



Crl.A.No.783 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 04.07.2023

Pronounced on: 20.07.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.783 of 2013

State represented by,
Inspector of Police,
CBI/EOW/Chenani.

... Appellant/Complainant

/versus/

Abdul Hakeem.M,
S/o.Mr.Abu Backer,
No.12, Surappan Street,
Triplicane,
Chennai – 600 005.

... Respondent/Accused

Prayer: Criminal Appeal has been filed under Section 378 of Cr.P.C., pleaded to set aside the judgment dated 05.12.2012 in Criminal Appeal No.240 of 2010 in C.C.No.15491 of 2008 passed by the Learned III Additional Sessions Judge, Chennai, acquitting the respondent/accused (A2 and A3) for the charges levelled against them and convict them for the offences charged in the interest of justice.

For Appellant : Mr.K.Srinivasan, Senior Counsel,
Special Public Prosecutor (CBI)

For Respondent : Mr.Naveen Kumar Murthi,
Legal Aid Counsel



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JUDGMENT

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This Criminal Appeal is preferred by the State being aggrieved by the order of the Lower Appellate Court acquitting the accused by reversing the judgment of the trial Court convicting the respondent for the offences under Section 20 r/w 4 of Indian Telegraph Act and Section 21 of Indian Telegraph Act, 1885.

2. The case of the prosecution is that, between June 2004 and March 2005, A1 Abdul Hakeem established illegal telecom hub in the name of M/s.Casino Courier Service, at Door No.75, II Floor Triplicane High Road, Triplicane, Chennai. He was a running parallel Telecom Exchange without obtaining valid license. In pursuant to the criminal conspiracy, Mr.T.S.Saravanan, Proprietor of M/s.Vaibhav Enterprises and one Malliga, Manager, misused GSM connection of M/s.Airtel; were illegally used for receiving international calls through ADSL link of M/s.BSNL. All the three accused in pursuant to the said conspiracy, by using the illegal telecom connection, transmitted the international calls as local calls and was connected to various domestic phone connections. By this, they caused loss to the tune of Rs.57,54,375/- to the Government of India, Department of Telecommunication.



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3. The trial Court framed charges against A1 to A3 for the offences under Section 120-B r/w 419, 420, 468 and 471 I.P.C and under Sections 20, 21 and 25(c) of Indian Telegraph Act, 1885. Section 6 r/w 3 of Indian Wireless Telegraph Act and Section 66(2) of Information and Technology Act, 2000.

4. To prove the charges, the prosecution examined 16 witnesses (P.W.1 to P.W.16), marked 50 Exhibits (Ex.P.1 to Ex.P.50) and 49 material objects (M.O.1 to M.O.49), (mostly cellphones and SIM Cards used for the alleged crime)

5. The trial Court found all the three accused guilty of offences under Sections 20 & 21 of Indian Telegraph Act sentenced them to undergo the following punishment:-

<i>Accused</i>	<i>Offences</i>	<i>Conviction and Sentence passed by the trial Court</i>
A1 to A3	u/s.20 r/w 4 of Indian Telegraph Act	To undergo 6 months S.I and to pay fine of Rs.1000/- each in default 2 weeks S.I.
	u/s.21 of Indian Telegraph Act	Sentenced to pay a fine of Rs.50/- each in default 1 week S.I.

6. The trial Court, however held that the prosecution failed to



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prove the offences under Section 66 (2) of Information and Technology Act

2000, Section 6 r/w 3 of Indian Wireless Telegraph Act and Section 25(c) of Indian Telegraph Act and also concluded that, the prosecution failed to prove the charges against all the three accused under section 120-B r/w 419, 420, 468, 471, 468 r/w 471 and 419 of I.P.C

7. Aggrieved by the order of Trial Court in C.C.No.15491 of 2008, A1/Abdul Hakeem has preferred C.A.No.240 of 2010 and A2 has preferred C.A.No.239 of 2010 before the III Additional Sessions Court, Chennai.

8. The Sessions Court allowed both the appeals holding that, the allegations of illegal use of Telegraph or establishing unauthorised telegraph punishable under the Indian Telegraph Act is unfound. The charges and material evidence indicates violation of Telecom Regulatory Authority of India Act 1997 but the trial Court has misconstrued that the appellants have violated the Indian Telegraph Act. Since the appellants/accused were not charged under correct provision/Act, they are entitle for acquittal.

9. Being aggrieved by that, the State/Appellant has preferred



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appeal Crl.A.No.783 of 2013 against the order of acquittal of Abdul Hakeem

(A1) on the ground that the Learned Trial Court Judge failed to consider the facts and law properly. The definition of 'Telegraph' under the Indian Telegraph Act includes Telephone also but the trial Court misconstrued the law and had wrongly observed that the violation attracts only provision of TRAI, 1987.

10. Though notice was sent to the 1st respondent/accused, there is no representation for the respondent/accused. Hence, Mr.Naveen Kumar Murthi was appointed by Legal Services Authority to represent the respondent/accused.

11. The Learned Counsel appointed by this Court, after due research on this point submitted that the prosecution launched under Indian Telegraph Act 1885 for running an illegal Telephone Exchange may not apply if strict interpretation of the charging provision is made. Being a Penal provision, the Court cannot apply liberal or harmonious interpretation. The expression Telegraph as found in Section 4 or 20 or 21 of Indian Telegraph Act does not mean and include Telephone in the strict sense. Therefore, the decision of the Learned Session Judge cannot be found fault. Unless, the



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expression 'Sound', found in the definition of Telegraph under Section 3(1-AA)

is given a liberal interpretation to include telephone, otherwise the reason for the order of acquittal appears to be correct. The Learned Counsel fairly clarifying the legal position, also submitted that, even if that reason is held not based on correct interpretation, also on facts, the order of acquittal need not be disturbed. Since the other grounds raised by the accused in his appeal still holds good. The Lower Appellate Court having been convinced on the non-application of the Indian Telegraph Act, allowed the appeal without adverting to the other grounds.

12. In support of the said submission, the Learned Counsel for the respondent relied upon these two judgments:-

(i). ***Union of India -vs- Subodh Kumar*** reported in ***1984 Cri LJ 367.***

(ii). ***Deny Bora -vs- State of Assam*** reported in ***(2014) 14 SCC 22.***

Section 3 (1-AA) of Indian Telegraph Act, 1885 defines Telegraph



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as below:-

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“3. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

.....

.....

*[(1AA)] “telegraph” means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and **sounds** or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.”*

13. The Learned Counsel submitted that, the charges against the respondent/Abdul Hakeem are under Section 20 r/w 4 of Indian Telegraph Act and Section 21 of Indian Telegraph Act, 1885. Section 20 of Indian Telegraph Act, 1885 in Part -IV PENALTIES deals with offence *“For establishing, Maintaining or working unauthorised Telegraph”*, and Section 21 deals with *“Using unauthorised Telegraphs”*. If Telephone does not fall within the definition of Telegraph, naturally Section 20 and Section 21 of Indian Telegraph Act, 1885 will not attract and therefore, the order of acquittal by the Lower Appellate Court is justifiable.

14. Per contra, the Learned Special Public Prosecutor for



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CBI/Appellant submitted that, the 1st respondent died on 24.10.2019 and therefore, the appeal is abated. However, the error in the judgment of the Appellate Court has to be indicated so that, there is no miscarriage of justice in future.

15. The case of the prosecution as spoken by their witnesses and evidence, is that, A1 conspired with other two persons and had established illegal Telephone hub in the Office premises at Door No.75, II Floor, Triplicane High Road, Triplicane, Chennai and by using Technology, MS Dishnet was connected to DSL router by by-passing the BSNL Gateway and by VOIP attached GSM and FTC connections through public switch telephone network illegally transmitted international calls as local calls, by connecting to various domestic phone connections. The illegal diversion of international calls as local calls has caused loss of Rs.57,54,375/- to the Government of India. Though, the other charges were not proved, the trial Court has convicted the accused for the offences under Section 20 r/w 4 and Section 21 of Indian Telegraph Act, 1885. The said Penal Sections are extracted below for each reference:-

Section 20 of Indian Telegraph Act, 1885 as below:-



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“20. Establishing, maintaining or working unauthorised telegraph.— (1) *If any person establishes, maintains or works a telegraph within [India] in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and, in any other case, with a fine which may extend to one thousand rupees.*

(2) *Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.*

(3) *When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to Government.”*

Section 21 of Indian Telegraph Act, 1885 as below:-

“21. Using unauthorised telegraphs.— *If any*



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person, knowing or having, reason to believe that a telegraph has been established or is maintained or worked, in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.”

16. While Section 3 [(1-AA)] of Indian Telegraph Act, 1885 defines Telegraph means instrument used for transmitting sound etc., and the Indian Telegraphs Rules, 1951 framed under Section 2 (rr) of Indian Telegraph Act, defines “Telecommunication” *means any transmission, emission or reception signs, signals, writing, images, sounds of intelligences of any nature, by wire, radio, visual or other electromagnetic system and also defines Public Telephone, Local Public Telephone, Interpolated Public Telephone, Long Distance Public Telephone.* It is incorrect to say Indian Telegraph Act, 1885 cannot be invoked against the person running illegal Telephone Exchange. TRAI (Telecom Regulatory Authority of India), established under the Act of Parliament to regulate Telecom Services including fixation, revision of Tariff for Telecom service. The dictionary meaning of word 'Telephone' is an apparatus, system, or process for transmission of sound or speech to a distant



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point, especially by an electric device.

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17. While defining the Telegraph, the act includes any appliance or instrument used of transmitting sound. Therefore even the strict interpretation of the law does not exclude Telephone from the preview of Indian Telegraph Act. Certainly, the establishment of exchange using telephone and cellphone to transmit sound/voice will fall within the definition of Indian Telegraph Act. So without license, whoever establishes or maintain unauthorised telephone Exchange or whoever use the telephone exchange established unauthorisedly can be prosecuted under Section 20 and Section 21 of the Indian Telegraph Act, 1885.

18. The Learned Lower Appellate Court Judge has misconstrued that, Telephone and Telephone Exchange are out of purview of Indian Telegraph Act, 1885 ignoring the definition of Telegraph found in Section 3(1-AA). The Lower Appellate Court Judge, though had extracted Section 20, 21 and 4 of the Indian Telegraph Act had miserably failed to look at the definition Sections both in the Act and as well as in the Rules framed thereunder.



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19. The apparent error in the Lower Appellate Court ordering acquittal is due to the failure of not considering the definition of Indian Telegraph Act as found in Section 3 [(1-AA)].

20. Before parting, this Court records its appreciation to the Learned Counsel for the appellant as well as the respondent for their assistance to the Court to arrive at the above conclusion.

21. This Court, pointing out the error apparent in the judgment of the Appellate Court regarding application of law, the ***Criminal Appeal No.783 of 2013 is disposed of*** as abated, recording the death of the 1st respondent/accused.

20.07.2023

Index :Yes/No.

Internet :Yes/No.

Speaking order/non speaking order

bsm

To:-

1.The Learned III Additional Sessions Judge, Chennai.

DR.G.JAYACHANDRAN,J.



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Pre-Delivery judgment made in
Criminal Appeal No.783 of 2013

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