

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1686 OF 2019

Nilesh Suryakant Jangam

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondent

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- Mr. Satyam Surana a/w Mr. Prakarsh, Advocates for Applicant.
 - Mr. Y. M. Nakhava, APP for the State.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 21, 2026

P.C.:

1. Heard Mr. Surana, learned Advocate for Applicant and Mr. Nakhava, learned Advocate for Respondent No.1 - State.

2. Present Application is filed under Section 482 of Code of Criminal Procedure, 1973, seeking to quash and set aside First Information Report No.559 of 2008 dated 29.11.2008 registered at Chatushrungi Police Station, Pune City, under Sections 420 and 406 of Indian Penal Code, 1860 (for short '**IPC**') along with Sections 63 and 63B of the Copyrights Act, 1957 and Section 66 of Information Technology Act, 2000 against Applicant.

3. Briefly stated, Applicant – Accused No.4 was an employee in the Accused No.1's company namely, Enthuse Technologies Pvt. Ltd. (hereinafter referred as '**said company**'). Applicant joined as design manager in said company in January 2008 and worked until October 2009. The said company was operated and managed by Accused No.1 since 2007 i.e. much before Applicant's joining as an employee.

3.1. Accused No.1 had left the employment of Complainant in 2006. It is alleged that Accused No.1 reproduced and used certain source codes in unauthorized manner on his business website which were originally owned by the Complainant's company namely, M/s. Brainvisa Technologies Ltd. which Complainant subsequently discovered in the year 2008 while randomly surfing online. It is alleged that due to infringement of copyrights and theft of certain data primarily by Accused No.1 and his unnamed associates, Complainant suffered loss of Rs.95,00,000/- USD in 2008 i.e. approximately Rs.50 Crore. Hence, aforesaid FIR was filed against five Accused persons. Thereafter, chargesheet was filed on 29.07.2009.

3.2. Applicant was partially discharged under Section 66 of Information Technology Act, 2000 by order dated 29.11.2010 passed by the JMFC, Pune. Applicant challenged order dated 29.11.2010 by filing Criminal Revision Application No.692 of 2010 before Sessions Court, Pune wherein by order dated 18.03.2019 , learned Additional Sessions Judge dismissed the said Revision Application. Being aggrieved, Applicant preferred present application.

4. Mr. Surana, learned Advocate for Applicant would submit that Applicant for being merely an employee cannot be attributed criminal liability for acts done by the Company and / or its directors. He would submit that Applicant used to work on database and information already been provided by Accused No.1 and had no

business to inquire about the source of such data and information. He would submit that there is no material on record to show that Applicant unlawfully used source code of Complainant's company and infringed any copyright.

4.1. He would submit that an employee cannot be held vicariously liable for the acts done by the company. In support of Applicant's case he would refer to and rely upon the decision of Supreme Court in the case of *Sunil Bharti Mittal Vs. Central Bureau of Investigation*¹ and contend that concept of vicarious liability does not exist in criminal law and that an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role occupied with criminal intent. He would submit that same has been reiterated in case of *Shiv Kumar Jatiya Vs. State of NCT of Delhi*².

4.2. He would submit that nowhere in FIR or charge-sheet any role whatsoever has been attributed to Applicant, neither material on record shows that Applicant was responsible for infringement of copyright of source codes and / or received any wrongful gain from same. Furthermore, he would submit that despite of all major allegations and material evidence in charge-sheet are admittedly against co-accused No.5 – Aasma Sandip Thorve who was equally

1 Judgment dated 09.01.2015 in Cr. Appeal No.34 of 2015

2 Judgment dated 23.08.2019 in Cr. Appeal No.1263 of 2019

placed as an employee in said company, she has been discharged by order dated 14.10.2014 passed by learned Additional Sessions Judge, Pune in Criminal Revision Application No.02 of 2011.

4.3. He would submit that Complainant lacks authority to file the present complaint because in his own statement he describes himself as vice-president in Brainvisa company, however it is nowhere mentioned in complaint that it is filed on behalf of Brainvisa company. He would submit that Complainant has not produced any authorization or resolution duly passed by the Brainvisa company. In support of his argument that Applicant be acquitted on the ground that complaint was filed by Complainant without any authorization of the company, he would refer to and rely upon the decision of this Court given at the Goa Bench in the case of *Ashok Bampto Pagui Vs. Agencia Real Canacona & Anr.*³ wherein it held that an individual director has no power to act on behalf of the company except as such that may be delegated to him by the board of directors or given to him by the Articles of Association of the company.

4.4. He would submit that the JMFC, Court No.9, Pune erred in not appreciating that Non-Disclosure Agreement was executed between Brainvisa company and Accused No.1, that it had no connection with Applicant. He would submit that present case is more of a civil dispute / business rivalry between the Complainant and Accused No.1

³ Judgment dated 08.06.2007 in Criminal Revision Application No.56 of 2006

and therefore case ought to have been filed only for a breach of contract and subsequent civil remedies. He would submit that said FIR filed in 2008 is still pending for almost 18 years with no progress.

4.5. He would refer to and rely upon the following decisions of the Supreme Court in support of his submissions for quashing of the charge against him:- *(i) AC Narayanan Vs. State of Maharashtra & Anr.*⁴, *(ii) Delhi Race Club (1940) Ltd. & Ors. Vs. State of Uttar Pradesh & Anr.*⁵, *(iii) Inder Chand Bagri Vs. Jagadish Prasad Bagri*⁶ and *(iv) Kailash Chandra Kapri Vs. State of Uttar Pradesh & Ors.*⁷ He would submit that as there is no material on record to show Applicant's active involvement or even slightest role to satisfy any ingredient of offences under Sections 63 and 63B of the Copyrights Act, 1957, charges against Applicant be quashed and set aside.

5. Mr. Nakhava, learned APP for the State would submit that not only Accused No.1 but Applicant also has jointly infringed the copyright of Brainvisa company over confidential information, data and source code. He would submit that Applicant facilitated Accused No.1 in commission of crime as he worked on said source codes as per direction of his employer i.e. Accused No.1.

5.1. She would submit that Applicant assisted Accused No.1 in setting up the domain server and then confidential data of Brainvisa

⁴ Judgment dated 28.01.2015 in Cri. Appeal No.73 of 2007

⁵ 2024 INSC 626 (paragraph No.30)

⁶ 2025 INSC 1350 (paragraph No.23)

⁷ 2026 INSC 473 (paragraph Nos.14, 15, 24, 25, 27, 40)

company was uploaded on the domain server. She would submit that mere fact that the alleged content was found in public folder of Applicant is enough to infer that the said infringed copyright was intended to deceive Brainvisa company and gain wrongfully. Therefore, she would urge this Court that present application be dismissed.

6. I have heard the learned Advocates appearing for the respective parties and with their able assistance, perused the record of the case. Submissions made by learned Advocates at the bar have received due consideration of the Court.

7. It is seen that Applicant is an ex-employee of Complainant's company. *Prima facie*, it is seen that JMFC, Pune has taken cognizance of the complaint without establishing the fact as to whether there existed any agreement between Complainant's company and Applicant in order to hold Applicant liable for copyright infringement. It is seen that it is not in dispute that complaint was filed by one Mr. Agarwal claiming to be vice-president of Brainvisa company. It is seen that JMFC, Pune erred in not appreciating that complaint which ought to have been filed on behalf of the company or its directors through authorized resolution, was filed by Complainant in his individual authority.

8. In so far as infringement of copyright of source codes is concerned, it is seen that those source codes were registered in the

name of Brainvisa company. It is settled law that unless there is resolution by the Board of Directors, Complainant has no power to lodge a complaint as an vice-president / individual Director. It is seen that it follows therefrom that no cognizance could therefore have been taken on a complaint filed by the vice-president on behalf of Brainvisa company without a resolution to that effect and much less the accused being indicted in such a complaint.

9. It is seen that Complainant as vice-president / individual Director has no power to act on behalf of the Brainvisa company as he has no power except such as may be delegated to him by the Board of Directors or given to him by the articles of association of a company. In so far as act of Applicant is concerned as his assistance was taken by Accused No.1 to set up domain server, it is seen that Applicant being an employee of Accused No.1 has merely followed directions of his master and was working on ready material made available by Accused No.1.

10. It is seen that Additional Sessions Judge, Pune erred in not appreciating that merely finding alleged content in a public folder of Applicant does not amount to his involvement in commission of crime. Hence, the order dated 18.03.2019 is liable to be set aside because no reason has been given therein while coming to the conclusion that there is *prima facie* case against the Applicant. On perusal of record of the case, it is seen that in absence of material on record to make out a

case against the Applicant, present matter has been pending since 2009 and charges are not yet framed. Therefore, *prima facie* there is no material at all placed by prosecution even to suggest that the Applicant committed any of the alleged offenses which he is charged with.

11. Hence, in view of the aforementioned observation and findings, FIR No. 559 of 2008 along with R.C.C. No.3611 of 2009 pending before the Ld. JMFC Court Room No.9 qua the Applicant before me is quashed and set aside. I am inclined to accept the submissions of Mr. Surana and determine the present Petition affirmatively.

12. Writ Petition is allowed in terms of prayer clause (b) and (c) which reads thus:-

“b. That this Hon’ble Court be pleased to quash and set aside the Order dated March 18, 2019 passed by the Ld. Sessions Court, Pune in Criminal Revision Application No.692 of 2010 in R.C.C. No.3611 of 2009 and Order dated February 25, 2010 passed in Exhibit 44 by the Ld. JMFC Court Room No.9, Pune in R.C.C. No.3611 of 2009;

c. This Hon’ble Court be pleased to quash the proceedings arising out of R.C.C. No.3611 of 2009 pending before the Ld. JMFC Court Room No.9;”

13. Writ Petition is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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