

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 4371 OF 2015

Samsher s/o Suresh Warpudkar,
Age 32 years, Occu. Business and Agri.,
R/o Vishnunagar, Parbhani,
Taluka District : Parbhani.

... **APPLICANT**

VERSUS

- 1) The State of Maharashtra,
Through P.I. Police Station
Nava Mondha Parbhani,
District Parbhani.
- 2) Upendra Namdeo Jalgaonkar,
Age 35 years, Occu.
R/o. 25-D-3, Randeep
Society Akurli, Mahada Residency
Road No.2, Kandiwali (East)
Mumbai 400101.

... **RESPONDENTS**

...
Mr. Arvind Deshmukh, Advocate for Applicant.
Mrs. D. S. Jape, APP for Respondent No.1 / State.
...

CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 08th August, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed under Section 482 of the Code of

Criminal Procedure for relief of quashing of charge-sheet No.80 of 2015, which is given as R.C.C. No.323 of 2015 in the Court of Judicial Magistrate First Class, Parbhani and which is filed in C.R. No.31 of 2015, registered with Nava Mondha Police Station, District Parbhani.

2 Both the sides are heard.

3 The crime is registered for the offences punishable under Sections 63 and 69 of the Copyright Act and for the offences punishable under Sections 420, 406 and 34 of the Indian Penal Code. The report is given by one Upendra Jalgaonkar, who is an employee of Star India Private Limited (Star) company. This Company has so many channels and the company gives rights under agreement for transmission of its channels. Allegations are made that agreement made with the present Applicant by Star company came to an end on 31st March, 2014 and after that the Applicant was in dues of Rs.5,77,930/-. It is contended that there was no renewal of the agreement and the amount due was also not paid by the Applicant. It is contended that notice was also given of 21 days to inform that the transmission will not be available if there is no renewal of the agreement and further action under Copyright Act and Indian Penal

Code can be taken. A notice was published for information of the customers also by Star company and then the services was cut-off.

4 It is the case of the first informant that as per the agreement, it was necessary for the Applicant to return the decoder boxes. The decoder boxes were not returned. It is contended that by using decoder boxes, the present Applicant started giving services to Videocon D2H and Airtel DTH for transmission of the channels of the Star company. It was verified that the present Applicant was transmitting the channels of Star TV by using its network and in the aforesaid manner. The channels were available at various numbers like Music OK was available at Channel No.15, Star Gold was available at Channel No.18, Star Pravah was available at Channel No.19 and so on. It is contended that the logos of Videocon company and other company could be seen on the screen due to aforesaid *modus operandi* used by the present Applicant and it became clear that the present Applicant was making available the channels of Star company to his customers through Videocon D2H and Airtel DTH. Video shooting of this transmission was done by the first informant and when transmission was going on, he gave report.

5 The learned counsel for Applicant submitted that there was a renewal of the agreement and there was a record with him to show that on the date of the FIR, the period of renewal agreement had not come to an end.

6 The learned APP on the other hand, submitted that the allegations made are of different offence and not the offence, for which the learned counsel for Applicant is advancing the arguments. Allegations are made that due to the aforesaid *modus operandi*, offence is committed under the Indian Penal Code and under Copyright Act also. Attention of this Court was drawn to the Telecommunication (Broadcasting and Cable Service) Interconnection Regulations, 2004. Definition of “cable service” and “cable television network” is given and definition of “direct to home service” is given separately. Copy of agreement shows the conditions, which need to be fulfilled and it shows that it was necessary for the Applicant to protect the intellectual property. The Applicant could not have used the services made available by decoding in any way other than mentioned in the agreement.

7 There are statements of witnesses and there is record like *Panchanama* in support of the contentions made in the FIR. In view of these circumstances, this Court holds that no relief can be granted to the Applicant. In the result, the following order is passed:

ORDER

- I. The application is dismissed.
- II. Interim relief, if any, is vacated.
- III. Rule is discharged.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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