

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 1931 OF 2014

Mr. Valappil Raman Shivdasan

... Petitioner.
(Org. Accused No.5)

V/s.

The State of Maharashtra

... Respondent.

Mr. Nitin Pradhan i/by Ameeta Kuttikrishnan, Advocate for the
Petitioner.

Ms. A.S. Pai, APP for the State.

CORAM : M.L.TAHALIYANI, J.

DATE : 09 JANUARY, 2015

P.C. :

1 Heard. Admit. Taken up for final hearing at the
admission stage by consent of the parties and as already
indicated earlier in the order dated 18th November, 2014.

2 This Petition is filed by the Petitioner under Article
227 of the Constitution of India and invoking powers of this
court under section 482 of the Code of Criminal Procedure.

3 The Petitioner is one of the accused in the
chargesheet filed by the DCB, CID, Mumbai, pending in the

court of Metropolitan Magistrate, 37th Court, Esplanade, Mumbai.

4 FIR was registered at M.H.D. Colony Police Station vide FIR No. 181 of 2004 on 1st October, 2004 for the offences punishable under section 420, 120-B of Indian Penal Code and under various sections of Indian Telegraph Act. The allegation against the named accused and the wanted accused in brief were that they had entered into the conspiracy to run a parallel telephone exchange with the help of about 49 mobile / cell phones. During the course of investigation, it was found that similar business was being carried out at Panvel and Pune also. The Mumbai premises were in possession of the accused - Gopal Shetty. It is alleged that the Petitioner was one of the conspirators and he had frequently visited the house of Gopal Shetty and was making arrangement for running a parallel telephone exchange. The premises in which Gopal Shetty was staying were on first floor of the building and adjoining premises were acquired for running a parallel telephone exchange. Landlord's statement was recorded and it was stated by him that three persons had come to him for grant of permission to install a "Dish Antenna". One of them was a person by name "Jerry". At this stage, it may be noted that the petitioner alleges that the alias name of the petitioner/ applicant - Valappil Raman Shivdasan is "Jerry" and therefore, he was being referred to as "Jerry" by the witnesses. It is

stated that the evidence against the petitioner/ applicant is in the form of statement of Mrs. Tara, wife of accused Gopal Shetty, statement of the landlord, statements of Pravin Mahadev Dange and one Ajit Kumar Shivdasan. Almost all these witnesses have referred the name of one “Jerry” and not the applicant/petitioner. The learned additional public prosecutor Ms. Pai has stated that the name of the petitioner has appeared in the statement of one Ajit Kumar Shivdasan, the resident of Panvel, whose premises were taken on rent for running a parallel telephone exchange. It may be noted here that the telephone exchange was neither found at Boriwali-Mumbai or Pune but was found at Panvel. It may be also noted here that the Panvel incident and Pune incident are not part of this present charge-sheet. It is very pertinent to note that neither the FIR was lodged at Panvel nor at Boriwali or Pune in respect of the alleged offence at Panvel. Therefore, this court has confined this order only to the alleged incident of telephone exchange being run at Boriwali in the premises of the accused - Gopal Shetty.

5 As already stated, almost all witnesses have referred to one “Jerry” as the person who was accompanying the other accused. In this regard, it may be noted here that “Jerry Verghese @ Valappil Raman Shivdasan” is shown as an accused against whom the charge-sheet has not been filed and he is one of the wanted accused involved in the present

offence. It may be further noted here that the police had left no stone unturned to arrest the wanted accused but he could not be traced and therefore, a chargesheet could not be submitted against him.

6 The learned additional public prosecutor has submitted that the applicant/petitioner was posing himself to be “Jerry” and in fact there was another person by name “Jerry Verghese”, who is wanted in this case. It is not explained as to why the photograph of the applicant/ petitioner was not shown to the witnesses after his arrest or as to why identification parade was not held, if the real name of the applicant/petitioner was different from the name stated by him before the witnesses.

7 In my opinion, the case against the petitioner is extremely hopeless and it would be impossible for the prosecution to sustain the charge against the Petitioner.

8 Hence, I pass the following order.

- i. Writ Petition is allowed.
- ii. The proceedings pending against the Petitioner vide C.C. No. 636/PW/2010 before the learned Additional Chief Metropolitan

Magistrate, 37th Court, Esplanade, Mumbai
shall stand quashed and his bail bonds, if any,
shall stand cancelled.

(JUDGE)

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