

Set India Pvt. Ltd. and ors. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Feb-01-2005

Judge : Rajendra Prasad, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482; Indian Penal Code (IPC) - Sections 406, 420 and 120B

Appeal No. : Cr. Misc. No. 9887 of 2003

Appellant : Set India Pvt. Ltd. and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : J.N. Tripathy, Adv.

Advocate for Pet/Ap. : Anjana Prakash, Adv.

Disposition : Application allowed

Judgement :

Rajendra Prasad, J.

1. This criminal miscellaneous application under Section 482 of the Code of Criminal Procedure has been filed for quashing the entire proceeding including the order dated 6.9.2002 passed in complaint case No. 855 (C) of 2002 whereunder the learned cognizance taking Court took cognizance under Sections 406, 420 and

120B of the Indian Penal Code against the petitioners and as many as five other co accused named in the complaint petition.

2. Petitioner Nos. 1 and 2 in this application are accused Nos. 6 and 7 in the complaint petition.

3. SET India Private Limited through N.P. Singh, Chief Financial Officer, 23, Shah Industrial Estate Off Veera Desai Road, Andheri (W), Mumbai-400053 (hereinafter referred to as the 'petitioner No. 1') and Kunal Dasgupta son of Manoranjan Dasgupta, CEO, SET India Pvt Ltd., 23, Shah Industrial Estate, Off Veera Desai Road, Andheri (W), Mumbai-400053 (hereinafter referred to as the 'petitioner No. 2') are mentioned as accused Nos. 6 and 7 in the complaint petition.

4. As it appears M/s Shiva International 82, 105, Gagan Apartment, Exhibition Road, P.S. Gandhi Maidan, Patna 800001 through Ravindra Singh S/o Shri Gauri Shankar Singh Manager of the firm is opposite party No. 2 (complainant) in this application (hereinafter referred to as the M/s Shiva International').

5. Opposite party No. 2 (Complainant) filed a complaint petition before the learned Chief Judicial Magistrate, Patna, against petitioner Nos. 1 and 2 and as many as five other accused, which was registered as Complaint Case No. 855 (C) of 2002.

6. Complainant's case, in short, is that M/s Shiva International is a firm which carries on the business of motion pictures distribution in the State of Bihar and accused No. 1 (M/s Ripples Pictures Entertainment Private Limited) is a motion pictures production concern who produces motion pictures through its Directors/partners accused Nos. 2 to 5 and accused Nos. 6 and 7 (Petitioner Nos. 1 and 2) are private T.V. channels who broad castes/communicates/transmits/ varieties of audio visual programme including motion pictures broadcasting through satellite which is being watched on T.V. Set of the bona fide viewers at large. The further case of the complainant is that the complainant firm was familer with accused Nos. 2 to 5 and 7 for more than three years. The accused No. 5, Vikram Razdan, contacted the complainant on telephone at Patna and requested to purchase the distribution right of their picture 'Yeh tera ghar yeh mera ghar' starring by Sunil Shethy, Mahima Choudhary, Paresh Rawal and others and

directed by Priyadarshan Music by Anand Milind which was due for release in the month of October, 2001 and considering the previous familiar relations with the accused persons the complainant accepted the offer of accused Nos. 2 to 5 and paid a sum of rupees twenty five lakhs to accused No. 1 (M/s Ripples Pictures Entertainment Private Limited) as per Annexure 1 in the complaint petition. Accused No. 1 (M/s Ripples Pictures Entertainment Private Limited) through accused No. 5 assigned the distribution, exploitation and exhibition right of the above said film to the complainant for the territory of Bihar as known in the film trade and accused Nos. 2 to 5 assured that the above said film 'Yeh tera ghar yeh mera ghar' shall not be released either on Doordarshan or any satellite channel or through any cable operator within one year from the date of first release in the country as per Annexure 2 in the complaint petition. The complainant had trust upon the assurances and affidavit sworn by accused No. 5 but the accused persons induced and deceived the complainant who took delivery of the prints and publicity of the said film incurring an expenditure of rupees five lakhs the cost of print and publicity and released the film in the assigned circuit.

7. The further case of the complainant is that committing breach of trust, cheating and criminal conspiracy accused Nos. 2 to 5 and 7 released illegally and unlawfully the above said film on 'SONY T.V. CHANNEL' on 23.3.2002 at 8 P.M. which has been watched by television viewers on that day, which caused loss of prestige and wrongful loss of rupees twenty lakhs to the complainant due to discontinuation of the film from viewers theatres in the given territory. The complainant thereafter served a legal notice upon the accused persons but the accused persons ignored and the reply of their advocate is frivolous, vexatious and pretending which shows the criminal intention of the accused persons who has no intention to pay the amount. Many of the exhibitors cancelled their booking contract after 23.3.2002 and have threatened the complainant to institute criminal case against him.

8. On the basis of facts alleged in the complaint, the statement of complainant on S.A. and also the statement of the witness examined in course of enquiry the learned cognizance taking Court took cognizance under Sections 406, 420 and 120B of the Indian Penal Code, against the petitioners and other accused persons

and ordered to issue processes against them.

9. Mrs. Anjana Prakash, learned counsel appearing on behalf of the petitioners submitted that even if the facts alleged in the complaint are taken and considered as it is, these facts do not constitute offences under Sections 406 or 420 or 120B of the Indian Penal Code, and hence the prosecution against the petitioners is abuse of process of Court and is fit to be quashed under Section 482 of the Code of Criminal Procedure.

10. Learned counsel for the petitioners points out that the facts alleged in the complaint petition itself indicate that it was the accused No. 5 Vikram Razadan who had contacted the complainant on telephone at Patna and requested to purchase the distribution right of their picture 'Yeh tera ghar yeh mera ghar' produced by accused No. 1 (M/s Ripples Pictures Entertainment Private Limited) and petitioner Nos. 1 and 2 had nothing to do with regard to such business with, accused No. 1 and accused Nos. 2 to 5 being Directors/Partners of accused No. 1 (M/s Ripples Picture Entertainment Private Limited) and so in absence Of entrustment of any property by the complainant with the petitioners and further in absence of any misappropriation or conversion of the property of the complainant to their own use no offence under Section 406, IPC may be made out. Learned counsel for the petitioner further submits that there is no such fact so as to constitute offence under Sections 420 and 120B, IPC also.

11. Mr. J.N. Tripathi, learned counsel appearing on behalf of opposite party No. 2 submits that the facts alleged in the complaint petition are sufficient to constitute offences under Sections 406, 420 and 120B, IPC, and it is not a fit case in which prosecution of the petitioner is fit to be quashed.

12. Having appreciated the rival contention I find force in the submission of learned counsel for the petitioner, Mrs. Anjana Prakash. The facts alleged in the complaint itself indicate that business dealing was between the complainant (Opposite party No. 2 here) with the accused No. 1 (M/s Ripples Pictures Entertainment Private Limited) and accused Nos. 2 to 5 who were Directors/partners of accused No. 1 and these petitioners are not responsible for any business dealing. As it is evidently clear that the complainant had never any

business dealing or entrusted any property with the petitioners and such facts also not appearing in the complaint petition indicating that the petitioners misappropriated any property of the complainant or converted the same to their own use or used such property or disposed of it, no case under Section 406, IPC, is said to have been made out against the petitioners. So far offence under Section 420, IPC is concerned, it is evidently clear from the facts alleged in the complaint petition that alleged facts do not indicate that the petitioner had ever induced the complainant for delivery of any property and thereby cheating and so no offence under Section 420, IPC may be made out. Similarly there is no such averment in the complaint petition so as to indicate that the petitioners had knowledge of business dealing between the complainant and accused Nos. 1 to 5. The complainant in his statement on S.A. and also the witnesses examined by the complainant in course of enquiry specifically stated that petitioner Nos. 1 and 2 had no knowledge of business dealing between the complainant the accused Nos. 1 to 5 and so in absence of such knowledge petitioner Nos. 1 and 2 cannot be said to have committed offence under Section 120B, IPC. The learned magistrate, perhaps, failed to appreciate the facts alleged in the complaint petition and so committed error in taking cognizance against the petitioners. In the facts I am of the view and find that cognizance taken against the petitioners is bad in law and also abuse of process of Court and the same is fit to be quashed.

In the result, this criminal miscellaneous application is allowed and the entire proceeding including the order dated 6.9.2002 passed in complaint case No. 855 (C) of 2002 is hereby quashed.

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