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Crl.O.P.No.32348 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.32348 of 2022
and Crl MP Nos.19954 and 19956 of 2022

Premnath Kumar

... Petitioner

Vs.

1. The State Rep. By the Inspector of Police,
Intellectual Property Right Enforcement Cell -II
Ayanavaram, Chennai 600 023

...Respondent /Complainant

2. Mr.Swaminathan

... Respondent/Informant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the Final report in C.C.No.1665 of 2022 on the file of XI Metropolitan Magistrate, Saidapet for offence under Sections 51 r/w 63 of the Copy rights Act, 1957 and Section 51(a) (i) r/w.63.

For Petitioners

: Mr.A.Ramesh
Senior Advocate for
Mr.G.R.Hari

For Respondents

: Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This petition has been filed to quash the proceedings pending in CC No.1665 of 2022, on the file of the XI Metropolitan Magistrate, Saidapet.

2. The case of the prosecution is that on 22.06.2019, two songs were played at Decathlon Sports India Private Limited, Perungudi, and that the 2nd respondent had the public performance rights with respect to both the songs and that the accused person had played the songs without getting any license and without getting any prior permission of the 2nd respondent. Accordingly, the 2nd respondent gave a complaint before the 1st respondent. An FIR came to be registered in Crime No.24 of 2021, for offence under Section 51 and 63 of the Copy Rights Act, on 20.02.2021. On completion of the investigation, a final report has been filed before the Court below and the Court below has taken the final report on file in CC No.1665 of 2022 and has taken cognizance against the petitioner for offence under Section 51(a) (i) r/w. Section 63 of the Copy Rights Act, 1957. Aggrieved by the same, this quash petition has been filed before this Court.

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



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for the 1st respondent and the 2nd respondent has been served with notice and the name of the 2nd respondent has also been printed in the cause list and there is no appearance either in person or through counsel.

4. The issues that are involved in the present quash petition has been captured in the order passed by this Court on 03.01.2023 and for proper appreciation, the same is extracted hereunder :-

This Criminal Original Petition has been filed to call for the records and quash the final report in C.C.No.1665 of 2022 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai for the offence under Section 51 read with 63 and Section 51(a)(i) read with 63 of the Copyrights Act, 1957.

2. Heard the learned counsel for the petitioner.

3. In this case, the learned counsel for the petitioner assailed the cognizance taken in C.C.No.1665 of 2022 by the learned XI Metropolitan Magistrate, Saidapet, Chennai on the following grounds: (i) Without passing a speaking order, the case was taken on file with a seal affixed on the file of the Court. It shows the nonapplication of mind of the learned XI Metropolitan Magistrate, Saidapet, Chennai before taking cognizance of the case. (ii) Other ground taken by the learned counsel for the petitioner is that only Store Manager of Decathlon Sports India Private Limited has been prosecuted. As per Section 69 of the Copyrights Act, a Company and also the person responsible are to be added as accused. In the case, the Company, Decathlon Sports India Private Limited is not shown as accused. (iii) He further submitted that the suits were filed by Novex Communication Limited against DXC Technology Private Limited and



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Cognizant Technologies Solutions India Private Limited for relief of mandatory injunction and other reliefs for restraining from publicity performing or in any manner communicating the songs authorised by Novex Communication Limited. The suit came to be dismissed for the reason that there is Statutory embargo for issuing license in view of Section 33 of the Copyrights Act. If that being case, there can be no question of defendants mulcted with liability failing to obtain the license, which the plaintiff cannot grant. (iv) Therefore, assuming that accused used songs for which the de facto complainant claim to have obtained copyright that will make out an offence.

4. Considering the reasons stated by the learned counsel for the petitioner and finding merits in his submission, this Court orders notice to the second respondent, returnable by three weeks.

5. Mr.S.Santhosh, learned Government Advocate (Criminal side) takes notice for the first respondent. 6. Post on 24.01.2023. 7. There shall be an order of interim stay till then. 8. The appearance of the petitioner is dispensed with, till then.

5. The 1st respondent has filed a counter affidavit and has met the grounds taken by the petitioner in the counter affidavit.

6. On carefully going through the complaint given by the 2nd respondent, it is seen that the complaint has been given against the Management of Decathlon Sports India Private Limited. In view of the same, Section 69 of the Copy rights Act becomes relevant. This provision makes it abundantly clear that



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where the offense is committed by a company, every person who at the time of committing the offence was incharge of, and was responsible for the conduct of the business shall be deemed to be guilty of such offence and shall be liable to be proceeded against him. In the instant case, the petitioner, who was working as a Stores Manager has been made as an accused. The company has not been made as an accused in this case. The very scheme of the copy rights Act bring within it the concept of vicarious liability. Therefore, if any person who belongs to the company, by virtue of the position he holds, is sought to be made as an accused, then it is mandatory that the company is first made as an accused in that case. This issue was discussed by the Apex Court in detail in ***[Aneetha Hada Vs. Godfather Travela and Tours]*** in **2012 5 SCC page 661**. Even though this judgement pertains to Section 141 of the Negotiable Instruments Act, it can be applied to the facts of the present since Section 69 of the Copy Right Act, is *in pari materia* to Section 141 of the Negotiable Instruments Act. The Apex Court has categorically held that where the commission of an offence is by a company, it is imperative that the company is made as an accused failing which the entire prosecution becomes unsustainable.

7. In the case on hand, the complaint was specifically against M/s.Decathlon Sports India Private Limited and the company has not been made



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as an accused. In view of the same, the prosecution against the petitioner who is only a stores manager is bound to fail.

8. In the light of the above finding, it is not necessary for this Court to go into the other grounds that has been raised by the learned Senior counsel. The continuation of the proceedings against the petitioner will result in abuse of process of Court, which requires the interference of this Court under Section 482 of Cr.PC.

9. In the result, the proceedings pending in CC No.1665 of 2022 on the file of the XI Metropolitan Magistrate, Saidapet is hereby quashed. This Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

11.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

1.The XI Metropolitan Magistrate, Saidapet



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2. The Public Prosecutor, High Court, Madras

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N.ANAND VENKATESH, J.

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