

July 2024

TECHNOLOGY INSIGHT

Karnataka High court Upholds Applicability of Section 67 B of Information and
technology Act and allows prosecution for browsing child pornography



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Karnataka High Court Upholds Applicability of Section 67 B IT Act, Allows Prosecution for Browsing Child Pornography

In the case of Inayathulla N. v State, Rep. by the State Public Prosecution & Anr, in Criminal Petition no.13141 of 2023, complaint was registered for the offence punishable under Section 67B of the Information Technology Act 2000 as the petitioner has viewed a website which contains pornographic content of children, this act was noticed by the Cyber Tipline and the I.P address was traced back with the petitioner mobile number.

The Ld. Counsel for the petitioner contended that Section 67 B of the act would not attract as he just viewed such a website and somewhat of an addict and never intended to circulate anything.

The Hon'ble High Court observed that provision of section 67 B punishes those persons who would Publish, transmit the material depicting children in Sexually explicit acts in "Electronic form". The Soul of the provision is Publishing or Transmitting. The Court, on 10.07.2024, allowed the petition, noting that the case originated from a Cyber Tipline alert about the petitioner viewing a specific website on his mobile.

After such Order state filed an application before the court to bring in section 15 of the POCSO, Act 2012 which was not invoked in FIR, and there was no impediment to invoke it during the course of investigation, such was not brought before the court and hence it was quashed. The Ld. Counsel reiterated his submission alleging offence under section 67 B of the IT act & section 15 of the POSCO is contrary to the law. It was an invasion of the Right to Privacy of the petitioner & relied upon 9 Judge bench Judgment of Hon'ble Supreme Court of India, where such right was held to be a fundamental right.

The Hon'ble HC of Karnataka observed that the petitioner relied on 67(a) but what is applicable here is SECTION 67(b) in which it opens up the prosecution against a person who creates Text or digital images, collects, seeks, browse download, advertise, promotes, exchange or distribute materials in electronic form depicting children in obscenity or indecent or in sexually explicit manner. It was not in the dispute that petitioner had browsed such content which is an offence under section 67(b). Therefore, while leaving all legal remedies open, the petition is rejected.



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