

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.Nos.9639 and 15217 of 2010 and
M.P.Nos.1 and 2 of 2010

Echo Recording Company Pvt. Ltd.
Old No.30, Conran Smith Road
Gopalapuram, Chennai - 600 086
rep. By its Director, P.Rajasekar .. Petitioner
in both Ops

Vs

- 1.State by Inspector of Police (X Team)
Central Crime Branch
Office of the Commissioner of Police
Egmore, Chennai - 600 008. .. Respondent
in CrIOP.9639/2010
and 1st respondent
in CrIOP.15217/2010
2. Ilaiyaraja .. 2nd respondent
in CrIOP.15217/2010

PRAYER in CrI.O.P.No.9639 of 2010: Petition under Section 482 of the Code of Criminal Procedure to direct the respondent police not to harass the petitioner company employees, management and retailers and stop seizing materials not connected to the case Crime No.164 of 2010 on the file of the respondent police.

PRAYER in CrI.O.P.No.15217 of 2010: Petition under Section 482 of the Code of Criminal Procedure to call for the records in respect of the proceedings in FIR X Crime No.164/2010 on the file of the respondent police and quash the same.

For Petitioner : Mr.Krishna Ravindaran

For Respondent : Mr.P.Govindarajan (for R1)
Addl. Public Prosecutor

Mr.V.Anand (for R2)

ORDER

The petitioner has filed Crl.O.P.No.9639 of 2010 to direct the respondent police not to harass the petitioner company employees, management and retailers and stop seizing materials not connected to the case Crime No.164 of 2010 on the file of the respondent police and Crl.O.P.No.15217 of 2010 to call for the records in respect of the proceedings in FIR X Crime No.164/2010 on the file of the respondent police and quash the same.

2. The facts in a nutshell are as under: According to the petitioner, on 19.3.2010, the SUN TV news channel carried news showing that Ilaiyaraja had approached the Commissioner of Police, Chennai and had lodged a complaint against the petitioner company for alleged copyright violations due to failure to pay royalties as promised and agreed between parties. A certified copy of the complaint was obtained by the petitioner only on 8.4.2010 and it is stated that no offence whatsoever is made against the petitioner.

3. It is the case of the petitioner that after receipt of the said complaint on 19.3.2010, the respondent police registered an FIR only on 5.4.2010 as Crime No.164 of 2010 on the file of the respondent police under Sections 51 read with Section 63 of the Copyright Act, 1957 and Section 418 of the Indian Penal Code. The said complaint was placed before the learned XI Metropolitan Magistrate, Saidapet, Chennai and thereafter the respondent seized over 20000 compact discs for which the petitioner company owns copyright.

4. It is the plea of the petitioner that the defacto complainant cannot claim ownership over the copyright of the music developed by him for various producers for valuable consideration, which soundtrack and audio shall form part of the respective cinematograph film, as held by the Hon'ble Supreme Court in AIR 1977 SC 1443 and AIR 1984 Madras 287.

5. It is further pleaded that the defacto complainant sent legal notices dated 22.12.2002, 29.8.2006 and 1.9.2006 to the petitioner, for which the petitioner company sent his reply

through its counsel on 20.1.2003 and 4.9.2006 and thereafter, the defacto complainant had not sent any reply.

6. It is also stated that the petitioner company received a notice dated 4.11.2009 from a Malaysian company stating that it owns copyright of all the music composed and created by the defacto complainant. In response to the same, the petitioner company sent a reply through its counsel on 18.11.2009. Therefore, one of the assignees of the petitioner company had filed suit in C.S.No.187 of 2010 on the file of this Court and the petitioner is also a made a party to the said suit and in fact, the assignees of the defacto complainant had not filed any counter affidavit or documents to substantiate their stand.

7. It is the stand of the petitioner that the allegations of the defacto complainant are not supported by any evidence or documents whatsoever and as the dispute is clearly civil in nature, the defacto complainant should approach the Civil Court for appropriate remedy and protection. It is specifically pleaded that the defacto complainant had illegally sold the rights in some music to two different companies and the same is also a subject matter of the suit in C.S.No.31 of 2010 on the file of this Court.

8. On behalf of the 2nd respondent, the learned counsel for the 2nd respondent put forth his argument is that the 2nd respondent Mr. Ilayaraja is an extremely famous, popular, eminent and widely respected Music Director. He has composed music for over 800 films including Tamil, Telugu, Malayalam and Hindi. On his hardwork and extremely talented performance, the 2nd respondent had earned a goodwill and reputation in the international arena and he has also composed several musical competitions that have won international acclaim.

9. The learned counsel for the 2nd respondent further states that the 2nd respondent is the exclusive owner of copyright in all these musical works composed by him, since he has been done by employing enormous skill, energy, labour and capital and the 2nd respondent having skill and talent had developed a distinct style for himself which has come to be identified with him alone and none else.

10. The learned counsel for the 2nd respondent also argued that several producers of various Tamil films, who had engaged the services of the 2nd respondent for their movies, had in turn entered into agreements with the petitioners, inter-alia for exploitation of certain rights in the movie. Hence, in these agreements it had been specifically covenanted that the petitioners while paying a total royalty of 12½ percent would pay 6¼ percent of the total royalty to the 2nd respondent and it

has also been further covenanted that half-yearly accounting statements will be the basis for computation of such royalty. It is relevant to emphasize that the covenant pertaining to 6¼ percent royalty has been acted upon and the petitioner have made some payments to the 2nd respondent. But inspite of several notices and reminders sent to the petitioners, the petitioners have neither discharged their obligations under the agreement nor stopped their illegal exploitation.

11. Therefore, in the above circumstances, due to the illegal exploitation of the copyrights, the 2nd respondent is liable to be taken penal action against the petitioners/company and also action under Civil Law particularly under Copyrights Act, 1957. Therefore, he has given a complaint to the 1st respondent Police and based on that the present F.I.R. registered as X Crime No.164 of 2010 for the offences under Sections 51 r/w 63 of Copyrights Act, 1957 and Section 418 of I.P.C. was registered against the petitioners. Pursuant to the registration of F.I.R., the 1st respondent Inspector of Police has taking action and the same is pending for further investigation. Therefore, at this stage, if this Court interfere with the investigation, the same will be prejudiced to the 2nd respondent. Therefore, the learned counsel for the 2nd respondent prayed this Court to dismiss the petition.

12. In such backdrop, the present criminal original petitions are filed for the relief stated supra.

13. I heard Mr. Krishna Ravindaran, learned counsel for the petitioner, Mr. P. Govindarajan, learned Additional Public Prosecutor appearing on behalf of the 1st respondent Police and Mr. V. Anand, learned counsel appearing on behalf of the second respondent/defacto complainant.

14. Insofar as offences punishable under the Copyright Act, 1956 are concerned, a reference to Sections 51 and 63 of the Act would be apposite:

"Section 51. When copyright infringed.- Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright: or

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India, any infringing copies of the work;

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Section 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 sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees."

15. Section 51 states when shall the copyright in a work be deemed to be infringed. It shall be deemed to be infringed when a person, without a licence granted by the owner of the copyright or the registrar of copyrights, does anything which is the exclusive right conferred upon the owner of the copyright by the Copyright Act. Section 51 does not say that the copyright in a work shall be deemed to be infringed only if it is registered.

16. In the case on hand, admittedly, there are several civil suits pending, inter se, between the parties in respect of the copyrights. M/s.People Infocom Private Limited, the exclusive licensee of the petitioner herein, filed a suit in C.S.No.187 of 2010 and in the said suit, by order dated 15.3.2010 passed in O.A.Nos.200 and 201 of 2010, a learned Single Judge of this Court directed the parties to maintain status quo. Subsequent to the said order, this Court by another order dated 26.4.2010, granted an interim order of injunction in favour of M/s.People Infocom Private Limited, on condition that the plaintiff deposits 6¼% every quarter into this court to the credit of the suit and on such deposit, the plaintiff in the suit was permitted to exploit its right to the exclusion of the defendants.

17. In fact, the exclusive licensee/assignee of the petitioner had also obtained an order of injunction in respect of the very same rights and the suit to decide the ultimate rights is pending on the file of this Court.

18. Suit with regard to unauthorized use of the music is pending and in that proceedings, the second respondent complainant has not been able to obtain an injunction in his favour. Therefore, at least, prima facie, it is not possible to state that any factual foundation has been laid which would indicate commission of any offence alleged.

19. Once the Civil Suits are pending between the parties namely, the petitioners and the 2nd respondent, the learned Single Judge of this Court also directed both the parties are to maintain status quo and in another Civil Case this Court also directed one M/s.People Infocom Private Limited, who is the plaintiff in the suit should be deposited 6¼ percent of every quarter before this Court into the credit of the suit. Therefore, once the parties are invoking the Civil Court, the 2nd respondent cannot be invoked the criminal jurisdiction and he must approach the Civil Court in the above suit and work out his remedy and hence the crime case registered in X Crime No.164 of 2010 on the file of the 1st respondent Police is not maintainable.

20. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice.

21. Therefore, the criminal proceedings set into motion by virtue of private complaint converted into Crime No.164 of 2010 on the file of the respondent police cannot be permitted to continue. Accordingly, both the Criminal Original Petitions are allowed and Crime No.164 of 2010 on the file of the respondent police is hereby quashed and set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vs
To

The Inspector of Police (X Team)
Central Crime Branch
Office of the Commissioner of Police
Egmore, Chennai - 600 008.

+ 1 cc to M/s. V. Anand Advocate Sr.44949
+ 1 cc to M/s. Krishna Ravindran, Advocate Sr.44344

CRL.O.P.Nos.9639 and 15217 of 2010 and
M.P.Nos.1 and 2 of 2010

(CS-VIII)
EU(31/10/2018)

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