TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 16TH FEBRUARY, 2012

M.A. No. 337 of 2011
IN

Petition No.354 (C) of 2011

M/s. Raj Television Network Limited, Chennai ... Petitioner

Vs.

M/s. Royal Cable Vision Pvt. Ltd., Madurai ... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR.P.K. RASTOGI, MEMBER

For Petitioner : Mr. Balaji Srinivasan, Advocate

For Respondent : Mr. Ajay Kumar, Advocate

J U D G E M E N T

Petitioner, which is a Broadcaster operating primarily in the southern part of the Union of India, has filed this petition against the Respondent, which is a Multi Service Operator for recovery of a sum of Rs.5,12,52,318/-, interest thereupon at the rate of 18 percent thereon, and for setting aside a notice dated 29.7.2011 and a public notice dated 08.08.2011 purported to have been issued/published by Respondent under Clauses 4.2 and 4.3 of the

Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, as amended from time to time ("The Regulations").

The factual matrix involved in the matter, shortly stated, may be noticed:-

(i) The relationship between the parties is not in dispute;

(ii) Whereas, according to the Petitioner, the parties had entered into a subscription agreement on or about 15.3.2008 on a subscriber base of 75,000, wherefor a subscription fee of Rs.13,14,612/- per month became payable to the Petitioner; the Respondent contends that there had been an oral arrangement by and between the parties hereto, whereby and whereunder the amount of subscription fee payable to the Petitioner was to be set off from the placement charges payable to the Respondent for placing the channel of the Petitioner on prime band. It is the case of the Respondent that it had started its business as Multi Service Operator in the town of Madurai only after 15.6.2008 and not in March, 2008 as contended by the Petitioner.

(iii) It is the case of the Petitioner that the agreement executed by it on 15.3.2008 was sent to the Respondent for its counter signature, which was not complied with.

(iv) In view of the alleged political clout, the Respondent's Managing Director being the son of Mr. M. K. Azhagiri, a Cabinet Minister in

the Union of India and grandson of Shri M. Karunanidhi, the former Chief Minister of Tamil Nadu, the Petitioner could not enforce its claim nor press the Respondent for counter signing the agreement; as otherwise its business would have been wiped off from the entire State of Tamil Nadu.

(v) Whereas the relationship between the Managing Director with Shri M.K. Azhagiri and Shri M. Karunanidi is not in dispute, the allegations made by the Petitioner is denied and disputed.

2. Petitioner, in support of its case, has brought on record a number of invoices, service whereof upon the Respondent, however, has not been proved. It made a demand of the outstandings on the Respondent only on 15.07.2011 in the following terms :-

> *"In continuation with our meeting at your office on 12.07.2011 along with Mr. Vidhyadhar Khatavkar, Group Chief operating officer, we had explained and briefed upto you on our request to settle the outstanding at the earliest.*
> *We being a limited company we are answerable for the above outstanding and we request you to settle Rs.5,12,52,3218/- (Five crores twelve lakh fifty two thousand three hundred and eighteen only) at the earliest."*

3. It's Head-Distribution, Mr. S. Swaminithan, also asked for a meeting by its letter dated 02.8.2011 and 04.08.2011. Respondent by its letter dated 29.7.2011, while denying and disputing the claim of the Petitioner, inter-alia, stated as under :-

> *"Further we are taken aback by your claim of outstanding to an extent of Five crores claimed the first time. We would like to invite your kind attention to our arrangement with you regarding subscription and placement.*
>
> *When we have started our headend in June 2008, even before a request from our side you were kind enough to provide us with your signals. Since Madurai being a TAM town in the range of above 1 million category we have demanded carriage fee from you. However, you have come with a proposal that the carriage fee demand would be taken as the consideration for subscription amount and hence it was mutually decided to carry the signal on "no carriage-no subscription charges" basis.*
>
> *It is relevant to mention that the above said arrangement was done on verbal basis. The fact that you have neither raised any invoice not executed any agreement would go to prove that the said arrangement was in existence.*
>
> *Being a leading broadcasting service provider we sincerely hope that you are aware about the mandatory service of monthly invoices and execution of agreements as envisaged in the interconnect regulations of TRAI. We would like to clarify that at any point we have not accepted for the monthly subscription charges of Rs.11,70,000/-. The said invoices are highly arbitrary in nature and against regulations of statutory authority. Your first time demand of such huge outstanding is illegal and per contra to our arrangement.*

We fail to understand your act of demanding such an outstanding for the first time on an illusionary subscription charges as claimed by you for the first time. We once again deny the invoices raised by you and the statement annexed thereto as wrong and vexatious.

Your sudden decision to raise invoice which is otherwise against our earlier arrangement would go to show that you are not willing to continue with the early arrangement. In such situation you may please feel free to organize a meeting, so that we can decide on an agreement to go way forward on carrying your signals. In the above juncture we hereby request you to kindly withdraw your outstanding demand made vide your letter dated 15.07.2011 along with the pseudo invoices raised for the first time thereto.

May we further clarify you, that it would be meaningless to carry the signals with an absurd demand and in absence of a new mutual agreement. Hence kindly treat this letter as a notice within the meaning of Regulation 4.2 of "The Telecommunication (Broadcasting and cable services) interconnect regulation – 2004" and their amendments may time to time. Accordingly we may remove all of your channels from our network after 21 days of receipt of this letter and we may take steps to come out with a public notice in accordance to law."

4. A public notice was also issued on or about 08.08.2011 on the premise that the Petitioner has failed to enter into a proper agreement.

5. By an order dated 29.9.2011 of this Tribunal, the following issues were framed :-

> *"i) Whether the petition of the petitioner is liable to be dismissed for the reason that no formal agreement has been executed between the parteis?*
>
> *ii) Whether the petitioner has served invoices upon the respondent?*
>
> *iii) Whether the petitioner is entitled to a decree for a sum of Rs.5,12,52,318/- along with the interest?*
>
> *iv) Whether there is validly concluded subscription agreeemnt between the parties?*
>
> *v) Whether there exists an oral carriage agreement between the parties or whether the parties agreed that no subscription fee shall be payable as no carriage fee was payable?"*

6. Petitioner, in support of its case, has examined Shri S. Swaminathan. In his evidence, the said witness contended that the original agreement was given to the Managing Director of the Respondent Company.

Mr. Swaminathan was cross-examined on 28.11.2011.

Respondent on or about 19.12.2011, filed a Miscellaneous Application, marked as M.A. No. 337 of 2011, purported to be in terms of Section 340 of the Code of Criminal Procedure, 1973 inter-alia on the premise that the agreement

dated 15.3.2008 is a forged and fabricated one as from an answer to a query made by its Advocate under Right to Information Act, it was disclosed that the stamp paper in question was printed on 11.06.2008.

7. The said application was directed to be considered at the time of final hearing.

8. Respondent filed the affidavit of its witness, Shri A. Raja Prabhu and on 27.12.2011 and he was cross-examined on 15.01.2012. Except a few documents including a letter dated 29.7.2011, PW-1/8 : RW-1/2 and Exb. PW-1/11 : RW-1/3, the invoices and the letter of demand, no other or further document has been produced.

9. Mr. Balaji Srinivasan, learned counsel appearing on behalf of the Petitioner, would urge :-

(i) Respondent having not denied and disputed the statements made by PW-1 that the original agreement dated 15.3.2008 was handed over to the Managing Director of the Respondent, the terms & conditions contained therein must

be held to be admitted as despite the same, the original agreement has not been produced.

(ii) The burden of proof to establish that the parties, apart from the Subscription Agreement, had entered into a Carriage Agreement also, was on the Respondent and it having not discharged the said burden, this petition should be allowed; the agreement between the parties whether oral or written with regard to supply of signals of its channel by the Petitioner to the Respondent's network having been admitted.

(iii) There are enough materials on record to show that the Petitioner is a victim of a political clout as was prevailing in the State of Tamil Nadu at the relevant point of time, in so far as the Respondent's Managing Director Shri Dorai Dayanithi is son of Shri M.K. Azhagiri and the grandson of Shri M. Karunanidi, and from the newspaper reports being Exb. PW-1/3 and Exb. PW-1/4, it would be evident that the Police authorities of the town of Madurai and neighboring areas had received unofficial instructions to lend their muscle to 'operation enlistment'.

Mr. Raja Prabhu. RW-1, being the office bearer of the Tamil Nadu MSO Association, was even otherwise an influential person.

(iv) In the aforementioned facts and circumstances the Petitioner was forced to provide Digital Satellite Receiver (DSR) No.045298773539 with Viewing Card bearing No.208384826468 in respect of "Raj TV" and DSR No. 045298694261 with viewing card bearing No. 208385022039 in respect of "Raj Digt. Plus" to the Respondent.

10. Mr. Ajay Kumar, learned counsel appearing on behalf of the Respondent, on the other hand, urged :-

(a) Petitioner being guilty of commission of forgery, this Petition should be dismissed.

(b) Petitioner could not have, without an agreement in writing, supplied signals of its channels in view of Clause 4-A of the Regulations, which came into force with effect from March 2009.

(c) Petitioner having not responded to the Respondent's letter dated 29.7.2011, it must be held that the Petitioner has not been able to prove its case, particularly having regard to the fact that the burden of proof lay upon it.

(d) For the purpose of invoking the jurisdiction of the Court under Section 340 of the Code of Criminal Procedure, it is

not necessary that all original documents must be brought on record.

(e) Petitioner having not denied and disputed the oral agreement, as stated in the Reply by not filing any rejoinder, having not brought any evidence and having not cross-examined RW-1 in that behalf, the same must be held to have been admitted.

11. The nature of agreement between the parties is the core question involved in this petition.

12. In the year 2008, there was no legal bar for a broadcaster and an MSO to enter into an oral agreement.

However on and from 17th March 2009, the Broadcasters and the Distributors of Cable T.V. services were obligated to enter into an agreement in writing. When the statute provides that the parties shall enter into an agreement in writing, the same would undoubtedly mean that the same is imperative in nature.

Admittedly, the agreement was drawn up on 15.03.2008, the original thereof and is said to have been sent to the Managing Director of the Respondent.

13. PW-1, however, would contend that the name of the Managing Director of the Respondent was Shri Durai Dayanithi. According to him, Mr. Raja Prabhu, RW-1 contacted him from the Respondent's side for entering into the subscription agreement.

14. RW-1, however, in his cross-examination stated that Mr. K.A. Dayanidhi was the Managing Director of the Company and there is no Director by the name of Mr. Durai Dayanidhi. He, however, accepted that the said Mr. Azhagiri and Mr. M. Karunanidi is father and grandfather respectively of Mr. Dayanidhi.

RW-1 also stated that he became Director of the Respondent-Company in the month of May and June 2008.

15. RW-1 did not produce original agreement evidently because the Respondent's contention is that only an oral agreement has been entered into. Petitioner did not call for the said original agreement from the Respondent.

16. Petitioner's witness with regard to the said document, stated as under :-

> *"9. Inspite of this hostile atmosphere the petitioner signed the subscription agreement dated 15.03.2008 and made the same available to the respondent for counter signature on 16.03.2008. This agreement was hand delivered by me to Managing Director of respondent company. Since the original agreement is in the physical custody of the respondent petitioner seeks leave of this Hon'ble Tribunal to produce office copy of the said signed agreement. Copy of the agreement dated 15.03.2008 signed by the petitioner is herewith produced as Exhibit PW-1/2."*

He even did not say that it was the true copy of the original.

He did not say that he made comparison of the contents of the said document. He even did not state that Exb. PW-1/2 with the copies of the original was prepared by mechanical process and the same was compared with such copies.

17. Provisions of Section 63 of the Indian Evidence Act, therefore, have not been satisfied.

18. Indisputably, the Respondent should have proved the purported oral agreement to establish that the parties simultaneously wanted to render Carriage services by the Respondent to the Petitioner.

19. In absence of any material brought on record, the Petitioner's case could have been considered only in terms of Section 70 of the Indian Contract Act.

What was necessary therefor was to prove either the terms of the agreement or the subscriber base of the Respondent; the rate of the channels of the Petitioner indisputably being Rs.15.60 paise.

The subscriber base, however, should be a negotiated figure in view of the provisions contained in Clause 2 (p) of the Regulations.

It reads thus :-

> "2.*(p)* ***"subscriber base"*** *means the number of subscribers –*
>
> *(i) as agreed to by two service providers in a non-addressable system on the basis of which payments are made by one service provider to the other, or*
>
> *(ii) as reflected by the Subscriber Management System, where addressable systems are employed."*

20. We are afraid that in absence of any material brought on record, it will not be possible for us to invoke the provisions of Section 70 of the Indian Contract Act.

21. Mr. Balaji Srinivasan urged that the Petitioner could not insist on counter signature on the agreement drawn up for the said purpose owing to political pressure.

We will assume the same.

Petitioner, in support of the said contention, has produced a Press Report dated 10.6.2008.

It reads as under :-

> *"Tamil Nadu's never-ending cable wars saw a new chapter opening at Madurai on Monday as the state chief minister's son M.K. Azhagiri's Royal Cable Vision (RCV) was launched with great fanfare.*
>
> *RCV targeted the Sumangali Cable Vision (SCV) of the Maran brothers, which has been reigning supreme in most parts of the state till now. With the local cable operators told to shift loyalty from SCV to RCV, there is big confusion in the temple town and other southern districts.*
>
> *Caught in the crossfire is the Arasu Cable Television Corporation, which incidentally closed applications on Monday from cable operators willing to hitch on to the bandwagon of this state owned entity.*

Azhagiri's aim is to black out Sun TV from all cable operators receiving signals from RCV and promote Kalaigner TV in its place. Jaya, Vijay and Raj will be shown on RCV but not Jaya's other channels like Plus and Max. But we are confident that public pressure will force them to end up showing Sun TV as well, commented an SCV official.

According to DMK, all party MLAs in South Tamil Nadu have been instructed to persuade cable operators in their area to switch over to RCV in the coming days.

The police in Madurai and neighbouring areas have also received unofficial instructions to lend their muscle to 'operation enlistment'. What the SCV did in the past, RCV is repeating now.", quipped a DMK functionary.

The arrival of RCV is bound to eat into SCV's estimated subscriber base of seven lakhs in Madurai and four lakhs in Tirunelveli."

22. A copy of a report of a Press Conference held by Mr. M. K. Azhagiri on 13.06.2008 has also been filed, the translated version whereof reads as under :-

"As per the statement given by Mr. Azakiri is, we have started Royal Cable Vision to give cable tv connection in Madurai at reduced amount.

Madurai is the head quarters for our Royal Cable Vision. Very soon we are going to start this Cable network all over southern region of tamilnadu.

Since 1991 Sumangali Cable Vision is responsible to give cable connection to all over Tamilnadu. Past 17 years they treated cable operators as a slaves.

They (SCV) didn't organize a meeting for cable operations, but we (RCV) organized a meeting for MSO and Head end, but we organized a meeting between MSO. In that meeting we mentioned in that it is enough to pay only 50% of the total subscription.

After knowing about our announcement SCV organized one meeting for cable operators. In that meeting they said that from now you give only 50% from the total subscription amount, please stay with us, but most of the operators supporting our organization.

Sun TV is planning to sell its own DTH service. In cable operators meeting they decided and request our CM (Mr. Karunanithi) to fix some tax amount for DTH service.

Now most of the operators said we feel after launching RCV. We planning to share the cable fees in the ratio 51:49 else 60:40. We decided to collect Rs.130 for cable telecast from public. This amount will be reduced in future.

We wrote letter to Sun Network to get their whole package. We sent that photo copy of that letter to TRA also. As per TRAI Regulations all Television Network should give their whole package for us, but they are publishing as if we are refusing to display their channels in RCV. They spreading this rumor for increasing their DTH service all over Tamilnadu.

We are not going to leave this matter, our further step is have to file a complaint in TRAI against Sun Network for getting their channels to display in our cable network.

(In picture: from left to right, Mr.Durai Dayanithi, Mr. M.K. Azagiri)"

23. The said Newspaper Reports containing the opinion of the reporters are although inadmissible in evidence, but we have, however, taken note of them as both the parties have relied thereupon. It is, however, evident that the Respondent MSO intended to start its operations at Madurai only on or after 19.06.2008. It is, therefore, difficult for us to conceive as to how invoices even for the months of March, April and May had been issued by the Petitioner.

24. Mr. Srinivasan urged that the fact that the Respondent is a big Multi Service Operator having 70 percent market share is not disputed. It was urged that the fact that the Respondent has made out a case for payment of carriage fee itself goes to show that it is a big MSO.

25. Contention of Mr. Srinivasan cuts both ways. Respondent was a big MSO and, thus, for a Broadcaster like the Petitioner, who have 90 percent of its market only in the State of Tamil Nadu, for the purpose of earning revenue from advertisement, would depend upon it in a TAM town like Madurai.

26. What was the market share of the Respondent in the town of Madurai should have been proved by adduction of appropriate evidence. Other and

further materials were also required to be brought on record, so as to enable this Tribunal to arrive at a reasonable figure as to what extent the Respondent had obtained benefit necessitating restitution thereof to the Petitioner.

27. Either directly or indirectly, the terms of the contract have not been proved. The amount of consideration in terms of the agreement between the parties has also not been proved; the subscriber base of the Respondent being at its core.

The burden of proof was on the Petitioner having regard to the provisions contained in Sections 101 to 103 of the Indian Evidence Act.

28. The Supreme Court of India in Parimal Vs. Veena reported in (2011) 3 SCC 545 noticed thus :-

> *"19. The provisions of Section 101 of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an allegation before he is entitled to a judgment in his favour. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The*

provision of Section 103 amplifies the general rule of Section 101 that the burden of proof lies on the person who asserts the affirmative of the facts in issue."

29. Yet again in Thiruvengadam Pillai Vs. Navaneethammal and Another reported in (2008) 4 SCC 530, it was stated :-

"19. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses. But the various circumstances enumerated by

the trial court and the High Court referred to earlier, when taken together, rightly create a doubt about the genuineness of the agreement and dislodge the effect of the evidence of PWs 1 to 3. We are therefore of the view that the decision of the High Court, reversing the decision of the first appellate court, does not call for interference."

30. Reliance has also been placed by Mr. Ajay Kumar in Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale & Others reported in (2007) 6 SCC 737, wherein in a case involving title of immovable property, it was observed that the weakness of the defence or the failure of the defendants to establish the title set up by them, would not by itself be sufficient for the plaintiff to obtain a decree.

31. The contention of the Petitioner keeping in view the Newspaper Reports may be true.

Petitioner, however, went to the Managing Director of the Respondent Company himself, as has been admitted by him in his cross-examination. It was not approached by the Respondent.

The fact that an agreement containing several terms and conditions have been executed should have been proved. At least service of invoices on a regular basis should have been proved. Moreover, there had been no demand of

the outstanding subscription fee from the side of the Petitioner upon the Respondent for a long time.

A lis cannot be and should not be decided one way or the other on the basis of the sympathy alone.

Regional Manager, SBI Vs. Mahatma Mishra decided on 1st November, 2006, reported in 2006 (13) SCC 727, the law was stated by the Supreme Court of India in the following terms :-

> *"Furthermore, the High Court, in our opinion, committed a serious error in passing an order only on the basis of sympathy although it was held that the respondent was not entitled to any relief.*
> *In Maruti Udyod Ltd. v. Ram Lal and Others (2005) 2 SCC 638, it was observed :*
>
> > *"While construing a statute, "sympathy" has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned."*
>
> *In A. Umarani v. Registrar, Coop. Societies this Court rejected a similar contention upon noticing the following judgments : (SCC pp. 131-32, pars 68-70)*
>
> > *"68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.*

In Teri Oat Estates (P) Ltd. v. U.T. Chandigarh 18 it is stated : (SCC p. 144, paras 36-37)

> *"36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.*
>
> *37. As early as in 1911, Farewell, L.J. in Latham v. Richard Johnson & Nephew Ltd. observed : (All ER p. 123E)*
>
> *"We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will of the wisp to take as a guide in the search for legal principles."*
>
> *70. Yet again, recently in Ramakrishna Kamat v. State of Karnataka this Court rejected a similar plea for regularization of services stating : (SCC pp. 377-78, para 7)."*

(See also State of Bihar & Ors. Vs. Amrendra Kumar Mishra reported in 2006 (12) SCC 561)

In Omprakash v. Radhacharan reported in (2009) 15 SCC 66, it is stated:-

> *"11. It is now a well settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and*

unambiguous. In HSIDC v. Hari Om Enterprises this Court held : (SCC p. 226, para 38)

> *"38. This Court applied the doctrine of proportionality having regard to a large number of decisions operating in the field. This Court, however, also put a note of caution that no order should be passed only on sympathy or sentiment."*

12. *In Subha B. Nair v. State of Kerala this Court held : (SCC p.216, para 21)*

> *"21. This Court furthermore cannot issue a direction only on sentiment/sympathy."*

13. *In Ganga Devi v. District Judge, Nainital this Court held (SCC p. 776, para 22)*

> *"22. The court would not determine a question only on the basis of sympathy or sentiment. Stricto sensu equity as such may not have any role to play."*

(See also Manish Goel v. Rohini Goel (2010) 4 SCC 393 para 19)

"19. Therefore, the law in this regard can be summarized to the effect that in exercise of the power under Article 142 of the Constitution, this Court generally does not pass an order in contravention of or ignoring the statutory provisions nor is the power exercised merely on sympathy."

32. The only question, which survives for our consideration, is as to whether this Tribunal should initiate a proceeding under Section 340 of the Code of Criminal Procedure, 1973 against the Petitioner.

33. As far as genuineness or otherwise of the said agreement is concerned, the Respondent is said to have authorized one Mr. R.L. Saravanan, an Advocate for the said purpose. He has not been examined. Although a letter written by him to the State Public Information Officer, Commissioner of Treasuries & Accounts being dated 3.10.2011 has been brought on record, the said officer has also not been examined.

Mr. A. Raja Prabhu, RW-1 even in his affidavit, did not identify the signature or otherwise or the author of the said letter. The original documents have also not been brought on record.

34. Mr. Ajay Kumar, however, would draw our attention to a letter of the Public Information Officer dated 20.10.2011 to contend that from the said document, the date of receipt of non-judicial paper from Security Printing Press, Hyderabad would appear and the same, being a public document, should be taken on record.

Section 74 of the Indian Evidence Act reads as under to mean :-

*"***74. Public documents -**

The following documents are public documents :—

(1) Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, [1][of any part of India or of the Commonwealth], or of a foreign country;

(2) Public records kept [2][in any State] of private documents."

35. A public document is required to be proved inter-alia by production of a certified copy. Only a photocopy of the said letter dated 20.10.2011 has been produced. What prevented the Respondent from producing the original document is difficult to appreciate.

Moreover, if the purported agreement dated 15.03.2008 has itself not been proved. In absence of any original document having brought on record and the documents having not been proved in accordance with law, we do not think that any proceeding under Section 340 of the Code of Criminal Procedure should be initiated.

36. For the reasons aforementioned, this Petition as also the Miscellaneous Application are dismissed with no order as to costs.

.....
(S.B. Sinha)
Chairperson

.....
(P.K. Rastogi)
Member

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