



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 13141 OF 2023

BETWEEN:

INAYATHULLA N
S/O NAWAB JAN,
AGED ABOUT 46 YEARS,
R/AT 5TH CROSS, V V EXTENSION
HOSAKOTE, BENGALURU DIST. - 562114

...PETITIONER

(BY SRI. S JAGAN BABU, ADV. AND
SRI. PARAMESH KUMAR H.K., ADV.)

AND:

1. STATE BY POLICE SUB-INSPECTOR
BENGALURU CEN CRIME POLICE STATION,
BANGALORE DISTRICT,
KARNATAKA - 560 052
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU - 560 001

2. YOGESH D L
NO.05, MILLERS ROAD,
BENGALURU CEN CRIME POLICE STATION,
BENGALURU - 560 052

...RESPONDENTS

(BY SRI. THEJESH P., HCGP A/W
SRI. HARISH GANAPATHI, HCGP)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO
QUASH THE FIR IN CR.NO.200/2023 FOR THE OFFENCE P/U/S
67B OF I.T. ACT, BENGLAURU CEN CRIME POLICE STATION,
BENGALURU DISTRICT NOW PENDING ON THE FILE OF C.J.M.,
BENGLAURU RURAL DISTRICT, BENGALURU.





THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question the proceedings in Crime No.200/2023 registered for offence punishable under Section 67B of the Information Technology Act, 2008 (hereinafter referred to as 'the Act' for short).

2. Heard the learned counsel Sri.S.Jagan Babu, appearing for the petitioner and the learned HCGP Sri.Harish Ganapathi, appearing for respondent No.1.

3. The facts in brief, germane, are as follows:

A compliant comes to be registered against the petitioner on an incident that happens on 23.03.2022. The incident is that the petitioner, between 3:50 p.m. to 4:40 p.m., has viewed a website, which holds in it pornographic material of children. This is noticed by the cyber Tipline, which placed an alert on its Tipline with regard to the IP address. IP address led to the mobile number of the petitioner and then to his address. A complaint then comes to be registered on 03.05.2023 after about two months on the aforesaid incident. The complaint



then becomes a crime in Crime No.200/2023 for offence punishable under Section 67B of the Information Technology Act, 2008 (hereinafter referred to as 'the IT Act' for short). Registering the crime, immediately drives the petitioner to this Court, in the subject petition.

4. Learned counsel for the petitioner would vehemently contend that Section 67B of the IT Act is not even attracted in the case at hand. All that the petitioner was doing was, viewing a pornographic website on his mobile for about 50 minutes. The allegation is that he has viewed child pornography. He would contend that the petitioner is somewhat a porn addict and never intends to circulate anything, as he was himself only viewing the existing website.

5. Per contra, the learned HCGP would submit that the petitioner has admittedly indulged in watching child pornography. Therefore, such things should not be permitted to be continued. He would contend that it is a matter of investigation, as what the petitioner has done in the later days. He would seek dismissal of the petition.



6. I have given my anxious consideration to the contentions of respective learned counsel and have perused the material on record.

7. The afore-narrated facts, lie in a narrow compass. What leads to registration of crime, is an alert in the cyber Tipline that the petitioner watching a particular website on his mobile between 3:50 p.m. to 4:40 p.m. This results in registration of the complaint. The complaint reads as follows:

“ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಮ್ಮಲ್ಲಿ ಕೇಳಿಕೊಳ್ಳುವುದೇನೆಂದರೆ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ನಿರ್ದೇಶನದ ಅನ್ವಯ ಕೇಂದ್ರ ಸರ್ಕಾರವು 2018 ರಲ್ಲಿ ಮಹಿಳೆಯರ ಮತ್ತು ಮಕ್ಕಳ/ಇತರರ ಮಕ್ಕಳ ವಿರುದ್ಧ ಲೈಂಗಿಕ ಅಪರಾಧಗಳನ್ನು ತಡೆಗಟ್ಟುವ ನಿಟ್ಟಿನಲ್ಲಿ ಪ್ರತ್ಯೇಕವಾದ (CCPWC) & (NCCRP) & (NCMEC) ಪೋರ್ಟಲ್‌ಗಳನ್ನು ತೆರೆದಿದ್ದು, ಕರ್ನಾಟಕ ರಾಜ್ಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಮಕ್ಕಳ ವಿರುದ್ಧ ಲೈಂಗಿಕ ಅಪರಾಧಗಳನ್ನು ಕುರಿತು ಕೇಂದ್ರ ಸರ್ಕಾರದ (MHA) ದವರು ಸಂಗ್ರಹಿಸಿದ ಮಾಹಿತಿಯನ್ನು ಕೇಂದ್ರ ಸರ್ಕಾರದ ಎನ್.ಸಿ.ಆರ್.ಬಿ. ಮೂಲಕ ಪೋರ್ಟಲ್ ನಲ್ಲಿನಿಡಿಯಲ್ಲಿ ಸೈಬರ್ ಅಪರಾಧಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ದೂರುಗಳನ್ನು ಪರಿಶೀಲಿಸಿ ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಸಿಬಿಡಿ ಘಟಕಕ್ಕೆ ಕಳುಹಿಸಿದ್ದ ಸದರಿ ದೂರುಗಳನ್ನು ಸದರಿಯವರು ಸಿಡಿಯಲ್ಲಿ ಪಡೆದುಕೊಂಡು ಅವುಗಳನ್ನು ತಾಂತ್ರಿಕವಾಗಿ ಪರಿಶೀಲಿಸಿ ಅದರಲ್ಲಿರುವ ಗೌಪ್ಯ ಮಾಹಿತಿ ವಿಶ್ಲೇಷಣೆ ಮಾಡಿ ಸಂಬಂಧಪಟ್ಟ ಸೇವಾಪ್ರದಾತರಿಂದ (Service Provider) ಮಾಹಿತಿಯನ್ನು ಕೋರಿಸಿ, ಟಿಪ್ ಲೈನ್ ನಂಬರ್-120928689 ರ ಸಿಡಿಯಲ್ಲಿರುವ ಮಾಹಿತಿಯನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿದ್ದು, ಆರೋಪಿ ದಿನಾಂಕ: 23/03/2022 ರಂದು ಮಧ್ಯಾಹ್ನ 03.50 ಗಂಟೆಯಿಂದ ಸಂಜೆ 4.40 ಗಂಟೆಯವರೆಗೆ ಮಕ್ಕಳ ಅಶ್ಲೀಲತೆ ಭಾವಚಿತ್ರ/ವಿಡಿಯೋ ವೀಕ್ಷಣೆ ಮಾಡಿರುವ ಬಗ್ಗೆ ಇದರೊಂದಿಗೆ ಲಗತ್ತಿಸಿಕೊಂಡಿರುವ ಆರೋಪಿಯ ಐ.ಪಿ.ವಿಳಾಸದಿಂದ ಹಾಗೂ ಇತರ ಮಾಹಿತಿಯನ್ನು ಒಳಗೊಂಡಿರುವುದು ಕಂಡು ಬಂದಿದ್ದು, ಸಿಡಿಯಲ್ಲಿರುವ ಮಾಹಿತಿಯನ್ನು Extension, Hosakote. ಮೊಬೈಲ್ ಸಂಖ್ಯೆ 7019087692 ಆಗಿದ್ದು, ಈ ಬಗ್ಗೆ ದೂರು ದಾಖಲಿಸಿ ಆರೋಪಿಯ ವಿರುದ್ಧ ಕಾನೂನು ರೀತಿಯ ಸೂಕ್ತ ಕ್ರಮ ಜರುಗಿಸಲು ಈ ಮೂಲಕ ನಿವೇದಿಸಿಕೊಂಡಿರುತ್ತೆ.”



This complaint, leads to registration of a crime in Crime No.200/2023 for offence punishable under Section 67B of the IT Act. Whether watching pornography material would attract Section 67B of the IT Act, is what is required to be noticed. Section 67B of the IT Act, reads as follows:

""67 B Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form.

Whoever,-

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or*
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or*
- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or*
- (d) facilitates abusing children online or*
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,*

shall be punished on first conviction with imprisonment of either description for a term which may



extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees"

Provided that the provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-

- (i) The publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or*

- (ii) which is kept or used for bonafide heritage or religious purposes*

Explanation: For the purposes of this section, "children" means a person who has not completed the age of 18 years."

Section 67B of the IT Act punishes those persons who would publish, transmit the material depicting children in sexually explicit acts in electronic form. The soul of the provision is publishing or transmitting of material depicting children in sexually explicit act.

8. The allegation against the petitioner is that he has watched a pornographic website. This, in the considered view of the Court, would not become publishing or transmitting of



material, as is necessary under Section 67B of the IT Act. At best, as contended, the petitioner could be a porn addict, who has watched pornographic material. Nothing beyond this, is alleged against the petitioner. If the facts are pitted against the ingredients necessary to drive home Section 67B of the IT Act, what would unmistakably emerge is, further proceedings cannot be permitted to be continued, as it would become an abuse of process of law. It would be apposite to refer the judgment of the Apex Court in the case of **STATE OF HARYANA v. BHAJANLAL¹**, wherein it has held as follows:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) ***Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.***
- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers*

¹ **1992 Supp(1) SCC 335**



under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) ***Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.***
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

The Apex Court in the afore laid postulates holds that even if the facts that forms the complaint is accepted as true, it would not make out any offence. In such cases, even investigation should not be permitted to be continued. Therefore, the impugned proceedings cannot be permitted to be continued, as it does not make out an offence under Section 67B of the IT Act.



9. For the aforesaid reasons, the following:

ORDER

- i) The criminal petition is allowed; and
- ii) The proceedings in Crime No.200/2023 on the file of Chief Judicial Magistrate, Bengaluru Rural District, Bengaluru, stand quashed.

**Sd/-
JUDGE**

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List No.: 1 Sl No.: 11