



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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Crl.O.P (MD) No.19021 of 2015

and

M.P. (MD) Nos.1 of 2015

1.M/s.Lyca Production,
Rep. by its Managing Director,
2nd Floor, No.55,
Vijayaraghava Road,
T.Nagar, Chennai-600 017.

2.Neelkant Narayanpur

3.A.R.Murugadoss

4.K.Karunamoorthy

5.Subash Karan

6.Joerge C.Williams

7.C.Joseph Vijay

... Petitioners/Accused

Vs

A.Rajasekar

... Respondent/Complainant

PRAYER: Petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records of C.C.No.184 of 2015 pending on the file of the learned Judicial Magistrate No.1, Thanjavur and quash the same.

For Petitioners : Mr.C.Muthusaravanan
for M/s. C.Selvakumar

For Respondent : Mr.A.V.Rajasekaran

ORDER

The petitioners are shown as accused in C.C.No.184 of 2015 on the file of the Judicial Magistrate No.1, Thanjavur. It is a private complaint instituted by the respondent herein against the petitioners for having allegedly committed the offence under Section 63(a) of the Copy Right Act, 1957. To quash the same, this criminal original petition has been filed.

2. The case of the respondent is that he had directed and produced short films. One of them was titled "Thagaboomi". According to the respondent, the theme of the film was the prevalence of water scarcity and agrarian distress in Thanjavur District. The said short film was produced by him some time in 2013. It was exhibited in quite a few film festivals and is said to have received acclaim. The respondent wanted to work under the third



petitioner herein Thiru.A.R.Murugadoss, a well known film director. The respondent claims that he sent his resume to the third petitioner herein and had enclosed a compact disc of the said short film "Thagaboomi". An e-Mail was sent to the third petitioner herein on 14.06.2013.

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3.The specific allegation of the respondent is that the third petitioner herein had infringed the complainant's copy right by making the film "Kathi". The complainant alleges that the film "Kathi" is a plagiarist adoption of the respondent's work "Thagaboomi". The respondent would also allege that the third petitioner has nowhere acknowledged his rights. With these allegations, the respondent herein filed O.S.No.132 of 2014 on the file of the Principal District Judge, Thanjavur District, seeking both damages and permanent injunction. He had also simultaneously filed the impugned complaint before the Judicial Magistrate No.1, Thanjavur.

4.The learned Judicial Magistrate, by the impugned order dated 03.09.2015, took cognizance of the offence and issued summons to the petitioners herein under Section 204 of Cr.P.C.. Hence, this criminal original petition has been filed for quashing the same.

5.Heard the learned counsel appearing on either side.

6.The first petitioner is the Production Company. The second petitioner is the Managing Director of the Production Company. The third petitioner is the director of the film. The fourth petitioner and fifth petitioner are also associated with the Production Company. The sixth petitioner is the Cinematographer. The seventh petitioner is the well known film actor who played the hero in the film.

7.One can straightaway note that the sixth and seventh petitioners herein, except working as Cinematographer and actor in the said movie, had not played any other role. They cannot be said to have committed any infringement of the respondent's alleged copyrights. Therefore, I am of the view that the very institution of the impugned complaint against the petitioners 6 and 7 is an abuse of legal process. The impugned proceedings stand quashed as far as they are concerned.

8.Likewise, the petitioners 1, 2, 4 and 5 are only producers of the movie and they have nothing to do with the story as such. When prosecution was lodged alleging copyright violation by the maker of the film "Enthiran", petitions for quashing the same were filed before this Court. Even while dismissing the quash petition filed by the Director, a learned Judge of this Court allowed the quash petition filed by the Producer.



the view that the Producers of the movie ought not to be fastened with any penal liability. Therefore, the impugned proceedings stand quashed as far as the petitioners 1, 2, 4 and 5 are concerned. That leaves the third petitioner who is the Film Director.

10. The learned counsel appearing for the petitioners submitted that the principles regarding copyright violation have been authoritatively laid down by the Hon'ble Supreme Court in the decision reported in **(1978) 4 SCC 118** in **R.G. Anand Vs. Delux Films**. The principles with regard to copyright violation have been summarized in Paragraph No.46 of the said Judgment. It reads as follows:-

"46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge.

1. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the ideas by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negate the intention to copy the original and coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.



6.As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.

7.Where, however, the question is of the violation of the copyright of stage play by a film producer or a director the test of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider filed and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which, the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved. "

11.In the case on hand, the learned trial Magistrate, appears to have been swayed by the averments set out in the complaint. This is a case in which, the allegation is that the film "Kathi" is a plagiarist adoption of the complainant's short film "Thagaboomi". Therefore, before taking cognizance of the offence, the learned trial Magistrate ought to have viewed both the feature film as well as the short film i.e. "Kathi" and "Thagaboomi". In this case, there is nothing on record to indicate that the Magistrate had viewed the feature film. I, therefore, hold that the order taking cognizance of the offence against the third petitioner-A.R.Murugadoss suffers from non application of mind. The order taking cognizance is set aside. The matter is remanded. The learned Judicial Magistrate is mandated to view both the films and see, if any prima facie case of infringement of the copy right has been made out. Thereupon, if he is satisfied, he will issue summons only to the film director, namely, Thiru.A.R.Murugadoss.

12. C.C.No.184 of 2015 is quashed in respect of the petitioners 1, 2, 4, 5, 6 and 7 and the matter is remanded to the file of the Judicial Magistrate No.I, Thanjavur in respect of the third petitioner-A.R.Murugadoss. This Criminal Original Petition is accordingly allowed on the above terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)



To

The Judicial Magistrate No.1,
Thanjavur.

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+2 CC to M/s.C.SELVAKUMAR, Advocate (SR-104506[F] dated
11/12/2019)

+1 CC to M/s.C.SELVAKUMAR, Advocate (SR-104530[F] dated
11/12/2019)

CrI.O.P (MD) No.19021 of 2015
and
M.P. (MD) Nos.1 and 2 of 2015
10.12.2019

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