

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.22643 of 2011
and
M.P.No.1 of 2011

A.Keliyappan

.. Petitioner

Vs.

1.The State rep. by
The Inspector of Police,
Team-10, Central Crime Branch,
Egmore, Chennai.

2.A.Sothinathan

.. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.4011 of 2011 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.R.Vivekananthan

For Respondents : Mr.K.Madhan (for R1)
Government Advocate (Crl.Side)

No Appearance - R2

O R D E R

The instant Original Petition is filed under Section 482 of Cr.P.C. to quash the proceedings in the Calendar Case No.4011 of 2011 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai.

2.The case of the petitioner is that he has been arrayed as accused for the alleged offence under Sections 406, 420 of IPC r/w Section 63 of the Copy Right Act, 1957 based on the complaint given by the Respondent/Defacto Complainant which was registered in Crime No.103 of 2010 on the file of the learned 1st Respondent/Complainant.

3.The allegations made against the petitioner by the Defacto complainant is that he is the proprietor of M/s.Uma Publications and is the permanent resident of Malaysia. The further allegation according to the Defacto complainant is that he obtained copy right from one Looi Wan Eng for some books as listed in the statutory declaration entered at Kuala lumpur, Malaysia. The petitioner had acquaintance since 2001 with the Defacto complainant and worked in the book company of the Defacto complainant. However, in the year 2004, the Defacto complainant commenced a Private Limited Company at Mylapore, Chennai in the name and style of Uma Multi Solutions Private Limited and the administration of said private limited was entrusted to the petitioner. Subsequently, in the year 2006, another company namely Mayura Books was commenced through the petitioner and he himself used to sell the books published followed by copy rights obtained by the Defacto complainant. However, the petitioner was improper in furnishing accounts and he himself excluded the erstwhile directors namely Radhakrishnan and Subbulakshmi on his own, by included himself and his sister as directors and submitted form 32. Moreover another sum of Rs.3,00,000/- was said to have misappropriated and thereby caused loss to the Defacto complainant. However, the learned counsel for the petitioner would submit that the allegations made by the Defacto complainant would never constitute or make out any offence as the allegations do not attract the offence as alleged under Sections 406 and 420 of IPC and 63 of Copy Right Act, 1957. According to the learned counsel for the petitioner, as far as the 63 of the Copy Right Act is concerned, it is related to the infringement of copy rights. Here the allegation of the Defacto complainant is that the pictures, paintings and headings of the Penerbit Arowane books published by Uma Publications were subjected for slight modifications and sold in the name as they were published by Mayura publications, Mourya publications and Pogo books without any copy right. At the same time there is no document is produced to substantiate the charges leveled against the petitioner.

4.Apart from that no allegation is made to the effect that which portion of the Penerbit Arowane books were published by infringing the copy rights of Uma publications. Moreover, the perusal of the 161(3) statement has not made out any case to attract the offences invoked in the final report. The proprietor of Penerbit Arowane namely Looi Wan Eng has not been examined as witness admittedly who is the proprietor of the company. Moreover, what copy rights of the Defacto complainant was infringed has not been elucidated clearly either in the complaint or in the 161(3) Cr.P.C., statement. So, according to the learned counsel for the petitioner that none of the charges

leveled against the petitioner is made out any case and the final report filed in C.C.No.4011 of 2011 is liable to be quashed.

5.Per contra, the learned counsel for the respondents would contend that the charge sheet filed by the 1st respondent is followed by an unbiased and thorough investigation. It is also pointed out that the acts committed by the petitioner would make out offence punishable under section 63 of the Copy Right Act, 1957. So, the petition to quash the final report in C.C.No.4011 of 2011 is liable to be dismissed.

6.I heard Mr.R.Vivekananthan, learned counsel for the petitioner and Mr.K.Madhan, learned Government Advocate (Criminal Side) for the 1st respondent and the materials available on record are perused. No representation on behalf of the 2nd respondent.

7.It is the case of the 2nd respondent/Defacto complainant that the books published by the publications namely Penerbit Arowane is published by making slight modifications in the pictures and painting of the books. In the instant case the Defacto complainant has not produced any materials to withstand the charge of infringement of copy right. Moreover, the Defacto complainant has not taken any steps to make application to the Magistrate concerned for such copies within a period 15 days of such seizure as contemplated under sub section (2) of Section 64 of the Copy Right Act, 1957.

8.In the instant case the fact reminds that the Civil Suit filed in C.S.No.605 of 2009 by the Defacto complainant and the Civil Suit Nos.1163, 1164 of 2009 and 14 and 15 of 2010 filed by the petitioner before the Competent Court are pending. Though it is stated in the quash petition that interim order was granted in favour of the petitioner in the aforesaid civil suits, no order copy is produced for appreciation. However, it is an admitted fact that the proprietor of the Penerbit Arowane publications has not been examined as witness. Further, he has not given any complaint. At the same time one of the publishers namely the Defacto complainant has filed the instant case. As far as copy right is concerned, it is contemplated under section 17 of the Copy Right Act, 1957, that the author of work shall be the first owner of the copy right therein.

9. Further, Section 13(2) would say that copy right shall not subsist in any work specified in sub section one of section 13 "other than a work to which the provision of section 40 or section 41 apply, unless in the case a published work is first published in India or where the work is first published outside India..." .

10. In the instant case admittedly the copy right which allegedly infringed by the petitioner does not belong to the Defacto complaint. Further admittedly civil suits are pending. Apart from that Section 2(1) would specify the work done in India, nowhere it is defined any kind of foreign work. Moreover, as per Section 14 of the Copy Right Act, 1957, the term copy right means the exclusive right subject to the provisions of this act, to do authorized the doing of any of the following acts in respect of a work or any substantiate part thereof, namely

- . In the case of a literary, dramatic or musical work, not being a computer programme,-

- . To reproduce the work in any material form including the storing of it in any medium by electronic means;

- . To issue copies of the work to the public not being copies already in circulation;

- . To perform the work in public, or communicate it to the public;

- . To make any cinematograph film or sound recording in respect of the work;

- . To make any translation of the work;

- . To make any adaptation of the work;\to do, in relation to a translation or any adaptation of the work, any of the acts specified in relation to the work in sub-clauses(i) to (vi);

- . In the case of a computer programme:-

- . To do any of the acts specified in clause (a);

- . To sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]

. In the case of any artistic work,-

. To reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

. To communicate the work to the public;

. To issue copies of the work to the public not being copies already in circulation;

. To include the work in any cinematograph film;

. To make any adaptation of the work;

. To do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv) ;

. In the case of a cinematograph film,

. to make a copy of the film including a photograph of any image forming part thereof;

. to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

. to communicate the film to the public;

. in the case of sound recording,-

. (i) to make any other sound recording embodying it;

. To sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;

. To communicate the sound recording to the public.

Explanation:- For the purpose of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.]

11.The case on hand does not make out any offence as per the definition of the aforesaid provision. Moreover, the Defacto-

Complainant is not the Proprietor of the aforesaid Malaysian Company allegedly whose copy right is infringed. If at all the Defacto-Complainant is interested in protecting his Copy Right, he would have been filed petition before the learned Magistrate concerned to get the alleged infringed publications, but he has not done so. That apart the charges leveled against the petitioner is bereft of clarity that in respect of which portion of the publication of the Defacto-Complainant is infringed by the petitioner. Under these circumstances, it is not safe to keep the charge sheet pending that too in the pendency of the Civil Suits. In the considered opinion of this Court, the charges leveled against the petitioner are not sustainable.

12. Therefore, for the foregoing discussions, this court finds the submissions of the learned counsel for the petitioner are having legal force for consideration, accordingly, the Criminal Original Petition is allowed and the charge sheet in C.C.No.4011 of 2011 pending before the learned XI Metropolitan Magistrate, Saidapet, Chennai is quashed. There is no order as to costs.

vs

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The XI Metropolitan Magistrate,
Saidapet, Chennai.
- 2.The Inspector of Police,
Team-10, Central Crime Branch,
Egmore, Chennai.
- 3.The Public Prosecutor,
Madras High Court, Chennai-104.

sm:12.7.2018

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