IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1241 OF 2007

Vijay Shrinivasrao Somanchi, adult,
Age 48, Indian Inhabitant residing at A-303,
Golden Orchid-2, Sunder Nagar,
Kalina, Santacruz (E). … Petitioner.

V/s.

State of Maharashtra (through DCB CID). … Respondent.

Mr.Girish Kulkarni, Senior Advocate i/by Mr.Omkar Ghag, Mr.K.N. Pandey, for Petitioner.
Mr. Ajay Patil, APP for Respondents-State.

CORAM : A.S. GADKARI & SHARMILA U. DESHMUKH, JJ.

Reserved on : 12th October, 2023.
Pronounced on : 2nd November, 2023.

<u>JUDGMENT : (Per SHARMILA U. DESHMUKH, J.)</u>

1. By this Petition, the Petitioner challenges the Order dated 8th March, 2007 passed by learned Sessions Judge in Revision Application Stamp No.242 of 2007, upholding the Order dated 25th January, 2007 passed by the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai in C.C.No.179/PW/2005, rejecting the Petitioner's application for discharge.

2. The present Petition was directed to be tagged along with Criminal Writ Petition No.1898 of 2004, which sought the relief of quashing of the same crime qua the Petitioner therein. Vide Order dated

25th September, 2008, this Court directed the present petition to be heard alongwith Criminal Writ Petition No.1898 of 2004. By Order dated 7th January, 2020, this Court considered the submission that the matter needs to be heard by the Single Judge and kept the said contention open. Today, there is no objection raised as regards the matter to be placed before the Single Judge. Today we have heard Writ Petition No.1898 of 2004 and as such have taken up this Petition also for hearing.

3. L.A.C No 12 of 2204 came to be registered with D.C.B, C.I.D., Unit IX, Bandra and CR No.37 of 2004 came to be registered with Worli Police Station for the alleged offences under Section 420, 487 and 120-B of Indian Penal Code, 1860 read with Sections 4, 20(1), 25(k), 20(a) of the Indian Telegraph Act. The crime came to be registered at the instance of the Senior Vigilance Officer of VSNL-Shri Dhirendrakumar Sinha. It is alleged that, on 11th February, 2004, on the basis of information received, the police from Crime Branch Unit IX, Bandra alongwith the Vigilance Officers of VSNL raided the premises of Net-4 (India) Pvt. Ltd. situated at Gala No.210, Shah & Nahar Industrial Estate, Worli Naka, Worli, Mumbai. The raid unearthed an illegal telephone exchange being operated in the premises. A panchanama was drawn and the equipments utilised for operating the illegal telephone

exchange were seized. That, the Petitioner was present in the premises at the time of the raid and was found to be operating the illegal telephone exchange. It is alleged that, upon inquiry with the Petitioner, it was revealed that, the telephone exchange was operated by Echovox (I) Pvt. Ltd. in the premises of Net-4 (India) Pvt. Ltd., under the orders of Mr. Jasjit Sohoni, the owner of Net-4 (India). After completion of investigation, final report under Section 173(2) of Cr.P.C was filed. An application for discharge was preferred in C.C. No.179/PW/2005 which came to be rejected by the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai by Order dated 25th January, 2007, as against which the revision filed came to be dismissed vide Order dated 8th March, 2007.

4. Heard Mr.Girish Kulkarni, learned Senior Advocate for the Petitioner and Mr. Ajay Patil, learned APP for Respondent-State.

5. Mr. Kulkarni, learned Senior Advocate for the Petitioner submits that, except the presence of the Petitioner at the time of the raid, there is no incriminating material found against the present Petitioner. He would submit that, the admitted position is that, the Petitioner was the employee of Net-4 (India) Pvt. Ltd. He points out the Order of the Magistrate dated 25th January, 2007, discharging Mr. Jasjit Sohoni CEO of Net-4 (India) Pvt. Ltd. and would submit that, there is

specific finding in the Order discharging Mr.Jasjit Sohoni that the employees of Net-4 (India) Pvt. Ltd. did not know about the illegal unauthorised telephone network. He would submit that, there is no material to demonstrate that any of extortion calls were made by the Petitioner or at the behest of the Petitioner and hence the offence under Section 387 of the IPC is prima facie not made out. He would further submit that, the impugned Orders do not consider the fact that, the Managing Director and the CEO of Net-4 (India) Pvt. Ltd having been discharged, the Petitioner who was admittedly an employee could not be prosecuted.

6. Mr. Patil, learned APP for the Respondent-State points out the Affidavit dated 3rd October, 2007 filed by Shri Mahesh R. Tawade, PSI, attached to D.C.B., C.I.D., Unit IX, Mumbai. It is stated in the Affidavit that, as the investigation was at the preliminary stage, the Petitioner was not shown as accused in respect of CR No.37 of 2004. Learned APP would submit that, at the time of the raid, the Petitioner was found at the premises and he had revealed that, the equipments were owned by Echovox (India) Pvt. Ltd and were being operated from the premises of Net-4 (India) Pvt. Ltd. According to the learned APP, in view of the knowledge of the Petitioner about the conduct of the business, it is evident that the Petitioner had the knowledge of the business being

carried out illegally.

7. We have considered the submissions and have perused the record. In recent decision of the Apex Court in the case of *State of Gujarat vs Dilipsinh Kishorsinh Rao* reported in *2023 SCC OnLine SC 1294*, the Apex Court held that, it is settled principle of law that, at the stage of considering the application for discharge, the Court must proceed on the assumption that the material that has been brought on record by the prosecution is true and evaluate the material to determine that the facts emerging from the material taken at its face value discloses the existence of ingredients necessary of the offence alleged.

8. In the background of settled principles of law, if the Order dated 25th January, 2007 rejecting the Petitioner's application for discharge is perused, the reason given for rejection of the application was that the Petitioner was present at the premises where the illegal telephone exchange was found running and the articles were seized in his presence. While adjudicating the discharge application, the exercise contemplated is evaluation of the material collected during investigation to ascertain whether the material taken at its face value discloses the offence alleged qua the Petitioner. We may add that no roving inquiry into the evidence is required at the stage of discharge. In the instant case, despite the availability of the statements of witnesses recorded

during the investigation, the same has not been considered by the learned Magistrate. On the solitary ground of presence of the Petitioner at the time of the raid, the Magistrate has declined to discharge the Petitioner.

9. During investigation the statement of the employees of Net-4 (India) Pvt. Ltd. were recorded. Darshan Desai-Supervisor in the Engineering Department has stated that, pursuant to the orders received from the Pune office of Net-4 (India) Pvt. Ltd., David of Echovox Company was permitted to install the equipments in their data centre. That he had supplied the power to the machines and thereafter, David has started the system from his own laptop using the internet services provided by Net-4 (India) Pvt. Ltd. That pursuant to the order given by the Delhi Office of Net-4 (India) Pvt. Ltd., ISD facility was made available to Echovox (India) Pvt. Ltd. That upon receiving order from their Pune office, the electric supply, anti-virus, internet code wire etc was connected to the machines.

10. Rajesh Mudner, Regional Controller Accounts and Finance of Net-4 (India) Pvt. Ltd. has stated that, order was received from their Pune office to assist David and Cloud of Echovox (India) Pvt. Ltd. for installation of the machines and pursuant thereto the Petitioner and Darshan had made arrangements for the same. That they were directed

not to handle the operation of the machine and in event of any malfunctioning, the directions would be issued by Delhi Office.

11. Rajeev Shah- Branch Manager of Net-4 (India) Pvt. Ltd. has stated that, the business of their company is to provide internet services and the work is carried out as per the instructions received from their Delhi office. He has stated that, space was made available in their Data centre for the purpose of installing the server of Echovox (India) Pvt. Ltd. as per the agreement entered into between their Company and Echovox (India) Pvt. Ltd. He has stated that, the entire operations of Net-4 (India) Pvt. Ltd. is carried out as per the instructions of their CEO-Mr.Jasjit Singh. Batuk Rao-General Manager of Net-4 (India) Pvt. Ltd. has reiterated the statement made by Rajeev Shah.

12. The statements as noted above reveals that the server of Echovox (India) Pvt. Ltd. was kept in the Data Centre of Net-4 (India) Pvt. Ltd. which was raided. Admittedly the Petitioner was an employee of Net-4 (India) Pvt. Ltd. and his presence at the premises cannot be viewed as being for the purpose of operating the illegal telephone exchange. The statements indicate that, the operations at the Data Centre were being run under the orders and directions issued by Mr.Jasjit Sohoni, CEO of Net-4 (India) Pvt. Ltd. and from their offices located at Pune and Delhi. The equipment of Echovox (India) Pvt. Ltd.

was installed in the premises pursuant to an agreement executed between Net-4 (India) Pvt.Ltd. and Echovox (India) Pvt. Ltd.

13. It is evident from the material collected during the investigation that Net-4 (India) Pvt. Ltd. was providing internet services to its customers and one of its customer was Echovox (India) Pvt. Ltd. The equipments in-question which were being used for running the illegal telephone exchange was procured by Echovox (India) Pvt. Ltd. itself and was being operated through the internet services by Net-4 (India) Pvt. Ltd. and its server was set up in the Data Centre of Net-4 (India) Pvt. Ltd. The investigation does not reveal any material to establish the nexus of the Petitioner with the operation of the illegal telephone exchange. The admitted position is that the Petitioner is an employee of Net-4 (India) Pvt. Ltd. and his presence in the premises at the time of the raid is completely justified. There are consistent statements of the witnesses that, the employees were carrying out work under the orders and directions of the CEO of Net-4 (India) Pvt. Ltd. Mr.Jasjit Sohoni.

14. It is pertinent to be noted that, by an Order of even date, the learned Additional Chief Metropolitan Magistrate has discharged Mr.Jasjit Sohoni-CEO of Net-4 (India) Pvt. Ltd. by considering in detail the statements of the witnesses recorded during investigation. The Order

discharging the CEO records that unless and until there is evidence to that effect to show the knowledge and active participation in running the unauthorised telephone network he cannot be held liable merely because he is managing director of Net-4 (India) Pvt.Ltd. It is also observed that, the employees also do not know about the said illegal unauthorised telephone network.

15. In view of aforesaid observations of the same trial Court in the same trial crime, we fail to comprehend as to how the Order of rejection of discharge application of the employee can be passed. We find considerable force in contention of Mr.Kulkarni that apart from the presence of Petitioner, there is no incriminating material to indict him in the present crime. As discussed above, the presence of Petitioner at the time of raid in the premises of his employer Company-Net-4 (India) Pvt. Ltd. is completely justified. The statement of witnesses indicates that, the employees were carrying out the routine work as assigned to them by the CEO-Mr.Jasjit Sohoni. There is no material to indicate the active participation of the Petitioner in the running of the said unauthorised telephone exchange.

16. The Sessions Court has failed to appreciate that, there is no sufficient material to frame the charges against the Petitioner and has dismissed the revision application. The impugned Orders are therefore

unsustainable in law.

17. Considering the material collected during the investigation, in our opinion, there is no material to frame the charges against the Petitioner for the alleged offences.

Resultantly, the impugned Order dated 25th January, 2007 passed in C.C.No.179/PW/2005 pending before the Court of Metropolitan Magistrate, 37th Court, Esplanade, Mumbai and the Order dated 8th March, 2007 passed in Revision Application Stamp No.242 of 2007 are quashed and set aside. Proceedings being C.C.No.179/PW/2005 is quashed qua the Petitioner.

18. Rule is made absolute in the above terms.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**