

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

CRIMINAL REVISION APPLICATION No. 212 OF 2002

Mr.Godwin Mathais

...Applicant

Versus

State of Maharashtra & Anr.

...Respondents

Mrs.Naina Desai I/b. Mr.Nimish Desai for the Applicant.

Ms.Kavita Kaushik, APP for Respondent No.1-State.

Mr. H.S.Venegaokar a/w. Ms.Vaidehi Pusalkar for Respondent No.2.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 21 FEBRUARY 2019**

P.C.:

1. The applicant/accused was convicted for the offence punishable under section 25 (C) of Indian Telegraph Act, 1885 (hereinafter referred to as "the said Act"). On 1st April, 1992, the Junior Telecom Officer observed that two telephone nos. 6050706 and 6051109 were going beyond 500 units and, therefore, an inquiry was conducted. In the said inquiry, it was found that two spare lines were diverted from the above telephone numbers illegally and, therefore, the offence was registered against the applicant/accused. The evidence of 11 witnesses was tendered by the prosecution to prove the offence. The learned Addl. Chief Metropolitan

Magistrate, 19th Court, Esplanade, Mumbai by an order dated 21st July, 1999 in C.C.No. 51/CP/ 98 convicted the applicant/accused for the offence punishable under section 25 (C) of the said Act and sentenced to suffer R.I. for 3 years and payment of fine of Rs. 1,00,000/-, in default to suffer further R.I. for 9 months. It was further directed that the amount of Rs. 50,000/- out of the fine amount, if recovered, be given to MTNL. The said order was challenged by the applicant/accused in Criminal Appeal No. 142 of 1999. By the judgment and order dated 4th March, 2002, the learned Addl. Sessions Judge, Greater Mumbai while dismissing the Criminal Appeal, confirmed the order passed by the learned Magistrate and the applicant/accused was directed to surrender. The learned Sessions Judge gave option to the applicant/accused that if he compensates the MTNL fully for the loss caused to the MTNL as shown in their metered calls which is stated to be Rs. 4 lakhs with interest thereon, which is also part of a civil suit filed by the MTNL, then the accused may apply for remission of the sentence of imprisonment imposed upon him. Hence, this Revision Application.

2. The learned counsel for the applicant/accused has submitted that the applicant/accused had already deposited an amount of Rs. 2 lacs in the

Sessions Court. She has further submitted that the applicant/accused has deposited the remaining amount of Rs. 2 lacs in the Sessions Court on 15th February, 2019. She has produced original receipt dated 15th February, 2019. Thus, it has made good total amount of compensation of Rs. 4 lacs. She has further submitted that the amount of interest is not to be saddled and the said order is to be modified. She has prayed that the substantive sentence is to be reduced and the order of sentence is to be set aside. She has further prayed that the order of conviction is also to be set aside, as the offence had taken place in April, 1992.

3. The learned counsel for respondent No.2 while opposing this Application, has confirmed that the applicant/accused has deposited an amount of Rs. 2 lacs and thus, he has paid the total amount of compensation of Rs. 4 lacs.

4. The original receipt dated 15th February, 2019 produced by the learned counsel for the applicant/accused is taken on record and marked as **Exhibit-1**.

5. In view of the facts and circumstances and especially, the incident is of 1992, and the applicant/accused has deposited the total amount of compensation of Rs. 4 lacs, the impugned order of sentence, though the accused is held guilty for the commission of offence under section 25 (C) of the said Act, is confirmed. Hence, I pass the following order :

ORDER

- (i) Criminal Revision Application is partly allowed;
- (ii) The impugned orders of the learned Magistrate and the learned Sessions Judge holding the applicant/accused guilty under section 25 (C) of the said Act are hereby maintained;
- (iii) The impugned order of substantive sentence of three years R.I. is hereby set aside and is substituted by payment of amount of Rs. 4 lacs towards compensation;
- (iv) The amount of Rs. 4 lacs deposited by the applicant/accused is to be paid to MTNL as compensation, as they have suffered from loss;

- (v) MTNL is allowed to withdraw the said amount of Rs. 2 lacs if not withdrawn earlier and also the amount of Rs. 2 lacs, which is deposited by the applicant/accused on 15th February, 2019.

(MRIDULA BHATKAR, J.)