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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 23.02.2022	Orders pronounced on 02.03.2022
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.22859 of 2015
and
M.P.Nos.1 and 2 of 2015

1. M/s.PEPPERS MEDIA P LTD.
REP. By its Managing Director
First Floor, No.5 First Street
Nandanam, Chennai - 600 035.
2. Mr.Nachiappan
Director M/s.PEPPERS MEDIA P LTD.
First Floor, No.5 First Street
Nandanam, Chennai - 600 035.
3. Mrs.Deepa Nachiappan
Director M/s.PEPPERS MEDIA P LTD.
First Floor, No.5 First Street
Nandanam, Chennai - 600 035.

...Petitioners

Vs.

1. M/s.RAJ TELEVISION NETWORK LTD
Rep. by its Admin Manager Mr.Suresh
No.32, Poes Road, 2nd Street
Teynampet, Chennai - 600 018.
2. M/s.VISHAL FILM FACTORY
Rep. by its Proprietor
Mr.Vishal Krishna
No.73, 1st Street, Kumaran Colony
Vadapalani, Chennai - 600 026.

...Respondents

(Second respondent is impleaded as per the order of this Court dated 13.04.2017 made in Crl.M.P.No.5259 of 2017 in Crl.O.P. 22860/2015)



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This Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records relating to C.C.No.3127 of 2015 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same by allowing this Criminal Original Petition.

For Petitioners	:	Mr.M.Arunachalam
For Respondent-1	:	Mr.P.K.Srinivasan
For Respondent-2	:	Mr.D.R.Arunkumar

ORDER

This petition is filed to call for the records in C.C.No.3127 of 2015 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. C.C.No.3127 of 2015 was filed, for the offences under Sections 51, 63, 66 and 69 of Copyright Act, 1957, by the first respondent against the petitioners.

3. The case of the first respondent, as seen from the complaint, in brief, is as follows:-

The first respondent is a leading TV network in Tamil Nadu. It had entered into an assignment agreement dated 15.11.2013 with second respondent M/s.Vishal Film Factory represented by its Proprietor Mr.Vishal Krishna, producer and exclusive copyright holder of tamil film 'Pandiya Nadu' for assignment of satellite TV broadcast rights, for valid consideration of Rs.9,00,00,000/- (Rupee nine crores only). It is for a perpetual period from the date of agreement. First petitioner M/s.Peppers Media P Ltd., in which petitioners 2 and 3 are Directors and in-charge of programming and business related works, without any right with respect to song 'Fy Fy Fy Kalachi Fy' from the movie 'Pandiya Nadu' telecasted in the channel 'Peppers TV' from 06.05.2015 to 11.05.2015 on many occasions. It was recorded and the CD is produced as a proof. Petitioners had telecasted the clippings and songs of the movie, of which first respondent has assignment right. Due to the telecast by the petitioners, first respondent suffered huge financial loss and damage. Therefore, the complaint was filed. Challenging the said complaint, petitioners filed this quash petition.

4. Learned counsel for the petitioners submitted that by a letter dated 25.10.2013 M/s.Vishal Film Factory, represented by its proprietor Mr.Vishal Krishna, authorised the



petitioners to telecast the trailer and clippings including songs of the film titled 'Pandiya Nadu' in petitioners' channel as many times as possible. They had also handed over the tapes of the same. Petitioners are permitted to telecast for perpetual period at no cost. Petitioners are not aware of the fact that the first respondent got copyright for the film 'Pandiya Nadu'. There is no allegations in the complaint that the petitioners knowingly violated the copyright of the first respondent. Petitioners are not the parties to the agreement between the first respondent and second respondent, namely, M/s.Vishal Film Factory. No notice was given to the petitioners. Therefore, there is no merit in this case on facts and law and thus, liable to be quashed.

5. Per contra, learned counsel for the first respondent submitted that permission to telecast trailer and clippings was granted only for the purpose of promoting the film, before the film is released or sometimes after the release of the film. Thereafter, nobody can telecast trailer and clippings. In the case before hand, petitioners had been telecasting the song 'Fy Fy Fy Kalachi Fy' from the movie 'Pandiya Nadu' from 06.05.2015 to 11.05.2015 knowing well that they have no copyright for the movie. There is a prima facie case made out against the petitioners and therefore, learned counsel for the first respondent prayed for dismissal of this petition.

6. Learned counsel for the second respondent submitted a letter dated 14.02.2022 stating that the second respondent M/s.Vishal Film Factory granted the satellite and digital rights of the film 'Pandiya Nadu' to first respondent vide agreement dated 15.11.2013 and they have not granted the satellite and digital rights to any other party till date. It is further stated that the letter issued to M/s.Peppers Media P Ltd., on 25.10.2013 was given to promote the film 'Pandiya Nadu' to telecast the trailer and clippings in their channel. This letter was given as it is the trade practice followed by all the producers for all the films, before the release of the film. Permission was given for promotion purpose only.

7. Considered the rival submissions and perused the records.

8. First contention of the learned counsel for the petitioners is that the petitioners were granted permission by M/s.Vishal Film Factory to telecast the trailer and clippings of the film 'Pandiya Nadu' for perpetual period on any number of



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times without any restrictions, on payment of no cost. Therefore, the telecast of trailer and clippings in their channel cannot be considered as an offence, especially when the petitioners are not aware of the copyright given in favour of the first respondent by M/s.Vishal Film Factory.

9. Copy of the letter dated 25.10.2013 by M/s.Vishal Film Factory addressed to PEPPERS TV is produced for the perusal of this Court. It reads as follows:-

"SUB : Telecasting trailer and clippings of the film 'Pandiya Naadu'.

We hereby authorize/request you to telecast the trailer and clippings of our film titled 'Pandiya Naadu' in your channel as may times as possible. In consideration of the above, we assure you to give the trailer and clippings of the above said film, certified by CBFC, unrestricted public exhibition. The said trailer and clippings can be telecasted in your channels and your associate channels by any means and number of times without any restriction for a period perpetual on non-exclusive basis for the entire world at no cost/payment whatsoever.

We need your support and publicity to reach the audience in a grand way and request you to start telecasting the trailer and clippings immediately. The said telecast is for the promotion of the movie and we agree to indemnify and keep you indemnified against any losses, claims or damages that may arise in this regard.

This letter is irrevocable. "

10. Reading of this letter shows that Peppers TV was granted permission to telecast the trailer and clippings of the film titled 'Pandiya Nadu'. What is underscored here is right to telecast trailer and clippings. However, the allegations made against the petitioners in the complaint is that the petitioners were telecasting the song 'Fy Fy Fy Kalachi Fy' from the movie 'Pandiya Nadu' from 06.05.2015 to 11.05.2015 on many occasions. Petitioners are not in a position to show that they were also permitted to telecast the song 'Fy Fy Fy Kalachi Fy' by M/s.Vishal Film Factory. Therefore, there is apparent violation of copyright given in favour of the first respondent.



11. The next contention of the learned counsel for the petitioners is that the petitioners are not aware of the agreement between the respondents 1 and 2 with regard to the copyright of the film 'Pandiya Nadu' and offence is attracted only if there is a copyright violation after knowing that copyright is conferred on a third party. Learned counsel for the petitioners brought to the notice of this Court Section 63 of The Copyrights Act, 1957. It reads as follows:-

63. Offence of infringement of copyright or other rights conferred by this Act.—Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) 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: Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees."

12. Learned counsel for the petitioners submitted that as per Section 63 of The Copyright Act, 1957 only if a person knowingly infringes or abets infringement of copyright of the work or any other right conferred by this Act, he shall be punishable with imprisonment and fine. There is no specific allegations in the complaint that the petitioners knew that copyright was granted by the second respondent in favour of first respondent and petitioners had knowingly infringed the copyright.

13. This particular contention of the petitioners is contrary to the averments made in the complaint. It is specifically alleged in the complaint that knowing fully well that petitioners do not have any right over the movie 'Pandiya Nadu' and aware of the fact that the first respondent is the exclusive and only copyright holder of the movie, petitioners had intentionally telecasted the movie in their channel. Thus,



there is clear allegation made in the complaint that the petitioners knowing fully well that they had no copyright for the movie 'Pandiya Nadu' and first respondent had exclusive copyright for the movie, telecasted the song in their channel. Thus, this court finds that prima facie case is made out for taking cognizance of the case against the petitioners under Sections 51, 63, 66 and 69 of the Copyright Act, 1957 and to proceed further with the trial of the case. In this view of the matter, this petition for quashing the case in C.C.No.3127 of 2015 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai, cannot be entertained.

14. In fine, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The XVIII Metropolitan Magistrate,
Saidapet
Chennai
2. Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai

+1 CC to Mr.P.K.Srinivasan, Advocate sr 13888
+1 CC to Mr.M.Arunachalam, Advocate sr 13970.

Cr1.O.P.No.22859 of 2015
and
M.P.Nos.1 and 2 of 2015

JPL (CO)
SP (24/03/2022)