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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2021

PRONOUNCED ON : 16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.1147 OF 2015

Senthilkumar

... Petitioner/Accused

Vs.

The State represented by,
The Inspector of Police,
Town Police Station,
Chidambaram.

... Respondent/Prosecution

PRAYER:-

This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., to set aside the judgment dated 16.02.2015 in C.C.No.266 of 2013, on the file of the learned Judicial Magistrate Court No. II, Chidambaram and judgment dated 31.07.2015 in C.A.No.13 of 2015 on the file of the learned II Additional District Judge, Chidambaram and to acquit the petitioner.

For Petitioner : Mr.M.Selvam

For Respondent : Mr.R.Vinoth Raja
Government Advocate

JUDGMENT

(The case has been heard through Video Conference)

The convicted accused is the revision petitioner herein.

2. The revision petitioner/accused has filed this Criminal Revision Case against the order passed in C.A.No.13 of 2015, by the learned II Additional District Court, Chidambaram, dated 31.07.2015, wherein, the learned Judge had modified the sentence and confirmed the conviction passed in C.C.No.266 of 2013, by the learned Judicial Magistrate Court No.II, Chidambaram, dated 16.02.2015, wherein, the Trial Court had convicted the revision



petitioner/accused and sentenced him to undergo rigorous imprisonment for a period of six months and fine of Rs.10,000/-, in default to undergo one month simple imprisonment.

3. The revision petitioner/accused is the owner of Musicals and is involved in the business of sale of compact discs and DVDs of movie and music.

4. The case of the prosecution is that on 08.07.2013 at about 15 hours, the respondent police, Chidambaram Town Police Station, on discrete information given by the police helper, have raided the shop of the revision petitioner herein, who is running DVD shop and found that the revision petitioner herein/accused is selling new DVD cassettes, totally 49 and accordingly, the same was seized and FIR was registered for the offence under Section 68(A) of Copy Rights Act, 1957 and filed a charge sheet.

5. During the trial before the Trial Court, the attesters of the Seizure Mahazar were examined as PW1 and PW2 and the Investigation Officer was examined as PW3 and Exs.P1 to P4 were marked on the side of the prosecution; No witness has been examined and no document has been marked on the side of the defence; Compact Disc has been marked as MO1.

6. The Trial Court has held that the prosecution has proved the charge that they are making duplicate copies of CDs for unauthorised copies of 49 CDs as pirated CDs and making video piracy and accordingly, the convicted the accused and laid the sentence as stated supra. Aggrieved against the said conviction and sentence, the revision petitioner/accused had preferred an appeal in C.A.No.13 of 2015 before the learned II Additional District Court, Chidambaram and by a judgment dated 31.07.2015, the Lower Appellate Court has moved the substantial sentence to that of the period already undergone and awarded a fine of Rs.10,000/-. Hence, the Criminal Revision Case.

7. Heard both the learned counsels and perused the materials placed on record.

8. The learned counsel for the revision petitioner/accused would contend that what was produced before the Trial Court was only a blank CD and it does not contain anything and in the absence of running CD, to verify, whether there is film inside, the Trial Court had laid the conviction. The very same objection appeared to have been taken before the Courts below. It is accordingly found by the Courts below that on behalf of the accused no such plea was raised while marking documents. Had the revision petitioner/accused had filed any memo, CD could have been played in TV within the Court campus in the open Court



hall. Accordingly, the Courts below rejected the said plea by observing that it is only an after thought and accordingly negated the said contention.

9. The learned counsel for the petitioner would also relied upon the fact that PW3 is the informant, he cannot investigate the case.

10. On perusal of Ex.P4/FIR, it is seen that based upon discrete information only the respondent police went to the place and seized the material. In the decision reported in 1983 LW (Cr1) 196 - [Assistant Collector of Central Excise Preventive Vs. Krishnamoorthy], the Hon'ble Apex Court in has held that when PW3 is not the informant there is no impediment on him to investigate the case and laid the charge sheet. Hence, taking into consideration the fact that only based upon the discrete information received from police helper, the respondent police have raided the shop of the revision petitioner and found 49 piracy cassettes of new Tamil Movie as narrated above, the said contention of the revision petitioner stands negated.

11. It remains to be stated that under Section 157 of Cr.P.C., based upon the source information or discrete information, the Criminal Law may be set into motion, it is as settled in the decision reported in AIR 1964 SC 221 - [State of Uttar Pradesh Vs. Bhagwant Kishore Joshi] and merely because, there was no third party independent person was available at the time of the seizure, it was seized in the presence of PW1 and PW2, does not cause any doubt as to the alleged seizure from the custody of the revision petitioner/accused.

12. It is relevant to mention that under Section 134 of the Evidence Act, a specific evidence from particular nature of the witnesses is not required if the evidence let in inspires the confidence of the Court.

13. In the instant case, based upon the discrete information received from the police helper, the police went for a ride in the shop owned by the revision petitioner/accused and found 49 piracy video cassettes of newly released Tamil Movies and also seized a Kalaigarnar TV, a DVD player and one cassette, which are meant for making several number of copies along with duplicate CDs. A person, who has indulged in an activity in connection with making piracy copies of the cinema, has attracted to one under Section 5(9) of the Cinematograph Act and accordingly, whether the accused is the owner of the shop or not; he being indulged, on the part of the job of taking copies of pirated version, said to have committed offence liable to be convicted and hence, all the points raised by the learned counsel for the revision petitioner stands negated.



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14. Section 68(a) of the Copy Right Act Rules reads as under:

"Any person who publishes a (Sound recording) or a video film in contravention of the provisions of Section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine."

15. Hence, the conviction laid by the learned Judicial Magistrate No.II, Chidambaram, for the offence under Section 68 (a) of the Copy Right Act, 1957, as confirmed by the Lower Appellate Court viz., the learned II Additional District Judge, Chidambaram and imposition of the sentence of six months rigorous imprisonment awarded by the Trial Court modified by the lower Appellate Court to the period already undergone and imposition of fine amount is well founded and well merited and does not warrant any interference of this Court in the revisional jurisdiction.

16. After taking note of the recovery of the cassettes viz., 49 in number were seized from the revision petitioner/accused, it is held to be proved in the manner known to law, this Court feels that the conviction laid is just and proper, does not warrant any interference and further, fine awarded by the Trial Court cannot be terms as excessive, since the revision petitioner/accused had CD's of Movies pirated copy for sale, in contravention under Section 68(A) of the Copy Rights Act.

17. Though, the learned counsel for the revision petitioner/accused has relied upon the judgment reported in 2005-I LW (Criminal) 447 (Kalaiselvan Vs.State represented by the Inspector of Police, Erumaipatti, Police Station, Namakkal District), on facts and circumstances, the Courts below have clearly held that the ration laid down therein is not applicable to the facts and circumstances of the case. During the cross-examination of PW1, PW2 and PW3, there is no denial of contents in the said C.D. In the absence of any suggestion, the trial Court has rightly come to the conclusion that they are pirated C.Ds. When the contents of C.Ds. were not challenged before the trial Court with the respective witnesses, the trial Court, in the absence of any challenge as to the alleged offence in respect of contents it contained, has rightly come to the conclusion that the charges are proved and hence, I find that no plea has been raised nor put to the prosecution witnesses during the time of the trial and as observed earlier, had it been disputed the contents of the M.Os. (seized Pirated C.Ds.), the trial Court could have very well played the D.V.Ds. in the open Court to see the contents and hence, on the facts and circumstances of the case, the decision reported in



Kalaiselvan's case is not applicable to the facts and circumstances of the case.

18. In view of the fact that FIR clearly disclosed the source information and based upon the said source information FIR came into being and hence, said contention of the learned counsel for the revision petitioner/accused that suo-motu PW3 has registered FIR and also investigated the case as found to be factual error and in fact, it is only based upon the source information received from the police assistance and as per section 157 of Cr.P.C., based upon the source information or by the discrete information, the Criminal Law can be settled into motion by registering FIR as stated in Bhagwant Kishore Joshi case. Admittedly, PW3 had registered FIR only based upon the source information as contemplated under Section 157 of Cr.P.C. Besides, he is neither an aggrieved party nor the informant as argued by the learned counsel for the revision petitioner. Further, the nature of the offence and the act of the accused are offences against the society. The investigation carried on by P.W.3 cannot be found fault with. Accordingly, all the points raised by the learned counsel for the revision petitioner stands negatived. Hence, on the facts and circumstances of the case, the decision stated in Bhagwant Kishore Joshi case shall be applicable and not Kalaiselvam case as contended by the learned counsel for the revision petitioner.

19. With the above observation this Criminal Revision Case stands dismissed. The conviction and sentence passed in C.A.No.13 of 2015, by the learned II Additional District Judge, Chidambaram, dated 31.07.2015, is hereby confirmed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate Court No.II,
Chidambaram.
2. The II Additional District Judge,
Chidambaram.



3. The Inspector of Police,
Town Police Station,
Chidambaram.

4. The Public Prosecutor,
High Court, Madras.

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JP-II(CO)
PBS/09/09/2021