



Crl.O.P.No.10237 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.03.2024

DELIVERED ON : 10.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.O.P.No.(MD)10237 of 2021 &
Crl.MP (MD) No.5239 of 2021

1. Bharathi Puthakalayam
Represented by Ramakrishnan,
No.7, Ilango Salai, Teynampet,
Chennai.
2. G. Ramakrishnan
3. Nagarajan
4. Kannan
5. Ganesan
6. Mayandi
7. Mohamed Sirajudeen
8. Ravichandran

... Petitioners

Vs.

1. State Rep. by
The Inspector of Police
Intelligent Property Rights (IPR)
Enforcement Cell, Madurai.

2. Sivakumar

... Respondents



Crl.O.P.No.10237 of 2021

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, 1973 to quash the charge sheet in C.C. No.84 of 2021 on the file of the Judicial Magistrate, No.II, Madurai.

For Petitioners : Mr.C. Muthu Saravanan
For R1 : Mr.R.M. Anbunithi
Additional Public Prosecutor (crl.side)
For R2 : Mr. R. Anand
for Mr. V. Muthukamatchi

ORDER

The petitioners have filed the petition under Section 482 Cr.P.C. to quash the final report in CC No.84/2021 on the file of the Judicial Magistrate, No.II, Madurai.

2. Briefly the facts of the case as described by the prosecution are as follows:

- I. Thiru. Sivakumar, the 2nd respondent/defacto complainant lodged a complaint with the Inspector of Police, VPC-CID, Madurai, stating that his book titled Keladha Sevigal Ketkattum (கௌத செவிகள் கேட்கட்டும்), which is a translated version in Tamil of Martyr Bhagat Singh's letters and writings, published by him in August 2016, was reproduced verbatim by Bharathi Puthakalayam (A1) in the name of



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'Viduthalai Padhayil Bhagat Singh' edited by Sivavarma in March 2017 thereby committing offences under Sections 63(a), 63(b) and 69 of Copy Right Act and Sections 420 and 120 B IPC.

II. According to the defacto complainant plagiarism was so blatant that even the typographical errors and corrections carried out by him in his manuscript were reproduced like a xerox copy in the book 'Viduthalai Padhayil Bhagat Singh' edited by Sivavarma. His further complaint was that this book published by Bharati Puthkalayam was sold all over the State of Tamil Nadu and also in the Book Exhibition held in Thamukkam grounds of Madurai making a huge profit by deceiving the general public by making it look like a original version.

III. Based on the complaint, an F.I.R. in Crime No.80/2018 was registered initially under Sections 51, 63(a), 63(b), 65 and 69 of Copy Right Act against 10 accused persons. The Inspector of Police VPC-CID, after concluding investigation laid a final report on 21.09.2020 before the Judicial Magistrate No.II, Madurai, against 11 accused for the offences punishable under Sections 63(a), 63(b) and 69 of Copy Right Act 1957 and Section 420 and 120 B IPC. The present petitioners are accused A1 to A4 and A8 to A11.



3. Mr.C. Muthu Saravanan, learned counsel for the petitioners contended that there can be no copy right in an idea, subject matter, themes, plots or historical and legendary facts and therefore, such matters if reproduced or published in the form of a book cannot be brought under the Copy Right Act as no one can claim to be the original author of the same. It was further contended by him that the book published by Bharathi Puthakalayam (A1) was only a translation in Tamil of the letters and speeches of Martyr Bhagat Singh and there is every possibility of similarity in the translated version which cannot be claimed as Copy Right infringement. It was also contended by him that the 2017 edition of the 'Viduthalai Padhayil Bhagat Singh' was the second edition, the first edition being 2007 edition.

4. Per contra, Mr. R. Anand, learned counsel for the 2nd respondent/defacto complainant would contend that even assuming that there was a possibility of similar translation of speeches and letters of Bhagat Singh, the presence of the same words in Tamil, typographical errors and corrections finding place in the book published by the 1st accused clearly points out the infringement of copy rights and therefore the accused



are liable to be punished for the offences mentioned in the final report. It was also pointed out by him that even in 2007, after a publication of the first edition, a complaint was lodged by the same defacto complainant on 18.10.2007 based on which an F.I.R. was registered in Cr.No.809/2007 of E1, K.Pudur Police Station. After investigation, a final report was laid against Bharati Puthakalayam, Nagarajan (present A3), DYFI represented by S. Kannan, S. Kannan (present A4), S.Veeramani (present A5) and S.Prabakaran (present A6) of Bharathi Puthakalayam for the offences under Sections 420, 465 & 471 IPC and 63, 65 and 69 of Copy Right Act read with 120(b) IPC. This was compromised in the Lok Adalat on 06.12.2014. This being the fact, the very same accused persons along with some other accused have again committed the same offences. It was also brought to the knowledge of this Court that the defacto complainant filed a Civil Suit in O.S. No.60/2010 before the Principal District Judge, Madurai, seeking an order of permanent injunction against DYFI represented by its State Secretary S. Kannan, Bharathi Puthakalayam, Manager Nagarajan, Velmurugan, Veeramani and Prabhakaran, in which a compromise was arrived at between the parties on 03.12.2014 wherein the defendants, barring defendants 5 and 6 had stated that the matter was settled out of



court and they are agreeable for a permanent injunction regarding the publication, printing, sale and distribution of the book 'Viduthalai Padhayil Bhagat Singh'. In the circumstances, the present petition cannot be allowed as the accused have violated their own undertaking.

5. Prima facie, it appears that some portions of the book "Keladha Sevigal Ketkattum" have been reproduced in the book 'Viduthalai Padhayil Bhagat Singh' edited by Sivavarma and published by Bharathi Puthakalayam (A1). However, some of the persons, namely, G.Ramakrishnan, one of the trustees of Pattali Arakattalai (A2), Ramesh (A7), Ganesan (A8), sellers of the book, namely, Mayandi (A9), Mohamed Sirajudin (A10) and Ravichandran (A11) are all added in the present complaint. They were neither found in the earlier complaint nor a party to the compromise both in the Lok Adalat and the Civil Suit. Out of the new persons arrayed as accused in the present charge sheet Ramesh (A7) is not a petitioner in the present petition. Similarly, S. Veeramani (A5) and S.Prabakaran (A6) have also not filed the present petition. Thus it can be safely concluded that the new persons arrayed as accused in the present final report were not aware of the earlier criminal case/Civil Suit and the



compromise arrived at in the earlier litigation. Moreover, A8 to A11 are only in charge of Book stalls and infringement of copy right or the charge of cheating and criminal conspiracy cannot be attributed to them. It is also be noted that all the six accused in the earlier Cr. No.809/07 of K.Pudur Police Station had signed the compromise, while the compromise in the civil suit in O.S. No.60 of 2010 was signed only by 4 out of the six defendants.

6. Section 69 of the Copy Right Act reads as under.

Section 69 in The Copyright Act, 1957

69. Offences by companies.—

(1)Where any offence under this Act has been committed by a company, every person who at the time 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, shall be liable to be proceeded against and punished accordingly:Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2)Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager,



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secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. – For the purposes of this section –

(a)"company" means any body corporate and includes a firm or other association of persons; and

(b)"director" in relation to a firm means a partner in the firm.

The contention of the defacto complainant is that A2 is also an authorised signatory of A1 firm. This alone would not suffice to establish that he was in know of the earlier litigation and the compromise as well as the contents of the second edition of the disputed book. Section 161(3) Cr.P.C. statement of Thiru. Murugappan, Senior Manager, Indian Bank, Alwarpet Branch, shows that the account of Bharathi Puthakalayam, was opened on 28.11.2005 by A2 and A3 and was operated upon by both jointly. Section 69 of the Copy Right Act allows an exemption to the person involved in the conduct of the affairs of the company if he has no knowledge about the infringement of copy rights. Moreover, though it is argued that A2 is an authorised signatory of the account of A1 firm he was a signatory as he was a trustee of the trust 'Pattaligal Ara Kattalai' which reportedly was running A1 firm. Merely because he was an authorised signatory does not put him in a position of an accused involved in a copy right infringement. As already



pointed out, he was neither a party to the civil and criminal disputes nor a signatory to the compromise memo. As regards A8 to A11 (petitioners 5 to 8) they were incharge of the book stalls and they cannot be made responsible for the acts of the editor or persons who were in know of things. In order to circumvent this, the prosecution seems to have added Sections 420 IPC and 120(b) IPC.

7. Section 415 of IPC which defines 'cheating' is extracted hereunder.

415. Cheating — *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

Explanation—*A dishonest concealment of facts is a deception*



within the meaning of this section.

The essential ingredients of the offense of cheating are,

- (1) deception of any person;
- (2) (a) fraudulently or dishonestly inducing that person
 - (i) to deliver any property to any person; or
 - (ii) to consent that any person shall retain any property; or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

8. Section 420 of IPC defines 'cheating and dishonestly inducing delivery of property' which reads as under:

420. Cheating and dishonestly inducing delivery of property. —

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with



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imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities.

9. The Hon'ble Apex Court in ***Prof.R.K.Vijayasarathy and Another Vs. Sudha Seetharam and Another***, reported in ***(2019) 16 SCC 739*** has held that the following ingredients are necessary to constitute the offence under Section 420 of IPC.

- i. a person must commit the offence of cheating under Section 415; and
- ii. the person cheated must be dishonestly induced to;
 - a) deliver property to any person; or
 - b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC. Under the aforesaid section, it is inbuilt that there has to be a dishonest intention from the very beginning which is sine qua



hold the accused guilty for commission of the said offence. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating. It is to be borne in mind that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. In the instant case, no criminal intention can be attributed upon the petitioners A2, A8 to A11 since they were not parties to the earlier litigation.

10. At the cost of repetition, it is to be born in mind that in order to attract the ingredients of Sections 406 and 420 IPC it is imperative on the part of the de facto complainant to prima facie establish that there was an intention on the part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore, it has to be prima facie established that due to such alleged act of cheating the de facto complainant had suffered a wrongful loss and the same had resulted in wrongful gain for the accused. In the absence of these elements, no proceeding is permissible in the eye of law with regard to the commission of



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the offence punishable u/s 420 IPC.

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11. There is nothing on record to show that all these accused conspired with each other in committing the offences alleged by the prosecution. In the circumstances, the offence under Section 120(b) IPC is also not made out against A2, A8 to A11.

12. It was argued that the said Siva Varma (Editor) had expired long back and that his name was taken as a shield for the copy rights violation. This aspect has to be dealt with by the trial court. However, this court is of the opinion that A2 and A8 to A11 are not involved in the offence and the final report against them stands quashed. As regards the other accused, only trial will conclude the guilt or otherwise of them.

13. In the result, the petition is allowed in respect of A2 (2nd petitioner), A8 to A11 (petitioners 5 to 8) only. Barring these accused, the others have to face the trial to prove their innocence. Consequently, connected miscellaneous petition is closed.



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Index : yes/no
Speaking /Non speaking Order

To

The Inspector of Police
Intelligent Property Rights (IPR)
Enforcement Cell, Madurai.



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R.HEMALATHA, J.

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Pre-Delivery Order in
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