

25.03.2021

Present:

None.

ORDER

The reply filed by the IO addresses the concerns of the applicant regarding protection of his client's data other than the "target data". The expert opinion reflect that the "target data" can be stored / copied / retrieved in a pendrive / memory device without interference other data stored in a hard disc, without creating any evidential vulnerabilities if the suspected computer system/ hard disc is submitted in FSL for examination purpose through forwarding agency with full details of required "target data" i.e. file name, file path/ location etc. If the hard disc is submitted in FSL the "target data" can be retrieved without any alteration to the meta data associated with "target data", without creating any evidential vulnerabilities as the data will be retrieved forensically. Also, it will not affect the data stored in hard disc relating to other clients of the applicant.

Through the use of forensic tools, it is possible to safely segregate the "target data" from the other data without any interference / alteration while keeping its authenticity and integrity and at the same time ensuring the admissibility of the "target data" without evidential vulnerabilities.

The collection of evidence is intrinsic to the investigation and hands of the investigators cannot be tied to prevent them from collecting evidence. The collection of data from its source is done to ensure its admissibility during trial and it is imperative for the IO to collect best form of evidence during investigation as per its own discretion.

If the IO feels that "target data" is to be retrieved from its source which is hard drive of the computer of the applicant for the purpose of investigation, the said decision of the IO cannot be interfered with by the Court nor accused can dictate him as to how evidence is to be collected, if it is clear that the other data can be protected from being interfered with by the IO.

Reliance upon section 126 Indian Evidence Act and Bar Council Conduct Rules by applicant is misplaced as same envisages voluntary sharing of data / communication by the Advocate or deposing against the client. However, the situation is different in this matter as the data is to be collected by the police on account of investigation in a criminal case. The plea for non-sharing of data of other clients of the

applicant is beyond the scope of section 126 of Indian Evidence Act. The plea of applicant about his offer of "target data" in Pen drive can only be considered by the IO subject to the issue of admissibility and Court's intervention is not proper and also accused cannot dictate the IO about the mode and manner for collection of evidence in an investigation. Accordingly, in the considered view of this Court, the objections raised by applicant are baseless. Let the search warrant be executed in accordance with law subject to the safeguards as per expert opinion. The application stands disposed off.

Copy of the order be given dasti.

Announced in the open Court

(Dr. Pankaj Sharma)
CMM/ND/Patiala House Courts
New Delhi/25.03.2021