



CrI.O.P.No.9227 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.9227 of 2023

and

CrI.M.P.Nos.5961 & 5962 of 2023

S.Shankar

.. Petitioner

/versus/

M/s.Sun TV Network Ltd.,
Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC Nagar, Chennai-600 028.

.. Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the proceedings in C.C.No.7241 of 2014 on the file of the Court of the XXIII Metropolitan Magistrate at Saidapet, and quash the same.

For Petitioner : M/s.R.Prem Rajakumari

For Respondent : Mr.V.Ragavachari, Senior Counsel,
for Mr.C.Arunkumar



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ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This Criminal Original Petition is filed to quash the complaint initiated against this petitioner for offence under Sections 406 & 420 IPC.

3. According to the respondent, private complaint is not maintainable for the alleged offences, since the transaction between the complainant and himself arose on an agreement to sell the satellite right of a movie for which the petitioner has assignment to his producer. Since the movie could not release in spite of getting clearance from the censor board there was breach in the terms of agreement which is purely a civil dispute and there cannot be a criminal complaint for offence under Sections 406 and 420 IPC which per se will not go together.

4. The learned Senior Counsel appearing for the respondent would submit that the petitioner herein posing himself as a assignee of the movie under production by name “Bheemu's Bang Bang Kids” agree to sell the satellite right to the complainant for a sum of Rs.98 lakhs and received Rs.88 lakhs, but failed to



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honour the terms of the contract, but gave false promise that soon the movie will be released and the complainant can enjoy the satellite right. However, it came to the knowledge of the complainant that the petitioner has no right of assignment of the said movie and the movie had never cleared the censor board. For this purpose to find whether there was any deceptive intention on the part of the petitioner at the time of entering the contract and whether the petitioner has dishonestly cheated the complainant, so as to sustain the complaint. This Court directed the learned counsel for the petitioner to furnish the censor board clearance if any for the said movie.

5. Accordingly, a photocopy of the certificate issued by the Regional Office of Censor Board at Cuttack dated 06.03.2010 was furnished before to this Court for perusal.

6. On perusing the board certificate, this Court finds that censor board has cleared movie by name “BHIMODS BANG BANG KIDS” which is in Kannada language produced by M/s.S.V.R .Movies, Bangalore.

7. The learned Senior Counsel appearing for the respondent/complainant



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would submit that the petitioner had entered into the agreement in respect of movie by name “Bheemu's Bang Bang Kids” (Kannada Colour) starring Upendraa, Ramya, Parvathi Melton, Rishi Mukesh, Riyaz, Doddanna, Rajesh & others, by an agreement dated 10.09.2008 promising to assign the exclusive copy right of broadcasting the movie to any satellite system and received Rs.88 lakhs in parts. Whereas when notice was issued calling upon him to honour the terms of contract he sent a reply through e-mail on 08.09.2022 stating that he played only the role of mediator for the margin of Rs.1 lakh and the movie is ready for release. Inspite of this letter dated 08.09.2022, there was no progress and therefore, the complaint under Section 406 IPC for breach of trust and Section 420 IPC cheating is maintainable.

8. Though Courts are not supposed to conduct mini trial under Section 482 Cr.P.C., in a quash petition, the parameters laid down by the Hon'ble Supreme Court also states that only if dispute is purely civil in nature, the provision of penal Code or any other Act having penal consequence been abused, quash petition should not be entertained.

9. In this case the complaint indicates that there was an agreement



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between the parties in respect of satellite right of the movie under production.

Though phonetically the name of the movie same, it is spelt differently in the agreement and the censor certificate. Nonetheless, the identity of the movie which both the parties have agreed is one and the same and there is no ambiguity. The complainant was aware of the fact the petitioner is not the producer of the movie but only the copy right holder of the cinematography and this could be seen from the complaint averment. The communication by way of e-mail between the parties clearly indicates that the performance of the contract on the part of the petitioner depends on the conduct of the producer S.V.Rajendra Singh Babu, Proprietor of M/s.S.V.R.Movies.

10. Though the movie had got the censor clearance on 06.03.2010, the release of the movie has not taken place. Precisely that is the reason why the parties after exchange of notices had now locked in a criminal prosecution. At no point of time in the transaction, this Court finds that the petitioner herein had any *mens rea* to cheat the complainant herein to attract either Section 406 or 420 IPC which is mutually exclusive. A civil transaction got frustrated by the subsequent event after the contract and receipt of money. Therefore, the



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respondent/complainant has to resort civil Court. They ought not to have invoked the criminal jurisdiction. Hence this Criminal Original Petition to quash the complaint is allowed.

13.12.2023

Netural Citation:yes/no
rpl

To:

The XXIII Metropolitan Magistrate, Saidapet, Chennai.



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Dr.G.JAYACHANDRAN,J.

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