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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: March 05, 2015

+ **CRL.M.C. 4953/2013 & Crl. M.A. 17812/2013**

VODAFONE MOBILE SERVICES LTD.Petitioner

Through: Mr. Rajiv Nayar, Senior Advocate
with Mr. Manu Nair and Mr.
Malak Bhatt, Advocates

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for State
Mr. Sandeep Sethi, Senior
Advocate with Ms. Kanika
Agnihotri and Mr. Karan Minocha
Srinivas, Advocates for
Respondent No. 2

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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Criminal Complaint under Sections 66A, 66B, 66C and 66D of the *Information and Technology Act, 2000* and under Section 120A and 120B of the *Indian Penal Code, 1860* was filed against petitioner regarding mobile No. 9811188888, which was provided by petitioner to respondent under the terms of Matrix Agreement. Trial court vide detailed impugned order of 28th June, 2012 held that no case for summoning petitioner as an accused is made out.

Respondent-accused had filed a revision petition against aforesaid order, which stands allowed vide impugned order of 10th October, 2013 while clearly indicating that the aspect of permissive user is not to be looked into. The grievance made by petitioner herein is that trial court's order of 28th June, 2012 (*Annexure P-11*) was in favour of petitioner as the complaint in question qua petitioner was dismissed and the Revisional Court vide impugned order has set aside aforesaid trial court's order without putting petitioner to notice.

At the hearing, learned senior counsel for petitioner had placed reliance upon Apex Court's decision in *Manharibhai Muljibhai Kakadia & Anr. v. Shaileshbhai Mohanbhai Patel & Ors.* (2012) 10 SCC 517 to submit that in a criminal revision petition, an effective hearing is to be afforded to the opposite party and the stage is not important i.e. whether at pre-process stage or at post-process stage. Learned senior counsel for respondent had sought to deal with the authoritative pronouncement of Apex Court in *Manharibhai Muljibhai* (supra) by relying upon a Single Bench decision of this Court in *Rajesh Dubey v. State & Ors.* 2013 Lawsuit (Del) 3600 to submit that Apex Court decision in *Manharibhai Muljibhai* (supra) has been considered by a Coordinate Bench of this Court in *Rajesh Dubey* (supra) and it is not the absolute requirement to provide hearing to the opposite party.

Upon hearing both the sides and on perusal of the impugned order, trial court's order, decisions cited and material on record, I

find that the dictum of Apex Court in *Manharibhai Muljibhai* (supra) is that once a challenge is allowed to trial court's order in a revision petition before the High Court or the Sessions Court then by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. Reliance placed upon decision in *Rajesh Dubey* (supra) is misplaced as in the above decision, the matter was simply remanded back whereas in the instant case impugned order remands matter back to trial court with a rider that the aspect of permissive user, which is crucial, is not to be looked into.

Applying the dictum of Apex Court in *Manharibhai Muljibhai* (supra) to the facts of the instant case, impugned order of 10th October, 2013 is quashed without commenting upon merits of this case and only on the short ground that petitioner has not been heard by the Revisional Court. Consequentially, the respondent's revision petition is restored for hearing afresh. The parties are directed to appear before the Revisional Court on 24th March, 2015 so that the said revision petition is expeditiously disposed of after providing an effective hearing to both the sides.

With aforesaid directions, the petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MARCH 05, 2015

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