

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.769 OF 2016

Mr. Aroon Poorie & Anr.
Versus

...Petitioners

Subhash Babbar & Anr.

...Respondents

.....

Mr. Mahesh Jethmalani, senior counsel with Mr. Sandeep Morne and Gunjan Mangla for the Petitioners.

Mr. Ramesh Pandey i/b. M/s. Ramesh Pandey and Associates for the Respondent No.1.

Mr. Y.M. Nakhwa, APP for the Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 13th NOVEMBER, 2017.

P.C.:-

By order dated 20th September, 2017 parties were put to notice that Petition would be disposed of finally at the stage of admission.

2. Heard Mr. Mahesh Jethmalani, senior counsel for the Petitioner, Mr. Ramesh Pandey, learned counsel for the Respondent No.1 and Mr. Y.M. Nakhwa, learned APP for the Respondent No.2-State. Perused the records.

3. The Respondent No.1 herein had lodged a complaint

against one Anuvhab Pal (accused No.1) and Director of M/s. Harper Collins, who was arrayed as accused No.2 for committing offence under the provisions of the Copyrights Act, 1957. The learned Magistrate after conducting enquiry under Section 202 of the Cr.P.C. issued process only against Accused No.1 i.e. Anuvhab Pal.

4. It is to be noted that no process was issued against accused No.2. The records however, indicate that the Respondent No.1-complainant had filed an application before the Magistrate stating that Court had issued process against accused Nos.1 and 2 and by the said application, stated to be under Section 319 of Cr.P.C., the Respondent No.1-complainant sought to implead four other persons as the accused on the ground that they were responsible for day to day business of the accused No.2.

5. By the impugned order dated 19th October, 2015 the learned Magistrate allowed the application and ordered to implead the said four persons as accused Nos.3 to 6. By order dated 26th October, 2015 the learned Magistrate held that the accused Nos.3 to 6 were responsible for day to day business of M/s. Harper Collins and therefore, issued process against these persons for offences punishable

under Sections 51, 52, 63, 64, 69 of the Copyright Act. The Petitioners, who are the original accused Nos.4 and 6 have challenged these orders.

6. As stated earlier process was issued only against accused No.1 and not against the accused No.2, despite which in the application stated to be under Section 319 of Cr.P.C. the complainant had stated that the process was also issued against Accused No.2. The learned Magistrate had impleaded these Petitioners and two others as accused and thereafter issued process against them on the premises that process was already issued against accused No. 2 and that these Petitioners and the other two were responsible for business of accused No.2-M/s. Harper Collins. It is therefore, evident that said order was passed on the basis of wrong rather false statement made by the Respondent No.1-complainant.

7. It is also not in dispute that the learned Magistrate had not conducted any enquiry and that the impugned order of issuance of process was passed solely on the basis of an application under Section 319 of the Cr.P.C.

8. Mr. Jethmalani, the learned senior counsel has placed reliance on the decision of the Apex Court in ***Hardeep Singh Vs. State of Punjab & Ors. AIR 2014 SC 1400***. The relevant paragraphs read as under :

“73. The unveiling of facts other than the material collected during investigation before the Magistrate or court before trial actually commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held, but can the same definition be extended for any other material collected during inquiry by the Magistrate or court for the purpose of Section 319, Cr.P.C.?”

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77. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an enquiry into or trying an offence, that the court can utilize or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the Court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for

the purpose of summoning any other person, other than the accused.”

9. As stated earlier, the impugned order is passed without enquiry and evidence. Needless to state that the Petitioners and others could not have been arrayed as accused solely on the basis of the statement rather a wrong statement made in the application under Section 319 of the Cr.P.C. The impugned order cannot be sustained and is liable to be set aside.

10. Under the circumstances and in view of discussion supra, the Petition is allowed in terms of prayer clause (a).

(ANUJA PRABHUDESSAI, J.)