

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.23076 of 2015

1.Kurichi Thangabalu Karthick
Son of Thangabalu
Director of M/s.Silver Star
Communications
No.12-C, 6th Main Road,
Kasturiba Nagar
Adyar, Chennai - 600 020.

2.Kurichi Thangabalu Indra
Daughter of Thangabalu
Director of M/s.Silver Star
Communications
No.12-C, 6th Main Road,
Kasturiba Nagar
Adyar, Chennai - 600 020.

... Petitioners/Accused 3&4

Vs.

M/s.Raj Television Network Limited
Represented by its Admin Manager
Mr.Suresh
No.32, Poes Road, 2nd Street,
Teynampet, Chennai - 600 018...Respondent/Complainant

Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records in C.C.No.3129 of 2015 on the
file of XVIII Metropolitan Magistrate, Saidapet at Chennai and
quash the same.

For Petitioners : Mr.T.Palanivel

For Respondent : Mr.P.K.Shrinivasan

ORDER

This Criminal Original Petition has been filed to quash
C.C.No.3129 of 2015 on the file of XVIII Metropolitan
Magistrate, Saidapet at Chennai, as against the petitioners.

2. Raj Television Network has launched a prosecution in C.C.No.3129 of 2015 before the XVIII Metropolitan Magistrate, Saidapet at Chennai, against Silver Star Communications Ltd. (A1), Jayanthi Thangabalu (A2), Kurichi Thangabalu Karthick (A3) and Kurichi Thangabalu Indra (A4) for the offences under Section 51, 63, 66 & 69 of the CopyRight Act, 1957, for broadcasting a film song "Chithakathi Pookale Suthivara Pakkuthry" from the Tamil feature film 'Rajakumaran', on 17.02.2015 at 03.58 a.m., in their channel in 'Mega TV', without obtaining any telecast rights or licence from them.

3. This quash petition has been filed by the petitioners on the short ground that there are no sufficient averments in the complaint to hold them vicariously liable with the aid of Section 69 of the CopyRights Act, 1957, which provision is in parie materia with Section 141 of the Negotiable Instruments Act, 1881.

4. Heard Mr.T.Palanivel, learned counsel for the petitioners/accused and Mr.P.K.Shrinivasan, learned counsel for the respondent/complainant.

5. This Court carefully perused the impugned complaint, wherein in paragraph No.12, it reads as follows :

"12. The complainant submits that the first accused is the company and all the Accused are whole time Director and of the company and responsible for the day to day affair of the company and the conduct of the business of the company.

6. Mr.T.Palanivel, learned counsel for the petitioners contended that the aforesaid stray statement of the complainant in C.C.No.3129 of 2015 is insufficient to prosecute the petitioners, with the aid of Section 69 of the CopyRight Act, 1957.

7. Per contra, Mr.P.K.Shrinivasan, learned counsel for the respondent argued vehemently to justify the complaint by contending that the petitioners were the Directors at the relevant point of time in A1's company and hence, the prosecution against them cannot be quashed at the threshold.

8. This Court gave its anxious consideration to the rival submissions.

9. Mr.T.Palanivel, learned counsel for the petitioners placed materials before this Court to show that the second petitioner was doing her Ph.D., in Anna University, Chennai at the relevant point of time. He submitted that the judgements of the Supreme Court on this aspect are a legion and also placed reliance on a few judgments in support of his contentions.

10. In the judgment of the Supreme Court in Gunmala Sales Private Limited Vs. Anu Mehta¹, it is suffice to refer to paragraph No.34.3 :

"34.3 In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint.

11. In this case, on an overall reading of the complaint, this Court is satisfied that in the absence of more particulars about the role of the petitioners in the affairs of the first accused company, the basic averment that the petitioners were responsible for the day to day affairs of the company and the conduct of the business of company, are by themselves insufficient to uphold the prosecution against the petitioners.

12. In the result, this petition is allowed and the prosecution in C.C.No.3129 of 2015 on the file of XVIII Metropolitan Magistrate, Saidapet at Chennai, as against the petitioners (A3 & A4) alone, is hereby quashed.

13. To a pointed query raised by this Court, Mr.T.Palanivel, learned counsel for the petitioners placed materials to show that Jayanthi Thangabalu (A2) was the Managing Director of Silver Star Communications Ltd., Chennai, and that she is none other than the mother of the petitioners herein. Therefore, Jayanthi Thangabalu (A2) cannot plead total ignorance of the prosecution against her, and the proceedings pending before this Court. The petitioners are directed to inform Jayanthi Thangabalu (A2) to appear before the trial Court at 10.30 a.m., on 25.01.2021 and execute a bond for a sum of Rs.10,000/- without sureties under Section 88 Cr.P.C., and participate in the trial. The trial Court is directed to complete the trial within six months from 25.01.2021.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nsd

To:

The XVIII Metropolitan Magistrate
Saidapet, Chennai.

1 c to Mr. Palanivel, Advocate, Sr. 41737

Cr1.O.P.No.23076 of 2015

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