



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.11.2021

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.12212 of 2017

Crl.M.P.No.7983 of 2017

1. Banumathi Arunachalam
2. Arulmozhi

...Petitioners

Vs

1. The State
rep. by its Station House Officer,
Vellore Police Station,
Video Piracy Cell - CID,
Vellore District.
(F.I.R. No.223 of 2017)

2. S.Siva Kumar

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the proceedings in F.I.R. No.223 of 2017 on the file of the Video Piracy Cell-CID, Vellore Police, Vellore District and to quash the same as illegal and without jurisdiction.

For Petitioners : Mr.V.Raghavachari

For Respondents : R1 - Mr.R.Kishore Kumar,
Government Advocate (Criminal Side)

Service awaited for R2

O R D E R

This petition has been filed to quash the First Information Report on the file of the Video Piracy Cell CID, Vellore Police, Vellore District for the offences under sections 51 and 63(a) of the Copy Rights Act, 1957 and Section 7 [1] [a] [i] of Cinematograph Act, 1952.



2. The crux of the First Information Report is as follows :

The accused, who is the owner of the theatre known as M/s.Chellam Paradise has released the movie 'Managaram' on 10.03.2017. The defacto complainant was working as an Assistant to the Secretary of the Tamilnadu Film Producers Council. He has received an information that the accused have stealthily copied the movie and thereafter took video of the same. In this regard, Wunderbar Films [P] Ltd. had given a complaint. Based on the above complaint, the prosecution has been launched for the above said offences.

3. The main contention of the learned counsel for the petitioner is that the First Information Report has been registered only on the basis of a hear say information and there is no material available on record to show that the defacto complainant is the copy right owner of the said film. Further, invoking provisions of Section 7[1] of the Cinematograph Act is totally misconceived. It is nobody's case that film released in the theatre has not been certified. Therefore, the question of committing an offence under section 7 [1] [i] of the Cinematograph Act does not arise at all. Similarly, absolutely there is no materials to show that the accused has copied the film in a video tape and the entire complaint is based on a hear say information. Therefore, the First Information Report is nothing but motivated and continuing the same is an abuse of process of law.

4. Whereas, the learned counsel for the respondent submitted that the First Information Report has been launched based on the information received from the defacto complainant about copying of the film in a video tape. Hence, the First Information Report disclose prima facie allegation to proceed against the accused and hence, the First Information Report cannot be quashed.

5. It is to be noted that the First Information Report has been filed under Sections 51 and 63(a) of the Copy Rights Act, 1957 and Section 7 [1] [a] [i] of Cinematograph Act, 1952. At the outset, on a perusal of the records, this Court is of the view that filing of the First Information Report under section 7 [1] [a] [i] of Cinematograph Act is nothing but futile exercise. It is no body's case that the so called film released in the theatre which is restricted for public exhibition or for public exhibition restricted to adults as contemplated under section 7 [1] [a] [i] of Cinematograph Act. Therefore, filing of a First Information Report under section 7 [1] [a] [i] of Cinematograph



Act is totally misconceived and cannot be continued and it is nothing but total waste of time.

6. As far as offences under sections 51 and 63(a) of the Copy Rights Act, 1957 are concerned, it is the contention of the prosecution that the accused has infringed the copy right of the film. It is to be noted that neither the defacto complainant nor the producer council is the owner of the film. When Section 63 of the Copy Right Act carefully seen, it is seen that any person who knowingly infringes or abets the infringement of the copyright in a work, or any other right conferred by this Act, except the right conferred by section 53A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. From the above section, it is clear that owner is the author of the work. In this regard, it is relevant to refer the judgment in Nagin Chand Jain Vs. State of U.P. reported in SCC OnLine All 653. The above judgment makes it clear that the author or assignee or licensee alone is entitled to maintain a criminal action under section of 63 of the Copy Right Act for protection of the copy right of the work.

7. Admittedly, in this case, the defacto complainant is not falling in any of the category either as an author, assignee or licensee. Therefore, lodging of a complaint itself is not correct by a third party who is no way connected with the film. Apart from that, it is seen from the entire allegations in the First Information Report that the defacto complainant has no direct knowledge about the allegations and the entire allegation is only a hear say information. The defacto complainant has no direct knowledge about the so called violation of the copy rights of the film. Therefore, when the allegations are based on a hear say information and he is no way connected with the film in any manner, prosecution under sections 51 and 63(a) of the Copy Rights Act, 1957 is nothing but a futile exercise.

8. Similarly, prosecution under section 7 [1] [a] [i] of Cinematograph Act is also not maintainable since it is not the case of the prosecution that the so called film has not been certified so as to attract the offence under section 7 [1] [a] [i] of Cinematograph Act. In the above circumstances, continuing the prosecution against the petitioner is sheer waste of time and in fact it will infringe the right of the petitioner.



9. Accordingly, this Criminal Original Petition is allowed and the First Information Report in Crime No.223 of 2017 on the file of Video Piracy Cell CID, Vellore Police, Vellore District is quashed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

vrc/kbs
To

1. The Video Piracy Cell-CID,
Vellore Police, Vellore District.
2. The Station House Officer,
Vellore Police Station,
Video Piracy Cell - CID,
Vellore District.
3. The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.V.Raghavachari, Advocate sr 58891.

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RGN(CO)
SP(02/12/2021)