

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.24829 & 24830 of 2016
& Crl.M.P. Nos.11964 to 11967 of 2016

1. Orange Creations
represented by its Partners/Authorised Signatory
T. Senthil and K.C. Shivakumar
No.1/2P, Bharathi Complex
Uzhavan Veethi
Uzhavan Nagar
Erode 638 009
 2. T. Senthil
Partner, M/s. Orange Creations
No.1/2P, Bharathi Complex
Uzhavan Veethi
Uzhavan Nagar
Erode 638 009
 3. P. Vaidyanathan
Partner, Orange Creations
No.1, State Bank Colony
Sastri Nagar, Adyar
Chennai 600 020
 4. K.C. Sivakumar
Partner, Orange Creations
P.No.101,
Door No.51 Kumaran Colony III Street
Vadapalani
Chennai 600 026
- ...Petitioners/Accused 1 to 4

Vs.

Vansan Movies
represented by its Managing Partner
S. Sutharsan
No.30, II Floor
Jawaharlal Nehru Salai
Koyambedu, Chennai 600 107

...Respondent/Complainant

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure seeking to call for the records culminating in C.C. Nos.5654 and 5653 of 2016 dated 08.06.2016 on the file of the V Metropolitan Magistrate, Egmore and quash the same.

For petitioners in : Mr. S. Sivaraman
both the Crl.O.Ps

COMMON ORDER

These Criminal Original Petitions are filed to call for the records culminating in C.C. Nos.5654 and 5653 of 2016 dated 08.06.2016 on the file of the V Metropolitan Magistrate Court, Egmore and quash the same.

2. For the sake of convenience, the petitioners and the respondent are referred to as accused and complainant respectively.

3. It is the case of the complainant that he had purchased a Tamil film "Sethupathy" and entered into a Minimum Guarantee Agreement dated 22.01.2016 with the accused, under which, the accused agreed to pay Rs.5,50,00,000/- being the minimum guarantee amount other than royalty. While so, the accused paid only a sum of Rs.3,14,20,000/- and there is a balance sum of Rs.2,35,80,000/- for discharging which, the accused had issued cheque nos.082008 dated 19.02.2016 and 082007 dated 04.04.2016, drawn on Axis Bank Ltd. for Rs.1,00,000/- each, which, when presented by the complainant, got dishonoured. Hence, the complainant issued legal notices dated 23.04.2016 and 25.04.2016 to the accused and the same were not received by the accused. Hence, two complaints, viz., C.C. No.5653 and 5654 of 2016 were lodged before the V Metropolitan Magistrate Court, Egmore, Chennai, against the accused, challenging which, the accused are before this Court by way of these two Criminal Original Petitions.

4. Heard Mr. Sivaraman, learned counsel for the accused.

5. Mr. Sivaraman, learned counsel for the accused contended that the dispute between the distributor and the producer was referred to the Distributors' Council, wherein, the complainant agreed to pay Rs.1,15,00,000/- to the accused towards distribution commission. That apart, Mr. Sivaraman contended that the accused have filed C.S. No.231 of 2016 on 11.04.2016 against the complainant for a direction to the complainant to return the cheques in question.

6. This Court gave its anxious consideration to the submissions made by Mr. Sivaraman, learned counsel for the accused.

7. According to the complainant, the cheques in question were presented on 04.04.2016 and they were dishonoured on 05.04.2016. Only thereafter, on 11.04.2016, the accused have filed the aforesaid suit before this Court.

Further, whether settlement was arrived at before the Distributors' Council is a question of fact, which cannot be gone into under Section 482, Cr.P.C.

8. Since prima facie materials are there in the complaints, this Court cannot interfere at the threshold and quash the complaints.

9. Mr. Sivaraman contended that according to the Minimum Guarantee Agreement, an amount of Rs.5,50,00,000/- should be paid by the accused to the complainant on or before the release of the film "Sethupathy" and the film was released on 19.02.2016 and therefore, the film could not have been released had the accused not paid the Minimum Guarantee Amount.

10. On the contrary, it is the case of the complainant that the accused had paid only Rs.3,14,20,000/- and had not paid the balance sum of Rs.2,35,80,000/-.

11. The circumstances under which the complainant agreed for the release of the film even without the payment of the Minimum Guarantee Amount of Rs.5,50,00,000/- is, once again, a question of fact which can be decided only during trial.

In the result, both the Criminal Original Petitions are dismissed. It is made clear that whatever observations made herein are only for the limited purpose of deciding these quash petitions and the Trial Court shall proceed with the trial, uninfluenced by any of the observations made herein. The petitioners are directed to surrender before the Trial Court within a period of two weeks from the date of receipt of a copy of this order and on their surrender, they shall be released on bail under Section 436, Cr.P.C. on the same day on they executing a bond for Rs.10,000/- each with two sureties who can be common sureties also. Thereafter, the presence of Vaidyanathan (A3) and Sivakumar (A4) before the Trial Court shall be dispensed with on condition that, they shall be present for receiving the complaint, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. They shall file an affidavit of undertaking before the Trial Court that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288]. If the accused adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence and remand them to custody, as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If, thereafter, the accused abscond, the trial Court shall direct registration of an FIR against them u/s 229-A IPC. Further, the Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of

this order, provided the accused cross-examine the witnesses on the day they are examined-in-chief and cooperate in the trial. Connected CrI.M.Ps. are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cad

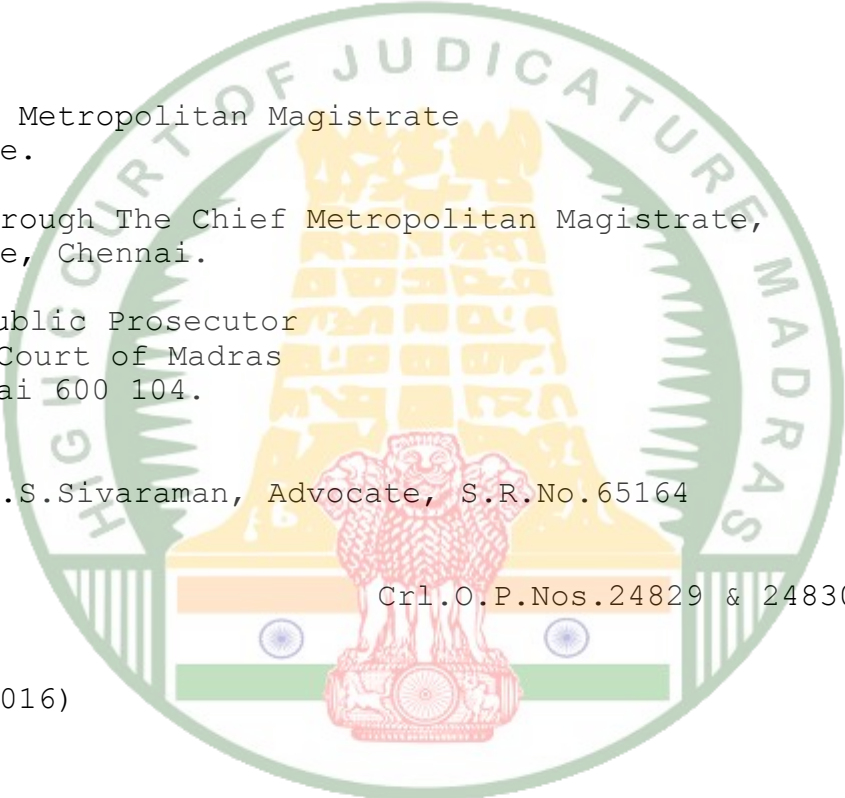
To

1. The V Metropolitan Magistrate
Egmore.
2. Do Through The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Public Prosecutor
High Court of Madras
Chennai 600 104.

+1cc to Mr.S.Sivaraman, Advocate, S.R.No.65164

CrI.O.P.Nos.24829 & 24830 of 2016

KSJ(CO)
CA(07/12/2016)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green circle around the gopuram. Below the gopuram is a red lion capital with a wheel in the center. At the bottom of the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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