



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1150 OF 2018**

Wolfgang Prock-Schauer .. Petitioner
Versus
The State of Maharashtra and anr .. Respondents
...

Adv.Niranjan Mundargi, a/w Keral Mehta, Savani Gupte, Lalit Munshi, Siddhi Somani i/b Samvad Partners for the Petitioner.
Adv.Tavleen Saini i/b Crawford Bayley & Co for respondent no.2.
Mr.J.P. Yagnik, APP for the State.
Ms.Meghana Burande, P.I., N.M. Joshi Marg Police Station.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 23rd OCTOBER, 2024**

P.C:-

1. Rule. Rule made returnable forthwith. By consent heard finally.
2. The Petition seek quashing of the FIR No.12/2018, registered on 8/02/2018, against the Petitioner on the basis of the complaint lodged by the respondent no.2, the Deputy General Manager, on behalf of M/s Go Airlines India Ltd, for which the Petitioner was working initially as Chief Executive Officer, and thereafter promoted as Managing Director, but resigned on 31/08/2017.

As per the Employment Agreement, he was under an obligation to work with the company for period of 6 months

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subsequent to his resignation, but he made a specific request to the Chairman of the Company to be relieved from his duties by 16/09/2017, and accordingly, he was relieved, on 15/12/2017.

As per the internal Policy and Regulations of the Company for which he was working, it was imperative for him to return the devices used by him for conducting the business of the Company in the capacity, as Managing Director, including the laptop, mobile phone, as well as all other confidential information.

3. It is the case of the Petitioner that on 18/12/2017, he received a letter from the Vice President (Legal) of Go Air, accusing him of sending confidential information from his official email ID to his personal email ID i.e. wolfgang.prockschauer@gmail.com and also to the email ID of the third party i.e. martina.flitsch@jarolim.at.

He was also accused of formatting the data on his iPad and he informed Mrs. Medha Patil, his Secretary that he would be returning the mobile phone provided to him by the Company through the driver on 18/12/2017, and he complied with it.

4. It is pertinent to note that Commercial Suit (L) No. 164 of 2018, was filed by Go Airlines (India) Ltd, against the Petitioner on 5/02/2018, seeking several reliefs, the primary relief being a restrain order against the Petitioner (impleaded as defendant) not to disclose and/or publish and/or otherwise embezzle the confidential information, trade secrets, and/or know-how pertaining to the Plaintiff, a list whereof was provided by way of Exhibit A, which was accessible to him, while he was in the employment of the Plaintiff, in breach of his commercial and legal obligations, though not limited to

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the breach of the Contracts of Employment between him and the plaintiff.

The other reliefs sought, being ancillary to the primary relief, included grant of temporary injunction, prohibitory or mandatory, as the case may be for restraining him from acting in any manner and/or copying and/or publishing and/or disclosing to any person any of the confidential information, trade secret or know-how as contained in the sealed envelopes.

5. In the present case, we are concerned with the First Information Report, which was registered with N.M. Joshi Marg Police Station, on 8/02/2019, alleging that the Petitioner, an employee of Go Air, working in the capacity of Chief Executive Officer was entrusted the email IDs for official purpose along with a SIM Card, iPad, mobile and laptop. Pursuant to his resignation it is revealed to the Board of Directors, that in the capacity as CEO, he was taking decisions on his own without consulting the Board of Directors and the information with him, relating to the company has been shared by him with third parties and the details of the necessary emails were specifically set out in the First Information Report, being seven in number, four of which pertains to the year 2016, when he was working in the capacity as CEO.

6. The gist of the complaint would reveal that the Petitioner face an accusation that from 13/03/2016 to 15/12/2017, while he was working in the capacity as CEO of Go Airlines (India) Ltd, when he was entrusted with laptop and mobile on behalf of the Company, he had downloaded the confidential information and shared it on his personal email id as well as the third party and this information being

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confidential in nature, has resulted in financial loss to the Company, and therefore, necessary action shall be initiated against him.

The aforesaid complaint resulted in invocation of Section 408 of IPC along with Section 43 (b) and 66 of the Information Technology Act, 2000.

On the very first date of hearing, we specifically raise a query, whether the prosecution is serious in prosecuting the Petitioner/the accused under the provision of IPC as well as the provisions of the Information Technology Act, by referring to the decision of the Apex Court in case of *Sharat Babu Digumarti vs. Government (NCT of Delhi) (2017) 2 SCC 18*, as well as the Full Bench of Bombay High Court in case of *Awadhesh Kumar Parasnath Pathak vs State of Maharashtra (2024) SCC Online Bombay 1074*.

Responding to it, Mr. Yagnik, the learned APP, made a categorical statement, which we recorded in our order dated 20/08/2024, that from the investigation conducted till date, the Investigating Officer has inferred that the stored data is not a property and therefore, they have decided to proceed ahead with the investigation under Section 43 (b) and Section 66 of the Information Technology Act, 2000, and have decided not to move ahead under Section 408 of IPC.

Recording the aforesaid statement, though we permitted the investigation to continue, with an expectation, to place before us the material that is collated to support the accusation under the Information Technology Act, 2000.

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7. On 16/10/2024, when the matter was exhaustively argued before us, we asked learned APP, Mr. Yagnik, to reflect upon the ingredients of Section 66 of the Information Technology Act, being, indulging into an act contemplated under Section 43 and in particular clause (b) thereof i.e. downloading or copying or extracting any data, computer data base or information from any computer, computer system or computer network including information or data held or stored in any removable storage medium, without the permission of the owner or any other person in-charge of the computer or the computer system/computer network, fraudulently or dishonestly as required under Section 66 of the Act, of 2000.

Worth it to note that the explanation appended to Section 66 clearly set out that the word 'dishonestly' and 'fraudulently' shall have the meaning assigned to it under Section 24 and 25 of the IPC.

8. It is in this background, we have heard Mr. Niranjana Mundargi, for the Petitioner, and Ms. Tavleen Saini, representing the complainant.

The gist of the FIR, which is clearly reflected from the statement of the complainant, Mr. Prasad Pathare, recorded on 8/02/2018, would disclose that in the month of 2015, the Petitioner an Austrian National, was recruited as CEO of the Company and under the directives of the Board of Directors of the Company, he was expected to discharge his functions. At that time, services of Mrs. Medha Patil was entrusted to him, to act as his Secretary, and he was also offered a flat, in Tardeo, Mumbai.

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For discharging his official duties, two email IDs were specifically assigned to him along with one SIM Card, one iphone mobile, and a laptop.

In the backdrop that, on 18/12/2017, a letter was received from Mrs. Medha Patil, alleging that from the email ID of the Company certain mails were forwarded to his personal email IDs as well as another email ID which is specified in the said communication.

Mr. Mundargi, by relying upon a chart showing, the response to the accusations as against each of the mail, which is alleged to have contained confidential information and it being shared on its personal mail has deciphered the background in which the mails were sent.

Worth it to note that the initial four emails referred to in the statement of the complainant are of the year 2016, and they are addressed by the Petitioner in the capacity as CEO of the Company.

As far as the first email dated 13/03/2016, is concerned, it pertains to the agreements relating to certain sale and rental agreements, negotiation with AIRBUS and others. The response of the Petitioner to the same is, that these emails were forwarded by the Petitioner for his official use, while travelling abroad and in the preparation for briefings and presentations and were used by him during his trip outside India for official purpose.

Similarly, the email dated 13/03/2016, is also regarding the information about the Engines and meetings with the Airbus and the attachment note was prepared by the Chairman. Same is the

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scenario as regards, email dated 9/04/2016, which is alleged to have been shared on his personal email-ID along with the email dated 11/04/2016, which also pertain to the official use of the Petitioner, while travelling abroad and in preparation of briefings and presentations. As far as email at item nos.5, 6 and 7, are concerned, they are forwarded by the Petitioner to his attorney in Austria after resignation, seeking legal advice on the issue, relating to his exit from the company and has no concern with the information of the Company.

9. When we repeatedly tried to ascertain from the Investigating Officer, as to whether there are any documents, which are downloaded and subsequently shared by the Petitioner in his capacity as a CEO, and if whether there is any material collated during the course of investigation to justify that it has been fraudulently and dishonestly downloaded, with an intention to gain any advantage from the company, we are not being provided with any information to that effect, as the same is not collected.

Since, the word 'fraudulent' has been assigned a specific meaning, which contemplate an intention of causing wrongful gain to one person or wrongful loss to another person and when an act is alleged to be done fraudulently, it is only when a person is set to do a thing with an intent to defraud but not otherwise, and with this explanation appended to Section 66, we do not find any material to that effect, being received by the Investigating Officer during the course of investigation.

We fail to understand, as to how the offence under Section 66 of the Information Technology Act, 2000, is made out. As

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we have already noted that the company from which the Petitioner sought exit has already secured its interest, by filing a Suit, which is pending for adjudication and therein the statement made by the Petitioner, is recorded in the order dated 13/02/2018, that he shall not use and/or copy and/or publish and/or disclose to any person or persons any of the confidential information, trade secret and/or know-how pertaining to the plaintiff Company, as is more particularly described in Paragraph No.31 of the plaint and this statement being accepted as an undertaking to the Court, has sufficiently secured the interest of the complainant Company.

Since, the accusation in the complaint do not lead to making out an offence under Section 43(b) r/w Section 66 of the Information Technology Act, the case of the Petitioner would fall within stipulation no.(a) & (e), in case of *State of Haryana and ors vs. Bhajanlal and ors, 1992 SCC (Cri) 426*, and namely (a), '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', as well as condition (e), 'where 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'.

Hence continuation of the proceedings against the Petitioner would be nothing short of mere procedural rigmarole and therefore, we are inclined to quash and set aside the subject FIR, as it has failed to make out an offence against the petitioners u/s 43(b) and 66 of Information Technology Act, 2000.

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The Writ Petition is made absolute in terms of prayer clause (B) by quashing and setting aside C.R. No.12/2018, from N.M.Joshi Marg Police Station, Mumbai.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J.)

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