

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.739 OF 2004**

Mr. Pramod Kumar Das
Age : 46 years, Occ. : Business,
having his address at
M/s Aniket Films,
Nishamani Niwas, Main Road,
Hilpatna, Berahampur, Ganjam,
State of Orissa

.... Applicant
(Ori. accused)

Vs.

1 Devidas Narayan Gendeti,
Having his business at
M/s Laxminarayan Cinema,
MIDC Road, Solapur – 413 006
and also having address at
M/s Laxminarayan Cinema,
Akashwani Road,
Solapur – 413 006

.... Original
Complainant

2 The State of Maharashtra Respondents

Mr. Tanmay Vispute i/by Mr. Rajiv Patil, Advocate for the
Applicant.

Mr. R.S. Alange, Advocate for Respondent no.1.

Mr. S.R. Agarkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 27th February, 2017

JUDGMENT :-

1 The applicant is the resident of State of Orissa. He has filed the present application under Section 482 Code of Criminal Procedure (“Cr.P.C.”) for quashing of the private complaint being M.A. No. 796 of 2003, pending in the Court of Chief Judicial Magistrate, First Class, Court Room No.1, Solapur for the offences punishable under Sections 420 and 406 Indian Penal Code (“I.P.C.”) and under Sections 51, 63, 68-A of Copy Rights Act filed by respondent no.1. The applicant contends that even if the contents of the complaint are acceptable to be true, the same do not make out any offence whatsoever. The second contention of the applicant is that the complaint has been filed by respondent no.1 with an intention of pressurising the applicant to settle a civil dispute over the business between him and respondent no.1.

2 The brief facts alleged by the applicant are as under:
The applicant is the proprietor of M/s Aniket Films, which deals in distribution of Telugu films in the State of Orissa. Respondent no.1 is the distributor of Telugu films for the State of Maharashtra. At one point of time, there was clash of interest over distribution rights of Telugu films between the two states i.e. State of Orissa and State of Maharashtra. Therefore, the Association of Distributors intervened and brought about an agreement between the parties under which it was decided that

the distributors from Orissa shall, as sub-distributor, purchase from respondent no. 1 the distribution rights for the State of Orissa and North India Territory @50% of the royalty, which is being paid by the distributor to the producer. Accordingly, the applicant had negotiated with respondent no.1 and on 6th April, 2002, it was agreed between the two that the applicant will purchase rights of distribution of four movies for the prices stated below:

1	Johnny	:	Rs.8,10,000/-
2	Indramma	:	Rs.1,12,500/-
3	Ugrasimhalu	:	Rs. 50,000/-
4	Juniors	:	Rs. 80,000/-

The agreement was executed at Secunderabad, State of Andhra Pradesh. The Minutes of the agreement were also drawn at Secunderabad and the total deal was agreed to Rs.8,61,126/- including the prints, share of royalty etc. for territory of Orissa and North India. At the time of execution of the agreement, the applicant had paid Rs.2,25,000/- to respondent no.1 and the balance amount was to be paid later on. There were also negotiations for other films i.e. Ninne Ishta Paddanu, Vasantham, Sivamani etc. The applicant had paid respondent no.1 amount of Rs.9,05,000/- in the form of bank drafts and transfers. He also paid a sum of Rs.2,85,000/- in the cash to the agent of respondent no.1, Shri. G. Ramesh at Berahampur.

Film Johney was to be released on 25th April, 2003 in Orissa. Respondent no.1 instead of sending prints to the applicant for the release, sent the prints to another cinema known as Jaya Cinema of Parlakhe Mundi. On being questioned, respondent no.1 refused to take any responsibility for the same and denied the agreement. The applicant, at the relevant time had accepted money from different cinema hall owners in Orissa on the basis of the agreement dtd. 6th April, 2002. The act of respondent no.1 in not sending the prints to him caused him huge loss of Rs.12,05,000/-. Therefore, the applicant had made a complaint to Police and also filed civil suit in the Court of Civil Judge, Senior Division, Berahampur, District Ganjam. Thereupon, respondent no.1 sent him legal notice dtd. 8th May, 2003 calling upon him to pay sum of Rs.6,37,126/- as the balance due under the agreement dtd. 6th April, 2002. According to the applicant, the criminal complaint filed by respondent no.1 is to counter the litigation initiated by the applicant.

3 Copy of the complaint filed by respondent no.1 is annexed to the present application. The complaint refers to the agreement between the two for distribution of films Johnny, Indramma, Ugrasimhalu and Juniors. It is alleged in the complaint that in the month of March, 2003, the applicant had personally came to Solapur for negotiations for Sub-Distributorship in respect of the four films in the State of Orissa except for the places Parlakhe Mundi, Jaipor and Berahampur.

It was agreed between the two that towards the royalty of Sub-Distributorship including the cost of prints and posters, the applicant would pay Rs.11,59,126/- to respondent no.1. Accordingly, agreement dtd. 6th April, 2003 was executed at Secunderabad by both. It is witnessed by one Shri. G. Ramesh of Hyderabad. At the relevant time, three of movies i.e. Indramma, Ugrasimhalu and Juniors had already been released in the State of Andhra Pradesh. Therefore, the price of the prints of the three films was accounted for in the agreement. However, the movie Johnny, at the relevant time, was not yet released in Andhra Pradesh. Since the cost of the prints could be known only 3-4 days prior to it's release, it had not been included in the total amount payable mentioned in the agreement dtd. 6th April, 2003. But it was orally agreed between the two that the amount towards the movie Johnny would be subsequently paid. The amount subsequently found payable towards that movie was of Rs.1,40,000/-. Thus under the agreement dtd. 6th April, 2003, the total amount payable by the applicant to respondent no.1 was of Rs.12,92,126/-. The applicant had from time to time made a total payment of Rs.6,55,000/- to respondent no.1 leaving the balance amount of Rs.6,37,126/-. As the applicant was short of funds, he had requested respondent no.1 that he would pay the balance amount after he received the prints for the movie Johnny. Respondent no.1 believed the word of the applicant and forwarded the prints through Shri. G. Ramesh on 24th April,

2003 to the applicant. Thereafter, the applicant had charity show of the movie Johnny at Berahampur. For that purpose, he had obtained permission of Ganjam District Magistrate and has earned substantial amount with the release. Despite that, the applicant failed to pay the balance amount of Rs.6,37,125/- to respondent no.2.

4 The complaint further alleges that though the applicant had no right to release the film, in Parlakhe Mundi area and the rights therefor had been given to one Jaya Mahal from Parlakhe Mundi, Gajpathi District (Orissa), the applicant got the film exhibited at Krishna Talkies in Parlakhe Mundi. Therefore, the proprietor of Jaya Mahal, one R. Parvatamma complained to the police on 29th August, 2003. Thereafter Krishna Talkies stopped exhibiting film Johnny. But it was found exhibited at other various places. Enquiries made by respondent no.1 revealed that exhibition at those places was at the instance of the applicant. Therefore, the first act of cheating alleged is that the applicant promised to send demand draft in the sum of Rs.6,37,125/- within two days of the agreement and caused respondent no.1 to handover the prints of the four motion pictures. Thereafter, he earned substantial amount by exhibition of the films but did not pay the balance amount to respondent no.1. The second act of cheating and breach of trust is breach of the agreement that he would not publish the movie Johnny at places Parlakhe Mundi, Jaipur and Berahampur and

earn therefrom. Respondent no.1 had on 7th July, 2003 complained to the concerned Police Station. Because no action was taken by the police, he filed the private complaint.

5 By it's order dtd. 15th September, 2003, the trial Court forwarded the complaint to the concerned Police Station, i.e. Vijapur Naka, Police Station Solapur for enquiries under Section 156(3) Cr.P.C.

6 The applicant contends that the complaint as filed does not even disclose the civil proceedings filed by him, which are in fact earlier in point of time. Also the facts alleged in the complaint neither constitute offence of cheating nor of criminal breach of trust and least of all offence under the Trade-Mark Act. According to him, the facts would give rise to a civil action for recovery of Rs.6,37,126/- or a claim for damages.

7 Mr. Alange, the learned advocate for respondent no.1 opposes the application with submission that the application is pre-mature since the proceedings are still at the stage of investigation. Relying upon decision of the Division Bench of this Court in B.S. Khatri (Col.) & Others vs. State of Maharashtra & Another, reported in 2004(1) Bom. C.R., page 424, he submits that whether the averments in the complaint are reliable or genuine or whether cognizance is liable is taken or not is exclusively within the jurisdiction of the Magistrate

trying the offence and this court should not decide the same at a premature stage. According to him, exercise of jurisdiction under Section 482 Cr.P.C. is required to be sparingly and cautiously done only when the court is of the opinion that otherwise there will be gross miscarriage of justice. He also argues that the applicant in fact is not available at the address disclosed by respondent no.1. Therefore, investigation is not possible without an arrest warrant.

8 Considering the facts and circumstances of the present case, it is obvious that the complaint filed by respondent no.1 does not disclose any of the offences alleged. At the highest, it would give rise to civil action for recovery of money due under the agreement or claim of monetary damage. It is significant that the complaint does not disclose the civil proceedings filed by the applicant which are earlier in point of time. Hence, there would be substance in the allegation of the applicant that it has been filed with oblique motive of pressurising the applicant. This also becomes clear from the report of the police that the investigation is not possible without a warrant for arrest. Strangely without warrant of arrest, the police have carried out no investigation whatsoever. Hence, the application is allowed in terms of prayer clause (b).

(Smt. R.P. SondurBaldota, J.)