

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 473 OF 2021

Paresh Gordhandas Thakkar. ... Applicant.
V/s.
The State of Maharashtra and another. ... Respondents.

Mr.Sudeep Pasbola i/b. Vaibhav Jagtap for the Applicant.
Ms.S.D.Shinde, APP for the Respondent- State.

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CORAM : **NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : **6 October 2021.**

P.C. :

By this application, the Applicant is seeking to quash
FIR No.80/2020 registered at Pant Nagar Police Station at the
instance of Respondent No.2.

2. FIR was lodged on 10 February 2020 by the Deputy
General Manager, the representative of Respondent No.2. The case
of Respondent No.2 was that Respondent No.2 had started a Joint
Venture with the Applicant in the year 2007 which business
continued till 2017. The entire control of the Joint Venture was
with the Applicant. The Applicant was taking monthly charges

from the subscribers and he was keeping the said amount with himself. According to Respondent No.2, it was obligatory on the Applicant to take the connection from Respondent No.2 alone. The dispute that arose regarding collection of charges is now in arbitration. It was then stated that Telecom Regulatory Authority of India, on 3 March 2017, issued a notification wherein it was stated that instead of taking fixed amount from the subscribers, the rates of TV channels were to be prescribed. According to Respondent No.2, the Applicant was informed to collect the charges from the subscribers as per new rules, however, the Applicant collected the charges as per plan and kept the amount with himself. Because of this situation, the connections given to the subscribers had to be disconnected. It was further stated that the Applicant formed another company and took licences, and between year 2013-16, the Applicant purchased various set-top boxes and supplied the same. The set-top boxes had a particular value and belonged to Respondent No.2. The Respondent No.2 alleged that the Applicant himself or his employees, by going to the houses of the subscribers, misrepresented the subscribers that they will be getting a different network from a different company which is going to provide better facilities and took away the set-top boxes and placed his own. Accordingly, the set-top boxes 2,610 in number valued around Rs.37.5 lakh were taken away by the Applicant. Therefore, FIR was lodged.

3. We have heard Mr.Pasbola for the Applicant and the learned APP for the Respondent- State.

4. The learned counsel for the Applicant firstly stated that the set-top boxes did not belong to Respondent No.2 and upon payment by the subscribers it was the property of the subscribers. In the FIR, the Respondent No.2 has stated that when the set-top boxes were supplied through Applicant to the subscribers, only activation charges were taken and the property continued to belong to Respondent No.2. The question as to whether full payment of charges was made by the subscribers and that set-top boxes could be considered as property of the subscribers is a matter of investigation. While considering whether FIR needs to be quashed, we cannot, at this stage, come to the conclusion that the assertion that set-top boxes belonged to subscribers is correct. Even as per the arguments advanced before us, supply of set-top boxes does not seem to be in dispute. Statements of some of the subscribers are recorded.

5. Second contention is that set-top boxes, which were removed as alleged, had no value and, therefore, not of any consequence. Whether the set top boxes had value or otherwise is also an issue that we cannot conclude finally. If they had no value, the question still remains as to why the set-top boxes were removed by the Applicant. Therefore, this is not the case where no investigation is required. Various facets still need to be investigated and at this stage we cannot come to the conclusion that no further

investigation is necessary and close the case forever. Such a course of action would be against the law laid down by the Apex Court in the case of *M/s.Neeharika Infrastructure Pvt.Ltd. v. State of Maharashtra*¹. This is not a rarest of rare case as indicated by the Apex Court. Accordingly, the application is rejected.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

1 AIR 2021 SC 1918