IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.458 OF 2016

1 Seven Arts International Ltd. .... Applicants
2 Mr. G.P. Vijaykumar

Vs.

The State of Maharashtra & Ors. .... Respondents

Ms. Racheeta R. Dhuru, Advocate for the Applicants.
Ms. Anamika Malhotra, A.P.P. for respondent no.1- State.
Mr. Ravi Suryawanshi, Mr. Krunal Mehta i/by Naik Naik & Co. for Respondent no.2.

Coram : Smt. R.P. SondurBaldota, J.
Date : 23rd January, 2017

P.C.

1 Respondent no.2 has filed private complaint being C.C. No.30/SW/2012 pending in the Court of Metropolitan Magistrate, 66th Court, Andheri, Mumbai alleging offences punishable under Sections 406, 415, 417, 418 and 420 Indian Penal Code. By the order dtd. 15th May, 2012, the trial court after recording the verification statement, issued process against the applicants under Sections 406, 415, 417, 418 and 420 Indian Penal Code. Being aggrieved by the order, the applicants preferred Criminal Revision Application No.80 of

2015 to the Sessions Court, Mumbai. By the order dtd.30th January, 2016, the Sessions Court partly allowed the Revision Application. It set aside the process issued under Sections 417, 418 and 420 Indian Penal Code and directed that the complaint shall proceed against the applicants for the offence punishable under Section 406 Indian Penal Code.

2 Apart from the contention that the facts disclosed in the complaint do not attract any of the offences, the applicants had also challenged the jurisdiction of the court in Mumbai to entertain the complaint. According to the applicants, the jurisdiction would lie with the court at Chennai.

3 The Sessions Court has considered the question of jurisdiction at para 9 of the order and the merits as regards the offence punishable under Section 406 Indian Penal Code at paragraph 11 thereof. The Sessions Court has noted that the agreement between the parties dtd. 17th December, 2007 is totally silent about the place of it's execution. Though the revenue stamp of Rs.100/- seems to have been purchased from Chennai, that fact by itself would not indicate that it was executed at Chennai. The agreement clearly mentions that the applicants had approached respondent no.2 for production and distribution of the film. This would mean that the applicants had approached respondent no.2 for execution of the agreement. The registered office of respondent no.2 is at Vile

Parle. Therefore, the claim of respondent no.2 that the agreement was entered into at Mumbai needs to be accepted. The court has further noted that the alleged loss suffered by respondent no.2 being resulted from the agreement, the court at Mumbai would have jurisdiction. In the facts of the case, the finding of the Sessions Court as regards the jurisdiction of the court at Andheri cannot be said to be infirm.

4 As regards commission of the offence punishable under Section 406 Indian Penal Code, the Sessions Court has noted that admittedly under the agreement dtd. 17th December, 2007 executed between the parties, a substantial amount i.e. Rs.52,50,000/- was paid by respondent no.2 to the applicants, out of which, the applicants have returned Rs.17,50,000/- to respondent no.2. The balance amount of Rs.52,50,000/- is allegedly paid by the applicants to various persons i.e. Director, Actor, Music Director etc. engaged by the applicants for production of the film. Under Clause 2.9 of the agreement, the applicants have agreed and undertaken to maintain all invoices, vouchers, receipts and other records evidencing all receipts, expenses, charges and taxes incurred in the production of the film. The applicants have also undertaken to prepare weekly status reports and cost statements in respect of the money expended by them in relation to the film and submit copies of the same to respondent no.2 immediately thereafter. The court has noted that there is nothing on record to indicate that the

applicants have maintained and submitted to respondent no.2 the accounts in respect of the amount and therefore there was mis-appropriation of the money. This reason of the Sessions Court is seen to be justified by the material on record.

5 Ms. Dhuru, the learned advocate for the applicants submits that the applicants have specifically informed respondent no.2 about the different amounts paid to Director, Actor, Music Director etc. The payment has been reflected in the Income-Tax returns filed by the applicants as also in the TDS certificates issued by the applicants. Reference either in the Income-Tax returns filed by the applicants or in the TDS certificates of the payments made would hardly amount to compliance with the agreement to maintain and furnish all the invoices, vouchers, receipts and other records evidencing all receipts, expenses, charges and taxes etc. In any case, this claim would amount to the defence of the applicants to the charges against them, which is outside the purview of consideration by the court. The petition is therefore dismissed.

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