

\* SMT JUSTICE T. RAJANI

+ CRLP.No.1937 of 2011

% Dated: 26.12.2017

# Sekhar Kammula.

... PETITIONER

AND

\$ S. Siva and others.

... RESPONDENTS

! Counsel for Petitioner : MR. R. RAGHUNANDAN  
For MR. T. VINOD KUMAR TADAKAMALLA

^ Counsel for Respondents: MR. V. ROOPESH KUMAR REDDY- R1  
PUBLIC PROSECUTOR

< GIST:

> HEAD NOTE:

? Cases referred:

(1978) 4 SCC 118



SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.1937 of 2011

ORDER:

The Telugu movie 'LEADER', directed by the petitioner, moved into a controversy, due to the complaint given by the complainant, that it is a copy of his story. The magistrate refused to entertain the complaint and a revision was preferred against the said order. This petition is filed seeking for quash of the orders in the said revision passed by the learned I Additional Metropolitan Session Judge, Hyderabad in CRLRP.No.47 of 2010 dated 05.01.2001 and also the resultant orders of the XVII Additional Chief Metropolitan Magistrate, Hyderabad in CC(SR).No.5439 of 2009 dated 01.02.2011 and the consequential FIR.No.66 of 2011 dated 18.02.2011 on the file of the Station House Officer, Jubilee Hills Police Station, Hyderabad. The offences alleged are under Sections 120-B, 420 and 506 of the Indian Penal Code, 1860 and section 63 Of the Copyright Act, 1957.

2. Heard the counsel for the petitioner, the counsel for the first second respondent and the learned Public Prosecutor appearing on behalf of the seventh respondent.

3. The complainant filed his complaint in the form of a memo, which shall hereinafter be referred to as the complaint, with the following allegations.

The complainant registered a Telugu film story by name LEADER, through the Telugu Film Directors Association on 21.01.2006. For getting an opportunity, he approached the producers in the film industry and in that process he approached LARSCO Entertainment

Private Limited, Jubilee Hills, Hyderabad, where the second accused was listening the stories on behalf of LARSCO company. The complainant narrated his story LEADER in full length to A2, who got inspired by the story and informed the complainant that he will fix the date for the story to be heard by his superiors. The complainant has been waiting for positive response. A3 to A6 were producing the film LEADER, under their banner. A1 claimed that the story of LEADER was developed by him and directed the said film. A3 to A6 titled the disputed film as LEADER and by seeing the title LEADER, he suspected that his story might have been copied by the accused and immediately he made a representation, by requesting the Telugu Film Directors Association, to verify whether the story of the accused film LEADER is similar to the story of the complainant. The association sent a letter to A1 and asked him to give explanation. A1 had a discussion with the other accused and to escape from the allegations made against him, with malafide intention and to take support of A.P. Cine Writers Association, he became a member of the said association and registered his story with the association and sent a synopsis of the story to the Telugu Film Directors Association. The attitude of A1 clearly shows that he became a member, to influence the members of the association and to defeat the rights of the complainant.

The Telugu Film Directors Association constituted a committee, which, after scrutiny, came to the conclusion and said that "Our committee framed, have gone through the synopsis and expressed their opinions, stating that after demise of the CM,

his son (hero) became the CM of the state. Due to some reasons, assembly gets dissolved and elections held, again the hero became CM of the State. Hence this is to inform you that the contents of the opinion of the said committee as above forwarded to Sri Sekhar Kammula, the director of the film as per the process of the association". Without mentioning about the outcome, the complainant states that *prima facie*, the story of the accused LEADER and its story line were plagiarized of the work of the complainant. He submits that the story line is similar and his story has been hijacked. The accused not only copied the contents of the complainant story but also copied the title LEADER. The accused influence the elders of the film industry and its members and under their pressure, the committee members formed the second committee and for the best reasons known to them, they have influenced the complainant and taken a letter that he would be bound by the opinion expressed by the committee. The accused, with the help of the elders in the film industry planned to keep the issue before the third committee, which is constituted by the same members of the first and second committees and without going into the merits, they gave their opinion, stating that there was no similarity between both the stories.

The complainant submits that A2, in view of getting wrongful gain, narrated to A1 and both the accused colluded with each other and narrated a new story on the same story under the same caption. It is learnt that A2 used to record the stories of the persons, who came to narrate them. A3 to A6 know well about the LEADER film story dispute between the complainant and A1 and all the accused conspired

together and started, encouraging A1 and influencing the elders of the film industry, to defeat the right of the complainant. The complainant submits that A.P. Cine Writers Association is registering stories of the members of the Telugu Film Industry by collecting the requisite fee for registration, in accordance with Section 34(3) of the Copyright Act, 1957. The complainant registered the Telugu story LEADER and paid the requisite fee and copyright registration does not confer any rights and is merely a *prima facie* proof of an entry in respect of the work.

4. So, with these allegations the complainant filed the complaint and the Magistrate refused to take cognizance of the case. A revision was preferred before I Additional Metropolitan Sessions Judge, Hyderabad and the learned Judge felt that the Magistrate needs to examine whether the allegations in the complaint are making out a *prima facie* case or not and that the same is not stated in the impugned order. Learned Judge felt that there was no examination of the complaint and there is no reference to any particular aspect raised by the revision petitioner and thereby, the learned Judge allowed the revision petition and the matter was remitted to the Court below for deciding the matter according to law. On the basis of the said order, the Court below took the complaint on file and referred the same to the Station House Officer, Police Station, Jubilee Hills, for investigation. The Court seems to have felt it easy to do so. A crime was registered based on the said reference. A1, who is the petitioner herein, seeks this Court to quash the said order on the ground that the stories of both the complainant and the petitioner have been compared and examined by industry peers and were found to be dissimilar.

5. At the hearing, counsel for the petitioner contends that simply because there is similarity in the story, the petitioner cannot be accused of infringing the copyright of the complainant. He relied on a decision of the Supreme Court in R.G. ANAND v. DELUX FILMS<sup>1</sup> wherein the Supreme Court observed that when the similarities are trivial and trifling and touch insignificant points and are not of a substantial nature, it cannot be said that there was any infringement of copyright. However, the said decision is rendered in an appeal and the merits of the case were examined to conclude that there was no infringement of copyright. A comparison was made between the alleged original and the copied work and the said conclusion was arrived at. As this case is at the threshold, the said decision may not help the petitioner. But, if, from the averments of the complaint, the allegations are found to be not constituting the alleged offence, the petitioner would be entitled for quash of orders as sought for.

6. The allegations against the petitioner are that he heard the story from A2. It is not alleged in the complaint that the petitioner has knowledge that the story narrated by A2 is that of the complainant originally. The contents of the complaint that the other accused encouraged the petitioner would show that the petitioner is not the person, who initiated the process of the alleged infringement of copyright. The offences alleged are under Sections 420, 506, 120-B IPC and Section 63 of the Copyright Act.

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<sup>1</sup> (1978) 4 SCC 118

7. As regards Section 420 IPC, the acts alleged do not constitute the said offence, as there is absolutely no delivery of any property, as required by the said provision. Section 415 IPC, which defines cheating runs as under:

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

But the nature of the offence alleged against the petitioner do not fall within any of the categories of cheating that are mentioned under Section 418 to 420 IPC. Hence, the proceedings so far as Section 420 IPC are concerned, cannot be allowed to be continued.

8. As regards Section 506 IPC, the complainant reproduces the contents of Section 506 IPC, in his complaint and then in order to contend that the accused committed the offence under Section 506 IPC, states that the section applies to the case where the accused threatened and also gave warning to the complainant through his henchmen. Except stating as such, in the main body of the complaint, no instances of threatening or the accused going with henchmen are stated. Hence, it has to be understood that only in order to meet the ingredients of Section 506 IPC, the said averments are made.

9. There is absolutely no evidence to show that there was any conspiracy between the petitioner and the other accused, as the narration in the complaint goes to show that A1 only heard the story

from the mouth of A2. Except mentioning that they conspired together, no averment that they did acts, which would amount to conspiracy are alleged.

10. So far as Section 63 of the Copyright Act is concerned, Section 13 of the Copyright Act is to the effect that copyright subsists throughout India in original literary, dramatic, musical and artistic works. As observed by the I Additional Metropolitan Sessions Judge, the Magistrate seems to have considered the fact that the story, which was allegedly copied by the petitioner, is not filed in the Court. The same can be the observation made in this petition also. The basis of the allegation is the story of the complainant. Even if the same is not filed along with the complaint and even if it can be considered that the same can be proved during the course of trial, as was observed by the I Additional Metropolitan Sessions Judge, the complaint does not anywhere speak about what the alleged story of the complainant is. Except stating that it also had the caption LEADER and that the same was the caption of the film made by A3 to A6, which was directed by the petitioner, he does not put forth the contents of his work. The allegation is that A2 narrated the story to A1, from which it is possible to understand that the information was got by A1 only from A2 and it is not alleged that A2 shared with A1 that it is the story of the complainant and that it also had the title as LEADER. It is possible that A2 might have projected the caption, as being coined by himself, and offered the same to A1 and that A1 had accepted the same, believing it to be the idea of A2. Unless there is an allegation that A1 had knowledge that A2 heard the story of the complainant, it cannot

be said that he copied the story of the complainant. While stating that the Telugu Film Directors Association scrutinized his story, he only reproduces the observations of the committee but he does not anyway make out any similarity between his story and the story taken by the petitioner.

11. The decision in R.G. ANAND's case (1 supra) can be taken help of to the extent of stating that a mere similarity in the story shall not be a basis to prosecute the accused under the Copyright Act. There is no averment in the complaint to state that there are basic similarities in the story and that the similarities are fundamental and substantial enough to constitute violation of copyright. The averments of the complaint are only to the effect that the story line of the story of the complainant was taken by the accused. He also states that a new story was created by this accused, which means that only the plot was taken from the alleged story of the complainant. Then the same does not amount to a copy right as it was held in the decision of the Supreme Court in R.G. ANAND's case (1 supra). It was held that there can be no copyright in an idea, plot etc.

Hence, in view of the above discussion, the criminal petition is allowed and orders of the learned I Additional Metropolitan Session Judge, Hyderabad in CRLRP.No.47 of 2010 dated 05.01.2001 and the orders of the XVII Additional Chief Metropolitan Magistrate, Hyderabad in CC(SR).No.5439 of 2009 dated 01.02.2011 and the consequential FIR.No.66 of 2011 dated 18.02.2011 on the file of the Station House Officer, Jubilee Hills Police Station, Hyderabad, against the petitioner,

are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

December 26, 2017  
DSK

T. RAJANI, J

