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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

CRL.O.P.NO.19673 OF 2019
AND
CRL.M.P.NO.10074 OF 2019

Madanlal

... Petitioner

Vs.

1. The State Rep. By
   Inspector of Police,
   Intellectual Property Right,
   Enforcement Unit-II, Crime,
   Chennai-23.

2. Sagayam

... Respondents

Prayer:

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for records in Crime No.141 of 2018 on the file of the Inspector of Police, Intellectual Property Right, Enforcement Unit-II, Crime, Chennai-23 and to quash the FIR.

For Petitioner : Mr.Ramesh Kumar Chopra

For Respondents: Mr.A.Gokulakrishnan
Government Advocate Crl.Side

O R D E R

The petitioner has filed this petition to quash the proceedings in Crime No.141 of 2018 pending on the file of the respondent police.

2. The learned counsel for the petitioner submitted that based upon the complaint given by the 2nd respondent / Sagayam of Griffin Intellectual Property Service Ltd., Mumbai on behalf of Apple INC., 1st respondent registered a case in Crime No.141 of 2018 for offence under Section 51(b)(ii) and 63(a) of Copy Rights Act, against the petitioner, alleging that the petitioner was indulged in selling duplicate items of Apple INC.

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He further submitted that on the basis of the case registered, shop of the petitioner was searched and some articles such as Display Batteries, Spare Parts, chargers, charging connectors and speakers were seized on 16.08.2018. The petitioner states that this Court, by its order dated 25.03.2019 in Crl.O.P.No.1379 of 2019 has held that the offence punishable under 63(a) of Copyright Act is Non-Cognizable offence by virtue of part (ii) of Schedule-I of Cr.P.C. since it carries punishment of imprisonment which can be extended up to 3 years.

3. Now, the petitioner approached the Court to praying to quash the proceedings on the ground that the offence under Section 63(a) of Copyrights Act, cannot be initiated as 1st respondent police not obtained order from the concerned Magistrate before lodging FIR. To establish his case, he relied on Section 155 of Cr.P.C., which is extracted as follows:

"155. Information as to Non-Cognizable cases and investigation of such cases

(i) when information is given to an officer in charge of a police station to the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(ii) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(iii) Any Police officer receiving such order may exercise the same powers (except yie power to arrest without warrant) as an officer in charge of a Police station may exercise in a Cognizable case.

(iv) where a case relates to two or more offeces of which atleast one is Cognizable, the case shall be deeded to be a Cognizable case, notwithstanding that the other offences are non-Cognizable".

4. Based upon the above proposition of law, the Police Officer has no right to register the case under Non-Cognizable offence without an order of Magistrate concerned. Further, the learned counsel for the petitioner submitted that the 1st respondent has registered the case under Section 63(a) of Copyrights Act, without an order of Jurisdictional Magistrate and seized the properties, which is an illegal. On that ground, he prays to quash the FIR. Furthermore, strengthening his case,

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he relied on the judgment passed in Crl.O.P.No.6100 of 2019 in the case of "Murugan Thangamai Vs. The State Rep. by the Inspector of Police, Intellectual Property Enforcement, (IPRE Cell), Unit-II, Ayanavaram, Chennai", wherein, it was observed as under:-

> "14.After Analyzing all the above judgments, this Court is of the view that the offence punishable under Section 63(a) 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. Hence as per the law laid down by the Hon'ble Supreme Court of India in Rajeev Chaudhar Vs.State (NCT) of Delhi reported in 2001 AIR SC 2369 and Andhra Pradesh Court reported in CDJ 2007 APHC 617 in the case of Amarnath Vyas @ Vijay Prakash Vyas Vs. The State of A.P.Rep., by its Public Prosecution, the expression imprisonment for terms which may extend upto three years would not come within expression of 'imprisonment of three years onwards". Therefore, the offence under Section 63(a) of Copy Right Act cannot be considered as Cognizable offence and the Police officer has no power to register a case."

5. As per the penal provision under Section 63(a) of Copy rights Act, imprisonment may extend to three years. Therefore, it may not be considered as a Cognizable offence and as such the Police officer has no power to register the case. The proposition relied on by the petitioner is squarely applicable to the case on hand. Admittedly the petitioner is prosecuted under Section 63(a) of Copyrights Act, and as discussed above, the Police have no right to register the case without an order from jurisdictional Magistrate concerned.

6. The prosecution also admits that before taking cognizable of the offence, they did not get any order from the Magistrate concerned, which is mandatory to invoke under Section 63(a) of Copyrights Act.

7. On a perusal of the records, it reveals that, no such order was obtained from the Jurisdictional Magistrate by the respondent police before lodging the FIR against the petitioner. Therefore the FIR proceedings initiated against the petitioner is illegal for the aforesaid reasons. Accordingly, the proceedings are quashed.

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8. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
   Intellectual Property Right,
   Enforcement Unit-II, Crime,
   Chennai-23.

2. The Public Prosecutor,
   High Court of Madras.

Crl.O.P.No.19673 of 2019
and
Crl.M.P.No.10074 of 2019

MT(CO)
PM/17/03/2022

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