



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 112 OF 2016

PRADEEP PRAKASH POKHARNIKAR &
ANR.

... Petitioners

Versus

STATE OF GOA, THR. POLICE
INSPECTOR IN-CHARGE OF MAPUSA
POLICE STATION, MAPUSA.

...Respondent

Mr V. A. Lawande, Mr Luis Fernandes and Mr Parimal Redkar,
Advocates for the petitioners.

Mr S. G. Bhobe, Public Prosecutor for the respondent.

**CORAM: M. S. KARNIK &
 VALMIKI MENEZES, JJ**

DATED : 26th AUGUST 2024

ORAL ORDER (Per M. S. Karnik, J)

Heard learned counsel Mr Lawande for the Petitioner and
learned Public Prosecutor Mr Bhobe for the respondent.

2 The petition is filed under Article 226 of the Constitution of
India and Section 482 of the Criminal Procedure Code praying for
a direction to quash and set aside the prosecution qua the petitioner

as accused No.4 in Charge Sheet No.160/2016 in Criminal Case IPC/241/2016/B pending before the JMFC, Mapusa (B-Court).

3 The facts in a nutshell are thus:

The petitioner No.1 is the employee of Vodafone company. The Vodafone company is engaged in providing Unified Access services in the State of Maharashtra and Goa under a licence issued by the Government of India, Ministry of Communication & I.T., Department of Telecommunication under Section 4 of the Indian Telegraph Act, 1885. The sales and distribution for Vodafone company is done in compliance with all the rules and regulations framed by the Department of Telecommunication, Government of India and Telecom Regulatory Authority of India (TRAI) and Apex Advisory Council for Telecom (ACT) and COAI. For the purpose of sale and distribution, Vodafone company appoints distributors by executing appropriate agreements/documents. The distributors in turn appoint retailers within their primary service areas by executing proper documentation, including the Retail Registration Form, ACT Form etc. The relationship between the distributors and Vodafone company is on a principal-to-principal basis. The retailers appointed by the distributors acquire customers.

4. The reason which led to the filing of the FIR against the petitioner was the arrest of accused No.1 who is a Nigerian National in NDPS case. During the investigation, it was revealed that accused Shivprasad @ Sameer Parab, was looking after the business of Soham Enterprises (Retailer) on behalf of his wife Mrs Poonam Parab in whose favour the retailer agreement is standing, Shivprasad @ Sameer Parab (accused No.2) was signing all the documents on behalf of Mrs Poonam Parab (accused No.3). Shivprasad @ Sameer Parab during interrogation stated that after obtaining photograph and identity card of the particular customer, the customer acquisition form (CAF) along with photographs and identity card are sent to the Activation Officer through the distributor for further formalities. The allegation is that accused No.1 obtained SIM card from the retail shop run by Shivprasad @ Sameer Parab. Accused no.2 Shivprasad is alleged to have processed the documents in the name of one Ms 'M' which she handed over a couple of years back to Shivprasad for getting a SIM card. It is the case of the prosecution that these documents were misused for handing over the SIM card to accused No.1. The documents were then sent through a distributor to the Vodafone company. The activation of the SIM card was done by the petitioner.

5. We have perused the charge sheet. A perusal of the charge sheet indicates that the allegations are mainly against accused No.1 and Shivprasad @ Sameer Parab. The charge sheet reveals that the concerned dealing authorities of the Vodafone company failed to follow mandatory guidelines issued by the Government of India, Ministry of Communication & IT, Department of Telecommunication. It is stated that one retailer Mrs Poonam Parab/Shivprasad @ Sameer Parab failed to get the CAF form signed from the owner in person and failed to record in the CAF that he has seen the subscriber and matched the photograph attached on the CAF with the subscriber. It is next stated that the distributor Sameer Isani/his employee Ms Tejashri Santosh Patil failed to confirm that the signature of the retailer tallies with the signature signed by the retailer in the agreement. It is then alleged that the activation officer Pradeep Pokharnikar (petitioner) failed to conduct adequate verification of the customer before enrolling him as a subscriber. It is alleged that the company's authorities including the Activation Officer failed to conduct proper telly verification after activating the SIM card and failed to verify local reference telephonically.

6. Thus, the allegations against the petitioner (accused No.4) are that without following the mandatory guidelines, the petitioner activated the said SIM card to get the benefit of activation for use of SIM card by accused No.1. This SIM card was subsequently used by accused No.1 in conducting drug related activities in the State of Goa. Hence it is alleged that the accused committed offence of cheating and forgery under Sections 419, 465, 467, 468, 471, 420 read with Section 34, 120-B of IPC.

7. The Public Prosecutor opposed the petition by submitting that materials on record justify the petitioner facing a full-fledged trial. The materials against him are incriminating.

8. Having perused the FIR and the charge sheet, we are of the firm opinion that the allegations against the Petitioner even if taken at its face value and accepted in their entirety, do not prima facie constitute any offence under Sections 468 and 471 of IPC or make out the case alleged against the petitioner. The materials on record indicate that the documents in the name of Ms 'M' were used for handing over a SIM card to accused No.1. This was done by the Retailer. The allegation against the petitioner at the highest is that he did not follow the mandatory guidelines issued by the Government of India, Ministry of Communication & IT,

Department of Telecommunication while activating SIM card. The documents were forwarded by the retailer to the distributor and then to the Vodafone company. The Petitioner appears to have been casual in activating the SIM card by not following the mandatory guidelines and proper verification process. However, there is nothing on record to indicate the petitioner's involvement in the use of forged document as genuine. Moreover, there are no incriminating materials even prima facie indicating that the intent on the part of the petitioner was to cheat since inception. The continuation of prosecution against the petitioner on the basis of such materials in our opinion is an abuse of the process of the Court.

9. The petition is allowed in terms of prayer clause (b) thereby quashing and setting aside the prosecution qua the petitioner. It is made clear that the consequential interim order dated 22.12.2016 as confirmed by the order dated 10.01.2017 is vacated. The trial Court to proceed with the trial on its own merits against the rest of the accused. The petition is accordingly disposed of.

VALMIKI MENEZES, J

M. S. KARNIK, J