IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.35 OF 2022

BETWEEN:

1. DR. SONAL ASTHANA
S/O.MAHENDRA ASTHANA
AGED ABOUT 50 YEARS
R/AT NO.116B
SOBHA MALACHITE APARTMENT
JAKKUR PLANTATION ROAD
BENGALURU-560 064.

2. DR. KAISAR RAJA
S/O DR. J.H. RAJA
AGED ABOUT 50 YEARS
R/AT NO.103, PRESTIGE OASIS
RAJANUKUNTE
DODDABALLAURA ROAD
BENGALURU-560 064.

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Location: HIGH COURT OF KARNATAKA

3. DR. RAJIV LOCHAN
S/O JAYADEVA H
AGED ABOUT 50 YEARS
R/AT C-13, SOBHA ATHEA AND AZALEA
EASHWAR TEMPLE ROAD
HAROAHALLI, YELAHANKA
DODDABALLAPURA ROAD
BENGALURU-560 064.

4. MARLENE VENKAT D/O JOSEPH
AGED ABOUT 49 YEARS
R/AT NO.31/1, HARRIS ROAD
BENSON TOWN, BENGALURU-560 046.

...PETITIONERS

(BY SRI. S. BALAKRISHNAN, ADVOCATE)

AND:

1. STATE OF KARNATAKA
   BY KENGERI POLICE STATION
   REPRESENTED BY SPP
   HIGH COURT OF KARNATAKA
   BENGALURU-560 001.

2. DR. VIJAY VEMURI
   CEO, BGS HOSPITAL
   UTTARAHALLI MAIN ROAD
   KENGERI, BENGALURU-560 060.

…RESPONDENTS

(BY SRI. MOHAMMED AYUB ALI, ADDL. SPP FOR R1;
SRI. S.V. SOGARAO &
SMT. RADHA PYARI, ADVOCATES FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH ALL THE PROCEEDINGS IN C.C.NO.26322/2018 BEFORE THE LEARNED I ADDITIONAL CHIEF METROPOLITAN MAGISTRATE COURT AT BENGALURU FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 43-A AND 66 OF INFORMATION TECHNOLOGY ACT AND SECTION 408 OF IPC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.11.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard learned counsel for the petitioners, learned Additional SPP for respondent No.1 and learned counsel for respondent No.2.

2. This petition is filed praying this Court to quash initiation of proceedings against the petitioners, who have been

arraigned as accused Nos.1 to 4 in C.C.No.26322/2018 for the offences punishable under Sections 43A and 66 of Information Technology Act ('IT Act' for short) and Section 408 of IPC.

3. The factual matrix of case of the complainant i.e., respondent No.2 is that he had lodged a complaint with the police i.e., respondent No.1 and based on the complaint, Crime No.335/2015 was registered. The police have investigated the matter and during the investigation, seized 320 GB hard disc and filed the charge sheet and the Magistrate took cognizance for the offence under Section 408 of IPC and Sections 43A and 66 of IT Act. The main accusation made in the complaint is that these petitioners involved in data stealing and data deleting from the hospital computer which seriously and adversely impacted the integrity of the patients data and reputation of the hospital. With that accusation, the FIR was registered and investigation was conducted.

4. The main contention of learned counsel appearing for the petitioners is that these petitioners have been falsely implicated with a vengeance and no material to attract Section 408 of IPC and counsel also brought to notice of this Court Section 408 of IPC, wherein it says that a clerk or servant or

employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, it attracts Section 408 of IPC. The counsel would vehemently contend that the ingredients of offence under Section 408 of IPC will not attract against the petitioners. But, the petitioners are not clerks or servants and they are only retainers and no material to invoke Section 408 of IPC. The counsel also vehemently contend that, in order to attract Section 66 of IT Act also there are no ingredients that Investigation Officer has recovered CD by drawing the mahazar dated 04.12.2015 and the same was subjected to PF No.149/2018. The content of the CD is not retrieved and placed on record connecting the same to the petitioners visa viz., neither a certificate mandated under Section 65B of the Evidence Act nor it was subjected to expert opinion as per Section 45A of the Evidence Act in compliance of Section 79A of the IT Act. Hence, the provisions under Section 66 of IT cannot be invoked. All patients' information in the hospital is maintained in the Hospital Information System (HIS) which is a password protected system, no export or deletion of data is possible and absolutely, there is no material that these

petitioners have stolen any data from the BGS Global Hospital computer. The facts and circumstances of the case also does not indicate that there was any intentional act. But, the management was not liking the petitioners leaving the hospital when an attempt was made to leave the hospital and when they were firm to leave the hospital, they were unceremoniously terminated from the service leveling serious fabricated and false allegations, which are per se not only defamatory, but also a coercion. It is contended that even hospital is liable to pay sum of Rs.70,00,000/- to the petitioners which is legal dues and the same also not paid and only with an intention to prevent the payment, false allegations are made. The counsel also vehemently contend that there was no fraudulent or dishonesty is found and on the face value, it is very clear that they were not operating the computers and with an oblique motive, filed the complaint. The device hard disc was seized, but nothing is found.

5. Per contra, learned counsel appearing for respondent No.2 would vehemently contend that hospital had engaging the services of these petitioners for Liver Transplantation and the fact that they were appointed as Retainers is not in dispute. But, they are maintaining the

records and they were operating and maintaining the information in the hospital. But, IT Department of the Hospital alerted that the data was stolen. Hence, COO filed the complaint and cognizance was taken. The consultant also come within the scope of Section 408 of IPC that they were having the data and the same was entrusted with them and once it is entrusted to them, it attracts Section 408 of IPC read with Section 66 of IT Act. The information is sensitive containing personal data of the patients, who visit the hospital and hence, within the meaning of Sections 24 and 25 of IPC also attracts and there cannot be any interference under Section 482 of Cr.P.C. and the data stealing amounts to serious economic offence. Hence, police rightly investigated the matter and filed the charge sheet and cognizance was taken.

6. Learned High Court Government Pleader appearing for the respondent No.1 also would contend that the fact that they are working as Retainers under the contract is not in dispute and they cannot harp upon as clerk or servant. But, when there is a contractual employment between the hospital and the petitioners, they can be tried and it requires trial.

7. In reply to this argument, the counsel appearing for the petitioners would vehemently contend that no statement is recorded regarding stolen data. In the absence of any such statement, it cannot be proved and it will not attract Section 408 of IPC and with an oblique motive, case is registered and salary is also not paid.

8. In reply to this argument of leaned counsel appearing for the petitioners, learned counsel appearing for respondent No.2 would submit that when they were retained as Retainers and it is a matter of contractual appointment and need not necessarily a clerk or servant and the definition of Section 408 of IPC is very clear.

9. Having heard learned counsel appearing for the petitioners, learned counsel for respondent No.2 and learned High Court Government Pleader for the respondent No.1 and the grounds which have been urged, the points that would arise for consideration of this Court are:

(1) Whether the Trial Court committed an error in taking cognizance based on the charge sheet and whether it is a case for invoking Section 482 of Cr.P.C.?

(2) What order?

Point No.(1):

10. The main contention of learned counsel appearing for the petitioners is that they are the Retainers and not servants or clerks as mentioned in Section 408 of IPC. Having perused Section 408 of IPC also, it is very clear that though the word commences with whoever being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished. But, in the case on hand, it is not in dispute that petitioners are Retainers and are also working as Doctors and they were part of Liver Transplantation and data was stored in the computer system maintained in the hospital and they were having dominion over the property and if such person indulge in such act, it amounts to criminal breach and the fact that they were also Retainers and condition of retainership is not to provide similar services to any other hospitals is not in dispute. Hence, the first contention that it will not attract Section 408 of IPC cannot be accepted.

11. The other contention that CD is recovered, but the same is not supported by Section 65B of Evidence Act cannot be accepted and at the time of initiation of proceedings, it is

not necessary that it should contain the Certificate under Section 65B of Evidence Act and the same can be even produced at the time of trial and only for the admissibility of the said material, Certificate is required which is held in the judgment of the Apex Court in ***M.R. Hiremath vs. State by Karnataka Lokayukta Police Station's*** case, wherein the Apex Court as categorically held that certificate can be produced at the time of the evidence and the second argument also cannot be accepted.

12. The High Court of Judicature at Madras in O.A.No.3/2023 and A.No.17/2023 in C.S.No.1/2023 dated 07.06.2023, has observed in paragraph No.7 that the case of the plaintiff is that based upon the vulnerability report, it is clear that the defendants have accessed the system and had taken out various details of its customers which is completely illegal and therefore, they have initiated the present suit. In paragraph No.9 it is observed that various provisions of the Information Technology Act, particularly Section 2(a)(i), (j) and z(e), Section 43 and Section 66 of the Act prohibits any person to access or secure access to a computer, computer system or computer network without the permission of the owner or any other person who is incharge of them. If such access is being

made, then such person would be liable for penalty under Section 43 and for a punishment of imprisonment with fine as per Section 66. In paragraph No.22 it is observed that this is an act prima facie not only attracts penalty under Section 43 but it is also an offence punishable with imprisonment under Section 66 of the Act. Therefore, I am prima facie of the view that the act of the respondents in accessing and downloading the date of the applicant is illegal as being contrary to the Act.

13. The other contention that all patients information will be in the Hospital Information System (HIS) which is a password protected system and the fact that these petitioners have stored the data and they were having access in respect of the computer is not in dispute and the same is not a ground to exercise the power under Section 482 of Cr.P.C. But, specific allegation is that data was stolen and deleted and when specific accusation is made, it is a matter of trial and the Court cannot consider the said defence at the time of considering the petition under Section 482 of Cr.P.C.

14. The other contention that with an oblique motive, the complaint is filed is also to be considered at the time of trial whether they were having any oblique motive and malafide

reasons and the fact hard disc was seized is not in dispute and whether the same was subjected to expert opinion or not and these grounds can be urged at the time of trial and whether the data was stolen or deleted from the computer system and whether these petitioners were having control over the same is also a defence could be raised at the time of trial. When the material available before the Court prima facie discloses committing of an offence and also there was contractual employment and they were working as Retainers is not in dispute. Hence, the said also contention cannot be accepted.

15. No doubt, learned counsel appearing for the petitioners relies upon judgment of the Apex Court in **WOLFGANG PROCK-SCHAUER vs. STATE OF MAHARASHTRA AND ANOTHER** reported in **2024 SCC ONLINE BOM 3482** and brought to notice of this Court discussion made in paragraph Nos.6 and 7 invoking Section 43 of Information Technology Act as well as ingredients of Section 66 of Information Technology Act and without the permission of the owner or any other person in-charge of the computer or the computer system network, fraudulently or dishonestly as required under Section 66 of the Act, of 2000 whether it is with dishonesty or fraudulent act also to be considered under

Sections 24 and 25 of the IPC and the same is a matter of trial and this Court cannot consider the same at this stage. Hence, I do not find any ground to entertain the petition. Accordingly, I answer Point No.(1) as 'negative'.

Point No.(2):

16. In view of the discussion made above, I pass the following:

ORDER

The criminal petition is ***dismissed.***

Sd/-
(H.P.SANDESH)
JUDGE

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