

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3122 of 2012

Arising Out of Complaint Case No. 335(C) Year- 2011 District- PATNA

- =====
1. M/S Super Cassettes Industries Limited having its registered office at E-2/16, White House, Ansari Road, Darya Ganj, P.S.- Dariya Ganj, New Delhi- 110002 through its Director namely Bhushan Kumar
 2. Bhushan Kumar S/O Late Gulshan Kumar, Managing Director, M/S Super Cassettes Industries Limited having its registered office at E-2/16, White House, Ansari Road, Darya Ganj, P.S.- Dariya Ganj, New Delhi- 110002
 3. Ajay Kapoor S/O Hardarshan Singh Kapoor, Director, M/S Super Cassettes Industries Limited having its registered office at E-2/16, White House, Ansari Road, Darya Ganj, P.S.- Dariya Ganj, New Delhi- 110002

.... Petitioners

Versus

1. The State Of Bihar
2. Rakesh Kumar S/O Sri Raj Narayan Singh Proprietor, M/S Maa Sona Films, 106, Gagan Apartment, Exhibition Road, P.S.- Gandhi Maidan, District- Patna- 800001

.... Opposite Parties.

=====

Appearance :

For the Petitioner/s	: Mr. Y.V.Giri, Sr. Advocate
	: Mr. K.K.Khaitan, Advocate
	: Mr. Ashish Giri, Advocate
	: Mr. Umesh Pathak, Advocate
For the O.P. No.2	: Mr. Ajit Kumar Jha, Advocate
	: Mr. Awadhesh Kumar, Advocate
For the State	: Mr. Jharkhandi Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

C.A.V. JUDGMENT

Date: 09-10-2017

This application under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been filed by the



petitioners for setting aside the order of cognizance dated 28.04.2011 passed by the learned Judicial Magistrate, 1st Class, Patna under Sections 406, 120-B and 420 of the Indian Penal Code in Complaint Case No. 335(C) of 2011.

2. As per complaint, the case of the complainant is that on 08.01.2011, Ajay Kapoor and Abhay Sinha reached to his office along with Sikandar Khan and requested him to purchase the distribution right of the film 'Patiala House' produced by M/S Super Cassettes Industries Limited and People Tree Film Pvt. Limited starring Akhay Kumar, Anushka Sharma etc. and directed by Nikhil Advani for the territory of Bihar & Jharkhand. He was not interested in the above said film, but due to great persuasion of Sikandar Khan and request of Ajay Kapoor, he agreed to purchase the distribution right of the said film and paid a sum of Rs.15 lacs by cheque in favour of M/S Super Cassettes Industries Pvt. Limited on 12.01.2011. After receiving the said cheque, Bhushan Kumar returned back to Bombay and sent a deed of licence, which was received by him on 23.01.2011. Again, on 27.01.2011, he paid Rs.15 lacs to the producers of the said film. After making payment of Rs.30 lacs, he came to know that the licence of the said film, which had been granted by the producers, is *non est* and he felt that he has been cheated by the producers of the film. On 02.02.2011,



he informed Mr. Sikandar Khan regarding the criminal acts of the producers. Thereafter, Sikandar Khan contacted Ajay Kapoor, who told on telephone to him that he is ready to reduce the price of the said film from Rs.1.09 crores to Rs.71 lacs.

3. It is further alleged that due to inducement and misrepresentation of the producers of the said film, the complainant became ready to continue with the void agreement and after getting censor certificate of the said film, the accused persons terminated the licence on 03.02.2011 and assigned the distribution right for the said territory of the said film to one Abhay Sinha.

4. On the basis of the above, the complainant has alleged that the accused persons misappropriated the amount of Rs.30 lacs and, on inquiry, Ajay Kapoor told on telephone that the company was in need of the amount at that particular time for launching other motion picture due to which they made false commitment and granted void licence to him and they are not intended to refund the amount.

5. The complainant has further alleged that after receiving the publicity from the accused persons, he had already booked the said film to several exhibitors for exhibition, which cannot be supplied because of the criminal act of the accused persons.



6. After institution of the complaint petition, the learned Chief Judicial Magistrate transferred the case to the court of the learned Judicial Magistrate, 1st Class, Patna for inquiry. Thereafter, the complainant was examined on solemn affirmation on 28.02.2011. In support of the complainant's version, four witnesses, namely, Sikandar Khan, Ranjan Singh, Krishna Kumar and Sanjeev Kumar were examined on 11.03.2011, 15.03.2011, 16.03.2011 and 24.03.2011 respectively. Thereafter, the learned Chief Judicial Magistrate, vide order dated 28.04.2011 finding a *prima facie* to be made out under Sections 406, 420 and 120-B of the Indian Penal Code summoned the petitioners to face trial.

7. The aforesaid summoning order dated 28.04.2011 is under challenge in the present application.

8. Mr. Y. V. Giri, learned Senior Advocate appearing for the petitioners submitted that the petitioners no. 2 and 3 being the Managing Director and the Director respectively of petitioner no. 1 Company are residents of Delhi. The present case has been instituted just to coerce them in settling a purely civil dispute arising out of an agreement in the form of Deed of Licence. He submitted that from perusal of the complaint petition, it would be manifest that there was an agreement between the parties for distribution right of a film. However, the details of the agreement



have deliberately been concealed by the complainant from the court. He submitted that in fact, in the agreement dated 12.01.2011 executed between M/S Super Cassettes Industries Limited and M/S Maa Sona Films, a proprietorship concern of the complainant regarding distribution right of the film 'Patiala House' . As per the terms of the agreement, it is clear that after negotiation Rs.1,09,00,000/- was agreed by the complainant for payment and the payment schedule was also mentioned. He submitted that since the complainant himself violated the terms and conditions of the agreement and failed to make payment within the stipulated period, the agreement was treated as null and void.

9. Mr. Y. V. Giri, learned Senior Advocate for the petitioners further drew my attention towards various clauses of the said agreement dated 12.01.2011 in order to highlight the fact that the petitioners have not committed any offence. The amount paid by the complainant has been forfeited as per the terms and conditions of the agreement. He contended that on 02.02.2011, at 9.27 p.m., the complainant forwarded an email intimating reduction of price of film 'Patiala House'. After receipt of the mail, one of the Directors, namely, Ajay Kapoor replied through email on 03.02.2011 mentioning therein that information regarding reduction of price is misleading and false. He further contended that the



complainant has committed serious breach of the agreement and the agreement has been automatically terminated owing to failure on the part of the complainant to make payment of instalments.

10. On the basis of the above submissions, Mr. Giri learned Senior Advocate submitted that on the facts disclosed in the complaint petition and the agreement entered into between the parties, no criminal offence whatsoever is made out much less any offence under Sections 420, 406 and 120-B of the Indian Penal Code.

11. On the other hand, Mr. Ajit Kumar Jha, learned Advocate appearing for the complainant/ opposite party no. 2 submitted that the allegations made in the complaint clearly attract the ingredients of the offences alleged. The complainant and the witnesses examined on his behalf have fully corroborated the allegations made in the complaint and in that view of the matter, no error can be found with the order by which the petitioners have been summoned to face trial in exercise of powers conferred under Section 204 of the Cr.P.C. He submitted that the case of the complainant is direct and specific that due to inducement and misrepresentation of the producer of the said film, the complainant became ready to purchase the distribution right of the film for the State of Bihar and Jharkhand and parted with Rs.30 lacs in two



instalments, but the accused persons terminated the licence on 03.02.2011 and assigned the distribution right of the said film for the said territory to one Abhay Sinha, Proprietor Yashi Films, Nasiman Building Frazer Road, P.S.-Gandhi Maidan. Patna. He submitted that summoning order was passed after holding inquiry.

12. I have heard learned counsel for the parties and perused the record.

13. The complainant has not disputed the fact that there was an agreement between both the parties for distribution right of the film in question. The said agreement has been brought on record by the petitioners and has been marked as Annexure-6 to the present application.

14. Clause 5 of the agreement reads as under :-

“5. As and by way of consideration for the Said Right, and firmly relying on the representation, undertakings and warranties by the Distributors and also relying on the contents of Clause No. 1 herein, for the territory or any part thereto the Distributors freely and voluntarily offer and irrevocably agree to pay as and by way of NET NON-NEGOTIABLE, NON-REDUCIBLE, NON-REFUNDABLE MINIMUM GUARANTEE AMOUNTS hereinafter referred to as the M G AMOUNTS a sum of Rs.1,09,00,000/- (Rupees One Crore Nine Lacs only) exclusive of any tax/Stamp



duty/Registration/service tax/levies/VAT/GST) including the cost of 35 release prints by D.D. free of any Bank or other transmission charges, in its entirety in favour of **Super Cassettes Industries Ltd.** as follows :

- a Rs.15,00,000/- (Rupees Fifteen Lacs Only) Paid herewith as signing amount vide cheque no.012803 dated 12.01.2011 on Union Bank of India, Patna.
- b Rs.35,00,000/- (Rupees Thirty Five Lacs Only) to be paid on & before 22.01.2011
- c Rs.59,00,000/- (Rupees Fifty Nine Lacs Only) to be paid by DD/RTGS seven days before the delivery letter to the lab for delivery of 35 prints at producer's cost.

The Payments on due dates is the necessity of the agreement. The distributor undertakes to honour the cheque by their bankers on presentation by the producers and in case the cheque is dishonour for signing amount, the agreement will be terminated automatically, in case the cheque for Rs.35,00,000/- dishonoured, the signing amount for Rs.15,00,000/- will be forfeited and agreement will be terminated automatically and lastly in case the delivery amount is not paid by the distributors the entire amount paid till date will be forfeited by the producer and



agreement will be treated as null and void and all the rights shall revert back to the producer and producer will be free to re-assign the said rights as they may deem fit and if any loss/damages will be recovered from the distributors.”

15. It would be manifest from perusal of clause 5 of the above agreement dated 12.01.2011 that after negotiation Rs.1,09,00, 000/- was agreed by the complainant for payment and payment schedule was as follows :-

- (a) Rs.15 lacs to be paid at the time of agreement as signing amount.
- (b) Rs.35 lacs to be paid on and before 22.01.2011.
- (c) Rs.59 lacs to be paid by DD/RTGS seven days before the delivery letter to the lab for delivery of 35 prints at producer's cost.

16. From the allegations made in the complaint petition, it would further be clear that after paying a sum of Rs.15 lacs by cheque in favour of petitioner no. 1 on 12.01.2011, the complainant again paid Rs.15 lacs on 27.01.2011. However, as per agreement entered into between the parties Rs.35 lacs was to be paid by the complainant on and before 22.01.2011. Apparently, the complainant failed to make payment of Rs.35 lacs within stipulated



period, i.e. on and before 22.01.2011. It would also appear from clause 5 of the agreement that the payment on due date was the necessity of the agreement. Failure to make payment on the due date would have resulted in termination of the agreement automatically and forfeiture of signing amount and other amount as per terms of agreement.

17. Under the aforesaid circumstances, it cannot be said that the petitioners had committed any criminal offence by terminating agreement and forfeiting the amount advanced by the complainant. If the complaint petition is read together with the aforesaid agreement dated 12.01.2011, I am of the opinion that the complaint does not disclose any criminal offence at all much less any offence under Sections 420, 406 and 120-B of the Indian Penal Code.

18. In view of the discussions made above, I am of the opinion that the present case is purely a civil dispute between the parties for which remedy lies before the civil court.

19. In view of above, in my opinion, allowing the complaint to continue would amount to abuse of the process of the court.

20. Accordingly, the impugned order of cognizance dated 28.04.2011 passed by learned Judicial Magistrate, 1st Class, Patna



in Complaint Case No. 335(C) of 2011 is hereby quashed.

21. The application stands allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	07.09.2017
Uploading Date	09.10.2017
Transmission Date	09.10.2017

