

Blatant misuse of Information Technology Act

The blatant misuse of penal provision by the law enforcement agencies due to ignorance of law is not new. The same is true with technical legislations like [Information Technology Act, 2000](#). As per the mandate of the IT Act, 2000, the offences under such Act has to be investigated by the police officer not below the rank of Deputy Superintendent of Police or Assistant Commissioner of Police where police commissioner-ate system is in force. Despite the investigation being given in the hands of superior officer, there have been instances where [the IT Act, 2000](#) should have been invoked in crime situation, where it has been not been invoked and there are some cases where it has been invoked where it should not be. One such case was investigated by Delhi Police in which the provision of Section 67 Information Technology Act was wrongly added by misinterpreting the said section and subsequently the innocent person was arrested and sent to Tihar Jail for the offence which he never committed.

Facts of the Case

The complainant Avinash Bansal made a complaint at a local police station against Rohit who was a colleague of his wife, both of whom were working with a government department. The wordings of the complaint run as follows:-

“Respected Sir, This is to bring to your most urgent notice that constant threats, filthy SMS messages, abusive telephone/Mobile calls are made by Rohit in connivance with his goonda friends/colleagues, one of them name Pramod. The content of SMS given from email id: rohit@rohitfriend.com at my mobile no. 98xxxxxxx.

10/12/2004: Time (5:45 P.M to 6:00 P.M)

- Bloody wife or your fucking story? Stop calling my office & spitting foul words about me. You did it again today?
- Yourself motherfucker? But instead, I am just warning you that KEEP AWAY FROM ME? HENCEFORTH? I don't have any interest in your
- If you do it again then you will be in deep shit? I hope this is clear to you? No more SMS or CALLS to me or to my office?
- For a SMS like the one you sent me in the morning I would have replied? FUCK YOU & FUCK YOUR BELOVED WIFE? Arsehole? Go screw

It is prayed from police that I am constantly threatened, abused, physically assaulted by Rohit to fulfill his ill desire of marrying my wife Sunita. I am under constant pressure/threat/harassment by Rohit. Kindly strict action be taken against him to that he is not successful in fulfilling his mal intentions.”

On the aforesaid complaint, initially a FIR was registered u/s 509/34 IPC and the investigation was taken by the local police. The local police arrested the accused Rohit and his friend Pramod and recorded the statement of the mother of the complainant who alleged to have received filthy messages about her on her son's mobile no. 98xxxxxxx which was found to be sent by Rohit and Pramod. The mobile phone detail of the complainant was also collected. During the investigation, the complainant Avinash Bansal made a submission to the local police for adding [Section 67 IT Act, 2000](#), as the SMS he received on his

mobile phone (which is an electronic medium) and read by his mother were filthy & obscene, and thus, Section 67 IT Act is applicable. The police in its wisdom (misinterpretation of IT Act) hastily added [Section 67 IT Act, 2000](#) to the case without examining the issue in detail. However, subsequently the case was transferred to the Cyber Cell, EOW, Delhi Police.

The Cyber Cell made a detailed investigation and examined the applicability of penal provisions including Section 67 IT Act which revealed that:

- The E-Mail address from which the obscene SMS was sent to the Mobile of the complainant was found in the name of Rohit, R/o xxxx, yyyy, New Delhi. The said E-Mail was found to be hosted from the server of M/s Rediff.Com India Ltd.
- The mother of the complainant stated that her son Avinash Bansal & his wife Sunita have strained relations and a case of divorce is going on between them. She further stated that she checked the mobile phone of her son Avinash Bansal and found that the filthy messages about her were received on the mobile which was found to be sent by Rohit.
- There is an ongoing dispute between the complainant and the alleged person Rohit. The complainant has earlier filed number of complaints against the alleged person Rohit. There has been a compromise signed between the alleged person Rohit & the complainant which reveals that there has been heated exchange of abusive SMS & calls between the alleged Rohit & the complainant. In the compromise dated 18/12/2004 signed by both the parties, the alleged person has stated in the said compromise letter that "I should not be troubled with SMS and calls to me or to my office.
- The content of the SMS allegedly send by Rohit were restructured which reads as follows:

"For a SMS like the one you sent me in the morning I would have replied? FUCK YOU & FUCK YOUR BELOVED WIFE? Arsehole? Go screw Yourself **motherfucker**? But instead, I am just warning you that KEEP AWAY FROM ME? HENCEFORTH? I don't have any interest in your Bloody wife or your fucking story? **Stop calling my office & spitting foul words about me. You did it again today!** If you do it again then you will be in deep shit? I hope this is clear to you? **No more SMS or CALLS to me or to my office?"**

Thus, the contents itself indicates that the said message was sent by the Rohit in response to the message sent by complainant. However, the message send by the complainant could not be collected because the same was not preserved by Rohit. However, the mobile detail of complainant reflects the sending of SMS by him to Rohit.

Legal Proposition

No offence is made out

The aforesaid sequence of the case clearly reveals that it is the animosity between two persons and the complaint has been filed by the complainant to settle his personal grudge against his old foe. Not only there has been blatant misuse of Section 67 IT Act but also the offence u/s 509 IPC is not made out either.

Section 506 IPC

- There is an ongoing dispute between the complainant and Rohit and both have filed a number of complaints against each other.
- The complainant in his complaint has himself stated that filthy SMS has been addressed to him.
- The wording of the aforesaid SMS sent by Rohit reveals that the SMS is abusive and is sent in rage to the complainant in response to the SMS sent by the complainant to the alleged person.
- Both the complainant and the alleged person are males and the SMS was sent by the alleged person with sole intention to offend the complainant. Though, the mother of the complainant has stated that she has read the message but the content, circumstances and the investigation reveals that the message was not intended for her. Thus, there is no intention of the Rohit to outrage the modesty of any female member of the family of the complainant and thus, section 509 IPC is not made out.

[Section 67 Information Technology Act, 2000:](#)

- As per the provision of the Section 67 IT Act, 2000 any information transmitted or published thru electronic form is obscene if:
 1. It is lascivious or appeals to the prurient interest or
 2. If its effect is such as to tend to deprave and corrupt persons who are likely, to read, see or hear the matter contained or embodied in it.
- The wordings of the SMS are offending and abusive towards the complainant and by no stretch of imagination can be said to be obscene.
- The message was given by the male person of adult age to other male person of the adult age and the wordings of the message of the SMS can at most be said to be offending and abusive sent by the complainant as an outrageous act with the sole intention to offend or hurt the complainant but the wordings of the SMS can hardly cause the feeling of lust or any kind of sexual reflections. Therefore, Section 67 of the IT Act, 2000 is also not attracted in the present case.

Thereafter, the cyber cell has cancelled the case and filed the cancellation report in the court which is pending adjudication.

There is utmost need to make educate and train the police officers at the local police stations with respect to the applicability of the provision of Information Technology Act, 2000 to the crime situation. There should be at least one trained officer at the local police station who should be specifically trained & qualified in cyber crime investigation and the IT Law. Further, the officers at the cyber crime investigation cells should be drawn from qualified IT Professionals and special training sessions should be organized for them to keep them update about the ever changing scenario of the cyber crime situation.

Note: The name of the complainant and the accused persons have been changed for the sake of privacy.

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