

Reserved on : 08.08.2024
Pronounced on : 03.09.2024

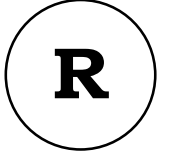
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2926 OF 2024



BETWEEN:

GAURAV DAHAKE
S/O MADHUKARLAXMAN DAHAKE
AGED ABOUT 34 YEARS
RESIDING AT: NO.11, E-25/6
MAYUR NAGAR, HUDCO
AURANGABAD – 431 003.

... PETITIONER

(BY SRI ROHAN KOTHARI, ADVOCATE A/W.,
SRI SATHVIK UPADHYA, ADVOCATE)

AND:

THE UNION OF INDIA
REPRESENTED BY
SRI A.K.TIWARY IPF/YPR
OFFICE OF THE POST COMMANDER
RAILWAY PROTECTION FORCE (RPF)
YESHWANTHPUR
BENGALURU DIVISION – 560 022
E-MAIL: pcrpfypr@sbc.railnet.gov.in
REPRESENTED BY L.SPP

HIGH COURT OF KARNATAKA
BENGALURU.

... RESPONDENT

(BY SRI AJAY PRABHU M., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO 1. QUASH THE OCCURRENCE REPORT BEARING NO.895/2020 DATED 30.09.2023 (ANNEXURE-A) FILED BY THE YESHWANTHPUR RAILWAY PROTECTION FORCE FOR THE OFFENCE P/U/S 143(2) OF THE RAILWAYS ACT, 1989 AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.08.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner is before this Court calling in question an order dated 31-10-2023 passed by the XXXV Additional Chief Metropolitan Magistrate/Special Metropolitan Magistrate (Railways), Bangalore in C.C.No.3401 of 2023 taking cognizance of the offence punishable under Section 143 of the Railways Act, 1989 ('the Act' for short).

2. Heard Sri Rohan Kothari, learned counsel appearing for the petitioner and Sri Ajay Prabhu M., learned counsel appearing for the respondent.

3. Facts, in Brief, germane are as follows:-

The petitioner claims to be an IIT Graduate from IIT Kharagpur with a deep passion for entrepreneurship. The petitioner begins a start up called '**buyhatke.com**' to help consumers save money during online transaction by serving as a product price comparison online browser extension. The petitioner subsequently in the month of August 2017 develops a software tool called 'Tatkalforsure' which auto fills the details of travellers intending to book Tatkal tickets on official IRCTC website. The Indian Railways had just then developed and promoted the concept of IRCTC Tatkal tickets which are limited tickets reserved solely for last minute ticket bookings and change of plans of travellers hoping to utilize the services of the Indian Railways. Tatkal ticket booking would open at 10 a.m. for AC class and at 11 a.m. for non-AC class one day in advance from the actual date of start of the train.

4. The petitioner claims that in order to allay the concern of a potential traveller, he developed a web extension/app that would auto-fill details of a potential traveller on the IRCTC website to expedite the process of booking a Tatkal ticket. The Tatkal website of Railways used to take 5 to 7 minutes, but in the tool developed by the petitioner the ticket would get generated in 45 seconds. This became very popular. Initially the petitioner was doing it for free. In the month of February 2020, the petitioner would do two acts – one, limit the bookings that would be booked through his extension to 10 and charge ₹30/- per booking. This caught the eye of the Railways as he was allegedly charging ₹30/- per ticket. Though the petitioner claimed that he was paying relevant taxes and GST on all the transactions done, a notice was issued to him on 29-09-2020, the petitioner was summoned and enquiry against him was made for offences punishable under Section 143 of the Act and the laptop through which the petitioner was doing his extension work comes to be seized and on the alleged confession of the petitioner, the respondent registered a crime. Long thereafter, a final report after 3 years of registration of crime comes to be filed before the concerned Court and the concerned Court takes cognizance of the

offence against the petitioner for offences punishable under Section 143 of the Act. Taking of cognizance has driven the petitioner to this Court in the subject petition.

5. The learned counsel appearing for the petitioner would contend that the ingredients of Section 143 of the Act are not, even in the remotest sense, present in the case at hand. The petitioner has neither procured nor distributed railway tickets as is necessary under Section 143 of the Act. The learned counsel would submit that permitting further proceedings would become an abuse of the process of law and result in miscarriage of justice. He would seek to place reliance on the judgment rendered by the High Court of Kerala which dealt with similar circumstance.

6. Per contra, the learned counsel Sri M Ajay Prabhu would vehemently refute the submissions to contend that the petitioner has indulged in procuring and distributing tickets. The concerned Court has now taken cognizance of the offence. Since the Court has taken cognizance of the offence based upon the statement of the petitioner, further proceedings should be permitted to be continued.

He would further emphasize on the fact that when the Railway Protection Force Police had questioned, the petitioner had confessed that he had made money worth of ₹12,49,710/- profit by charging fee of ₹30/- per e-ticket.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. The genesis of the issue is from the act of the petitioner in generating the software tool to help the public who were struggling to get their Tatkal tickets booked through IRCTC website. The software developed by the petitioner reduced the time of issuance of a confirmed Tatkal ticket to 45 seconds as the software tool of the petitioner would fill up all the details of the consumer within seconds. The process that the petitioner adopted would go this way –

- (i) *"Enable the "Tatkalforsure" browser extension and log in with credentials of the IRCTC username and password;*
- (ii) *Fill all relevant information relating to the journey to be taken, including train name, number, class and quota;*

- (iii) *Enter all relevant details of the passengers intending to travel on the train;*
- (iv) *Select preferred payment method which is securely stored only on the website and not on any cloud platforms;*
- (v) *Thereafter, once all the relevant details are filled out and stored, the user has to merely click on "book now" two minutes prior to the opening of the Tatkal window;*
- (vi) *Once "book now" is clicked on, **the user is automatically redirected to the official website of the IRCTC** wherein all relevant details including login credentials, train name, passenger name and payment method are automatically filled by the software tool. **The user only has to fill in the captcha at all relevant points;***
- (vii) *The entire process is carried on within 40-45 seconds of login to the IRCTC website which saves precious time to the potential traveller to confirm their ticket which otherwise would take at least 7 - 8 minutes."*

The averment is that the potential traveller to get a confirmed ticket from Railways would take 8 minutes and through the web-extension of the petitioner it would take 40 – 45 seconds. All was well for three years when the petitioner was doing it for free. It appears that to prevent misuse of the software tool by unauthorized persons as bulk tickets were booked, he would restrict them to ten tickets in a month and built a security system that would block those accounts which would indulge in bulk ticketing points and to

provide any authenticity he began to charge ₹30/- per ticket from February 2020 and claims to have paid all the taxes. Charging ₹30/- catches the eye of the Railways. He was summoned and a statement of his was recorded. The petitioner confessed that he is charging ₹30/- and claiming that he has caused loss to the Railways, crime for offences punishable under Section 143 of the Act is initiated. Since the offence alleged is Section 143 of the Act, I deem it appropriate to notice Section 143 of the Act. It reads as follows:-

**"143. Penalty for unauthorised carrying on of business of procuring and supplying of railway tickets.—
(1) If any person, not being a railway servant or an agent authorised in this behalf,—**

- (a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a train; or**
- (b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person,**

he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the tickets which he so procures, supplies, purchases, sells or attempts to purchase or sell:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.

(2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence."

(Emphasis supplied)

Section 143 of the Act prohibits unauthorized carrying on of business of procuring and supplying railway tickets. If any person who is not a Railway servant or agent carrying on the business of procuring and supplying the tickets without permission it would become an offence punishable under Section 143 of the Act.

9. The issue now would be whether, the petitioner has either procured or supplied railway tickets. The answer would be **unequivocal** and an **emphatic 'no'**. The petitioner has neither procured nor supplied tickets. All that the petitioner has done was creation of an extension to the IRCTC website. That extension would speed up the process of securing Tatkal confirmation of those potential traveller and the period of 7 minutes is said to have been reduced to 40 seconds. It would undoubtedly benefit all the public. Unless the ingredients of Section 143 are met, the crime itself could not have been registered. The Railway Police did not file their final

report despite passage of 3 years. Repeated show cause notices were issued by the concerned Court. It is only then a final report is placed before the Court on 30-10-2023 upon which the impugned order of cognizance emerges. The petitioner neither purchases, sells or attempts to purchase tickets of the railways. It is only those persons who unauthorisedly carry on the business of procuring and supplying tickets for travel on a railway would become open to punishment for offence punishable under Section 143 of the Act. The petitioner has not indulged in unauthorized carrying on of business of procuring and supplying of railway tickets. Finding no ingredient of offence under Section 143 of the Act, permitting further proceedings would run counter to law. This view of mine, in this regard, is fortified by the judgment rendered by the Kerala High Court reported in **MATHEW K.CHERIAN v. STATE OF KERALA**¹. The challenge therein was also to an offence under Section 143 of the Act. The Kerala high Court answers the issue as follows:

"....

3. Occurrence report is similar to the First Information Report. Normally this Court would not have interfered with the

¹ 2016 SCC OnLine Ker. 31556

occurrence report. However a statement has been filed by the 2nd respondent detailing the nature of offence committed by the petitioner. At a glance, it can be treated as a complaint against the petitioner to defend their action. The statement discloses that the petitioner created various fake user IDs in the name of different persons with the IRCTC portal to procure and supply railway tickets to travellers.

4. The case of the Railway is that since the petitioner is not Railway's agent and authorised to supply the railway tickets, an offence under Section 143 of the Act is made out. It is appropriate to refer Section 143 of the Act which reads as follows:

"143. Penalty for unauthorised carrying on of business of procuring and supplying of railway tickets.- (1) If any person, not being a railway servant or an agent authorised in this behalf,—

(a) carries on the business of procuring and supplying tickets for travel on a railway or from reserved accommodation for journey in a train; or

(b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the tickets which he do so procures, supplies, purchases, sells or attempts to purchase or sell:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in judgment of the court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.

(2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence."

5. The Act was enacted much before the advent of e-ticket system. The object of Section 143 is to prevent procurement of ticket for travelling on railway or in a

reserved compartment or journey in a train by any person with the ticket not being issued by railway servant or by an authorised agent. It appears that Railway wants to ensure the authenticity of the tickets issued to the travellers on a travel in a railway. It appears that many travellers were travelling on railway in a ticket not being issued to them and issued in the name of third parties. The Railway Act wants to ensure that the ticket is issued by railway servant or agent authorised on this behalf as the case may be to a genuine travellers.

6. The question before this Court arises in this context is whether purchasing of online tickets through the website of IRCTC by a traveller through a facility provided by the petitioner or staff would amount to procuring and supplying tickets for travelling on a railway. In this regard two aspects have to be noted:- One is that ticket is purchased in the name of traveller. Secondly the ticket is issued by IRCTC. As seen from the counter, the allegation as against the petitioner is that the petitioner misused IRCTC portal by creating fake User ID to procure and supply tickets to travellers. The use of internet medium registered in the name of a person, to issue tickets to a third party is not one contemplated under Section 143 for the purpose of considering it as an offence. As has been noted Section 143 was enacted much before the advent of e-ticket system. The railway's stand is that creating a fake user ID for issuing railway ticket is an illegal act attracting an offence under Section 143 of the Act. I am afraid that this has any merit to constitute an offence. First of all, the registration of the user ID with IRCTC is regulated by the terms and condition of the IRCTC. If there is any violation by use of such facility with the IRCTC, it is open for IRCTC to take appropriate action to de-register such registered users. Misusing a user ID for purchasing a ticket by genuine person is not an offence as contemplated under Section 143 of the Act. There is no sale of ticket by the petitioner as even admitted in the counter, the sale is being conducted by IRCTC. The use of computer or use of printer for printing ticket purchased by a traveller cannot be deemed as sale effected by the owner of the computer or printer. Procuring tickets has to be understood as providing or giving tickets to the travellers. Admittedly tickets are procured by the genuine travellers. When legislature considered an actionable wrong in a particular manner in a brick and mortar business, it cannot be

applied to an online business unless all elements constituting the offence are present in the online business. The offence is not attracted even if one has to assume that action of the accused would amount to supplying tickets. The Penal Provision clearly mandates that tickets have to be procured by the offender. Admittedly tickets are purchased by the genuine travellers. The dictionary meaning of procure is "to obtain by some efforts or means or acquire (see Webster's Comprehensive dictionary, encyclopedic edition). To constitute a criminal offence under Section 143 of the Act, the action of the accused must be a kind of act as prescribed in the Penal Provision."

(Emphasis supplied)

The facts obtaining before the High Court of Kerala were similar to the one that are obtaining in the case at hand. I am in complete agreement with what is held by the Kerala High Court.

10. Therefore, finding no warrant to permit continuance of the proceedings against the petitioner, I deem it appropriate to exercise my jurisdiction under Section 482 of the Cr.P.C., and obliterate the crime against the petitioner.

11. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

- (ii) Order dated 31-10-2023 passed by the XXXV Additional Chief Metropolitan Magistrate/Special Metropolitan Magistrate (Railways) Bangalore in C.C.No.3401 of 2023 and all further actions thereto stand quashed.
- (iii) It is made clear that the observations made in the course of the order would not become applicable to any other proceeding initiated against the petitioner.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:SS