**BEFORE THE ADJUDICATING OFFICER**

**Principal Secretary , Information Technology & Electronics Department,**

**Government of West Bengal**

**Talleen Kumar**

**COMPLAINT NO. 1 OF 2014**

**In the matter of:** **Dated :26.11.2014.**

Smt. TANAYA MUKHERJEE

Through Shri Bivas Chatterjee, Advocate .....Complainant

**Versus**

Shri. AMIT KUMAR SEN

Through Shri Alok Kumar Laha, Advocate .....Respondent

**A complaint was filed for adjudication under Sections 43(a), 43(b),66, 66C, 66D and72 of the IT Act 2000(as amendment till date) . Detailed hearings were held in which both parties i.e. the Complainant and the Ld. Advocates of the Respondent were present and were heard. Following the completion of hearing and response of both the parties, the following order is hereby issued:-**

**ORDER**

**1.The details submitted by the Complainant are as follows :-**

I. The Complainant in this case is an Indian citizen having her permanent address at 81/2, Kshetra Mohan Banerjee Lane, P.S.-Shibpur, District- Howrah, Pin- 711102.The marriage between the Complainant and the Respondent was solemnized on 20.5.2013 and the parties started their matrimonial life at the address of the respondent. The parties were very much acquainted with their accounts on Facebook and the Complainant based on her faith and love for Respondent shared her ID and password of Facebook and her email id and password with the Respondent.

II. The Complainant stated that the Respondent was suspicious of her activities. Before the marriage, the Respondent took the Facebook password from the Complainant and got the mobile connection changed from prepaid to postpaid. The Respondent always checked the laptop of the Complainant through Team Viewer software. After marriage, the Respondent formatted the hard drive of her laptop to get rid of all important documents, study materials and even demolished the laptop screen.

III. The Complainant stated that she used one android based mobile phone of LG Model No E400 in which the Respondent installed a software to keep backup of all call logs and SMS to a cloud based website **syncdorid.org** without informing the complainant and that afterwards, the Respondent opened the said website by a password and was also able to see or download those backups i.e. the incoming and outgoing calls and messages and other relevant needs. It is also stated by the Complainant that later on in January 2014, the Respondent took the cell phone of the Complainant for his use and the Complainant observed that the sound made during conversation over her phone had an echo every time. On 03.01.2014, the Complainant got a notice of injunction on her matrimonial home from the Ld. Civil Judge (Jr. Div) Howrah and at the same time the Complainant also came to know that her husband had filed a suit for restoration of conjugal right which is pending before the Ld. Court of District Judge at Howrah.

IV. In June 2014, the Complainant came to know that her husband i.e. the Respondent filed a Matrimonial Suit No. 465 of 2014 against the complainant before the Ld. District Judge at Howrah and from the notice of the divorce suit the Complainant came to know that her husband had installed some software on her mobile phone through which he was in a position to know the details of each conversation, call log and SMSs off the cell phone of the Complainant in the past.

V. Further, the Complainant has also quoted many details from the matrimonial suit no. 465 of 2014 filed by the Respondent before the Ld. District Judge at Howrah to establish her claim for compensation and penalty to the Respondent under sections 43(a)(b)/ 66/ 66C/ 66D/ 72 of the IT Act as amended.

VI. The Complainant has enclosed (marked as annexure P-2) a copy of the plaint filed at learned District Judge, Howrah which has been registered as MAT Suit No. 465 of 2014, which was duly received by the Complainant along with a summon from the Learned Court.

VII. The Complainant has also mentioned that on 07.02.2014, she got an email from Google Accounts team informing her that an attempt was made to hack her account having profile name tanaya.mukherjee1986@gmail.com on 7th February,2014 through the IP address: 101.220.83.50 at the location Chennai, Tamil Nadu, India, which the Google Accounts team succeeded in preventing. A downloaded copy of the same is also enclosed and marked as annexure P-3.

**2.Relevant details from the Matrimonial Suit no. 465 of 2014 filed by the Respondent as a petitioner in the suit before the Ld. District Judge at Howrah are as follows:**

I. In Para (18) of the matrimonial suit, the Respondent(and a petitioner of the suit in this matter) has himself stated that he came to know about fact of conversations of the Complainant with other male persons with the use of one android based phone of LG model No. E400 which belonged to the Complainant. The Respondent has also stated that he installed one software to backup all calls and SMS to a website called **www.syncdorid.org**and opened the said Website by a password to see or download those

backups i.e. the incoming and outgoing calls and messages from the mobile phone of the Complainant. It is further stated by the Respondent that the said website also has facility to record the sound of the surroundings of the phone.

II. In para (19) of the matrimonial suit, the Respondent (and a petitioner of the suit in this matter)further stated that he handed over the mobile phone back to the Complainant with SIM card bearing no. 8420221019 and all conversations between the Complainant and other people were recorded and sent to the website due to the installed software on the Complainant's mobile phone and the Respondent had access to the recorded information on the website through which the Respondent had the apprehensions that the Complainant and her agents shall put him and his family members in trouble. The Respondent in this matter as petitioner of the suit has also craved leave to refer to those recordings at the time of trial of the suit.

III. In the para (22) of the matrimonial suit, the Respondent in this matter as a petitioner of the suit has quoted the explicit content of the conversations and messages emanating to and from the said mobile phone, which he claims to have accessed from the Internet through a mechanical process.

**3. Following are the submissions of the Ld. Advocate of the Respondent as per the written objection and oral arguments during the hearing on 04.08.2015:**

I. That the complaint made by the Complainant against the objector is neither maintainable in facts nor in law and as such the said application is liable to be dismissed and that the said complaint is false, malafide, motivated and harassing and as such the said complaint is liable to be rejected.

II. That the Facebook chatting between the Complainant and Respondent started from before marriage.

III. That no access to the Email account of the Complainant was available to the Respondent and only access to the Facebook account was there. There was no sharing of password of email between the Complainant and Respondent and no documentary evidence has been produced in regard to such sharing. Use of Team Viewer to view laptop was done due to their relation as husband and wife

IV. The Respondent denies about installation of software on mobile phone of the Complainant to keep back up of all calls and SMS to a website named www.syncdorid.org without informing the Complainant.

V. The Complainant used to change her Facebook password from time to time and after changing of her password she used to convey the same to the Respondent. Therefore, as such the allegation of unauthorized access of her Facebook account does not arise.

VI. The Respondent obtained the photographs from the laptop of the Complainant as a husband and not by unauthorized access to her Email or Facebook accounts. Since, they

are married couple, the use of laptop is not a violation under sections 43(a), 43(b), 66C nor 66D of the IT Act.

VII. The Respondent is not an employee or servant under the Complainant, who is the owner of the said Computer system or Computer Network and as such the Respondent was /is never in charge of any Computer under the Complainant. The provision of Section 43(a) & (b) has been wrongly invoked in this case as the Respondent never violated the said provision of law and after the dispute arose by and between the parties hereof the objector never downloaded or copied any extract or any data as complained by the complainant.

VIII. That the Complainant has made a fraudulent sign-in attempt warning of her Google Account by the Google Accounts Team, which has been falsely manufactured by the Complainant in a typed format. The Respondent has enclosed a format of the sign-in attempt sent by the Google Accounts Team.

**4. Following points were raised in the reply of the Complainant dated 7.10.15 made against the written objection of the Respondent:**

I. The Respondent has filed a written objection after a long time of filing this complaint, which is being dealt with in the manner hereinafter appearing.

II. That the written objection is not maintainable in law as well as in facts and circumstances of the case. The averment made in the said written objection under objection is false, frivolous, mischievous, mala fide, misconceived and harassing one.

III. The Opposite Party is not entitled to any relief in the above complaint case. The Prayer made out in the written objection is not tenable in view of the settled proposition of law. The averment made in the said written objection is barred under the principles and provisions of the law and is liable to be rejected and or dismissed

IV. The Complainant has made a point that the statement made in paragraph no. 5 of the written objection by the Respondent has no relevance in light of the fact that it is the Respondent who has himself admitted and stated his modus and motive of unlawful access of the resources of the Complainant (in this case her Mobile phone, Call logs and SMSes) in the para number 18 to 20 in his application u/s 27 of the Special Marriage Act, 1954 for Decree of Divorce filed by him before the Ld. Howrah Court. The authenticated copy of which has already been filed for the kind perusal of the present Ld. Forum.

V. The Complainant has also countered the Respondent stating that the Google format (sign-in attempt warning from Google Accounts Team) submitted is not false and only printout has been taken in a different way. The Complainant is herewith filing a screenshot of the same. The Complainant has also questioned relevance of this point raised by the Respondent in view of his admitting the allegation of accessing resources of the Complainant (in this case Mobile phone and its content) in his application for divorce before the Ld. District Judge, Howrah. The Complainant has insisted that the resources

like her Facebook account and Mobile phone were under the ownership of the Complainant.

VI. The Complainant has again mentioned that the Respondent admitted that he applied the "Syncdroid Software" in the LG handset used by the Complainant without intimating her since the month of January and February of 2014. Further, the petitioner used to open her Facebook account through that handset only and as a result, the Respondent easily got all the personal information kept in the handset by the Complainant.

VII. The Complainant has further stated that the statements made by the Respondent in the para number 18 to 20 in his application u/s 27 of the Special Marriage Act, 1954 for Decree of Divorce filed by him before Ld. Howrah Court itself proves his offence u/s 43, 66, 66B, 66C and 72A of IT Act. The Complainant insisted that the way the evidence was collected by the Respondent was by breaching the privacy of the Complainant by committing the offence of unlawful access which straightway attracts the provisions of the IT Act and the fiduciary relation between husband and wife in no way debars the Complainant to file this application under IT Act.

**5. Documents submitted by the parties**

**By Complainant:**

a) The copy of the marriage certificate.
b) The copy of the plaint of Mat suit No 465 of 2014 before the Ld. District Judge, Howrah
c) Downloaded copy of sign-in attempt warning statement from Google Accounts Team.
d) Prayer for passing Ex-parte Order filed on 24.3.2015.
e) Written Argument dated 7.4.2015.
f) List of documents produced by Plaintiff before the Ld. District Judge at Howrah in the format HIGH COURT FORM No (J)22 containing original copy of summon along with copy of application u/s 27 Special Marriage Act , Statement u/s 65B of Indian Evidence Act by complainant , downloaded copy from www.syncdorid.org and certified copy of Order in c/w Mat suit 79/14 along with the copy of the application of the said suit.
g) Written Argument dated 7.10.2015 against the W.O dated 4.8.2015 filed by the Ld. Advocate of the Respondent.

**By Respondent:**

a) Written objection dated 4.8.2015.
b) Copy of the Sign-in attempt warning email from Google Accounts Team
c) Copy of the Email from Airtel stating that SIM Card No. 8420221019 is registered in the Respondent's name

**5.In light of the above discussions, in my considered view:**

a) It is clear that the Respondent has himself admitted to have installed one software on the android based phone of LG model No. E400 belonging to the Complainant and accessed the website of the software called www.syncdroid.orgby a password to gather details of all the incoming and outgoing calls and messages from the mobile phone of the Complainant without her knowledge. The Respondent also continued to access the website and phone data backup even after handing over the mobile phone back to the Complainant for her use with SIM Card No. 8420221019. The argument and the documentary evidence presented by the Respondent in support of his ownership of SIM Card No. 8420221019 does not take away the fact that the Complainant was the owner of the Mobile phone and its content, which was accessed and extracted by the Respondent without her knowledge or consent, regardless of the motive of the Respondent in executing such unlawful access.

b) It is also accepted by both the parties that the Complainant had willingly shared her Facebook account and Mobile phone with the Respondent. Considering the fact that this complaint revolves around the Mobile phone as the crucial information resource/ computing system, it is found that the Complainant was negligent and careless in sharing such resources with the Respondent for his use and access without thinking of her data protection and privacy concerns at that time.

c) Having carefully gone through all the documents and discussions, I finally conclude that the Respondent has violated **sections 43(a), (b), 66(C) and 72of the IT Act 2000** (as amended till date)by accessing the computer resource and its stored information (in this case the android based Mobile phone and its content data) without the permission of the owner of the computer resource and by dishonestly using the password of the software installed on the owner's phone for sub serving his own motive without the knowledge and permission of the owner i.e. The Complainant in this case. **Hence, it is ordered that the Respondent pay a compensation of Rs50,000/- (Rupees Fifty thousand only) to the Complainant within a period of one month from the date of service of this Order.** Confirmation of service will be furnished by the Commissioner, Howrah Police Commissionerate, West Bengal before the Adjudicating Officer. Compliance of this Order shall be filed by the Respondent within 15 (fifteen) days from the date of this payment under written undertaking before this Court.

d) A plain copy of this Order should be made available to both the Complainant & the Respondent and a copy should be serviced upon the Commissioner, Howrah Police Commissionerate, West Bengal with immediate effect for compliance.

**Talleen Kumar,**

**Adjudicating Officer and**

**Principal Secretary to Government**

**Information Technology& Electronics Department**

**Government of West Bengal**

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