

State v. Mehmood Pracha
FIR No.212/2020
PS Special Cell

12.03.2021

Present: None.

ORDER

In brief, the grievance of the applicant is that the demand for the hard disk of any of the computers of the applicant is absolutely illegal and unjustified especially since the specific documents are already in the possession of the police collected on the previous search. Also, it is outlined that insistence on seizing the hard drive is evidently to collect information and data belonging to the client of the applicant (completely unconnected to the present case) who *interalia* include whistle blower and anti corruption activists. Applicant volunteered to furnish any specific document etc sought by the investigation agencies and also re-furnish whatever was taken during the previous search. It is contended by the applicant that he is doing for the sake of protecting the data and information pertaining to his clients and briefs (completely unconnected to the allegations being investigated) which is his boundened duty as an Advocate under the law of the land. It is pointed out that IO did not use section 91 Cr.P.C for obtaining said documents and applicant under the directions of the Court is ready and willing to supply the specific document (email and complaint) which are alleged to have been drafted at his office and also subsequently sent from his office computers on email. Applicant has conceded to the allegations relating to the drafting of complaint and its subsequent transmission from his office so that basic premise for search and seizure being sought does not stand any longer. Also, the applicant proposed to present the identified computer before the Court so that IO may obtain whatever he wishes to, and whatever is permitted by the Court in the presence of the Court to avoid mischief by police.

In reply, IO has submitted that applicant and his associate Bahadur Abbas were contacted on their mobile phone and were intimated about search proceedings. However, they asked for the next day and thereafter, the copy of the search warrant and Court's order were sent to the applicant on whatsapp no. 9811023019 and they were asked to join search proceeding for the same day but they refused to join the proceeding.

Heard. Perused.

The applicant has cast aspersions on the politicians, bureaucrats and judicial officers in the application, and despite indirect insinuation, the same is being ignored and only the merits are being considered for disposal of the application.

The facts highlighted the aspect of maintaining the confidentiality of communication passed to and from him and his clients which is stored in the form of complaints / legal advise / affidavits is important and warrants foremost consideration as the documents generated in the course of Advocate-Client relationship are confidential and form part of privilege communication within the scope and ambit of section 126 of Indian Evidence Act.

From the legal stand point, the said concern relating to protection of privilege communication being passed on to police has to be addressed by preventing the same to be passed on/ collected by the IO. The protection available under section 126 of Indian Evidence Act, makes it imperative that the Court protect the data / files relating to communication of clients with applicant stored in the hard disk from interference of police while collecting the "target data" (the complaint for which search warrant was obtained).

The search warrants were aimed to obtain the "target data" and the said data is in the hard disk where other information / files belonging to other clients of the applicant is also available. In this scenario, the issue relating to retrieval of "target data" without interference with the other data stored in the hard disk has to be meticulously looked upon and at the same time, obtaining "target data" without creating any evidential vulnerabilities for future purpose has to be considered because it is important for the IO to maintain authenticity and integrity of the "target data". Given the consent by the applicant for furnishing data through pen drive or through production of computer, how the prosecution proposes to:

- (a) receive "target data" of the pen drive without creating any evidential vulnerability;
- (b) retrieve "target data" without any alteration to the meta data associated with the "target data" to prevent further evidential vulnerabilities without any disruption/ interference/ disclosure of the other files/ data stored in the hard disk relating to other clients of the applicant, and

IO to file its response regarding the abovesaid queries on or before

19.03.2021.

Put up on 19.03.2021. Copy of the order be given dasti to all the parties.

(Dr. Pankaj Sharma)
CMM/ND/Patiala House Courts
New Delhi/12.03.2021