

**OFFICE OF THE ADJUDICATING OFFICER,
GOVERNMENT OF GUJARAT,
SCIENCE & TECHNOLOGY DEPARTMENT,
Block No: 7, 5th Floor, Sardar Patel Bhavan, Sachivalaya, Gandhinagar.**

Special Civil Complaint No: 2021/01

Date of Decision: 30th January, 2023

IN THE MATTER OF:

Mr. Chetan N Vyas
26, Parimal Park Society,
Nizampura, Vadodara, Gujarat

Vs

1) Mr. Jwalit A Patel
c/o Ambalal I Patel,
20, Gangotri Exotica, Old Laxmipura Road, Beside Narayan Garden,
GOTRI, Vadodara, Gujarat

2) Mr. Jwalit A Patel
Through Advocate Divesh A Joshi
FF/10 Ambe Residency, Sama Savli Road / Vemali Road
B/H Mecdonad Near Gujarat Vadodara Gramin Bank,
AT: Vemali Vadodara-390008, Gujarat

**MR. VIJAY NEHRA
ADJUDICATING OFFICER UNDER
INFORMATION TECHNOLOGY ACT, 2000**

1. This matter has been filed by the petitioner under Section 43-A of the Information Technology Act, 2000.
2. The brief of the case as mentioned by the petitioner is as follows:

- a) The Applicant is partner of a registered Partnership firm, namely, M/s Ayesha Medical Agency. The said partnership firm is having its registered office situated in Ikara Building, Shiyapura, Vadodara.
- b) The said partnership firm has been doing business of purchase and sale on wholesale basis medicine and drugs in the City of Vadodara. All the purchases are from the corporate leading pharmaceuticals companies like Glaxo, Intas, Mankind, Sanofi etc. So payment is also done by cheque only.



- c) The applicant was a silent partner, however in August, 2012 one Ambalal Patel who was employee of IOCL and was servicing as a Chief Pharmacist had own contacted the present applicant and exhibited his desire to join partnership firm of the applicant after his retirement from IOCL and also shown readiness and willingness to invest money through his wife though his wife have no independent income sources and Ambalal Patel was indirectly involved himself in the said firm and he made it clear that after his date of superannuation he would be able to get himself indicated himself in the firm on the basis of execution of partnership deed, However without there being any execution of deed he got him self involved in the affairs of the partnership firm and had requested the applicant that he would sent his son who would get experience and accordingly Jwalit@ Guddu Ambalal Patel has started attending office of firm and had started a learning the mode and method of wholesale business of firm and had started using computer as and when he was given the password by the applicant or another partner namely Shri Yatin Trivedi and respondent there in namely Jwalit @ Guddu Ambalal Patel was also taken up pay role of the manager and under supervision of another partner Shri Yatinbhai Trivedi he had started discharging duty as manager of the firm which included signing and delivering voucher, preparation of bill, verifying and maintaining stock, placing the order, verifying the expire date and even day to day routine transaction, banking transaction undertaken by respondent herein, he was manager of the firm and has all the administrative power to enter details / correct / edit details of day to day transactions in the computer and the said accused / respondent herein was supposed to operate / administer business as per actual purchase, sales as per medicine and he was supposed to entered in to all the transaction as per actual physical, transaction of the purchase and sells and he was supposed to administered the firm by maintaining the correct record of purchase and sells, he was supposed to administered the firm as per rules and regulations of Drugs and Cosmetics Act applicable to the wholesale business medical agency.
- d) The applicant states that the main accused / respondent herein was having intension from beginning that make deceitful, dishonest representation to get himself to involved in partnership frim as admin / manager, However from beginning the accused have dishonest intention and on the basis of which he was allowed the administration of firm.
- e) It is submitted that from August 2012 to 31.12.2016 he had committed serious offence of entering manipulated incorrect details in computer, manipulated details of purchase, sales bills in computer, mischief with item, payment receipt, stock editing and manipulation and editing of actual transaction / amounts received from costumer and had also started altering / manipulated details in computer and had created got-up false and fabricated documents, records of bills, sales, purchase details, payment receipts and





misused the computer code and had created his own password and hacked the computer system and used computerized server code, password of another partner and employee and had thus access to the computer, computerized system and computer network without due and proper authorities, without permission of partner of firm and got download copies and data and had manipulated the computerized data and created and entered absolutely false transactions and without due authority had access computer server and password of the present applicant and another partner namely Shri Yatinbhai Trivedi, multiple time and the same came to was verified by Shri Yatinbhai Trivedi as well as through concerned company whole software was utilized and the same was verified with log report and therefore the one FIR came to be registered being CR NO-I-148/2017 dated 5.10.2017 for the alleged offences punishable under Sections 420, 406, 120-B of IPC against the respondent herein.

- f) That as per the log report it was confirmed that the respondent here had manipulated in such nature then expert can be able to find out actual amount of misappropriation of fund which may more than 70 lakh hence the present application.

3. The matter was heard before the Hon'ble Adjudicating Officer on 29th July, 2021, 05th October, 2021 and 10th January, 2023.

4. In the hearing held on 10th January, 2023, Advocate of Respondent in continuation of his earlier arguments informed that the matter in addition to being time barred that matter is also being proceeded in the Civil Court as the scope of the case extended beyond mere contravention where police investigation is called for and police investigation in the matter are also in process. During the hearing, Advocate of Complainant argued that the case falls under Section 65 and Section 66 along with Section 43 of IT Act, 2000.

5. It was observed that during the service time period of Respondent was authorized by the Petitioner to use Petitioner's Company data related to his employment.

6. There is a clear employee-employer relationship existing between Complainant & respondent. Therefore, the case extends beyond Chapter XI of IT Act instead of contraventions needing appropriate remedy elsewhere. Therefore, Petitioner claim for any redressal, under the provisions of IT Act, is not sustainable.

Accordingly, the following orders:

ORDER

Petitioner's claim for redressal of his grievance under the provisions of IT Act is not substantiated. Accordingly, the petition is rejected.

(Vijay Nehra)

Adjudicating Officer & Secretary,
Department of Science and Technology,
Government of Gujarat

