

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
(APPELLATE SIDE)**

**Present:**  
**The Hon'ble Justice Rai Chattopadhyay**

**CRR 718 of 2015**

**Bablu Das  
Vs.  
State of West Bengal & Anr.**

For the Petitioner : Mr. Sourav Chatterjee,  
: Ms. Subhasree Patel.

For the State : Mr. Pravas Bhattacharya,  
: Ms. Debjani Sahu,

**Hearing concluded on: 23/12/2022**

**Judgment on: 01/03/2023**

**Rai Chattopadhyay, J.**

1) This case has been preferred by the petitioner to challenge the entire proceeding being case ACB GR No. 10/13 under section 63 of the Copy Rights Act, 1957, all orders passed therein including the order dated May 14, 2013, taking cognizance of offence by the trial Court that is Additional Chief Judicial Magistrate, Alipore. This case arose in connection with Kasba (E. B) Police Station Case No. 123 dated 13. 02. 2013, under the said provision of law as afore stated.

**2)** The case was started pursuant to a FIR lodged on February 11, 2013, by one Ranjan Prasad Sinha, manager of Brand Protection and Anti-Piracy Solutions. The defacto complainant has stated himself to be the authorised representative of Media Pro Enterprise Private Limited, a company having its office at Mumbai. The defacto complainant has alleged against the business establishment namely “Choudhury Estate Guest House”, of infringement of rights and authorities to transmit cable TV channels, distributed by the said Media Pro Enterprise Private Limited. Allegedly the said business house has unauthorizedly obtained signals of the satellite channels from any unknown source and transmitted that to the respective commercial properties, thereby causing unlawful loss of huge revenue to the original distribution company, that is, Media Pro. According to the defacto complainant such illegal access of the signals of media Pro channels from unknown source by the accused business houses/persons amount to offence under the Indian Copyright Act, 1957, the Indian Penal Code, violation of the Cable Television Networks (Regulation) Act, 1995 and also the TRAI Regulations dated April 30, 2012. Present petitioner is the employee of the said business house namely “Choudhury Estate Guest House”, which is alleged of infringing copyright of the distribution company, that is, Media Pro.

**3)** Mr Chatterjee, appearing for the petitioner has attacked the order of the trial Court taking cognizance of the offence against the present petitioner in this case on many fold grounds. He would first submit that the first information report is a nonspeaking one so far as any allegation or implication of the present petitioner in the instant case is concerned. He

says that to proceed in the criminal case against his client, the prosecutors should have been equipped with the prima facie immaterial of offence against his client, which, according to him are not available in this case in the first information report. Hence according to him any proceeding pursuant to such a FIR against his client is only an abuse of the process of Court and not sustainable in the eye of law.

**4)** Mr Chatterjee further submits that in view of the agreement entered into between the MSO/cable operator and the guesthouse in the years 2012 – 2013 and 2013 – 2014, pursuant to which stipulated sum of money has already been remitted by the guesthouse for obtaining authorisation for transmission of the cable TV channels in the guesthouse, it can never be alleged that any infringement has been made by the said guesthouse as alleged, of the rights of transmission of the broadcaster nor it can be said that the guesthouse has been unauthorizedly obtaining signal and transmitting the same for viewing purpose and has been indulging into piracy as alleged. It is submitted that during existence of the agreement entered into between the parties in the year 2013-2014, lodging of any first information report with the police alleging illegality in acquiring signals for broadcasting purpose by the said guesthouse is only malicious and a police case initiated with the taint of malice is not maintainable in the eyes of law. According to Mr Chatterjee, the guesthouse if at all using the signals of the broadcaster for transmission of the TV channels, is only under proper and valid authorisation as per a duly executed agreement entered into between the parties and not otherwise.

**5)** Mr Chatterjee would further submit that the defecto complainant has arrayed the guesthouse as contemplated accused. Nowhere in the first information report, any role of his client, that is, the present petitioner has ever been described, to be involved in the offensive activities as alleged. Mr Chatterjee emphasises that the petitioner is only an employee of the guesthouse and no way connected with the managerial affairs of the same. He further points it out that in order to hold the petitioner responsible for any action of the guesthouse as such, the defecto complainant would be required under law to specifically narrate in the FIR the specific roll and part playing of the petitioner on the basis of which any ingredient of offence as alleged against him could be found, at least prima facie. It is submitted that in this case there is no such ingredient of offence available against the present petitioner in the FIR. Hence on behalf of the petitioner it has been submitted that the criminal proceeding against the present petitioner should not continue and the case in the trial Court as mentioned above should be quashed, so far as the present petitioner is concerned.

**6)** State is represented in this case and the contention and prayer of the petitioner has been severely objected to. Photocopy of the case diary has been produced in Court and on the basis of the materials in the same it has been submitted that those are sufficiently indicating about petitioner's involvement in commission of the acts of infringement of copyright of the broadcaster thereby causing injury to its lawful business rights and properties, resulting to its unlawful loss. Special emphasis has been made to the seizure list as contained in the case diary to show that seizure of the set-top box et cetera in connection with the present case was made from the

custody of the present petitioner. It has also been pointed out that witnesses have stated about his involvement. Thus according to the State, there has been sufficient material available against the petitioner to go into trial with respect to him. According to the State petitioner's prayer is only unfounded and the present revision case is devoid of any merit and may be dismissed.

**7)** No one has appeared in this case on behalf of the opposite party/complainant, in spite of due and completed service of notice. Under such circumstances the case is taken up for hearing and disposal, in absence of the opposite party/complainant.

**8)** Usage by the accused business house, of the transmission signals from the broadcaster company are authorised or not, are dependent on the fact whether the recipient of the signals have opted the same pursuant to due remittance of fees/duties for the same or not. Primarily in this case it has been shown on behalf of the petitioner that the business house has entered into a contract with the broadcaster and the cable operator, which is in operation at the relevant point of time and pursuant to which the business house has remitted stipulated amount of money in lieu of the authorisation of broadcasting given to it by the broadcaster. Such an agreement, even being in operation between the parties, has not been part of the investigation, as it can be seen from the case diary itself. Naturally on this point there has been no counter argument by the State. The complainant is not present to defy such fact. This fact therefore, being uncontroverted, that, at the relevant point of time the business house

namely “Choudhury Estate Guest House”, was covered under the valid agreement, duly entered into between the parties, granting broadcasting rights to the said business house, leaves no scope of doubt that the allegation of want of broadcasting rights, has not been founded on very credible or cogent grounds.

9) Furthermore it has been rightly pointed out on behalf of the petitioner that in the FIR, allegations have only been made against the business house and no specific roll of the petitioner has at all been attributed and mentioned therein. Later on during investigation, seizure of set-top box et cetera has been made, allegedly from the custody of the present petitioner. However as discussed earlier, during the subsistence of an agreement, this ipso facto cannot prima facie constitute any element of offence or culpability as regards the present petitioner. It is the trait law that as soon as the petitioner is being vicariously made liable for an offence committed by the concern in which he is employed, his extent of involvement and specific roll has to be categorically pleaded in the FIR in order to make him liable vicariously for the juridical person, in this case the concerned business house. The first information report in this case is indeed a nonspeaking and silent one, so far as this aspect of the matter is concerned. In such view of the fact, the ratio of the judicial pronouncements as relied on by the petitioner appeared to be squarely applicable in this case. Those are as follows:

**(i) *Sushil Sethi and Another vs State of Arunachal Pradesh and Others reported in (2020) 3 Supreme Court Cases 240;*** the Hon'ble Court held that it is obligatory on part of the complainant to make requisite

allegations which would attract the provisions constituting vicarious liability;

**(ii) *Aneeta Hada vs Godfather travels and Tours Private Limited reported in (2012) 5 Supreme Court Cases 661***; the Hon'ble Court has held that applying the doctrine of strict construction, commission of offence by the company is an express condition precedent to attract the vicarious liability of others.

**10)** It is also settled that in exercise of power under section 482 CRPC, the Court shall interfere into a proceeding, to secure the ends of justice, if the same is found to be based on a first information report not disclosing any prima facie material for a cognizable offence and prosecutable case against the petitioner. As discussed earlier, during existence of any valid agreement for broadcasting between the parties, an allegation for unauthorizedly obtaining signal is only baseless, illusory and unfounded. So is the implication of the petitioner in the present case, particularly in absence of any specific role of the petitioner having been alleged by the defecto complainant. The extent of criminal liability to the alleged offence as attributed to the petitioner, is also found to be wrongly placed on him, keeping in mind the duly obtained authority of his employer to broadcast the satellite television channels in lieu of applicable charges.

**11)** By referring in the ratio of the decisions of the Hon'ble Supreme Court in the cases of ***Sushil Sethi (Supra)*** and ***Aneeta Hada (Supra)***, it is found that under the law, the prosecution has to bring on record in specific terms, the specific allegations against the person, who is being vicariously

made liable for the offence of a juridical person, which in this case the prosecution has tried to make out against the present petitioner, being an employee of the guest house. However as discussed earlier, in the FIR there is no mention of the petitioner's name or his alleged involvement in the offence, much less of his specific part play therein. Therefore, the ratio of the two decisions as referred to in this case on behalf of the petitioner squarely applies in this case and accordingly it can be found that the FIR is devoid of any clenching material against the petitioner to proceed against him in trial.

**12)** Therefore after considering elaborately the materials in this case against the petitioner it can well be formulated that no ingredient of offence as alleged against the petitioner has been made available at least prima facie, either in the first information report or during investigation so as to justify any further proceedings in this case against him. Otherwise it would only be a gross misuse of the process of the Court if the prosecution is allowed to be proceeded with any further against the petitioner. Hence accordingly, in exercise of the extra ordinary inherent power of this Court under section 482 CrPC, the entire proceedings in the trial Court, in connection with case ACB GR No. 10/13 under section 63 of the Copy Rights Act, 1957, is quashed and set aside, as against this petitioner. Hence the revision succeeds.

**13)** CRR 718 of 2015 is allowed, with the directions as made above. Case is disposed of along with connected application if any. Case diary be returned.

**14)** Certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

**(Rai Chattopadhyay,J.)**