Bail Slip:
The Revision petitioners 2 & 3 have been on bail, on their imprisonment being suspended vide order in Crl.M.P.No.4711/2016 in Crl.R.C.No.666/2015, dated 21/04/2016, on condition of their executing a bond for Rs.15,000/- each to the satisfaction Additional Chief Metropolitan Magistrate, Egmore, Chennai and appear before him on first day of every month.

Reserved on : 12.06.2017

Delivered on : 10.07.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.R.C. No.666 of 2016

1. M/s. R.M.B.Software's Pvt Ltd.,
   No.452, Railway Colony
   Ahmedabad - 380 008

2. Richard Morris
   S/o. Joseph Morris
   Director of M/s. R.M.B.Software's Pvt Ltd.,
   R/o No-S-14, Devlok Apartments
   Opposite Railway Club, Mani Nagar
   Ahmedabad - 380 008

3. Maulik Bavishi
   S/o. Mahesh Jagjeevan Das Bavishi
   Director of M/s. R.M.B.Software's Pvt Ltd
   R/o No. W-6. Sakal Apartment
   Opposite Navanpura Post Office
   Navanpura,
   Ahmedabad - 3800131 .. Revision Petitioners/accused

vs.

State rep.by
The Inspector of Police
SPE/CBI/ACB,Chennai .. Respondent/Complainant
(R.C.No.31(A)2001)

Revision Case filed under Section 397 and 401 of Cr.P.C against the conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai in C.A.No.177 of 2010 by its judgment dated 13.04.2016.

For petitioner : Mr.A.Ramesh, Sr.Counsel for M/s. V.Krishnakumar

For Respondent : Mr.K.Srinivasan Special Public Prosecutor (CBI Cases)

ORDER

This Revision Petition has been filed by the petitioners challenging the judgment dated 13.4.2016 passed by the learned VII Additional Sessions Judge, Chennai confirming the judgment dated 22.09.2010 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai for the offence punishable under Section 20 read with 4 of Indian Telegraph Act with Simple Imprisonment of six months and fine of Rs.1,000/- each and in default of payment of fine, to undergo Simple Imprisonment for a period of two weeks. It has been further ordered that sentences awarded shall run concurrently.

2. The brief facts of the case of the prosecution is as follows:

(i) Joint surprise check was conducted by the officer of CBI along with the officials of Chennai Telephone on 02.8.2001, at the premise of M/s.Wipronet Ltd., Alwarpet. P.W.1 and P.W.3 also participated in the said surprise check and Ex.P1 was prepared and found out that illegal switching of international incoming calls were going on at Wipronet premises. Rough sketch about M/s. R.M.B. Software Net work was identified and marked as Ex.P3. The data print out taken were identified and marked as Ex.P4. P.W.4, taken out print out of the telephone Nos., which is marked as Ex.P5. P.W.5, Sub Divisional Engineer also spoken about the details of the print out. P.W.7 was working as Technical Delivery Manager at Wipronet at the relevant time. According to P.W.7, the accused company sought co-location facility with Wipronet and they were provided with co-location services. M/s.RMB Software sent the Server from Ahmedabad and the same was received on 19.1.2001 by him. The server was marked as M.O.1. The email print out, which was sent to Shafikhan, was marked as Ex.P7. P.W.7 further stated that the server was connected to their network and Shafikhan informed them not to enter into the net access. It was informed that accused customers will look into. After the connection, RMB Software was informed about the activation. The Commission Report was marked as Ex.P8. 20 telephone connections were given under M.O.2. Thereafter, P.W.7 was informed to disconnect the server. RMB Software also refused to part with password. At this juncture, the CBI authorities conducted surprise check and they were supplied with necessary details. The print out taken on the transaction was marked as Ex.P9.

(ii) P.W.8, the Customer Relation Officer at Chennai Telephones, had passed orders granting connection to the Wipronet. The said documents are marked as Exs.P12 to P29. P.W.9, carried out the orders by giving Telephone connections for Wipronet work. P.W.10 to P.W.21 were examined and in their evidence, they have stated that they never receive any foreign calls. P.W.22, the Deputy Manager at Wipronet has given co-location service to Wipronet. The invoices in respect of the same is marked as Ex.P30. P.W.24, Assistant Commissioner delivered the consignment and the said papers were marked as Exs.P.31 to P.40. P.W.27 counter signed the records while passing imported items. P.W.28, Manager of Lakshmi Vilas Bank stated that one Sanskrut Software opened an account with their bank and the opening form was marked as Ex.P43. The memorandum and Articles of Association were marked as Ex.P.44 and P.45.The statement of Current Account was identified and marked as Ex.P46. Similarly, A1 and A3 were also opened an account and the same is marked as Ex.47 and cheques issued were marked as Ex.48 series. Their statement of bank account is marked as Ex.49 series. The covering letter received from CBI was marked as Ex.P50.

(iii) P.W.30 is the Finance Manager at Tata Communications Limited. According to her, they had an agreement between World Com American Company and VSNL on international incoming and outgoing calls and obtained licence, which is marked as Ex.P51. The income generated would be shared between the companies in the rate fixed in the agreement, which is marked as Ex.P52. The call duration calculation sheet for the month of January, February, March and April 2001 was marked as Ex.P53. The amount of payment in US Dollars was marked as Ex.P54. P.W.31, who was working as Manager of Tata Communications identified the CBI mahazar and the same was marked as Ex.P55. P.W.1, in his evidence, has stated that as per the request of CBI, he has identified IP addresses which were allocated to M/s. Wipronet Limited, Bangalore. However, IP address for 208.192.116.26 could not be found out because the said IP address was given to a American Company.

(iv) P.W.32, presently working as Manager in Sun Micro Systems at Bangalore earlier worked as Manager at Wipronet Limited. According to him, M/s. Wipronet Limited is a Category - A Internet Service Provider and they used to provide messaging co-location VPN and internet access as their services and he was responsible for maintenance of backbone net work and services assigning IP addresses. M/s. RMB Software Private Limited was one of the customer, who were given co-location and were assigned two IP address viz., 202.177.1.40.66 and 67/26 for the server to that installed at Chennai. M/s. RMB Software was made operational on 20.01.2001. Normal international practice is not to have a dedicated monitor connected to co-location services. According to him, on 23.5.2001, Shafiqkhan, customer Support Executive of M/s. Wipronet Limited, Ahmedabad rang up and informed that there is a serious problem with M/s. RMB Software server and the law enforcement agencies are checking the connectivity and related issues in Ahmedabad premises of Wipronet Limited. He advised his Supervisor over phone to disconnect the telephone lines of M/s.RMB Software at Chennai and Calcutta and to keep the server in safe custody. Accordingly, server lines are disconnected.

(v) P.W.33, Manager, Operations in Blue Dart Company, Ahmedabad stated that RMB Software sent consignment on 19.1.2001. The Air way Bill was marked as Ex.P56. P.W.34, also took part of joint surprise check conducted at Wipronet Limited on 02.8.2001. According to him, huge number of telephone lines remained idle but were heavily billed and CBI suspected a fraud on those lines. When P.W.34 asked for explanation with regard to 92 lines, which remained idle and there was heavy billing, Wipronet authorities explained that 20 of those lines were connected to the Server, which belongs to M/s. RMB Software. Another 48 lines were also in the similar way. Therefore, they removed the server of RMB Software and analysed the software and hardware installed inside it. It is stated that RMB server was working as a switching equipment, which was on the one side connected to 20 telephone lines through dialogic box and on the other side connected to vide area net work from where it was connected to internet. When international calls are received on the internet as Voice Over Internet Protocol Calls (VOIP), the same reached the RMB server and as it is connected to dialogic box, it is switched over to public telephone lines as a local call. By this the actual gateway of Chennai Telephones and VSNL set -up to switch over the international calls were by-passed. The datas recorded in two floppies were marked as M.O.2 series. The server used by RMB Software was seized by the CBI Officials. According to P.W.33, RMB Software cannot switch calls to public net work if they could not have the licence provided by the Government.

(vi) P.W.35 stated that the main operations of Wipronet was that to provide internet access to customers on the basis of infrastructure that was built by the company to provide facilities such as E-mail services co-hosting, co-location etc., Co-location is an operation, by which people are allowed to maintain their servers on the infrastructure provided by M/s. Wipronet. As far as M/s. RMB Software limited, they received the server of that company which was installed by their Customer Support Team. This server was directly maintained by M/s. RMB Software Limited and there was 20 telephone lines connected to their server. This server was not connected to any input or output device. Around May 2001, he has received a communication from Vigilance Officials raising questions about the functioning of Wipronet and specifically asking about M/s. RMB Software Limited. P.W.36, was an Engineer in CISCO System Limited. According to him, they undertake to provide E-mail services, co-hosting, co-location etc. and his duty was to connect the server, land connectivity and telephone lines as per the instructions and look after the net work connectivity and telephone line connectivity. Using RJ 45 cables, 20 telephone lines were connected to dialogic box in the server. At Chennai, Mr. Chandrasekar's duties were to co-ordinate the net work operation and maintenance as per the instructions from the Head of Office. After few months of connection of service, P.W.36 was asked to remove the lines and connectivity of that M/s RMB Server.

(vii) P.W.37, who is a Professor at IIT, Chennai was a witness to the Mahazar proceedings on 10.3.2003. The Mahazar was identified and marked as Ex.P58. CBI personnel brought the machine, which was a Computer that had many interfaces. The computer which was brought to P.W.37 was not functioning and its contents were displayed in another computer at his lab. The report prepared by P.W.37 on 12.6.2003 was marked as Ex.P59 and his certificate was marked as Ex.P60. According to him, the fact whether the telephone communications went through the net to the foreign countries can be found out by observing from the logs written on the hard disk and this could be checked from the IP address of the machines communicated by ascertaining from the logs the certificate was issued to say that the communication established was with computer outside India and the specific IP involved in most of the communication was identified and marked as Ex.P61. The special type of hard disk was known as SCSI type and he could successfully retrieve the data from the hard disk. The CD containing the retrieved data was marked as M.O.3.

(viii) P.W.40 Inspector of Police, CBI, ACB, who conducted a joint surprise check at the office premises of Wipronet Limited, Alwarpet, Chennai, along with personnel from Chennai Telephones and VSNL, asked the Wipronet Officers to explain the utilization of 162 telephone connections received from Mylapore Telephone Exchange. The surprise check was duly signed and marked as Ex.P1. FIR was marked as Ex.P66 and the complaint was marked as Ex.P67. P.W.41, the Inspector of Police, ACB, Chennai, who took up further investigation, examined the witnesses and recorded their statements. He seized various communications and marked as Exs.68 to 71.

(ix) After investigation in the matter, the charge sheet was filed on 20.6.2003 as against the accused which was registered as C.C.No.7892 of 2003 in the Court of learned Additional Chief Metropolitan Magistrate, Egmore, Chennai for the offence under Section 120 B read with 420 IPC and Section 20 read with 4 of Indian Telegraph Act, for illegal switching of the international incoming calls by passing- VSNL through their server installed at the premises of Wipronet, Chennai, as co-location server through 20 BSNL Telephone lines. The learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, acuquitted the accused Nos.1 to 6 for the offence under Section 120 B read with 420 IPC and Section 20 read with 4 of Indian Telegraph Act and Section 420 of IPC. The learned Additional Chief Metropolitan Magistrate, Egmore, Chennai convicted the accused Nos. 1 to 3 for the offence under Section 20 read with 4 of Indian Telegraph Act and sentenced to undergo Simple Imprisonment for 6 months and also to pay a fine of Rs.1,000/- each in default, to undergo two weeks Simple Imprisonment. The learned Additional Chief Metropolitan Magistrate, Egmore, Chennai further held that the sentence imposed on A1 company will be on A2 and the period of sentence imposed shall run concurrently. The fine imposed on A1 Company shall be paid by A2. Aggrieved over the said judgment, Appeal being Criminal Appeal No.177 of 2010 was filed. The Appellate Court (VII Additional Sessions Judge) vide judgment dated 13.04.2016 confirmed the judgment dated 22.09.2010 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C. No.7892 of 2003.

3. Heard Mr.A.Ramesh, learned Senior counsel for the revisionists. He has contended that originally the complaint has been lodged only as against the employee of the Wipronet and subsequently, only in the charge sheet, the present appellants have been arrayed as accused. He has further contended that except transmitting server to Wipronet, no connection, whatsoever was given by the accused and that they are not maintaining or operating the so called server. It is the vehement contention of the learned Senior Counsel that the entire server was operated by Wipronet employees only and all the telephone connections were obtained by them. Therefore, according to the learned Senior Counsel, the case of the prosecution that the accused herein were engaged in illegal switching of incoming international telephone calls to several local subscribers of Chennai Telephones as local calls without a valid licence from the Department of Telecommunications by way of illegal equipment set up provided with switching hardware which resulting in revenue loss to the Department of Chennai Telephones and VSNL is highly improbable.

4. The learned Senior counsel for the revisionists / accused vehemently argued that absolutely, there is no evidence that the revisionists/accused have played any role in switching over the international calls illegally. According to the learned Senior counsel, the Trial Court has relied upon the interested witnesses, who were originally arrayed as accused in the FIR, which is not sustainable in law. The learned Senior counsel for the revisionists further contended that the Wipronet employees, in order to destroy the reputation of the accused company, has given false evidence as if the server belongs to the accused company was used to switch over the international calls as local calls.

5. The learned Senior Counsel has also contended that the courts below have committed an error while not appreciating the evidence on record which indicates that the present revisionists had not played any role in the commission of the offence. The courts below committed an error in convicting the revisionists. Therefore, according to the learned Senior Counsel, the impugned judgments are illegal and improper. Hence, the learned counsel for the revisionists prayed for allowing the revision.

6. Per contra, the learned Special Public Prosecutor submitted that the prosecution has clearly established the role of the accused beyond reasonable doubt. In fact, the server in question, was seized and marked as M.O.1. It is submitted that only through M.O.1 server, illegal switching of incoming international calls as local calls were happened. It is further submitted that only the accused company has given server as co-location server and only through such server, 20 BSNL telephone lines were illegally used for switching international incoming calls as local calls. It is also submitted that expert's evidence would clearly prove the case of the prosecution. Hence, the learned Special Public Prosecutor submitted that the Courts below, after appreciating the entire

evidence in proper perspective, had rightly come to the conclusion of convicting the accused and the same does not warrant interference.

7. I have gone through the impugned judgment passed by both the Courts below and oral as well as documentary evidence produced on the record. I have also considered the submissions advanced by the learned counsel for the respective parties.

8. Originally, A1 to A6 were arrayed as accused and charges were framed against them for the offence under Section 120 B read with 420 IPC and Section 20 read with 4 of Indian Telegraph Act. The prosecution has examined as many as 41 witnesses and marked Exs.P1 to P72 besides M.O.1 to M.O.3. However, the learned Trial Court acquitted the accused 4 to 6 in all charges and convicted A1 to A3 alone for the offence under Section 20 read with 4 of Indian Telegraph Act while acquitting them for the offence 120 B read with 420 IPC. The conviction and sentence imposed by the Trial Court was confirmed by the lower appellate Court.

9. It is well settled that the power of Revision is not automatic and only if the Court satisfies that there was irregularity or illegality in the finding of the Trial Court, such power can be exercised. It is also well settled that Revisional jurisdiction cannot be exercised in re-appreciating evidence. But at the same time, when the Trial Court has mis-read the evidence or not properly appreciated the evidence, the revisional Court can very well look into the evidence to find out whether the orders of the Courts below have suffered from illegality or perverse.

10. In the instant case, the entire prosecution has started on the basis of the complaint originally given by the Chief General Manager, Chennai Telephones to the Superintendent of Police, SPE/ CBI/ACB, Chennai dated 02.8.2001. The prosecution started on the basis of the joint surprise check conducted by the CBI and officials of the BSNL and Vigilance Department of Chennai Telephones on the premises of M/s. Wipronet Ltd, Alwarpet, Chennai. Ex.P1 is the proceedings of the joint surprise check.

11. On a careful perusal of Ex.P1, it is seen that surprise check was conducted on the basis of the written complaint received from the Vigilance Department of Chennai Telephones alleging that M/s Wipronet Private Limited of Chennai were engaged in illegal switching of incoming international telephone calls to several local subscribers of Chennai Telephones as local calls without a valid licence from the Department of Telecommunications by way of illegal equipment set up provided with switching hardware which resulting in revenue loss to the Department of Chennai Telephones and VSNL. Further, in the surprise check, it is found that Wipronet has obtained 162 telephone connections from Mylapore Telephone Exchange. Out of which, it is stated that they have subscribed 20 telephone

lines to the accused company and 48 lines to M/s. Naveen Info Vision. Based on the said surprise report, prosecution conducted investigation and finally laid a charge sheet as against the accused.

12. It is the specific case of the prosecution that the accused company, by using the server, illegally switching of the international incoming calls by passing- VSNL through their server installed at the premises of Wipronet, Chennai, as co-location server through 20 BSNL Telephone lines. P.W.1, Assistant Vigilance Officer of the Chennai Telephones, has spoken about the joint surprise check conducted by the CBI on 02.8.2001. P.W.1 would depose that in the joint surprise check, he found that illegal switching of the international incoming calls were going on M/s. Wipronet Limited, Alwarpet, Chennai premises. P.W.3 was also present at the time of surprise check and he also signed in the rough sketch Ex.P3. The data model print out taken were identified and marked as Ex.P4.

13. Though P.W.1 and P.W.3, in their evidence, have stated that they took part in the joint surprise check, they have not spoken about the illegal switching of international calls by R.M.B Software Pvt Ltd. Whereas, the statement of P.W.4 clearly shows that telephone lines were given in the name of Wipronet. The details found in Ex.P5, print out, also substantiate the said fact. The statement of P.W.5 would further prove the fact that telephone connections were, in fact, given in the name of Wipronet. When Ex.P10 is carefully perused, it is seen that only Wipronet was given licence by the Government of India, Ministry of Communications, Department of Telecommunications, to maintain and operation internet service. In this regard, it would be useful to extract Clause 10 of the said agreement, which reads as follows:

> "10. .. ..The LICENSEE shall not, without the prior written consent of the Lincensor, either directly or indirectly, assign or transfer its rights in any manner whatsoever to any other party or enter into any agreement for sub-licence and/or partnership relating to any subject matter of the licence to any third party either in whole or in part. Any violation of his term shall be construed as a breach of Licence. Agreement and the licence shall be liable for termination. Provided, however, that installation of systems, equipment and network can be given on contract, but, providing the SERVICE cannot be given to another party on contract. Provided, further, that the licensee can always employ or appoint agents and servants. .. .. .."

On a close reading of Ex.P10, it is clear that Wipronet company alone was granted licence to maintain the internet service.

14. The prosecution has mainly relied upon the evidence of P.W.7, who was, in fact, originally shown as first accused in the FIR. According to him, he was a Technical Delivery Manager

at Wipronet limited at the relevant time and they had network licence to maintain internet. He has also stated that some company also used their server to chat internet, known as co location. Likewise, some of the accused were also provided with their server and they utilised such facility. The accused company herein also used to get nternet connectivity from the Wipronet as per the instruction from Head Office of P.W.7. They received server (M.O.1) from the accused company on 19.01.2001. As per the statement of P.W.7, after receiving server, he has asked one Shafikhan about the remaining process for which he replied that access has been given only through IP address and the remaining work will be controlled by remote control. Accordingly, server was entrusted and 20 telephone connections were connected to the server as per the instruction of Shafikhan, who was working in Wipronet at Ahmedabad. Thereafter, in view of some instruction from one Chandrasekar of their company, they disconnected the server of the accused. During surprise check, he has drawn diagram Ex.P3 to show how those server was connected.

15. It is to be noted that Ex.P9, correspondence between P.W.7 and one Shafikhan of Wipronet at Ahmedabad, clearly shows that server was connected only as per the instruction of Shafikhan. In fact, in one of the communication sent on 19.01.2001 to P.W.7, the said Shafikhan has given instruction to P.W.7 to connect CPU to the co-location segment and after powering it, rest of the operations will be taken care of him remotely. From the above communication, it is very clear that as per the instruction of Shafikhan, P.W.7 had installed the server to the accused company and other operations were done by the said Shafikhan remotely. Therefore, the statement of P.W.7 that the accused company did not give password for operating the server at the relevant time is highly improbable.

16. Similarly, the statement of P.W.7, that after five months of operation, they disconnected the server in question, would also create serious doubt as there is no evidence, whatsoever, available on record to show that the so called server was configured by the accused themselves by some other mode and fixed the same in the Wipronet company. Whereas the statement of P.W.7, who appears to be an expert in the field of computer, clearly shows that M.O.1, server, was installed and maintained by the Wipronet alone and no one from the accused company maintained M.O.1. P.W.7, in his evidence, has stated that 20 telephone connections obtained by Wipronet were connected to M.O.1 and payments were made by them for such connections. The evidence of P.W.8, other officer, who was examined on the side of the prosecution, also clearly shows that all the telephone connections were obtained only by the Wipronet. The statement of P.W.9 would also go to show that connection was not given to each phone separately but the connection was given to D.B. Box and from there Wipronet Limited used to take connections. Though P.W.10 to P.W.21 were examined, they have not supported the prosecution in any manner and they deposed that they did not receive any foreign calls.

17. Further, though the prosecution has pleaded that there was an agreement between RMB Software, the accused herein and wipronet for using the alleged server, there is no materials available on record to substantiate the same. Even P.W.7 deposed that he does not know about any such agreement. Even though the prosecution has relied upon Ex.P30, invoices, to show that there was an agreement between the accused company and Wipronet for co-location service, when the statement of P.W.22 is carefully analysed, it is seen that the alleged invoice dated 31.12.2000 alone was shown to him. Therefore, the evidence of P.W.22 cannot be taken as a proof to infer that there was an agreement between the accused company and Wipronet. P.W.24 and P.W.25 were examined by the prosecution to show that server was purchased by two companies and consignment was sent. However, that itself cannot be taken as a proof to hold that there was a contract between the parties for co-location. As per the evidence of P.W.36, who was in charge of Wipronet at the time in respect of M.O.1 server, no one from the accused company was present at the time of installation and entire system was under the care and maintenance of Wipronet employees.

18. Similarly, the prosecution has filed Exs.P47 and P.49, bank opening form and cheques, to show there are many transactions took place between the accused and the Wipronet. Though, according to prosecution, Exs.P47 and P49 would indicate that there was some arrangement between the accused company and Wipronet in respect of the alleged use of internet facility, the crux of the issue in this case is whether the server M.O.1 was configured by the accused for the purpose of illegally switching of international incoming calls as a local calls. That has to be proved only by the prosecution by cogent evidence.

19. Admittedly, all the top officials of the Wipronet company were originally shown as accused in this case. On a perusal of all the evidence adduced by the prosecution, it is clear that server was installed by P.W.7 only at the instruction of one Shafikhan, the employee of Wipronet from Ahmedabad. The e-mail communication referred to as above, also shows that the said Shafikhan alone was controlling the server remotely from Ahmedabad. But the said Shafikhan has not been examined, which creates doubt about the case of the prosecution.

20. The statement of P.W.30 would go to show that calls were routed through VSNL for illegally switching of international calls as local calls, which resulted loss to the Government. The prosecution has relied upon Ex.P.53, calculation sheet to substantiate the same. On a perusal of Ex.P53, calculation sheet, it is seen that the said document is only a print out taken from the computer and the same has not even been certified by the competent authority. Further, there is no evidence to show from which computer, it was taken, who was in charge of computer at the relevant time and whether the computer was in operation at the relevant time. In other words, the mandatory condition imposed under Section 65 (b) of the Indian Evidence Act has not been complied with by the prosecution to make the

said electronic print out as admissible in evidence. Only when conditions prescribed in Section 65 (b)are satisfied, documents can be admitted as admissible evidence. It is well settled that the evidence must be authenticated by foundational evidence that the alleged document is in fact original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. In such circumstances, I am of the view that the evidence let in by P.W.30 in respect of Ex.P.53 is not admissible in evidence and the same shall not be relied upon.

21. P.W.31, in his evidence, has stated that three (3) IP addresses were checked by him and two (2) of the IP addresses allocated to M/s. Wipronet Limited, Bangalore and another IP address No.208.192.116.26 could not be traced out. In fact, according to P.W.31, it has been allocated in favour of American company. To substantiate the said statement, Ex.P55 has been marked by the prosecution. It is the statement of P.W.35 that one of the IP address was not given to Wipro Limited. But absolutely, there is no evidence to show that who has configured the said IP address to the server. When the entire oral and documentary evidence adduced by the prosecution is analysed, it is seen that the alleged server was installed by the Wipronet employees. Though P.W.32, who is the Manager of Wipronet Limited, Bangalore, deposed that two of the addresses were allotted to RMB Software (Accused herein), absolutely, there is no evidence to show that the alleged server was, in fact, configured by the accused company. Therefore, the evidence of P.W.32 in that aspect will not help the case of prosecution.

22. That apart, the statement of P.W.34, who accompanied with CBI officer during joint surprise check, would also clearly indicate that only as per the instruction of staff of Wipronet, server fixed in the Wipro company. P.W.34, in his cross examination, would depose that telephone billing was done by Wipronet for all the transactions and the payment for the said telephone billing was also made by them. He has also stated that call duration was recorded in two floppies, which is marked as Ex.M.O.2 series. However, the prosecution has not taken steps to certify these print outs to comply with the conditions imposed under Section 65 (b) of the Indian Evidence Act. Therefore, it is clear that only on the basis of the statement made by the staff of Wipro, the prosecution has come to the conclusion that 20 telephone lines were given to RMB Software. That apart, P.W.34, in the cross examination, has stated that he received information that Wipronet, Chennai are engaged in illegal switching of incoming international calls to several local subscribers of Chennai. Further he has stated that he did not receive any information that incoming international call was switch to different local customers. He has also stated that only Shanmugapandian and Chandrasekaran were accompanied with them during the inspection and both of them are employees of Wipronet. According to him, sub leasing of telephone connection to others is not legal.

23. On a careful analysis of the evidence of P.W.34, it is seen that all the telephone bills and other documents were produced only by Shanmugapandian and Chandrasekaran, who were originally arrayed as accused. Further, the said Chandrasekaran was examined as P.W.35. P.W.35, in his evidence, has stated that M.O.1 server was directly maintained by RMB software, which is contrary to the evidence of P.W.7. P.W.35 also stated that no configuration has been made on the server, which also creates serious doubt about the case of the prosecution.

24. It is curious to note that without operating the server, no one could be able to find out whether any configuration has been done in the server or not. Therefore, the evidence of P.W.34 and P.W.35 that configuration has not been done in the server would also create serious doubt. That apart, the conduct of Wipronet in paying electricity bills for the entire connection, despite huge billing, would also gives an inference that they were aware of the aforesaid connections to RMB software server.

25. P.W.36, who was also one of the employee of Wipronet, has deposed that at the time of installing M.O.1, 20 telephone lines were connected to RMB software and network connectivity was given to them as per the instructions given by P.W.35, Chandrasekaran. He has further stated that one Shafiqkhan from Ahamadabad Branch initially co-ordinated and instructed for installing the alleged server. From the statement of P.W.36, it is clear that the alleged server was initially installed only as per the instruction of ShafiqKhan, who was originally arrayed as accused. P.W.36, another witness was also shown as accused in the FIR.

26. Admittedly, the surprise check was conducted on 02.8.2001 and FIR was filed subsequently, wherein P.W.7, P.W.35 and P.W.36 were shown as accused, which is evident from Ex.P66. Therefore, their evidence, who are highly interested in escaping from the serious allegations, requires deeper scrutiny and in fact, their evidence would clearly suggest that they are the only persons, who were actually in charge of the server. Apart from that, since they are all experts in handling computer softwares, there is every possibility for them to make some changes in the hardware or software.

27. Though P.W.37, professor of Computer Science Department, IIT, Chennai, who retrieved data from the server, has stated that Ex.P59, the originating I.P address is a public IP address assigned in USA to a company by name UU Net Technologies INC, USA and Ex.P.61, carton box marked “A” containing the server of Naveen Maid and the system 800 series, it is to be noted that his evidence would not help the prosecution to bring home guilt of the accused, as pertinent question raised now is who has made such change in the server. Further, the statement of P.W.39, in chief examination, would clearly show that a sum of Rs.2,86,204/- was paid by the Wipronet in respect of the alleged 20 telephones, which were connected through MO1. Server.

28. From the above re-appreciation of the evidence, this Court is of the view that the role of the accused in maintaining the server has not been established by the prosecution beyond reasonable doubt. In this context, it is would be useful to extract Section 4 and Section 20 of the Indian Telegraph Act, 1885, which reads as follows:

> 4. Exclusive privilege in respect of telegraphs, and power to grant licenses.— [(1)] Within [India], the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:
>
> Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]:
>
> [Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working—
>
> (a) of wireless telegraphs on ships within Indian territorial waters [and on aircraft within or above [India], or Indian territorial waters], and
>
> (b) of telegraphs other than wireless telegraphs within any part of [India].
>
> [Explanation—The payments made for the grant of a licence under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendation made in this behalf by the Telegraph Regulatory Authority of India established under sub-section (1) of section 3 of the Telegraph Regulatory Authority of India Act, 1997 (24 of 1997).]
>
> [(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of it its powers under the first proviso to sub-section (1).
>
> The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose.]
>
> 20. Establishing, maintaining or working unauthorised telegraph.—(1) If any person establishes, maintains or works a telegraph within [India] in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and in

any other case, with a fine which may extend to one thousand rupees. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.

(3) When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to Government.

[20A. Breach of condition of license.—If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.]

29. In the case on hand, the accused were not granted license to establish, maintain or work a telegraph within India. Further, a close reading of Section 20 of the Indian Telegraph Act, as extracted above, would make it very clear that if any person establishes or maintains or works a telegraph within India in contravention of the provisions of Section 4 or otherwise than as permitted by rules, he shall be punished, with imprisonment. But in the instant case, the entire oral and documentary evidence adduced by the prosecution does not disclose the factum of the accused in establishing or maintaining or working telegraph. Except supply of M.O.1 server, the accused has not played any role. The server in question was, in fact, in the custody of Wipronet all along and the same was maintained only by the employees of the Wipronet. Therefore, Section 20 read with Section 4 of the Indian Telegraph cannot be inferred merely because there is some violation in switching of the international calls as the local calls. More so, the prosecution has also failed to establish that only the accused herein have switched over incoming international calls as the local calls. As discussed supra, the prosecution has miserably failed to bring home the guilt of the accused.

30. This Court finds that both Courts below have committed an error while not appreciating the evidence on record from which it is crystal clear that the present applicants/accused had not played any role in the commission of the offence.

31. Both the Courts below failed to appreciate that one of the cardinal principles of our system of administration of justice in criminal cases is that a person arraigned as an accused in presumed to be innocent unless that presumption is

rebutted by the prosecution by production of evidence as may show him to be guilty of the offence, with which he is charged.

32. The onus and burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of the burden, the Courts cannot record the finding of the guilt of the accused.

33. Thus, going by the above said aspect in this case the prosecution has miserably failed to discharge its duty in order to prove the case beyond reasonable doubt against the accused and, therefore, no conviction can be based merely on assumption and presumptions. The Courts below committed a glaring error in convicting the revisionists/accused. It is primarily the duty of prosecution to bring home the guilt of the accused by leading cogent reliable and unimpeachable evidence. It is also the duty of the prosecution to establish these aspects beyond reasonable doubt and they must coexist. If it is not proved by the prosecution, the benefit would be extended to the accused.

34. Hence, in view of the above mentioned facts, circumstances and the nature of glaring illegalities, perversities in the manner in which both the lower Courts have considered the material on record along with adverse inference of those material and witnesses not examined, the present revision is required to be allowed.

35. In fine,

(a) The Criminal Revision is allowed.

(b) The judgment dated 13.4.2016 passed by the VII Additional Sessions Judge, Chennai in Criminal Appeal No.177 of 2010 along with the judgment dated 22.09.2010 passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.7892 of 2003 are hereby quashed and set aside. The revisionists /accused are ordered to be acquitted from the alleged offence.

(c) The fine amount paid, if any, is ordered to be refunded.

(d) The Bail bond, if any executed by the revisionists/accused, shall stand cancelled.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. VII Additional Sessions Judge, Chennai.

2. Additional Chief Metropolitan Magistrate, Egmore, Chennai

3.Record Keeper, Criminal Section, High Court of Madras.

4.The Special Public Prosecutor,(CBI Cases),
High Court, Madras.

+2cc to Mr.N.Krishnakumar,Advocate sr.48379

+1cc to Special Public prosecutor,High Court, Madras sr.48477

+1cc to Mr.Anirudh krishnan,Advocate sr.48429(5/9/2017)

Crl.R.C No.666 of 2016

mv(co)

ss(9/8/2017)