

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46600 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Aamir Khan, Son of Tahir Hussain, Resident of 5 Marina Apartments, Pali Hill,
Banddra (W) Mumbai-400 050

.... Petitioner

Versus

1. The State of Bihar
2. Raj Kishore Unmukta @ Kishore Singh Son of Late Basudeo Singh Resident of
Station Road, Barh, P.O.+P.S.-Barh, District-Patna, Bihar

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. N.K. Agrawal, Senior Advocate Mr. Aditya Dewan, Advocate Mr. Saket Tiwary, Advocate Mr. Sanjeev Kr. Dubey, Advocate
For the State	:	Md. Mushtaque Alam, APP
For O.P. No.2	:	Mr. Surendra Kishore Thakur, Advocate Mr. Manoj Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 18-07-2017

The petitioner challenges order dated 29.02.2012, passed by learned Judicial Magistrate, 1st Class, Barh (Patna) in Complaint Case No.163 of 2011 whereby he has taken cognizance of the offence under Section 63 of the Copyright Act, 1957.

2. The complaint filed by one Raj Kishore Unmukta @ Kishore Singh leveling allegation in brief against the accused persons is that they have plagiarized his poem titled 'Gabarua', which was composed way back in the year 1986 but published in the year 2005 by Rachnakar Publication, Sahibabad, Purnea. While watching film Peepli Live on Z Cinema Channel, the complainant noticed that the theme of his poem was plagiarized by the producer and writer of the



said film.

3. Learned counsel for the petitioner submits that there is no similarity in the theme and character of the film Peepli Live produced by the petitioner's company. This film was made on a burning social issue. Presently in the country farmers in general get trapped in debt for many reasons, primarily their agricultural produce does not give adequate return so they fail to return back the loan amount. The burden of debt compels a farmer to commit suicide. On this basic theme, film Peepli Live was made. There is distinction between theme and other details of the film 'Peepli Live' and the poem 'Gabarua'. The petitioner had no knowledge about poem 'Gabarua' moreover it was not registered under the Copyright Act. Unless it is registered, there cannot be any violation of provisions of the Copyright Act.

4. Learned counsel for opposite party no.2 supports the impugned order of taking cognizance. The court below has taken cognizance on being satisfied with the allegation in the complaint and the evidence adduced at the enquiry stage, so defence of the petitioner cannot be considered at this point of time.

5. Having considered rival submissions and on perusal of records the Court is of the view that no *prima facie* case under Section 63 of the Copyright Act is made out against the petitioner.



Aamir Khan, the petitioner, is a well known film actor, producer and social activist of the country. Peepli Live is in the category of parallel cinema not made for commercial return rather subject matter relates to burning issue of the society. The main theme of the film is that the principle character Naththa, the farmer in debt, to draw the attention of authorities makes a plan to commit suicide and it was knowingly made known to everybody thereafter the authorities and media come to the village and the issue is highlighted. It is a sarcastic remark on the system that is projected in the film whereas in poem Gabarua, the farmer committed suicide by shooting himself thereafter public, media and public authorities' attention is drawn. With this distinction there appears no similarity in the two. Moreover, poem Gabarua is not registered as a Copyright by the complainant as such registration is mandatory in view of Section 44 of the Copyright Act. The procedure to be adopted before registration is inviting objection as per Section 45 of the Copyright Act. The infringement of Copyright is described in Section 51 of the Copyright Act. Section 63 of the Copyright reads as follows:-

"63. Offence of infringement of copyright or other rights conferred by this Act. – Any person who knowingly infringes or abets the infringement of–
(a) the copyright in a work, or
(b) any other right conferred by this Act
[except the right conferred by section 53-A],
[shall be punishable with imprisonment for



a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that [where the infringement has not been made for gain in the course of trade or business] the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.]"

6. The offence under Section 63 is only made out when any person knowingly makes infringement or abets the infringement as mentioned in Section 51 of the Act. This is admitted position that poem Gabarua is not registered under the Copyright Act, so there cannot be any violation of the Copyright Act, therefore, for the aforesaid reason the continuation of criminal proceeding in the matter would be sheer abuse of the process of the court hence, the order of cognizance dated 29.02.2012, passed by learned Judicial Magistrate, 1st Class, Barh (Patna) in Complaint Case No.163 of 2011 and the entire criminal proceeding is set aside.

7. The petition stands allowed.

(Arun Kumar, J.)

S.Kumar/-

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