Crl.R.C.No.642 of 2022
and Crl.M.P.Nos.6724, 6726 and 10513 of 2022

D.BHARATHA CHAKRAVARTHY, J.

Today, the matter is posted under the caption "for being mentioned".

2. The learned Counsel appearing on behalf of the petitioner, pointing out to the sentence in paragraph No.2 i.e., "As far as the petitioner is concerned, he is the chartered Accountant, who was looking after the income tax filed by both the spouses", would submit that there is an error in recording the statement.

3. He has actually submitted that "As far as the petitioner is concerned, he is the Chartered Accountant, who was looking after the income tax accounts of the Company, in which, accused No.2 was working" and accordingly, he prays that necessary correction should be made.

4. But, however, the learned Counsel appearing for the de-facto complainant would submit that already, against the said order, a Special Leave Petition is filed before the Hon'ble Supreme Court of India.

5. Therefore, when the order was passed on 05.08.2022 and now, when a

Special Leave Petition is filed, this Court cannot make any correction at this stage.

02.12.2022

grs

D.BHARATHA CHAKRAVARTHY, J.

grs

Crl.R.C.No.642 of 2022
and Crl.M.P.Nos.6724, 6726 and 10513 of 2022

02.12.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 25.07.2022

Orders Pronounced on : **05.08.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.642 of 2022

R.Seshadri .. Petitioner

Versus

State rep. by the
Inspector of Police,
Central Crime Branch,
CCB-II, Vepery, Chennai - 600 007. .. Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order, dated 18.04.2022 passed in Crl.M.P.No.1475 of 2020 in C.C.No.876 of 2020 pending on the file of the learned Judicial Magistrate No.I, Alandur and thus allow this Criminal Revision.

For Petitioner : Mr.K.P.Anantha Krishna

For Respondent : Mr.S.Vinoth Kumar

Government Advocate (Crl. Side)

For Intervenor : Mr.B.K.Girish Neelakantan
(Crl.M.P.No.10513 of 2022)

ORDER

This Revision is filed against the order of the learned Judicial Magistrate No.I, Alandur, dated 18.04.2022 in Crl.M.P.No.1475 of 2020 in C.C.No.876 of 2020, in and by which, the prayer of the petitioner to discharge him from the case, is negatived.

2. The learned Counsel appearing on behalf of the petitioner would submit that this is a case where the de-facto complainant/wife and the first accused/husband are in conflict and in the said course of family conflict between them, the present complaint is lodged on the allegation that the first accused, in this case, namely *Venkateswaran*, had logged into her income tax account and downloaded her returns and gained into her personal details and had even produced it before the Court as evidence. In that context, a case was registered and after investigation, now a Final Report is filed for the offence under Section 66 read with Section 43 of the Information Technology (Amendment) Act, 2008. As far as the petitioner is concerned, he is the Chartered Accountant, who was looking after

the income tax filed by both the spouses. It is from the office of the petitioner/accused No.4, the first accused had accessed the income tax account and has got the details.

3. The case of the petitioner in the discharge application is that even as per the statements of the witnesses under Section 161 Cr.P.C., it is clear that the petitioner, being the Chartered Accountant, his office will be working on the systems all the time, his e-mail as well as the log in account are kept logged in on the screens of the various computers/laptops in his office where his assistants and others frantically type out the details, upload the documents etc., and therefore, in the process, the petitioner/accused No.4 had no active role when the first accused/husband took advantage of the situation and accessed the information and details of the de-facto complainant. He would further submit that the statements of L.Ws.1 to 4 under Section 161 Cr.P.C., would support the said stand.

4. In this case, the de-facto complainant got impleaded herself as the

intervener and the learned Counsel appearing on behalf of the de-facto complainant, by producing a typed set of papers, would contend before the Court that when the first accused had tried to logged in, the system generated e-mail is sent and received by the petitioner/accused No.4, namely the Chartered Accountant, through his e-mail ID i.e., rsassociates1987@gmail.com and he has also produced the said e-mail, dated 17.11.2014 and therefore, when the pin number is also sent to the e-mail of the petitioner/accused No.4, his complexity in the offence is very clear.

5. The learned Government Advocate (Crl. Side) would also submit that there is prima facie material to proceed in this case and therefore, he would submit that the petition for discharge has been rightly dismissed.

6. The Final Report, in this case, is filed for the offence under Section 66 read with Section 43 of the Information Technology (Amendment) Act, 2008. As per the Section 66 of the Act, if any person dishonestly or fraudulently does any act

referred in Section 43 of the Act, shall be punishable with an imprisonment which may extend to three years or with fine which may extend to Rs.5,00,000/- or both. As per Section 43 of the Act, if any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network, accesses details etc., or does the various acts mentioned from Sections 43A to 43J of the Act, is liable for penalty. Therefore, from the statements of the witnesses under Section 161 Cr.P.C., it is clear that the computer systems including the e-mail identity and the log in of the website etc., belong to the petitioner/accused No.4 and the first accused had indulged in downloading, accessing etc.

7. It was submitted that downloading the income tax details, for the purpose of producing before the Court, would not amount to fraudulent or dishonest action, but, the same has to be considered vis-a-vis while considering the case of the first accused. However, as far as the petitioner is concerned, even taking the materials

produced along with the final report on its face value, it does not give rise to any suspicion that the petitioner/accused No. 4 has fraudulently or dishonestly done any act which are enumerated under Section 43 of the Act and therefore, there is no material to frame charge against the petitioner/accused No. 4 for the offence punishable under Section 66 of the Information Technology (Amendment) Act, 2008. Following the dictum of the Hon'ble Supreme Court of India in the case of ***Sajjan Kumar vs. Central Bureau of Investigation***[1]**,** on sifting the materials on record, it is clear that in the course of the conflict between the husband and wife which escalates and manifests into several briefs and dockets both civil and criminal, the instant complaint under the Information Technology (Amendment) Act, 2008 is also lodged. And without any prima facie motive or material, as to any fraudulent or dishonest intention or any act which is perse violative of Section 43 of the Act, the petitioner/accused No.4 has been dragged into the case.

8. Therefore, this is a fit case for discharge of the petitioner and accordingly,

[1] (2010) 9 SCC 368

the Criminal Revision Case is allowed on the following terms:-

(i) the order of the learned Judicial Magistrate No.I, Alandur in Crl.M.P.No.1475 of 2020 in C.C.No.876 of 2020, dated 18.04.2022 is set aside;

(ii) the petitioner/accused No.4 is discharged from C.C.No.876 of 2020;

(iii) Consequently, Crl.M.P.Nos.6724, 6726 and 10513 of 2022 are closed.

05.08.2022

Index : yes/no
Speaking order/Non-speaking order
grs

To

1. The Judicial Magistrate No.I,
   Alandur.

2. The Public Prosecutor,
   High Court of Madras.

3. The Inspector of Police,
   Central Crime Branch,
   CCB-II, Vepery,
   Chennai - 600 007.

D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Order in

Crl.R.C.No.642 of 2022

05.08.2022