

SMT JUSTICE T.RAJANI

CRIMINAL PETITION No.7393 OF 2011

ORDER:

1. This Criminal Petition, under Section 482 of Cr.P.C. is filed by the Petitioners/Accused Nos.1 and 2 seeking to quash the proceedings in C.C. No.16 of 2011, on the file of the Court of XV Additional Chief Metropolitan Magistrate, Hyderabad (for short, 'the trial Court'), registered for the offences punishable under Sections 63 and 68(A) of the Copy Right Act, 1957 (for short, 'the Act') and Section 420 of I.P.C.

2. Heard learned counsel for the petitioners, learned counsel for the 1st respondent – *de-facto* complainant, and learned Public Prosecutor, appearing for the 2nd respondent – State.

3. The allegations in the complaint, as can be understood from the charge sheet, are that in the year 1985, L.W.2, who is own brother of A-1, along with one Mohd. Yaseen, Sameena Banu, wife of A-1, Parveen Banu, sister-in-law of A-1, started a firm styled as '*Shalimar Video Company*' with both Ashraf and Yaseen holding 35% share each and Sameena Banu and Parveen Banu holding 15% share each. The job of the company is purchasing VCD/DVDs rights from producers and copy right holders, manufacturing, marketing and selling of the same. L.W.2 is the Managing Partner of the firm and is authorized to take all decisions on behalf of other partners, as per the partnership deed. While so, in the year 2004, A-1 started a new firm styled as '*Shalimar Enterprises*' for marketing of VCD/DVDs and after procuring them from various companies, in the year 2005, A-1 obtained an authorization letter from the said Yaseen, Parveen Banu and Sameena Banu to manufacture and market the VCD/DVDs of Shalimar Video Company. Without the knowledge and consent of the Managing Partner *i.e.*, L.W.2, A-1 also obtained a receipt for Rs.9,50,000/- towards consideration amount for authorizing him and also obtained the list of 882 films but none of them contained the signatures of L.W.2. The other partner *i.e.*, Mohd. Yaseen, expired in the year 2006. L.W.2 raised objections regarding the authorization

letter and since one year, A-1 started manufacturing and marketing of VCD/DVDs of Shalimar Video Company, who is the owner and copy right owner. In the year 2008, the complainant, son of L.W.2, started a company styled as 'Universal Home Entertainments' for manufacturing, marketing and selling VCD/DVDs by making an agreement with the Shalimar Video Company, represented by its Managing Partner i.e., L.W.2. In that regard, a quarrel took place among them and A-1 approached the competent Court, though A-1 had knowledge that he was not legally authorized by the Managing Partner of the Shalimar Video Company, who was only authorized to make any agreement or to give any authorization to any company, and that some of the VCD/DVDs rights are purchased by L.W.2. A-1 started manufacturing those VCD/DVDs and marketed the same at lower prices and made easy money. In that regard, about 40 days prior to filing of the complaint, A-1, along with A-2, went to India Packaging shop, Red Hills, Hyderabad, of L.W.3 and ordered for lamination and cutting of VCD covers of some telugu movies and handed over them in the said shop, as the accused are manufacturing VCD/DVDs at Gayatri Optic CD Makers, Balanagar.

4. These being the averments in the complaint, learned counsel for the petitioners submits that a suit in O.S. No.86 of 2009 is already filed by A-1 on the file of the Chief Judge, City Civil Court at Hyderabad, and he obtained *interim* injunction in his favour, *vide* order in I.A. No.628 of 2009, dated 16.03.2009; against which, Civil Miscellaneous Appeal Nos.426 and 582 of 2009 were preferred before this Court by 2nd defendant and *de-facto* complainant herein, who is the 1st defendant therein.

5. A perusal of the order, dated 23.06.2010, passed in C.M.A. Nos.426 and 582 of 2009 shows that the Court has considered the transactions, which took place between the parties and concluded by saying that when A-1, who is plaintiff in O.S. No.86 of 2009, claimed rights in respect of almost 1000 films, and it is supposed to make out a very strong case and held that there was no *prima-facie* case in his favour and with regard to the balance of convenience, it was held that

if the plaintiff is permitted to proceed with manufacturing, marketing and selling of DVDs and VCDs of large number of films, serious hardship would be caused to the defendants 1 and 2 therein.

6. Learned counsel for the petitioners submits that, after the said order, the petitioners and respondents are continuing manufacturing of VCDs and DVDs. He submits that there are as many as more than 800 films for which DVDs and VCDs are permitted to be manufactured and, out of the said number, the allegation against the petitioners pertains to only some of them.

7. However, it can be seen that the disputes between the parties are completely civil in nature.

8. Hence, in view of the above, this Court opines that continuation of further proceedings against the petitioners would only be an abuse of process of law.

9. Accordingly, the Criminal Petition is allowed and all further proceedings against the Petitioners/A-1 and A-2, in C.C. No.16 of 2011, on the file of the Court of XV Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

10. As a sequel, miscellaneous petitions, if any, pending in this Petition shall stand closed.

T. RAJANI, J

Date: 10.12.2018.
Dsh

SMT JUSTICE T.RAJANI**338****26122018****CRIMINAL PETITION No.7393 OF 2011**

Date. 10.12.2018

DSH