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Crl.O.P.No.11894 of 2017 in Crl.A.SR.No.23888 of 2017

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RESERVED ON : 27.03.2024
PRONOUNCED ON : 04.06.2024

M.NIRMAL KUMAR, J.

The petitioner/State has filed the present Criminal Original Petition seeking leave to file an appeal against judgment of acquittal, dated 24.02.2017 in S.C.No.192 of 2009 rendered by the learned XVIII Additional Sessions Judge (FAC), XVII Additional Court, Chennai acquitting the respondent.

2.The case of the prosecution is that on 14.04.2008, Deccan Chronicle English Daily Newspaper and Makkal Television and Jaya Television published and telecasted conversation between the then Chief Secretary to Government of Tamil Nadu (PW39) and the Director of Vigilance and Anti Corruption (PW43) on 20.09.2007. The Government got embarrassment and found that vital information leaked out. To find out the truth, constituted one man commission under the head of the Former Judge of this Court Hon'ble Mr.Justice P.Shanmugam who conducted enquiry and found



the respondent is the reason for the same. While so, on 17.07.2008, Ms.S.Malathy, I.A.S., the then Principal Secretary to Government lodged a complaint (Ex.P60) to the Additional Director General of Police, CBCID, Chennai against the respondent. Thereafter, an FIR in Crime No.2 of 2008 registered for offence under Section 5 of the Official Secrets Act, Sections 43 & 66 of the Information Technology Act and Sections 378, 463, 470 and 505 of IPC and investigation conducted. During investigation, it revealed that on 01.04.2008, the computer at the room of Legal Advisor's of Directorate of Vigilance and Anti Corruption, Chennai located in the ground floor of the newly constructed building-21 (NCB-21) P.S.Kumarasamy Salai, Raja Annamalaipuram, Chennai-28 has been intruded, stored files from the computer copied and taken away by external device. The respondent who was employed as Special Assistant of Confidential Section in the Directorate of Vigilance and Anti Corruption Office functioning at NCB-23 with an intention to cause damage to the office of the Directorate of Vigilance and Anti Corruption, which had not considered his appointment to the Secretariat as Assistant Section Officer, without the permission of the owner of the computer i.e., Mr.N.Vijayarajan (PW31), Legal adviser of



DVAC, unauthorizedly accessed into the computer system of the Legal adviser (PW31) on 01.04.2008 through his pendrive named 'Sujatha' and accessed the folder "Director's backup 2" kept in the Legal Advisor's computer. Thereafter, the same was published in the said newspaper and also telecasted in the said television channels. On completion of investigation, the petitioner filed charge sheet before the learned II Metropolitan Magistrate, Egmore, Chennai and the same was taken on file as P.R.C.No.234 of 2008. On committal, it was transferred to the file of the XVIII Additional Sessions Court, Chennai and assigned S.C.No.192 of 2009. During trial, on the side of the prosecution, 45 witnesses examined as PW1 to PW45 and 110 documents marked as Exs.P1 to P110 and 26 Material Objects marked as MO1 to MO26. On the side of the defence/respondent, no witness examined and no document marked. On conclusion of trial, the trial Court acquitted the respondent from the charges levelled against him vide judgment, dated 24.02.2017. Challenging the same, the State had preferred this criminal original petition seeking leave to file an appeal.



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3.The learned Government Advocate (Crl. Side) appearing for the State submitted that the trial Court had erroneously come to the conclusion that the letter (Ex.P60) of the Principal Secretary to Government of Tamil Nadu sent to the Additional Director General of Police, CBCID has been taken as complaint cannot be acted upon for the reason that in the said letter (Ex.P60), it was mentioned that 'this letter should not either be quoted in charge memo or cited as prosecution documents', hence, registration of FIR (Ex.P82) and launching of criminal prosecution is not proper as held by the trial Court is not sustainable. He further submitted that on perusal of the letter (Ex.P60), it is seen that the then Principal Secretary to Government of Tamil Nadu on 17.07.2008 forwarded the complaint to the Additional Director General of Police, CBCID to register a criminal case against the respondent, who was employed as Special Assistant, Directorate of Vigilance and Anti Corruption, Chennai and to further investigate the same immediately. The said complaint refers to commission of enquiry conducted by the Former Judge of this Court Hon'ble Mr.Justice P.Shanmugam. During enquiry, the commission found that the respondent is the main person responsible for the offence committed. This letter (Ex.P60) was



marked through Mr.T.Sivasubramanian, the then Secretary in Home Department (PW35). The objection raised is that the signature of PW35 is not available in Ex.P60. The Author of the letter (Ex.P60) Ms.S.Malathi, the then Principal Secretary to Government was not examined during trial on 08.03.2011. Ms.S.Malathi was suffering from cancer and finally passed away on 25.03.2012. Added to it, he submitted that the said witness (PW35) not cross examined in this aspect. Hence, the trial Court discarding Ex.P60 is not proper.

4.It is further submitted that the trial Court had come to the conclusion that PW43 not produced the original audio file recorded in the office of the Directorate of Vigilance and Anti Corruption. On the contrary the evidence of the HCL Manager (PW37) is categorical that the hard disk and laptop of PW43 got corrupted and damage could not be repaired, hence, the hard disk removed and sent to Singapore for repair. Such being the position, no question put to PW37 as well as to PW25, the Service Engineer of HCL in this regard. He further submitted that the trial Court erroneously came to conclusion that no notification under Section 79A of the Information



Technology Act, 2000 obtained from the Government and hence, the evidences of PW8, PW25, PW27, PW30, PW37 & PW38 are not acceptable, is to be rejected. In this case, PW7 and PW30 are the Forensic Experts who confirmed usage of pen drive named 'Sujatha' and recording data. In this case, PW6-Sujatha employed as Clerk in the Directorate of Vigilance and Anti Corruption Department confirms that she does not use any pen drive. PW44, the sister of the respondent though not supported the case of the prosecution, confirms that her name is A.Sujatha, her brother is the respondent working as Special Assistant in the Directorate of Vigilance and Anti Corruption Department. In this case, PW12, PW13, PW14, PW22, PW23 & PW42 confirmed the usage of pen drive by the respondent. Section 79A of the Information Technology Act, 2000 was come into effect by way of Act 10 of 2009 from 27.10.2009. In this case, the period of occurrence is between 20.09.2007 and 14.04.2008 and the complaint was lodged and the case was registered on 17.07.2008. Since the period of occurrence is prior to the Amendment, the trial Court ought not to have rejected the evidence of the above witnesses citing 79A of the Information Technology Act, 2000.



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5.He further submitted that without permission of PW31, the Legal Advisor of the Directorate of Vigilance and Anti Corruption, nobody can use his computer. PW14, the Sub Inspector of Police, DVAC, a Technical person stated that he was maintaining about 30 computers of the Department. PW42, the Police Constable who assisted PW14, stated that the system of PW31 cannot be opened without knowing password. PW31 stated that he had asked the respondent to use his computer for preparing some reports and PPTs. Hence, the respondent had known password and accessed the computer of PW31.

6.The trial Court placed reliance heavily on non-seizure of pendrive named 'Sujatha' and gave benefit of doubt to the respondent is not proper. In this case, PW7, the Assistant Director of Forensic Department in his evidence categorically stated that on examination of the computer of Legal Advisor (PW31), it was found that in the said computer two link files in the name of 'Sujatha' found, which clearly proves that the computer of PW31 accessed using external storage device in the name of 'Sujatha'.



7.The admitted case of PW39, the then Chief Secretary to Government and PW43, the Former Director of Vigilance and Anti Corruption is that they used to have regular telephonic conversation between them and confirmed the news item published in the newspaper and telecasted in televisions, was the conversation between them. Hence, there is no dispute in the published conversation. Added to it, PW43 admits that he is in the habit of recording conversation in his laptop. His laptop got repaired and it was serviced by PW25, HCL personnel which is confirmed by PW14 and PW42. During service of laptop, the conversation recorded and uploaded in computer of PW31 Legal Adviser. Hence, non recovery of pendrive would no way affect the case of the prosecution. He further submitted that the report of the Assistant Director, Forensic Science Department (Ex.P42) confirms external/removable storage media like a pendrive named 'Sujatha' was accessed with the computer system/hard disk, item 4 on 01.04.2008 (Legal Advisor's/PW31 Computer System). Added to it, the lab report (Ex.P28) confirmed link file named 'Sujatha' retrieved from the hard disk.



8.He further submitted that it is a case of circumstantial evidence with

electronic evidence which was clearly proved by the prosecution.

Nonetheless, the trial Court acquitting the respondent is not proper. The trial Court without any proper discussion of the evidence discarded the electronic evidence citing Section 79A of the Information Technology Act, 2000 and Section 45A of the Indian Evidence Act. The Investigating Officer (PW45) in his evidence states that there is nothing to show that the respondent had erased, damaged or altered the conversation. The trial Court citing the same and coming to the conclusion no evidence available against the respondent is not proper. The trial Court failed to look into the fact hacking can be done gaining access to the computer. He further submitted that the offence committed in this case is prior to Amendment of Section 66 of the Information Technology Act, 2000. Hacking is defined as follows (Section 66 of the Information Technology Act, 2000):

"66.Hacking with computer system.

(1)Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing



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in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits back.

(2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine may extend upto two lakhs, or with both."

9. In this case the trial Court brushed aside vital evidence and rendered judgment merely on technicality. In support of his submissions, the learned Government Advocate (Crl. Side) relied on the decision of the Hon'ble Apex Court in the case of "***A.R. Antulay Versus Ramdas Srinivas Nayak and another*** reported in ***(1984) 2 Supreme Court Cases 500***" wherein it had held that "recognized principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary.". The judgment of the trial Court is not a detailed one without any discussion and analysis of the evidence produced. Hence, he prays for granting leave to prefer an appeal against the judgment of acquittal.



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10.The learned Senior Counsel appearing for the respondent submitted that in this case, the trial Court rightly considered the evidence and acquitted the respondent. In this case, neither PW39 nor PW43 who are supposed to have conversation between them which got published, not lodged any complaint against the respondent. Months later, Ms.S.Malathi, the then Principal Secretary to Government of Tamil Nadu lodged the complaint (Ex.P60) to the Additional Director General of Police, Chennai. Though she was available, she was not examined and Ex.P60, the complaint not marked through her. She passed away on 25.03.2012. Investigating Officer (PW45) gives no explanation, failed to produce any document in this regard. The Service Engineer (PW25) of HCL clearly confirmed that the hard disk of the Director getting corrupted and damaged and from 23.11.2007 to 12.02.2008, the laptop was in service. PW14, the Sub Inspector of Police, incharge of the computers, stated that he used to carryout service work by himself and whenever required, he would call PW25. In this case, the laptop initially repaired installing new hard disk on 10.12.2007 and thereafter on 14.12.2007 again it was informed that the laptop was not functioning properly. During this period, when the change of



hard disk done, PW14, PW25 and PW42 transferred datas from the Director laptop to DVD and they were placed in the Bureau in the Director's office which was easily accessible. The transfer of datas and recordings are known to PW14, PW25 and PW42. PW14 admits that he uploaded the datas in his own system and heard the conversation between PW39 and PW43. Hence, there are possibilities of datas being leaked from other sources. Since the respondent made complaint during that period against some of the officials of the Vigilance and Anti Corruption for not considering his transfer and deputation to the Secretariat service, he is made as scapegoat. There are thirty systems which are used by the various staffs of the Vigilance and Anti Corruption Department. Such being the position, the respondent singularly targeted and made as scapegoat. It is also admitted that the laptop of the Director reached the office of HCL, from there, the possibility of data going to public is possible. In this case, PW1 to PW4 are the witnesses from the Deccan Chronicle, Makkal Television and Jaya Television, none of them stated anything against the respondent.



11.He further submitted that in this case, admittedly, the pendrive named 'Sujatha' not seized. The respondent's sister examined as witness (PW44), but not supported the case of the prosecution. The petitioner to somehow implicate the respondent created electronic evidence against him, which has been disproved by extensive cross examination of PW7 and PW30. The respondent is a whistle blower and he used to report certain wrongdoing in the Government Departments and in the society. The trial Court on considering and analyzing the evidence and materials, had rightly acquitted the respondent which needs no interference of this Court. Hence, he prays for rejection of grant leave petition.

12.This Court considered the rival submissions and perused the materials available on record.

13.It is not in dispute that the respondent was employed as Special Assistant in the office of the Directorate of Vigilance and Anti Corruption. The conversation between the then Chief Secretary to Government and Director of Vigilance and Anti Corruption (PW43 and PW39) is a private and confidential conversation which got published and telecasted in the print and visual media.



14.PW43 admits that he used to record his conversations including PW39 in his laptop. The hard disk of his laptop got damaged, needed repair and service. PW25 Service Engineer of HCL confirmed the same which is further corroborated by the evidence of PW14 and PW42, the Technical Staff of the Vigilance and Anti Corruption. When the laptop was sent for replacement of hard disk, files of the laptop were attempted to be uploaded in the computer of Director's Personal Assistant (PW17). Since there was no DVD writer, it could not be done. Hence, it was uploaded in the computer system of Legal Adviser (PW31) and it was also recorded in the DVDs and kept in the Director's office. The recording and taking backup of datas is normal to save the datas when such damage takes places in the hard disk. On 14.04.2008, the recorded conversation of PW39 & PW43 got publicized, created sensation and commission of enquiry constituted. The commission of enquiry found the respondent is the person who had accessed the files. This finding is based on the electronic evidence and the circumstantial evidence. The usage of pen drive named 'Sujatha' by the respondent clearly spoken to by PW12, PW13, PW14, PW22, PW23 & PW42 and intrusion in the name of 'Sujatha' is confirmed by the evidence of



PW7 and PW30. It is admitted case that there is no official pendrive given to any of the staff of the Vigilance and Anti Corruption Department to use the same. Though there were evidences and materials against the Added to it, the respondent, the trial Court not considered the same. Added to it, the evidence of forensic expert not considered. The trial Court discarded the evidences of PW8, PW25, PW27, PW30, PW37 & PW38 without any discussion on the sole ground that it is hit under Section 79A of the Information Technology Act, 2000 is not proper. Section 79A of the Information Technology Act, 2000 had come into effect only on 27.10.2009 and the offence had taken place much before.

15.Further, the trial Court doubting Ex.P60 on flimsy grounds is not proper. Anybody can set law in motion. More so, in Ex.P60 it is clearly mentioned 'to register a criminal case and investigate'. Added to it, the circumstantial evidence and electronic evidence are not properly considered and scrutinized by the trial Court. Thus, the judgment of the trial Court needs reappraisal and reconsideration.



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16.In view of the above, this Court is inclined to grant leave.

Accordingly, leave is granted to prefer an appeal against the judgment of acquittal, dated 24.02.2017 in S.C.No.192 of 2009.

17.Registry is directed to number the appeal and post the same under the caption 'For Admission' if it is otherwise in order.

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