

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.4525 of 2015 and
Cr1.M.P.No.1 of 2014

1.S.Jaganathan
2.S.Balan (alias) Balasubramanian,
3.Saravanan
Vs.
...Petitioners

1. The Inspector of Police,
F1, Chindadripet Police Station,
Chennai-District.

2. K.P.Ravichandran
...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records as to quash the First Information Report in Crime No.219 of 2014 pending on the file of the respondent No-1 police station.

For Petitioner : Mr.R.Sivakumar

For R1 : Mr.K.Prabakar,
Additional Public Prosecutor

For R2 : Mr.Sathish Kumar,
Legal Aid Counsel

ORDER

The petitioners, who are the accused in Crime No.219 of 2014, for offence under Section 51 r/w 63 of The Copy Rights Act, 1957, have filed this quash petition.

2.Despite service of notice to the 2nd respondent and his name printed in the cause list, no representation for the 2nd respondent. Hence, this Court by order dated 04.08.2020 appointed Mr.Sathish Kumar as Legal Aid Counsel for the 2nd respondent.

3.The 1st petitioner is the Chairman of M/s.Modern Digitech Media Limited and the 2nd and 3rd petitioner are its Director and Manager. M/s.Modern Digitech Media Limited was dealing in VCD,

DVD, Blue Ray and other copy rights of Tamil Movies obtained various procedures and legitimate copy right owner. The 2nd respondent is the Proprietor of M/s.Movie Land, who was also dealing in VCD, DVD, Blue Ray and other copy rights of Tamil Movies obtained various procedures and legitimate copy right owners.

4.The gist of the case is that on 10.04.2014, the 2nd respondent lodged a complaint to the 1st respondent Police, stating that they are the copy right holder of VCD and DVD for more than 1000 Tamil films and purchased the right from the original film producers and negative right holder of Tamil Films and they produce the copy righted films as VCD and DVD and sell through Tamil Nadu Video Over Network Dealers. The 2nd respondent further stated in the complaint that the petitioners carrying on business from Madurai, was infringing the rights of the 2nd respondent. Hence, the 2nd respondent filed a Civil Suit in C.S.No.100 of 2014 before this Court and in the civil suit, he filed O.A.No.129 of 2014 and obtained restraining order against the petitioners. The order dated 14.02.2014 in O.A.No.129 of 2014 in C.S.No.100 of 2014 clearly restrained the petitioners and their agents infringing into the rights of the 2nd respondent. Thereafter, the 2nd respondent found in a shop at No.1, Wallers Road, Chennai in selling VCD and DVD in violation of the Copy Rights Act. Hence, the above complaint came to be registered in Crime No.219 of 2014, for offence under Section 51 r/w 63 of the Copy Right Act, 1957.

5.The learned counsel for the petitioners submitted that the 2nd respondent filed a civil suit in C.S.No.100 of 2014 and prayed for interim injunction in O.A.No.129 of 2014 in C.S.No.100 of 2014 that the petitioners not to infringe the copy rights of the 2nd respondent. Initially, the 2nd respondent obtained an interim injunction and the petitioners coming to know about the same, have filed an application to vacate the interim injunction on 18.03.2014. After coming to know about the same, the 2nd respondent has lodged the above false complaint on 10.04.2014 as though the petitioners were infringed their copy rights. The learned counsel further submitted that the petitioners were no connection with M/s.Vedu Electronics at No.1, Wallers Road, Chennai and there is no material to show that the petitioners had supplied VCD and DVD to them. He further submitted that the petitioners company did not produce and sell any one of the VCD and DVD to M/s.Veda Electronics. On the counter filed by the petitioners in C.S.No.100 of 2014 and after hearing both sides, this Court was pleased to vacate an interim injunction granted in O.A.No.129 of 2014 in C.S.No.100 of 2014 on 25.09.2014. The 2nd respondent in order to extract money from the petitioners, has filed the above criminal complaint. The 2nd respondent had given a criminal colour to the

civil suit. Further, the 1st respondent Police has got no right or authority to register a case under Section 51 r/w 63 of the Copy Right Act, 1957 and to investigate the same. Since the offence is bailable and non cognizable one, without permission of a Magistrate, the above case cannot be filed. Hence, the learned counsel for the petitioners prayed for quashing of FIR.

6.The learned counsel for the 2nd respondent fairly submitted that as per Section 63 of the Copy Rights Act, the offence is punishable with imprisonment for a term which shall not be less than six months but which may extend to three years with fine. He further submitted that second category of II-Part of Schedule-I of Cr.P.C that the term of imprisonment for three years or upwards, but not more than seven years, cannot be equated with the expression used in Section 63 of the Copy Rights Act, the imprisonment which may extend to three years and offence punishable under Section 63 of Copy Rights Act cannot be considered as non cognizable offence.

7.In support of his contention, the learned counsel for the 2nd respondent relied upon the judgment of Hon'ble Apex Court in the case of "Rajeev Chaudhary Versus State (N.C.T) of Delhi reported in 2001 CrL LJ 2941."

8.The learned Additional Public Prosecutor appearing for the 1st respondent reiterated the submissions made by the learned counsel for the 2nd respondent and submitted that the Hon'ble Apex Court in the case of "Rajeev Chaudhary Versus State (N.C.T) of Delhi reported in 2001 CrL LJ 2941." had given a guidelines and held that the offence under Section 63 of the Copy Rights Act is non cognizable and bailable one and the police are not empowered to register a case and investigate the same.

9.This Court considered the rival submissions and perused the materials available on record.

10.This Court by following the judgment of Hon'ble Apex Court "Rajeev Chaudhary Versus State (N.C.T) of Delhi reported in 2001 CrL LJ 2941" is of the view that the offence punishable under Section 63 of the Copy Right Act is non cognizable offence by virtue of part II of Schedule I of Cr.P.C., since it carries imprisonment which can be extended upto three years and therefore as per Section 155 of Cr.P.C., no police officer can investigate a non cognizable offence without an order of a Magistrate.

11.Hence, the police officer cannot register a case for the non cognizable offence, without an order of concerned jurisdictional Magistrate. It is admitted that this Court by order dated 25.09.2014 in O.A.No.129 of 2014 in C.S.No.100 of

2014 had vacated the interim injunction granted, against which the respondent has not preferred any appeal. If at all the respondent is aggrieved on the petitioners violating the interim order, the recourse is available to them under Order 39 Rule 2A of the Code of Civil Procedure.

12.In view of the above, the continuation of the investigation against the petitioners would amounts to abuse of process of law and the impugned FIR in Crime No.219 of 2014 is hereby quashed and the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

13.This Court places appreciations to Mr.Sathish Kumar, Legal Aid Counsel for the 2nd respondent for preparation and effective arguments made in this case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
F1, Chindadripet Police Station,
Chennai-District.
2. The Public Prosecutor,
High Court, Madras.
3. The Secretary,
Legal Service Authority,
High Court, Madras-104.

सत्यमेव जयते

Cr1.O.P.No.4525 of 2015

CP(CO)
RV(22/10/2020)

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