

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P Nos.9443 and 9444 of 2010
and
M.P.Nos.1 and 1 of 2010

C.Kristhudass Rabert ... Petitioner in Crl.O.P.No.9443/2010

T.Somasundarau ... Petitioner in Crl.O.P.No.9444/2010

vs.

1.State rep. by
The Inspector of Police,
Crime Investigation Dept.,
Puducherry.

2.Ramakrishna Majeth ... Respondents in both the Crl.O.Ps

Common Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the case records pertaining to C.C.No.148 of 2009 and seeking quashing of the Charge Sheet filed in C.C.No.148 of 2009 on the file of the learned Chief Judicial Magistrate, Puducherry.

(In both the Crl.O.Ps)

For Petitioners : Mr.N.R.Elango, Senior Counsel
for Mr.A.M.Venkatak Krishnan

For Respondents : Mr.V.Balamurugane (for R1)
Additional Public Prosecutor
(Puducherry)

No Appearance (for R2)

JUDGMENT

The petitioners have filed the present Criminal original petitions invoking the inherent power of this Court under Section 482 of CrPC to quash the final report in CC.No.148 of 2010 on the file of the Learned Chief Judicial Magistrate, Pondichery laid under Sections 420, 120 B of IPC and 4 and 20 of the Indian Telegraph Act and Sec 4 and 6 of the Indian Wireless Telegraph Act.

2.The brief facts necessary to dispose of these Criminal Original Petitions are recapitulated as under: The petitioners herein in Crl.O.P.Nos.9443 and 9444 of 2010 are accused ranking second and third respectively in the above final report in CC.No.148 of 2010. The above Charge Sheet came to be filed by the 1st respondent in furtherance of an investigation conducted over the complaint of the 2nd respondent dated 16.07.2007 alleging setting up of an illegal Telephone Exchange by M/s.Strait Systems Pvt, such that routing International calls through internet. The above complaint came to be lodged by the 2nd respondent, pursuant to a raid dated 16.07.2007 conducted by the 2nd respondent Vigilance Telecom Monitoring Cell over M/s Strait Systems situated in Kellys Road, Chennai.

3.It is the case of the 2nd respondent that the said M/s.Strait Systems Company had established an illegal Telephone Exchange for international long distance calls and thereby caused wrongful loss to BSNL and other ILDO (International long distance operators). During the course of investigation it revealed that A4 namely Manish @ Mani operated the above illegal Exchange and routed the ISD calls as local calls through his network utilizing Internet and 67 SIM cards obtained on bogus and fake ID proofs. The loss incurred by the telecom department of India is about 40.22 Crores. Wherefore the above complaint was lodged by the 2nd respondent and came to be registered in Crime No.06 of 2007 on the file 1st respondent under Section 420, 120(B) of IPC and 4 and 20 of the Indian Telegraph Act and Sec 4 and 6 of the Indian Wireless Telegraph Act as against the said Manish @ Mani and his associates and against the persons aided the above Offence. The petitioners herein are Internet providers well acquainted of the above illegal design and they have accorded sanction to the Network Diagram submitted by A4, despite knowing that there is no such physical existence of Network as figured in the Network Diagram of M/s.Strait Systems. Further by intentionally omitting to give factual position of Networking to higher officials through inspection and reports, the petitioners played key role in the above Offence, thereupon the above charges came to be framed against the petitioners.

4.It is the contention of the Learned Senior Counsel Mr.N.R.Elango for the petitioners that they are the Office bearers of the Internet Providing Company namely "Dishnet" and they have provided Internet supply during their course of employment in accordance with law and after fulfilling all the legal formalities. Further they are mere Internet Service provider meticulously followed all the statutory guidelines and regulations issued by Telecom Authorities. No amount of

dishonest or intent to cheat can be saddled on petitioners, since all the formalities are scrupulously followed. Further they had all reasons to believe that the Internet User (Subscriber) is to be a genuine user, as the latter complied with all statutory requirements. Therefore, allowing the above criminal case to see the ordeal of trial as against the petitioners would be an abuse of process of law.

5.Per contra, the Learned Additional Public Prosecutor (Puducherry) argued that there are absolute materials available on record against the petitioners that they being the Internet provider and having acquainted that there is no Network structure as figured in the Network Diagram of M/s.Strait Systems have accorded sanction to the above illegal design and they intentionally omitted to give factual position of Networking to higher officials through inspection and reports. Thus the petitioners played key role in the above Offence and strongly objected to quash the final report filed against the petitioners.

6.I heard Mr.N.R.Elango, learned Senior Counsel for Mr.A.M.Venkatak Krishnan for the petitioners and Mr.V.Balamurugane, learned Additional Public Prosecutor (Puducherry) for the 1st respondent and perused the materials available on records. There was no representation on behalf of the 2nd respondent.

7.The petitioners are found to be the Office bearers of the Internet Providing Company namely "Dishnet" provided Internet supply to the M/s. Strait Systems. Though it is the case of the petitioners that during the course of employment in accordance with the statutory guidelines and regulations issued by Telecom Authorities and that they had all reasons to believe that the Internet User (Subscriber) is to be a genuine user all such contentions is to be substantiated only through proper documentary and oral evidence proving their innocence.

8.When it is the specific case of the respondent that petitioners are acquainted with fact that there is no Network structure as figured in the Network Diagram of M/s.Strait Systems in actual, but have accorded sanction to the above illegal design and that they intentionally omitted to give factual position of Networking to higher officials through inspection and reports, this Court is of the opinion that all the above rival submissions cannot be looked into at this stage and all the contentions of either side has to be substantiated through sufficient documents and evidence.

9. In the case of quashing of criminal proceedings the power under Section 482 should be very sparingly and cautiously exercised and more so probative value of statement of witness cannot be gone into by this Court at this stage in this quash petition.

10. Therefore, I do not think that this is a fit case in which this Court can decide whether the petitioners have participated in the above Offence or not on the basis of the materials available before this Court and it require a full fledged trial to see as to whether petitioners have committed any irregularities or Omission as contended by the prosecution.

11. In the result, both the Criminal Original Petitions fails and the same are dismissed hereby. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

vs
To

1. The Chief Judicial Magistrate,
Puducherry.
2. The Inspector of Police,
Crime Investigation Department,
Puducherry.
3. The Public Prosecutor,
Pondicherry.

+1cc to the Government Pleader, S.R.No. 19364, 19578
+2cc to Mr.A.M.Venkatakrisnan, Advocate, S.R.No. 19700

Pre-Delivery Judgment in
Crl.O.P Nos.9443 and 9444 of 2010
and
M.P.Nos.1 and 1 of 2010

NM(CO)
TR(28/03/2018)