

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-01-2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN
Crl.O.P.Nos.15128 and 15993 of 2013
and M.P.No.1 of 2013

Rajiv Rajagopal,
mis-described as Rajurajagopal
Former Chief Executive Officer,
Bharti Airtel Limited. ... Petitioner
Chennai 28. in Crl.O.P.No.15128 of 2013

Bharti Airtel Limited,
mis-described as Bharathi Airtel Ltd.
Repd. By its Chief Executive Officer,
Mr.Rajurajagopal. Petitioner
Chennai 28. in Crl.O.P.No.15993 of 2013

Vs.

1.State of Tamilnadu,
repd. By Sub-Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Egmore,
Chennai-600 008.

2.V.S.Suresh ... Respondents
in both Crl.O.Ps.

Common Prayer: Criminal Original Petitions filed under
section 482 of Criminal Procedure Code, to call for records in
C.C.No.2132 of 2013, pending on the file of the Chief Judicial
Magistrate, Egmore, Chennai and quash the same insofar as it
relates to the petitioner herein.

(in both Crl.O.Ps.)

For Petitioner : Mr.Madan Babu

For 1st Respondent: Mr.R.Ravichandran
Government Advocate (Crl.side)

For 2nd Respdent : Mr.V.Raghupathi

COMMON ORDER

The 1st respondent Police has registered a case in Crime
No.11 of 2011 as against the petitioners, based on the
complaint given by the second respondent for the offence under

Sections 292, 292 A and 294 IPC and Sections 3, 4 and 6 of Indecent Representation of Women (Prohibition) Act, 1986 and Section 2,3 and 6 of the Young Persons (Harmful Publications) Act 1956. Though, the complaint was filed under Section 156(3) Cr.P.C, the learned Chief Metropolitan Magistrate, Egmore, based on the directions of the learned Magistrate, the first respondent Police registered a case and investigated the matter further. After investigation, the respondent Police filed a charge sheet before the learned Magistrate in C.C.No.2132 of 2013. The learned Magistrate took cognizance of the charge sheet and sent summons to the petitioners. Aggrieved by the same, the petitioners have filed the present petitions.

2.The learned counsel for the petitioners submitted that the petitioner in Crl.O.P.No.15993 of 2013 is the company represented by the Chief Executive Officer, who is arrayed as A1 and the petitioner in Crl.O.P.No.15128 of 2013 is the Chief Executive Officer himself, who is arrayed as A2 in this complaint. The learned counsel submitted that this petitioner company is only a service provider and the company has no role to play and the petitioner in Crl.O.P.No.15128 of 2013, has no occasion to see the messages transferred from one customer to another customer. Therefore, the petitioners are not liable to be held for the alleged offence. Even otherwise, under Section 67, service providers cannot be prosecuted. He further submitted that the messages said to have received by the second respondent, itself is also not obscene as defined under Section 292 IPC. Therefore, the petitioner has nothing to do with the message received by the respondent and also that they are only service providers. Hence, the petitioners cannot be put liable for the aforesaid offence under Section 292, 292 A and 294 IPC and Sections 3, 4 and 6 of Indecent Representation of Women (Prohibition) Act, 1986 and Section 2,3 and 6 of the Young Persons (Harmful Publications) Act 1956. To support his submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court reported in (2019)2 SCC in the case of Sharat Babu Digumarti Vs. Government (NCT of Delhi) and the judgment of this Court dated 08.01.2019 passed in Crl.O.P.Nos.19965 and 20020 of 2013, where the directors, who are not the incharge or not looking in to the day-to-day affairs of the company are not held liable for criminal prosecution. Only the criminal statute mandates the directors of the company are not vicariously liable for prosecution. Further, the Information Technology Act, 2000 itself covers the offence under Section 292 IPC. Further Section 79 of IT Act provides the protection to the individuals and therefore, the charge sheet filed against the petitioner required to be quashed.

3.The learned Government Advocate (Crl.side) would submit that the 2nd respondent/complainant is a practising advocate and he is a customer under the petitioner's company and had a cellphone connection. He had been frequently receiving

obscene messages and calls to his mobile phone, which were obscene in nature. Therefore, he made a complaint to the petitioners, for which they have stated that it will take some time to set right the issues. Even thereafter, they had not taken any action to prevent from receiving the obscene messages to the petitioner's mobile number. Therefore, the contention of the petitioner that the respondent had not made complaint is not acceptable. Thereafter, the 2nd respondent lodged a complaint before the learned Chief Metropolitan Magistrate, Egmore, Chennai, and subsequently on the directions of the learned Magistrate, the respondent police investigated the matter and filed the charge sheet. During investigation, the respondent police recorded statement of the prosecution witnesses under Section 161 Cr.P.C, which reveals a prima facie case that the petitioners are responsible for the obscene messages received by the 2nd respondent in his mobile phone. Therefore, the probative value of the materials cannot be gone into at this stage and there is no ground to quash the petition and the same is to be quashed.

4. Heard the submissions made on either side and perused the records.

5. Admittedly, the second respondent is the consumer with the petitioner's service and he had a cell phone connection with Airtel. It is also not in dispute that he received some obscene messages. The statement recorded under Section 161 Cr.P.C by the investigating officers also reveals that a prima facie case is made out as against the petitioners. Whether the messages received by the 2nd respondent is obscene or not that depends upon the view of the individual person. However, the statement recorded by the investigating officer from the prosecution witnesses shows prima facie evidence and also the second respondent has made a complaint before the petitioners, for which they have not taken any action. Whether, the petitioners are liable or they have any direction or not, all those matters are to be decided after the trial and not at this stage. Therefore, this Court does not find any valid reason to invoke Section 482 Cr.P.C., to quash the proceedings in C.C.No.2132 of 2013. Accordingly, these Criminal Original Petitions are dismissed. The petitioners shall take all their defence before the trial Court. Connected miscellaneous petition is also dismissed.

6. Since the calendar case in C.C.No.2132 of 2013, on the file of the learned Chief Judicial Magistrate, Egmore, Chennai, is pending from the year 2013 onwards, the learned Chief Judicial Magistrate, is directed to complete the trial proceedings in accordance with law within a period of four months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To,
The Chief Metropolitan Magistrate,
Egmore, chennai

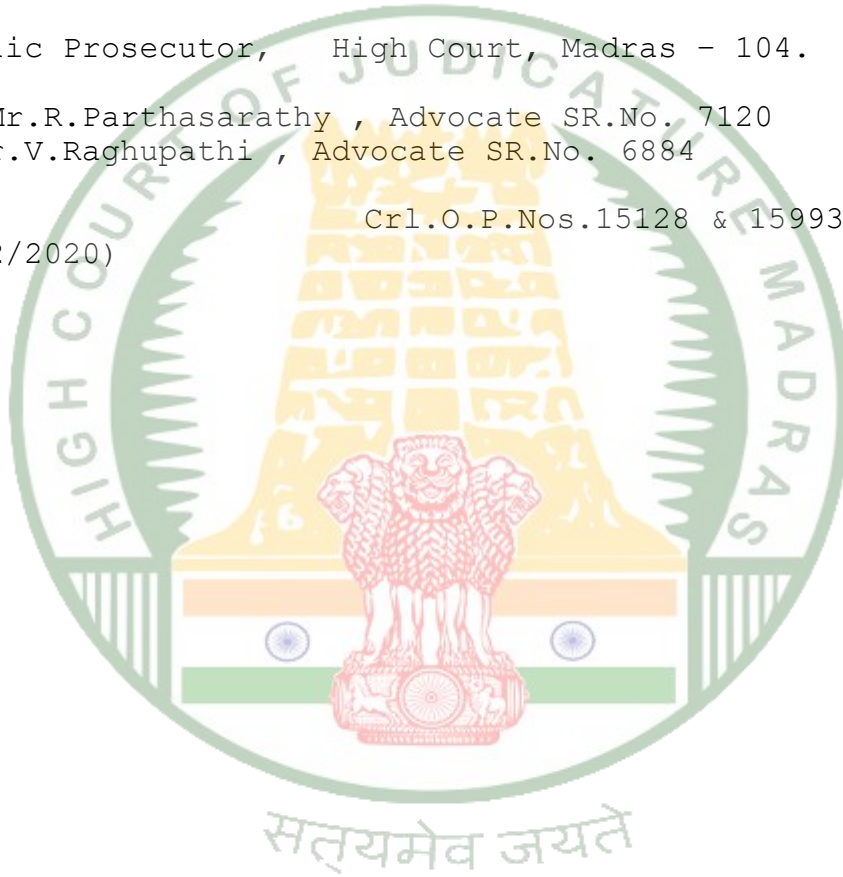
2.The Sub-Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Egmore,
Chennai-600 008.

3.The Public Prosecutor, High Court, Madras - 104.

+2ccs to Mr.R.Parthasarathy , Advocate SR.No. 7120
+1cc to Mr.V.Raghupathi , Advocate SR.No. 6884

Crl.O.P.Nos.15128 & 15993 of 2013

A.SK(03/02/2020)



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