

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 21.08.2018

Pronounced on : 10.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.OP.No.10654 of 2013

and

MP.Nos.1 and 2 of 2013

Prabhu ...Petitioner/Accused
versus

1.State rep. By
The Inspector of Police,
Central Crime Branch, Team-X,
Egmore, Chennai 600 008.

2.R. Satish Kumar, ...Respondents
(R2 impleaded as per the order of this Court
dated 19.06.2013 made in M.P.No.3/13).

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.10095 of 2009 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai-15 and quash the same.

For Petitioner : Mr.K. Rajasekaran

For Respondents : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side) for R1

No appearance for R2.

ORDER

This petition has been filed by the accused to quash the proceedings against him in C.C.No.10095 of 2009 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai.

2. The first respondent herein, based on the complaint given by the second respondent has registered a case in Cr.No.764 of 2008 against the petitioner herein and after investigation, filed a charge sheet stating that the petitioner has committed an offence punishable u/s.63 (B) of Copyright Act, 1957. Based on the said chargesheet, the learned XI Metropolitan Magistrate, Saidapet, Chennai, has taken the case on file in C.C.No.10095 of 2009 and issued summons to the accused. After

receipt of the summons, the accused has filed the present petition under Section 482 Cr.P.C., to quash the proceedings against him in C.C.No.10095 of 2009.

3. Though the second respondent has received private notice on 28.06.2013 which was sent by the speed post, the second respondent has not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and learned Government Advocate (Crl.Side) for the first respondent and perusing the records, order is being passed in this petition.

4. The learned counsel for the petitioner has submitted that the second respondent herein has lodged a complaint before the first respondent stating that he is an employee of M/s.EIPR India Ltd., and their Company was authorised by SAP India Private Limited to investigate and initiate legal action for and on behalf of SAP India Private Ltd but has not produced any such authorisation. He further submitted that as per the said complaint, the petitioner unauthorisedly used SAP's intellectual property rights and indulged in giving training to the public and thereby caused wrongful gain to themselves and wrongful loss to the general public as well as SAP India Private Limited. In addition to the fiscal loss, the reputation of SAP also suffered badly in the eyes of the public. But neither the second respondent nor the first respondent has produced any documentary evidence to show that the said SAP India Private Limited got Copyright in respect of the particular intellectual property. He further submitted that the second respondent also lodged a complaint against one Saravanan making similar allegations and based on the said complaint, the first respondent has registered a case and after investigation filed a charge sheet against the said Saravanan stating that he has committed an offence punishable under Section 63 (B) of the Copyrights Act. He further submitted that based on the said charge sheet, the XI Metropolitan Magistrate, Saidapet, Chennai, has taken the case on file in C.C.No.10101 of 2009 and in that case, the accused viz., Saravanan had filed a petition under Section 239 Cr.P.C in Crl.M.P.No.3080 of 2009 to discharge him from the said case and the learned Metropolitan Magistrate by the order dated 27.03.2017 has allowed the said petition and discharged the said Saravanan from the said case. He further submitted that the petitioner also facing similar charge. He further submitted that there is no prima case to proceed against the petitioner herein and therefore, he prayed to quash the proceedings against him.

5. Per contra, the learned Government Advocate (Crl.Side) has submitted that the second respondent has stated in his complaint that the petitioner herein is conducting a computer centre, wherein he taught the software of SAP India Private Limited, without getting any permission from the said Company.

He further submitted that in the statement recorded under Section 161 Cr.P.C also, the second respondent has categorically stated that the petitioner herein has violated the Copyrights of SAP India Private Limited and the other witness also categorically stated that the petitioner herein has violated the Copyright of SAP India Private Limited and therefore, a prima facie case is made out to proceed against the petitioner and hence, he requests to dismiss the above petition.

6. It is seen from the typed set of papers filed by the petitioner that the second respondent has lodged a complaint before the first respondent on 15.10.2008 stating that he is an employee of M/s.EIPR India Ltd., and the said company has been authorised by the SAP India Private Limited to investigate and initiate legal action for and on behalf of SAP India Private Limited. He also stated that in pursuance of the said authorisation, his Company viz., M/s.EIPR India Ltd., authorised him to investigate and initiate legal action. Accordingly, he conducted a survey in Chennai City and found that the petitioner herein and others have violated the Copyright of the SAP India Private Limited and unauthorisedly gave training to the persons, who were studying in their institution. Based on the said complaint, the first respondent has registered a case and after investigation, filed a charge sheet against the petitioner herein stating that he has committed an offence punishable under Section 63 (B) of Copyrights Act, 1957.

7. Learned counsel for the petitioner has also produced a copy of the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, in CrI.M.P.No.3080 of 2009 in C.C.No.10101 of 2009 dated 27.03.2017. A perusal of the said order shows that based on the complaint given by the second respondent herein, the first respondent has registered a case and after investigation, filed a charge sheet against one Saravanan and based on the said charge sheet, the learned XI Metropolitan Magistrate has taken a case on file in C.C.No.10101 of 2009 and issued summons to the said Saravanan. The said Saravanan after receipt of summons, has filed a petition under Section 239 Cr.P.C seeking for discharge from the said case. The learned XI Metropolitan Magistrate, after considering the charge sheet, FIR and documents filed along with charge sheet found that in order to constitute an offence punishable under Section 63 (B) of Copyrights Act, 1957, the Investigation Officer ought to prove two important factors viz., protective right of the complainant party and the infringement of the alleged accused. He further found that all the three persons shown as witnesses in list viz, LW1 to LW3 are associated with M/s.EIPR India Ltd, but none of the witnesses from SAP India Private Limited were examined. He further found that the Investigation Officer has not produced any materials to show that what is protective right of the complaining party and in the absence of producing

material with regard to the protecting right of the complaining party, the charge that the accused had infringed said right cannot be framed. Accordingly, he discharged the said Saravanan from the aforesaid case. The same principle will apply to the facts of the case also. In this case also, the respondents have not produced any material to show that SAP India Private Limited got registered any right under Section 63 (B) of Copyrights Act, 1957. In the absence of production of any such material, it cannot be said that the petitioner herein has violated the said Copyright Act. Therefore, this court is of the view that the continuance of the proceedings against the petitioner herein would amount to abuse of process of Court. Accordingly, this court is inclined to allow the petition.

8. In the result, this petition is allowed. The proceedings against the petitioner herein in C.C.No.10095 of 2009 on the file of XI Metropolitan Magistrate, Saidapet, Chennai, are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

1.The XI Metropolitan Magistrate Court,
Saidapet, Chennai-15.

2.The Inspector of Police,
Central Crime Branch, Team-X,
Egmore, Chennai 600 008.

3.The Public Prosecutor,
High Court, Madras.

CRL.OP.No.10654 of 2013
and
MP.Nos.1 and 2 of 2013

PPA(CO)

rrs 07/03/2019

10.01.2019