



WEB COPY

*CrI.O.P.(MD)No.17607 of 2022*



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.07.2023**

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

**CrI.O.P.(MD) No.17607 of 2022**

**and**

**CrI.M.P.(MD).Nos.11947 and 11948 of 2022**

Vinoth

... Petitioner

Vs.

1.The State represented by  
the Inspector of Police,  
Ethamozhi Police Station,  
Kanyakumari District.  
Crime No.224 of 2016

2.Devaraj.MS  
Sub Inspector of Police-1065,  
Eathamozhi Police Station,  
Kanyakumari District.

..Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in connection with charge sheet in C.C.No. 12 of 2017 on the file of the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District and quash the same as against the petitioner.

For Petitioner : Mr.R.Russel Raj

For Respondents : Mr.E.Antony Sahaya Prabahar  
Additional Public Prosecutor



WEB COPY

CrI.O.P.(MD)No.17607 of 2022



## **ORDER**

This petition is filed challenging the Charge Sheet in C.C.No.12 of 2017 pending on the file of the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District, which is registered against the petitioner for the offences under Sections 51 and 63 (a) of the Copyright Act, 1957 r/w Section 7(1)(a)(i) of the Cinematograph Act, 1952.

2. The facts in brief are that the Sub Inspector of Police, by name, Devaraj.MS, has lodged a complaint against the petitioner and another accused alleging that they have screened movie titled “Kabali” on the whitewashed wall of the Kitchen in Keerivilai Amman Temple at 03.00 a.m on 07.09.2016 with the help of a CD through Epson Projector without any permission and license for a wrongful gain.

3. On the strength of the said complaint, a case has been registered in Crime No.224 of 2016 for the offences under Sections 51 and 63 (a) of the Copyright Act, 1957 r/w Section 7(1)(a)(i) of Cinematograph Act, 1952 and charge sheet is filed as C.C.No.12 of 2017 on the file of the learned Judicial Magistrate Court No.III, Nagercoil, Kanyakumari District. Challenging the said charge sheet, this petition is filed under Section 482 of Cr.P.C.



WEB COPY

CrI.O.P.(MD)No.17607 of 2022



4. It is submitted by the learned counsel for the petitioner that the offences, under Sections 51 and 63 (a) of the Copyright Act, 1957 r/w Section 7(1)(a)(i) of Cinematograph Act, 1952, are not attracted to the facts of the case as screening of Kabali movie is not restricted one and the same was released throughout the country in theatres and that the petitioner has not infringed the copyright of the film and that the complainant is not the owner or author of the work and that the Police have not seized CD, Epson Projector or any other materials.

5. Learned Additional Public Prosecutor appearing for the respondent Police has strongly opposed the submissions of the petitioner stating that the screening of a film without license or permission of the owner of the film is an offence and sought for dismissal of this petition.

6. Section 51 of the Copyright Act, reads as under:

*51. When copyright infringed- Copyright in a work shall be deemed to be infringed-*

*(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so*



WEB COPY

CrI.O.P.(MD)No.17607 of 2022



*granted or of any condition imposed by a competent authority under this Act-*

*(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or*

*(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright or*

*(b)when any person-*

*(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or*

*(ii)distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or*

*(iii)by way of trade exhibits in public,  
or*

*(iv)imports into India,  
any infringing copies of the work:  
(Provided that nothing in sub-clause (iv) shall*



*apply to the import of one copy of any work for the private and domestic use of the importer.)*

7. Section 63-A of the Copyright Act, 1957, reads as under:

*“63-A Enhanced Penalty on second and subsequent convictions-*

*Whoever having already been convicted of an offence under Section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one Lakh 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 one year or a fine of less than one Lakh Rupees:*

*Provided further that for the purposes of this Section, no cognizance shall be taken of any conviction made before the commencement of the Copyright (Amendment) Act, 1984.”*



8. Section 51 of the Copy Right Act, 1957, defines when a copyright is infringed and Section 63 (a) of the Copy Right Act, 1957, deals with enhanced penalty on second and subsequent convictions. On perusal of Sections 51 and 63 (a) of the Copyright Act, 1957, it is clear that unless the owner or assignee or licensee files a complaint before the Police alleging that the petitioner has screened the movie without license / permission, no offence is made out.

9. The Sub Inspector of Police is the complainant in this case and he is not the owner of the film Kabali. The owner or the distributor of the film, are the aggrieved persons, who can file a complaint before the Police for screening the film by the petitioner without any license or permission either the owner or distributor to know whether they have any grievance or objection for screening the film on the wall of the temple, without their permission. The complainant is not either the owner or assignee or a licence holder of the movie. The contention of the respondent Police that the petitioner has violated the Copy Right Act under Sections 51 and 63 (a) of the Copyright Act, 1957, cannot be accepted.



WEB COPY



10. Section 7 (1)(a)(i) of the Cinematograph Act, reads as

under:

*“7.Penalties for contraventions of this part-[(1)*

*If any person -*

*(a) exhibits or permits to be exhibited in any place*

*(i) any film other than a film which has been certified by the Board as suitable for unrestricted public exhibition or for public exhibition restricted to adults[or to members of any profession or any class of persons] and which, when exhibited, displays the prescribed mark of the Board and has not been altered or tampered with in any way since such mark was affixed thereto,”*

11. As per Section 7 (1)(a)(i) of the Cinematograph Act, 1952, a person who exhibited / screened a film other than film certified by the Censor Board, the offence is deemed to have been committed and liable for punishment. In the case on hand, it is not the case of respondent No.1 / Police that the petitioner has screened a film, which was not certified by the National Censor Board. The allegation levelled against the petitioner is that he has screened a picture, which was certified by the National Censor Board with the help of a Projector on the wall of the



temple, hence, Section 7 (1)(a)(i) of the Cinematograph Act, 1952, is not applicable to the facts of the case. This Court has held in a similar circumstances in Crl.O.P.(MD).No.12211 of 2017, dated 16.11.2021 by following the Judgment of the Apex Court reported in **SCC Online All 653** that unless the owner of the film makes a complaint, the act of the accused in screening the film cannot be found fault.

12. Considering the discussion made above, since the facts of the case do not attract the offences alleged against him under the Cinematograph Act, 1952 and the Copyright Act, 1957, the charge sheet filed under Sections 51 and 63 (a) of the Copy Right Act, 1957 and Section 7 (1) (a) (i) of the Cinematograph Act, 1952, will not be sustainable and therefore, the charge sheet is quashed.

13. Accordingly, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

**19.07.2023**

NCC: Yes/No  
Index : Yes/No  
Internet : Yes/No  
tsg



*CrI.O.P.(MD)No.17607 of 2022*

To

1.The Inspector of Police,  
Ethamozhi Police Station,  
Kanyakumari District.  
Crime No.224 of 2016

2.The Sub Inspector of Police-1065,  
Eathamozhi Police Station,  
Kanyakumari District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*CrI.O.P.(MD)No.17607 of 2022*

**DR.D.NAGARJUN. J.**

tsg

**CrI.O.P.(MD)No.17607 of 2022**

**19.07.2023**