

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.15910 of 2016

1.Susi Ganesan
2.Devi Sriprasad
3.Kalaipuli S.Thanu .. Petitioners

vs.

V.Elango .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to C.C.No.3239 of 2009 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai, and quash the same.

For petitioners : Mr.J.Ravikumar
for Ms. A.V.K.Ezhilmani
For respondent : Mr.K.Veeraraghavan

RESERVED ON	PRONOUNCED ON
27.09.2016	30.09.2016

ORDER

This petition has been filed to call for the records pertaining to C.C.No.3239 of 2009 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai, and quash the same.

2. For the sake of convenience, the petitioners and the respondent are referred to as accused and complainant respectively.

3. The complainant is an Advocate practising in the High Court and is said to be a Tamil lyricist. It is his case that the accused engaged the services of the complainant to pen a song for their Tamil film “Kandasamy”, after explaining to him the situation. Even according to the complainant, he prepared a part of the lyrics, namely the *pallavi* portion for the song and read out the lines to the first accused on 10.07.2007 over phone. It is his further case that on 11.07.2007, he recorded the part of the lyrics in a Compact Disc [CD] along with the tune for the song and gave it to the first accused. Admittedly, according to the complainant, he had framed the lyrics conceived by him as under:

“பல்லவி

(செல்போன் மூலம் ஏற்கனவே 10.07.2007 அன்று
இயக்குநருக்கு கொடுக்கப்பட்டது)

பெண் : Hey, Excuse me, Mr.Kandhasamy
ஒரு Coffee குடிப்போம்
Come with me
Hot 'ஆ Cold 'ஆ
You now Touch and see.”

ஆண் : Hey, Excuse Me, Miss. Chinna Mami
ஊர சுத்துறதா
உந்தன் Hobby
ஆள விடுட
நானும் ஓடிப் போறேன்.”

4. It is alleged by the complainant that the accused used the aforesaid lyrics composed by him in their film “Kandasamy”, as if it was composed by one Vivek and released the film. Hence, the complainant has lodged a private complaint in C.C.No.3239 of 2009 before the VII Metropolitan Magistrate, George Town, Chennai for an offence u/s 63 of the Copyright Act, 1957 r/w Sections 120-B and 34 IPC, challenging which the accused are before this Court.

5. Heard the learned counsel for the petitioners/accused and the learned counsel for the respondent/complainant.

6. Admittedly, in this case, the complainant filed a civil suit in C.S.No.36 of 2009 against the accused for declaration, that he alone is entitled to exploit all the rights in respect of the aforesaid lyrics. The complainant also prayed for an interim injunction restraining the accused from infringing his rights by using the aforesaid lyrics in their film “Kandasamy”.

7. A learned single Judge of this Court, by order dated 18.04.2009, gave a finding that there are *prima facie* materials to show that the complainant had composed the pallavi portion [the first portion of the aforesaid lyrics] and granted interim injunction as prayed for only in respect of the first portion. The accused took the matter to a Division Bench of this

Court, wherein, the order dated 18.04.2009 passed by the learned single Judge was modified vide order dated 30.04.2009, as follows:

“Heard the learned counsel for the petitioner as well as the respondent, who appeared in person. As the court does not find time to hear both the counsel as to the interim order, we propose to make the following arrangement till this petition is disposed of on the next adjourned date. The order made in Application No.21 of 2009 in C.S.No.36 of 2009 dated 18.4.2009 is suspended subject to the condition that the petitioners shall also display the name of the respondent in the title along with one Mr.Vivega as the author of the Pallavi in the song starting "Hey excuse me Mr.Kandhasamy". Post the matter on 12.6.2009 for further orders. The petitioners are also at liberty to indicate that the name of the respondent is included as per the directions of the Court.”

8. After the summer vacation, further orders were passed on 29.06.2009 in the appeal filed by the accused, which is as follows:

“The appellant is directed to show the name of Mr.V.Elango as lyricist in the rolling titles in respect of the Pallavi under dispute in the bracket of the song starting "Excuse me Mr.Kandasamy.”

9. After these orders were passed, the complainant has filed the present complaint against the accused on 01.06.2009, alleging infringement of his copyright. The suit filed by the complainant in C.S.No.36 of 2009 is still pending on the file of this Court and there has not been final adjudication in this regard.

10. Learned counsel for the accused submitted that, even going by the averments in the complaint, according to the complainant, he had

composed the said lyrics on 10.07.2007, but he chose to file the suit in C.S.No.36 of 2009 only in the year 2009, when the film “Kandasamy” was about to be released, which only shows his *mala fide* intention. That apart, he contended that even according to the complainant, he had composed only ten lines of the song, out of which, injunction order was granted only in respect of five lines, which is under dispute in C.S.No.36 of 2009 and therefore, the present prosecution is a clear abuse of process of law.

11. Per contra, learned counsel for the complainant submitted that the learned single Judge of this Court has given a finding that five lines have been composed by the complainant and when the complaint discloses the commission of a cognizable offence, the same should not be quashed. In support of this contention, he relied upon the following judgments:

1. State of Haryana and others v. Bhajan Lal and others [(1992) SCC (Cri) 426]
2. M.N.Damani v. S.K. Sinha and others [(2001) SCC (Cri) 823]
3. State of Maharashtra and others v. Ishwar Piraji Kalpatri and others [AIR 1996 SC 722]
4. Mushtaq Ahmad v. Mohd.Habibur Rehman Faizi and other [AIR 1996 SC 2982]
5. Vinod Raghuvanshi v. Ajay Arora and others [(2013) 10 SCC 581]

12. It is true that the Court should zealously protect the copyright of the individual citizens. In this case, the complainant is an Advocate and he is presumed to know the law. According to him, he composed ten lines

and read them out to accused over phone, but did not enter into any formal agreement with the accused in that regard. Even according to the complainant, the accused were showing those pieces in the trailer and in advertisement, in which the name of the complainant was not shown in the lyrics much prior to the release of the film. Strangely, the complainant did not choose to protest then and instead, when the movie “Kandasamy” was about to be released in 2009, he filed the suit, as stated above.

13. As contended by the learned counsel for the accused, the rights of the complainant have still not been crystallised, as the suit in C.S.No.36 of 2009 is pending. It is not the case of the complainant that he had composed the particular song in its entirety. Even in the order passed in C.S.No.36 of 2009, the learned Judge has merely stated that there are *prima facie* materials to show that the complainant must have composed five lines out of ten lines, he is said to have composed. This is only *pallavi* and not *saranam*. The whole song will have *saranam*, which will be the crux of the lyrics, the *pallavi* being the frills. Viewed from that perspective, in the considered opinion of this Court, the present prosecution launched by the complainant is surely an abuse of process of law.

Accordingly, this petition is allowed and the prosecution in C.C.No.3239 of 2009 pending on the file of the VII Metropolitan Magistrate Court, George Town, Chennai is hereby quashed.

30.09.2016

gms
To

1. VII Metropolitan Magistrate,
George Town, Chennai.

2.The Public Prosecutor
High Court, Madras 600 104.

P.N.PRAKASH, J.

gms

**Pre-delivery order in
Crl.O.P.No.15910 of 2016**

30.09.2016