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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.30092 OF 2015

AND

CRL.M.P.NO.750 OF 2020

1. Jayanthi

2. K.V.Thangabalu

... Petitioners/Accused
1 & 2

.Vs.

1. The State Rep., by
The Inspector of Police,
Central Crime Branch,
Egmore, Chennai.
(Crime No.42 of 2010)

... 1st Respondent/Respondent

2. M/S.Raj Television Network,
32, Poes Road, 2nd Street,
Teynampet, Chennai.
(2nd Respondent impleaded as per order
in M.P.No.3 of 2015 dated 19.01.2016)

... 2nd Respondent

PRAYER:-

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings in C.C.No.2169 of 2015 on the file of XI Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.B.Kumar
For Mr.A.Kalaivanan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
For R1

No Appearance
For R2



O R D E R

This petition is filed to call for the records and quash the proceedings in C.C.No.2169/2015 on the file of XI Metropolitan Magistrate, Saidapet, Chennai.

2. FIR in this case was registered on the basis of complaint given by authorised signatory of Raj Television Network Limited against Managing Director and Director of Mega TV. In pursuance of the complaint, the FIR was registered under Section 63 of Copy Right Act 1957, in crime No.42/2010, Central Crime Branch, Chennai.

3. The complaint allegations in brief, are that

3(i). the defacto complainant acquired copyrights of the films from the producer/copy right holder for valuable consideration. It came to the notice that some of the registered copyright movies, songs and clippings were telecasted illegally by Mega TV. The copy right songs from the films were telecasted by M/s.Imayam TV on 30.08.2008-Nadodimannan, on 02.09.2018-Nadodimannan, on 11.09.2008-Nadodimannan, on 01.11.2008-Nadodimannan, on 04.09.2008-Adimaipen, on 05.09.2008-Adimaipen, on 25.09.2008-Adimaipen. Thus, the said M/s.Mega TV, infringed the defacto complainant's copy right and therefore, the complaint was given.

3(ii). On the basis of the complaint, investigation was conducted and final report was filed against the petitioners claiming themselves as Managing Directors and Executive Directors especially of Mega TV for the offence under Section 63 of Indian Copyrights Act, 1957.

4. Challenging the said final report, the petitioners have filed this petition for quashing.

5. Learned counsel for the petitioners mainly contended that Mega TV is not a registered Company. However, claiming petitioners as Managing Director and Executive Director respectively, complaint was given and final report was filed. Mega TV comes under M/s.Silver Star Communications Limited. However, M/s.Silver Star Communications Limited is not impleaded as accused in this case. Without impleading the company, individual Directors/officials of the company cannot be fastened with the liability. Therefore, this case instituted without impleading M/s.Silver Star Communications Limited is illegal. That apart, the second petitioner is not holding any position, much less position of Executive Director in M/s.Silver Star Communication Limited, Chennai. Thus, the impleadment as an



accused in this case is illegal. Thus, on these grounds, the learned counsel for the petitioners submitted that complaint that has been filed is not legally maintainable and therefore, prays for quashing of the case.

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6. Learned Additional Public Prosecutor submitted that non impleading the company is a curable defect and in this regard, he referred to the order of this Court in CrI.O.P.Nos.33016 to 33019 of 2014, the relevant portion reads as follows:

"13. It may be true that the company was not arrayed as an accused in these cases by the complainant. But it is immaterial, because, every offence is treated to have been committed against the State and therefore, it is the duty cast upon the Court to ascertain the persons against whom the allegations are there, making out offence.

14. In such view of the matter, I am inclined to issue direction to the learned Magistrate to issue summons under Section 204 of the Criminal Procedure Code to the company, namely, M/s.Shapoorji Pallanji and Company Private Limited, arraying it as the second accused and then proceed with the cases. Thus, for the reasons petitioner also, the entire case cannot be quashed."

7. In reply, the learned counsel for the petitioners submitted that the judgment reported in (2013) 3 MLJ (CrI) 542 (S.Balasubramanian, Director, Addison Paints & Chemicals Limited, Chennai and Others Vs. State of Tamil Nadu, rep. by the Labour Welfare Officer, III Circle, Chennai and Others), for the proposition that it is absolutely necessary that company should be arrayed as an accused. In the absence of impleading the company, the individual members cannot be prosecuted. Thus, he prayed for quashing of the case.

Paragraph 28 is extracted hereunder:

28. In view of the above position, there can be no doubt that for punishing an accused under the Industrial Disputes Act by invoking Section 32 of the said Act, it is absolutely necessary that the Company should be arrayed as an accused and only when the Court records a finding that the Company is guilty of the offence, then only the other persons enumerated in Section 32 of the Industrial Disputes Act, such as, Director, Manager, Secretary, Agent etc., can also be punished."



The judgements reported in 2012 (5) SCC 661 and (2009) 1 SCC 516, are relied for the same proposition.

8. Second respondent was earlier represented by Advocate Mr.P.K.Shrinivasan. Since there was no representation for the second respondent when the matter was taken up for final hearing on multiple occasions, this Court directed the name of the second respondent to be printed in the cause list. As directed, the second respondent name is printed in the cause list. Today also, there is no representation for the second respondent. In the said circumstances, the learned counsel appearing for the petitioners and the first respondent were heard in full and the matter is proceeded with.

9. Considered the rival submission and perused the records.

10. Considering the limited scope of enquiry that prosecution of individual Directors of the Company without impleading the company is illegal, this Court finds that Section 69 of Copy Right Act, 1957 requires that if any offence under this Act has been committed by a company, every person who at the time of the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence. Thus, under Section 69(i) of Copy Right Act, the persons responsible as well as the company are liable to be prosecuted, if any offence is committed under this Act.

11. In the case before hand, it is the submission of the learned counsel for the petitioners that Mega TV is only a brand name and the Mega TV is not a registered Company. Mega TV brand comes under M/s.Silver Star Communications Limited, Chennai. Admittedly, M/s.Silver Star Communications Limited is not impleaded as an accused in this case. Therefore, as per Section 69(i), the prosecution against individual directors of the company without impleading M/s.Silver Stars Communications Limited is not in accordance with law.

12. It is also seen from the communication dated 06.05.2019 issued by Ministry of Information and Broadcasting to the Managing Director of M/s.Silver Star Communications Limited, second respondent is not a member of Board of Directors. Learned counsel for the petitioners submitted that second petitioner is not in the board of directors from the inception of M/s.Silver Star Communications Limited. Thus, it is obvious that showing the second petitioner as Executive Director and instituting the case, is absolutely not correct.

13. Thus, this Court is of the considered view that without impleading the Silver Star Communications Limited, individual



Directors cannot be prosecuted and in this view of the matter, this petition is allowed quashing the proceedings in C.C.No.2169 of 2015 pending on the file of XI Metropolitan Magistrate, Saidapet, Chennai. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

1. The XI Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
Central Crime Branch,
Egmore, Chennai.

+1cc to Mr.A.Kalaivanan, Advocate, S.R.No.27832
+1cc to the Public Prosecutor, High Court, Madras,
S.R.No.28430

CRL.O.P.NO.30092 OF 2015 AND
CRL.M.P.NO.750 OF 2020

AK-II(CO)
PBS/13/06/2022