally admitted in the writ petition that they worked in VEMPL, Sri Chaitanya group in various capacities for the last several years. Therefore, the fact that the petitioners have worked in various capacities in VEMPL is now an incontrovertible fact.

11. It is the specific version of the prosecution as per the allegations set out in the FIR that the data was prepared by VEMPL worth of Rs.100 Crores for its exclusive use to impart education to the students of its educational institutions and the same has been stored in the computer systems of the said educational institutions and that they are entrusted to accused 1 to 3 to use the said data exclusively for the purpose of teaching the students and that necessary passwords of the computer systems to have access to the said data are also given to accused 1 to 3 and that they have misused their position as employees of VEMPL and unauthorisedly, without consent of the management of VEMPL, have stolen the said data and other information relating to the students and thereafter established another educational institution along with A4 and A5 in the name and style "Gosalites Medical Academy" deceptively similar to the CMR, J.

name of the educational institutions of Sri Chaitanya, Gosala branch and started using the said data which was stolen by them in the said Gosalites Medical Academy by inducing the students to pay only Rs.6,000/- per month stating that they need not pay the balance amount to VEMPL.

12. Now, the crucial question for adjudication is - whether these acts said to have been committed by accused would constitute any offence as contemplated under the I.T. Act or not?

13. In this context, it is relevant to consider Section 43 of the I.T. Act. Chapter IX of the I.T. Act deals with penalties, compensation and adjudication. Section 43 enumerates certain acts committed relating to illegal access to computer system, downloading copies or extracts of any data from computer system, causing damage to the computers, introducing any virus into the computer and computer network etc., in Clauses (a) to (j) of Section 43 of the I.T. Act. Person who commits any one or all of these acts is liable to pay compensation to the person affected by way of damages. For the purpose of deciding the present dispute, Clauses (a) and (b) of Section 43 are relevant in the context and for better appreciation, they are extracted hereunder:

"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;

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

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) ..... " shall be liable to pay damages by way of compensation to the person so affected.

14. Although this Section 43 contemplates that a person committing any such act or acts is liable to pay damages by way of compensation to the person affected, it is significant to note that Section 66 of the I.T. Act ordains that 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 extend to three years or with fine which may extend to five lakh rupees or with both. As per the explanation appended to



Section 66, the words "dishonestly" and "fraudulently" used therein shall have the same meaning assigned to the said expression in Sections 24 and 25 respectively of IPC.

15. Section 66 of the I.T. Act reads 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 CMR, J.

a term which may extend to three years or with fine which may extend to five 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;

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

16. Therefore, a combined reading of Sections 43(a) and

(b) and 66 of the I.T. Act makes it manifest that if any person, without the permission of the owner of the computer, computer system or computer network (a) accesses or secures access to the computer, computer system or computer network and (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium, dishonestly or fraudulently, he is liable for prosecution under Section 66 of the I.T. Act as the said acts are also made an offence under Section 43(a) and (b) of the I.T. Act.

17. Section 24 of IPC defines the term "dishonestly" as anything done with intention to have wrongful gain to one person or causing wrongful loss to another person. Section 23 of IPC defines the term "wrongful gain" and it is said that a gain by unlawful means of property to which the person gaining is not legally entitled is a "wrongful gain". Section 23 of IPC further defines "wrongful loss" stating that the loss caused by unlawful means of property to which the person losing it is legally entitled is a "wrongful loss". Similarly, CMR, J.

under Section 25 of IPC, "fraudulently" is defined as doing a thing fraudulently if he does it with intent to defraud a person.

18. It is specifically stated in the FIR that accused 1 to 3 have stolen the entire data stored in the computer system of VEMPL and its educational institutions and used the same for teaching the students in another company floated by accused 1 to 3 along with accused 4 and 5. So, it is a clear case where the said act of extracting or stealing the data from the computer systems of VEMPL is

done to have wrongful gain to accused 1 to 3 and to cause wrongful loss to VEMPL. So, the dishonest and fraudulent intention is very much apparent from the said acts. Therefore, the facts of the case, prima facie, clearly constitute an offence punishable under Section 66 read with Section 43(a) and (b) of the I.T. Act.

19. It is also specifically stated in the F.I.R. that the computers and computer systems in the educational institutions of Sri Chaitanya group of VEMPL were entrusted to A1 to A3 only for the exclusive use of the data therein in Gosala branches and other educational institutions of VEMPL. As it is stated that they had unauthorized access to the said data without the permission of the owners of the said computers and computer systems i.e. management of the VEMPL and used the same in their educational institutions floated as Gosalites Medical Academy, established by A1 to A3 along with A4 and A5, a clear offence punishable under CMR, J.

Sections 66 r/w.43(a) of the I.T. Act is made out. Similarly, the exclusive data of VEMPL was also found in the desktop computer and hard disk of Gosalites Medical Academy, which are seized by the police under the cover of a mediators report during the course of investigation in the premises of the said Gosalites Medical Academy. So, it is also prima facie evident that A4 and A5, who are the Vice Principal and Admin. Officer cum Partners of the said Gosalites Medical Academy, also had unauthorized access to the said data of VEMPL without their permission and copied the same and transferred the same into the Desktop and hard disk of the "Gosalites Medical Academy" and using the same in the Gosalites Medical Academy, which is an educational institution established by them along with A1 to A3. Therefore, these facts also constitute an offence punishable under Sections 66 r/w.43(a) and (b) of the I.T. Act against A4 and A5 also.

20. Eventhough the laptops which are found in the Gosalites Medical Academy when the police searched the said premises during the course of investigation were given to A1 to A3 for their use in the educational institutions of VEMPL, as they have used the same in Gosalites Medical Academy established by them and used the data in it belonging to VEMPL and also got the data in it extracted, copied and transferred into desktop and hard disk of Gosalites Medical Academy, the unauthorized access and transfer of data without the permission of the owner is apparent from it.

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As the details of the students of educational institutions of VEMPL are also available with Gosalites Medical Academy, it is also obvious that all the accused i.e. A1 to A5 had unauthorized access to the data relating to the students also of VEMPL and downloaded and copied the same into their computer. So, all the accused 1 to 5 are liable for prosecution for the offence punishable under Sections 66 r/w.43(a) and (b) of the I.T. Act.

21. Similarly, Section 66C of the I.T. Act makes use of password or any other unique identification feature of another person fraudulently or dishonestly, punishable with imprisonment of either description for a term which may extend to three years and fine which may extend to Rupees One Lakh. Section 66C of the I.T. Act reads thus:

"66C. Punishment for identity theft.-- Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh."

22. A reading of the aforesaid Section makes it manifest that mere user of the password of another person dishonestly or fraudulently by itself is made an offence.

23. As can be seen from the contents of the FIR at para-6, it is clearly stated that the management by reposing confidence in accused 1 to 3 has entrusted and given access CMR, J.

to them in good faith to the highly confidential and valuable data by providing passwords of the computer systems to them for using the data exclusively to run the educational institutions belonging to the employer and for using the same in Gosala branches of Sri Chaitanya group of VEMPL. In para-7 of the FIR, it is stated that accused 1 to 3, who have domain over the said computers, electronic gadgets, software, computer data base of the institutions including customize education software, have misused the passwords of the computer system and gained access to the said data and have stolen the same from the computer systems.

24. The petitioners did not dispute the fact that Gosalites Medical Academy was established by them. They themselves have filed a copy of Certificate of Registration of "Sri Gosalites Educational Society" along with the Writ Petition and also copy of declaration by the authorized agent for delivering the electronic services. As can be seen from the same, A-1 is the Secretary Correspondent and A2 is the Member of the said Sri Gosalites Educational Society. Now, it is significant to note that as can be seen from the Photostat copy of the certified copy of the mediators report, dated 29.05.2021, produced by the 4th respondent-de facto complainant, it shows that the police during the course of investigation seized desktop, laptop and one external hard disk containing the data relating to the VEMPL i.e. the educational institution of the complainant company found in CMR, J.

the premises of Gosalites Medical Academy. The contents of the mediators report prima facie disclose that A1 and A3 were found in the said Gosalites Medical Academy at the time when the police searched the said premises and they found on the table of A3 one computer i.e. desktop and it contains study material, teaching methods, curriculum etc. belonging to Sri Chaitanya Educational Institutions and they found one laptop also containing the same study material, teaching methods, lesson plans etc. of Sri Chaitanya Educational Institutions and one external hard disk also containing the same data relating to the Sri Chaitanya Educational Institutions and that they were seized in the presence of the mediators. Therefore, it is now prima facie evident that by using the password that was furnished to A1 to A3 dishonestly to have access to the data of VEMPL educational institutions, that A1 to A3 have transferred the said data in the laptop that was given to them to conduct online classes in the educational institutions of VEMPL into the desktop computer of Gosalites Medical Academy and also into the hard disk. The dishonest intention in using the said password to have wrongful gain to the accused and to cause wrongful loss to the VEMPL institutions is very much apparent from it.

25. Thus, these allegations in the FIR, when considered in the light of the ingredients contemplated under Section 43 read with Sections 66 and 66C of the I.T. Act, clearly CMR, J.

constitute the offences punishable under Section 66 read with Section 43(a) & (b) of the I.T. Act and under Section 66C of the I.T. Act.

26. Therefore, when it is found that the facts of the case constitute an offence punishable under Section 66 read with Section 43 and Section 66C of the I.T. Act, it cannot be said under any stretch of reasoning that the very registration of FIR in Crime No.239/2021 against accused is unsustainable under law or that it is unconstitutional. The truth or otherwise of the said allegations, which prima facie constitute the aforesaid offences, has to be ascertained during the course of investigation. Therefore, there is no merit in the contention of the petitioners that the facts of the case do not constitute any such offences punishable under Section 66 read with Section 43 and under Section 66C of the I.T. Act for which the FIR was registered.

27. The next crucial question that arises for consideration is - when the facts of the case constitute various offences under the I.T. Act, whether the accused are liable for prosecution for the offences punishable under IPC or not?

28. Even though from the facts of the case it appears that an offence of criminal misappropriation and criminal breach of trust are made out, in as much as A1 to A3 dishonestly used the passwords furnished to them and CMR, J.

extracted the data from the computer system entrusted to A1 to A3 by the VEMPL educational institutions and misappropriated the said data for their use in the educational institution i.e. Gosalites Medical Academy established by them, as the said facts of the case also constitute an offence punishable under Sections 66 r/w.43 of the I.T. Act and under Section 66C of the I.T. Act as discussed above, prosecuting the petitioners again for the offences punishable under Sections 403 and 408 of IPC is not permissible under law. The legal position in this regard is not res integra and the same has been well settled by the Apex Court in the case of Sharat Babu Digumarti<sup>3</sup>. The Supreme Court held that the provisions of the I. T. Act are a complete code relating to the offences that are covered under the I. T. Act. It is a special enactment and it has special provisions and all its provisions shall be allowed to have a full play.

29. Further held that Section 292 of IPC makes offence sale of obscene books etc., and when the I. T. Act in its various provisions deals with obscenity in electronic form, it also covers the offence under Section 292 of IPC. So, as it is a special enactment and has special provisions and when the offence has nexus with electronic record, the protection under Section 79 of the I.T. Act cannot be ignored and negated and as it is a special provision for a specific purpose, the I.T. Act has to be given effect to so as to make the protection effective and true to the legislative intent. Also CMR, J.

held that it is the specific mandate of Section 81 of the I.T. Act that the provisions of the I.T. Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and that all the provisions in the I.T. Act will have their play and significance, if

they pertain to electronic record.

30. Finally held that electronic forms of transmission are covered by I.T. Act which is a special law and that it is well settled proposition of law that a special law shall prevail over the general and prior laws like IPC and if the legislative intendment is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention and held that when once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of IPC.

31. As per the facts of the case in the above reported judgment of the Apex Court, the accused therein was sought to be prosecuted for the offence punishable under Section 67 of the I.T. Act for publishing and transmitting obscene material in electronic form, which is made an offence under the aforesaid Section of law in the I.T. Act. He was also sought to be prosecuted for the offence punishable under Section 292 of IPC for sale and publication of obscene books etc. As the publication and transmission of obscene material is made in the electronic form, it is held that the offence is CMR, J.

covered by the I.T. Act and as such, the accused therein is not liable again for prosecution under Section 292 of IPC.

32. Following the law laid down by the Apex Court in the above judgment, a Division Bench of the Bombay High Court also in the case of Gagan Harsh Sharma v. The State of Maharashtra<sup>4</sup> held at para.7 that the provisions of the I.T. Act would reveal that it provides complete mechanism for protection of data in a computer system or a computer network. The said enactment is a complete code which deals with electronic governance and confers a legal recognition on electronic records and the manner in which such records can be secured. The I.T. Act makes certain acts punishable in Chapter-IX and Chapter-XI of the Act which enumerates the offences related to the computer including the source documents. Thus, the said enactment is a complete Code in itself and deals with various aspects of electronic data and computer system.

33. Ultimately held that, once the acts of the accused done with fraudulent or dishonest intention constitute an offence under Sections 66 r/w.43 of the I.T. Act, they cannot be again held liable for the offence punishable under the Indian Penal Code.

34. As per the facts of the above reported case, that was also a case where F.I.R. was registered for the offences punishable under Sections 408 and 420 of IPC and under Judgment of the Bombay High Court in Crl.W.P.No.4361 of 2018, dt.26.10.2018.

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Sections 43, 65 and 66 of the I.T. Act against the accused for unauthorized use of data code by the employees of the complainant company by accessing the code and stealing the said data by using the computer source code without the permission of the owner or a person in-charge of the said computer or computer system. The Court held that when the offences are covered by Section 66 of

the I.T. Act that prosecuting the accused under both the Indian Penal Code and I.T. Act would be a brazen violation of protection against double jeopardy and quashed the F.I.R. in so far as it relates to offences punishable under the Indian Penal Code.

35. Thus, it is abundantly clear from the conspectus of law laid down in the aforesaid judgments of the Apex Court and the Bombay High Court that when the special enactment i.e. I.T. Act covers the criminal act and the offender, that the offender gets out of the net of the Indian Penal Code.

36. The analogy in the aforesaid judgments of the Apex Court and the Bombay High Court applies to the facts of the present case also. The acts committed by A1 to A3 and also A4 and A5 in extracting the data surreptitiously with a dishonest intention to use the same in their educational institutions, which they have established separately, and also the acts of A1 to A3 in using the password furnished to them dishonestly for the said purpose were made offences under Sections 66 r/w.43 of the I.T. Act and under Section 66C of the I.T. Act. So, the said illegal acts said to have been CMR, J.

committed by the accused are covered by the I.T. Act and they are made punishable. Therefore, in view of the law laid down in the aforesaid judgments of the Apex Court and the Bombay High Court, they cannot be again prosecuted for the same acts committed by them under Sections 403 and 408 of IPC. Facts of the case also do not constitute any offences punishable under Section 420 and Section 477A of IPC.

37. Therefore, the registration of the F.I.R. for the offences punishable under Sections 403, 408, 420 and 477-A of IPC is unsustainable under law. Ergo, the F.I.R. to that extent is liable to be quashed.

38. Upon considering the facts and circumstances of the case and the prima facie evidence that is collected during the course of investigation, this Court found that the facts of the case clearly constitute the offences punishable under Sections 66 r/w.43(a) and (b) and under Section 66C of the I.T. Act. It is well settled law that when the F.I.R. discloses commission of a cognizable offence and when the facts of the case constitute a particular offence, the investigation cannot be interdicted and the F.I.R. cannot be quashed. The investigation shall be allowed to go on to find out the truth or otherwise of the said allegations. It is also settled law that the power, under Section 482 Cr.P.C. or under Article 226 of the Constitution of India, of the High Court to thwart the investigation and to quash the F.I.R. is to be very sparingly exercised with circumspection only in rare and CMR, J.

exceptional cases. Only when it is found that the facts of the case taken at its face value do not even constitute any offence, then only the Court would be justified in quashing the F.I.R. Truth of the matter as per the allegations set out in the F.I.R. cannot be gone into in a petition filed under Section 482 Cr.P.C. or under Article 226 of the Constitution of India seeking quash of the F.I.R. The same is to be only ascertained during the course of investigation and if at all charge-sheet is filed, by the trial Court in the final adjudication of the case. The said legal position has been fairly well settled by the Apex Court in plethora of judicial pronouncements.

39. In the case of State of Haryana v. Bhajan Lal<sup>2</sup>, it is held that the power to quash criminal proceedings should be exercised sparingly and in rarest of rare cases and reliability of allegations

made in F.I.R. or complaint not to be examined.

40. The present case as regards the offences under the I.T. Act is concerned, is not falling within the parameters laid down in the above judgment for quash of F.I.R.

41. In the case of State of Orissa v. Ujjal Kumar Burdhan<sup>5</sup> also the Supreme Court held that the extraordinary power of the High Court to quash the F.I.R. or to interfere with the investigation has to be exercised sparingly with circumspection where the allegations in the F.I.R. even on its face value do not constitute any offence and that the High (2012) 4 SCC 547 CMR, J.

Court should be loath to interfere at early/pre-mature stage of investigation. Also held that investigation is necessary to test the veracity of the alleged offence and interference causing hindrance to investigation without any supervening circumstances, in a casual manner, amounts to miscarriage of justice, which is unsustainable.

42. In the judgment of Scoda Auto Volkswagen India Pvt. Ltd. v. State of Uttar Pradesh<sup>6</sup>, relied on by the learned Government Pleader for Home, the Three-Judge Bench of the Apex Court held that the criminal proceedings ought not to be scuttled at the initial stage and quashing of complaint should rather be an exception and a rarity than an ordinary rule.

43. Learned Senior Counsel appearing for the petitioners contended that as there is an employment agreement between A1 to A3 being the employees and their employer i.e. VEMPL that at best the alleged acts committed by A1 to A3 amount to committing breach of agreement and it gives rise to only a civil liability and criminal prosecution even for extracting the data illegally in breach of confidentiality as per the terms of the agreement is not maintainable. Also contends that as there is a clause for arbitration in case of any dispute arises out of the said agreement that the parties have to work out their remedy by resorting to arbitration and criminal prosecution is not an appropriate remedy.

2020 SCC OnLine SC 958 CMR, J.

44. The said contention has no merit. Mere fact that the alleged acts give rise to a civil liability cannot be a valid ground to quash the criminal proceedings when the facts also constitute offences under the I.T. Act and the accused are fastened with criminal liability.

45. The Apex Court in the case of Trisuns Chemical Industry v. Rajesh Agarwal<sup>7</sup> held that criminal prosecution cannot be thwarted merely because civil proceedings are also maintainable. Also held that existence of arbitration clause in the contract for supply of goods held not sufficient for quashing the complaint in a case registered under Sections 415 and 420 of IPC. It is held that arbitrator is not competent to adjudge an offence. The same proposition is also laid down by the Apex Court in the case of S.W. Palanitkar v. State of Bihar<sup>8</sup>. Therefore, the said contention holds no water.

46. Learned Senior Counsel appearing for the petitioners would also contend that as per Section 78 of the I.T. Act an officer not below the rank of Inspector of Police has to investigate the case and as the Sub-Inspector of Police registered the F.I.R. and has been investigating the case that the investigation is vitiated.

47. Learned Government Pleader for Home would submit that as the report was lodged with the Station House (1999) 8 SCC 686 (2002) 1 SCC 241 CMR, J.

Officer of Kankipadu Police Station, Vijayawada City, that the same was registered by the Sub-Inspector of Police, who was the Station House Officer at that time. He submits that the investigation is being done by the Inspector of Police in compliance with Section 78 of the I.T. Act.

48. Registration of F.I.R. can be made by an officer, who is the Station House Officer at the time when the report was lodged with the Police. So, registration of the F.I.R. by the Sub-Inspector of Police, who was the Station House Officer by then, is perfectly valid under law. Section 78 of the I.T. Act only ordains that the investigation shall be done by the officer not below the rank of Inspector of Police. As it is stated by the learned Government Pleader for Home on instructions that the investigation is now being done by the Inspector of Police, it is not contrary to the mandate of Section 78 of the I.T. Act.

#### CONCLUSION:

49. To sum up, the facts of the case coupled with the prima facie evidence that is available on record as discussed supra, prima facie, constitute an offence punishable under Sections 66 r/w.43(a) and (b) and Section 66C of the I.T. Act against A1 to A3 and the facts also constitute an offence punishable under Sections 66 r/w.43(a) of the I.T. Act against A4 and A5. Therefore, the F.I.R. in respect of the said offences is not liable to be quashed against the petitioners.

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However, as the petitioners are not found to be liable for prosecution for the offences punishable under Sections 120-B, 403, 408, 420, 477A of IPC, the F.I.R. to that extent is liable to be quashed.

50. Resultantly, the Writ Petition is partly allowed quashing the F.I.R. registered for the offences punishable under Sections 120-B, 403, 408, 420, 477A of IPC. The F.I.R. in respect of the offences punishable under Sections 66 r/w 43 of the I.T. Act and Section 66C of the I.T. Act holds good. The investigation in respect of the said offences shall go on.

51. The interim order earlier granted on 04.06.2021 staying the investigation stands vacated. No costs.

As a sequel, miscellaneous petitions, if any pending, in this Writ Petition, shall stand closed.



\_\_\_\_\_ CHEEKATI MANAVENDRANATH  
ROY, J.

31 January, 2022.

st Note:-

L.R. Copy to be marked.

(B/o) Ak/cs CMR, J.

HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY Writ Petition  
No.10882 of 2021 31st January, 2022.

(cs) CMR, J.

\* HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY + Writ Petition No.10882 of  
2021 % Dated 31-01-2022.

# V.Narendra Babu and 4 others ..... Petitioners Versus \$ 1. The State of A.P., rep. by its Principal  
Secretary, Home Department, Secretariat, Velagapudi, Amaravati, Guntur & 3 others ..Respondents  
! Counsel for the petitioners : Sri Dammalapati Srinivas, Senior Counsel, representing Sri P.Durga  
Prasad ^ Counsel for respondent Nos.1 to 3: Govt. Pleader for Home ^ Counsel for respondent No.4:  
Sri B.Adinarayana Rao, Senior Counsel, representing Sri K.Nithin Krishna <GIST:

> HEAD NOTE:

? Cases referred:

1. (2014) 2 SCC 1

2. 1992 Supp (1) SCC 33

3. (2017) 2 SCC 18

4. Crl.W.P.No.4361/2018, dt.26-10-2018, of Bombay High Court

5. (2012) 4 SCC 47

6. 2020 SCC Online SC 98

7. (1999) 8 SCC 686

8. (2002) 1 SCC 241 CMR, J.

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH Writ Petition No.10882 of 2021  
V.Narendra Babu and 4 others ..... Petitioners Versus

1. The State of A.P., rep. by its Principal Secretary, Home Department, Secretariat, Velagapudi, Amaravati, Guntur & 3 others ..Respondents JUDGMENT PRONOUNCED ON: 31-01-2022  
HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers --- may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked -Yes- to Law Reporters/Journals
3. Whether His Lordship wish to see the fair copy of -Yes- the Judgment?

JUSTICE CHEEKATI MANAVENDRANATH ROY