

Sreekanth C.Nair vs Licensee/Developer (2008) [Blocking of Website]

Summary: A student of ASCL, came across the website "www.incometaxpune.com", and on visiting the said site, the complainant was taken to a pornographic site and move the court for blocking order against the website. The court ordered that only when the authorities enumerated under Clauses (i) to (vii) when moved were either not inclined or had refused to prefer a complaint to the Director, CERT-In, then the court could be moved for a direction to the officer concerned.

Kerala High Court

Sreekanth C.Nair vs Licensee/Developer on 28 August, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 2900 of 2008

SREEKANTH C.NAIR, ... Petitioner

Vs

LICENSEE/DEVELOPER ... Respondent

STATE OF KERALA, REP. BY PUBLIC

The Hon'ble MR. Justice V.RAMKUMAR

Dated :28/08/2008

O R D E R

The petitioner, who was the applicant in the petition filed as Crl.M.P. No. 4378 of 2008 before the Judicial First Class Magistrate-I, Cherthala, challenges the order dated 02.07.2008 passed by the learned Magistrate rejecting the application.

2. The case of the revision petitioner in the said petition can be summarised as follows:-

The complainant is a student of Asian School of Cyber Laws residing at Cherthala. While researching on Income Tax statutes relating to the State of Maharashtra, the complainant came across the website "www.incometaxpune.com". The google search results for the said website caption described the site as "helpful for tax payers living in Pune region. Taxpayers of the region can also lodge their complaints and get assistance through this website." Visiting the said site, the complainant was taken to a pornographic site which depicted numerous lascivious images of women thereby clearly violating Section 67 of the Information Technology Act, 2000 ('IT Act' for short). The order dated 07.07.2003 issued by the Ministry of Communication and Information Technology, Government of India provides for the procedure for blocking of websites by submitting a complaint to the Director, CERT-In (Indian Computer Emergency Response Team) functioning under the Department of Information Technology. As per clause (viii) of paragraph V(1) of the said order, court has been given powers to issue a direction to the Director, CERT-In for blocking any such pornographic websites. The complainant, therefore, prays the court to send a complaint to CERT-In as per the provisions of the aforesaid Government Order directing the CERT-In to investigate and block the website referred to above in public interest.

3. The learned Magistrate rejected the petition styled as a complaint holding, inter alia, that the petition filed by the petitioner does not satisfy the description of a "complaint" as defined under Section 2(d) Cr.P.C and that even as per the Government Order produced by the petitioner, the authority who can entertain the complaint is the Director, CERT-In and that merely because CERT-In can take appropriate action on a complaint preferred before its Director on the basis of a court directive the same, is not an indication of investiture of jurisdiction on a Magistrate to receive such complaints and issue directives as per the said Government Order. The learned Magistrate also observed that it would not be possible for the Magistrate to usurp the jurisdiction of the statutory

functionary.

4. I heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor.

5. Adv. Shri. D Prem Kamath appearing for the revision petitioner made the following submissions in support of the revision:-

The website in question is an unmistakable pornographic website which has to be blocked in public interest. Whoever be responsible for hosting the website is guilty of an offence punishable under Section 67 of the Information Technology Act, 2000 which reads as follows:-

Publishing of information which is obscene in electronic form.- Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

When the revision petitioner, having come across the obscene website was desirous of lodging a complaint before the Director CERT-In and it was for the said purpose that he moved the court which is one of the authorities listed under the aforementioned paragraph and who are entitled to submit a complaint to the Director, the court below was not justified in rejecting his complaint.

6. I am afraid that I cannot agree with the above submissions. If the petitioner had come across the obscene website as mentioned by him, then whoever be the person who has hosted the said website, prima facie, commits an offence punishable under Section 67 of the Information Technology Act, 2000. But the petitioner does not know the person or persons responsible for the said website. Only a person who is so responsible can be convicted and punished under Section 67 of the said Act. Even the person shown as the accused/respondent in Annexure -A private complaint is the licensee/developer of the website "www.incometaxpune.com". The petitioner cannot expect the court to find out the author of the said website and issue notice to him. That is not the function of the court. That is the function of the authorities under the IT Act and the Rules and Orders issued thereunder. Paragraph V of the order dated 07.07.2003 issued by the Ministry of Communication and Information Technology for blocking of websites reads as follows:-

V. The detailed procedure for submitting a complaint to the Director, CERT-In for blocking of a website shall be as follows:-

1. The following officers listed in Para 2 of the Gazette Notification can submit the complaint to the Director, CERT-In:-

- (i) Secretary, National Security Council Secretariat (NSCS) (II) Secretary, Ministry of Home Affairs, Government of India.
- (iii) Foreign Secretary in the Department of External Affairs or a representative not below the rank of Joint secretary;
- (iv) Secretaries, Department of Home Affairs of each of the States and of the Union Territories;
- (v) Central Bureau of Investigation (CBI), Intelligence Bureau (IB), Director General of Police of all the States and such other enforcement agencies;
- (vi) Secretaries or Heads of all the Information Technology Department of all the States and Union Territories not below the rank of Joint Secretary of Central Government.
- (vii) Chairman of the National Human Rights Commission or Minorities Commission or Scheduled Castes or Scheduled Tribes Commission or National Women Commission.
- (viii) The directive of the courts;
- (ix) Any others as may be specified by the Government.

7. There cannot be any doubt that the said provision has not been drafted happily. "The directive of the courts" cannot obviously be an officer among the officers listed under the said provision. "The directive of the courts" which falls under clause

(viii) is the penultimate entry under the said provision, the last entry being "any others as may be specified by the Government". Even going by the above paragraph in the order, the enumerated officers are the persons authorised to submit a complaint to the Director of CERT-In and the heading of the paragraph indicates that the said provision deals with the procedure for submitting a complaint to the Director, CERT-In. A reading of the said provision indicates that any of those enumerated officers can file a complaint before the Director, CERT-In and paragraph V(2) provides as follows:-

"2. The complaint shall contain the following:-

- (i) Name of the complainant with address, telephone number, fax number, and e-mail.
- (ii) The address of the offending website.
- (iii) The name of the organisation with address, if known, which is promoting/hosting the website.
- (iv) Specific reasons for requesting blocking of website. This may be from any of the following:-
Promoting hate content, slander or defamation of others, promoting gambling, promoting racism, violence and terrorism and other such material, promoting pornography, including child pornography and violent sex.
- (v) Any other reasons may be specified by the complainant.
- (vi) Segment of population or the audience that is adversely affected by the offending website."

Clause (i) of sub-paragraph 2 states that the complaint shall contain among other things the name of the complainant with address, telephone number, fax number, and E-mail address. If the court were intended to be an authority competent to lodge a complaint before the Director, CERT-In for blocking a website, then there was no need to mention "the directives of the courts" in paragraph V (1) above. The obvious reason for using the above words is that if any of the authorities enumerated under Clauses (i) to (vii) when moved were either not inclined or had refused to prefer a complaint to the Director, CERT-In, then the court could be moved for a direction to the officer concerned. No doubt, as mentioned earlier, the provision is not happily worded. None the less, the only intention which can be gathered is that the provision is to confer a power to issue a directive, in case there is non-compliance or the failure to comply with the request to submit a complaint to the Director, CERT-In. If an interpretation as suggested by the petitioner is adopted, then the court will be placed in the embarrassing position of a complainant before the Director, CERT-In for initiating action for blocking a website. That evidently cannot be the object behind the Government Order. In this view of the matter, the court below was justified in rejecting the application which does not satisfy the definition of a "complaint" as provided under Section 2(d) Cr.P.C. The court could not have taken cognizance of the offence under Section 67 of the Information Technology Act on the petition filed by the petitioner particularly when the request of the petitioner in that petition was to block the website in public interest. I, therefore, see no grounds to interfere with the order passed by the learned Magistrate.

This Crl. R.P. is accordingly dismissed.

Dated this the 28th day of August, 2008.

V. RAMKUMAR, JUDGE.