

**(2004) 1 ALD(Cri) 410 : (2004) 1 ALT(Cri) 396 : (2004) 1 APLJ 384 : (2005) 125
CompCas 815**

Andhra Pradesh High Court

Case No: Criminal Petition No. 4971 of 2003

Vissa Television
Network Ltd. and
Others

APPELLANT

Vs

Gemini Television P.
Ltd. and Another

RESPONDENT

Date of Decision: Dec. 18, 2003

Acts Referred:

- Copyright Act, 1957 - Section 63, 69, 69(1)
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141
- Prevention of Food Adulteration Act, 1954 - Section 17

Citation: (2004) 1 ALD(Cri) 410 : (2004) 1 ALT(Cri) 396 : (2004) 1 APLJ 384 : (2005) 125
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Hon'ble Judges: C.Y. Somayajulu, J

Bench: Single Bench

Advocate: Naga Raghu, for the Appellant; Public Prosecutor, for the Respondent

Judgement

C.Y. Somayajulu J.

1. The first respondent filed a private complaint alleging that it acquired copyright over the Telugu feature film "Badi" by virtue of an agreement dated April 11, 1998, entered into with M/s. Suma Priya Creations, represented by its proprietor J.V. Rama Rao. The petitioners who have no manner of rights, title or interest over the said film "Badi" had telecast the said feature film on June 28, 2003 and hence are liable for punishment u/s 63 read with Section 69 of the Copyright Act, 1957 (for short "the Act").

2. The learned Magistrate, after recording sworn statement of Mr. K. Radhakrishna, manager of the first respondent branch at Hyderabad took cognizance of the offence u/s 138 of the Negotiable Instruments Act, obviously a mistake for Section 63 of the Act, and issued summons to the petitioner. This petition is filed to quash the said complaint.

3. The contention of learned counsel for the petitioners is that since wilful violation of copyright is the sine qua non for an offence u/s 63 of the Act and since there is no allegation in the complaint that the petitioners have knowingly violated the copyright of the first respondent, the complaint is liable to be quashed. His second contention is that in any event complaint against petitioners Nos. 3 to 7 is liable to be quashed since it does not disclose as to how petitioners Nos. 3 to 7 are liable for punishment for the offence alleged and nay, there is no whisper about their being involved in the commission of the alleged offence and in fact the relation between them and the first petitioner is also not mentioned either in the body of the complaint or in the cause title. It is his contention that since the provision of Sections 69 of the Act are in pari materia with Section 141 of the Negotiable Instruments Act and Section 17 of the Prevention of Food Adulteration Act (37 of 1954), etc., in view of the ratio in *Smt. Neeta Bhalla v. S. M. S. Pharmaceuticals Ltd.* [2002] 111 Comp Cas 793 (AP); [2002] 1 Andh LT (Crl.) 127 the complaint against petitioners Nos. 3 to 7 is liable to be quashed.

4. The contention of learned counsel for the first respondent is that the petitioners who were made aware of the copyright of the first respondent when the first petitioner was test-running its channel through satellite, through a registered notice, they cannot say that they have no knowledge of the copyright of the petitioners over the film "Badi". His contention is that merely because designations of petitioners Nos. 3 to 7 are not mentioned in the complaint, that too when it is not even their case that they are not the directors of the first petitioner-company, the complaint against them cannot be quashed, because it is for them, in view of the second proviso to Sub-section (1) of Section 69 of the Act to establish that they are not liable for punishment, by strongly relying on [J.N. Bagga and Others Vs. All India Reporter Ltd.](#), and in [Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others](#), .

5. In view of Section 69 of the Act, when the offence is by a company, apart from the 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 its business can be proceeded against, for the offence committed by the company.

6. As rightly contended by learned counsel for the petitioners that Section 69 of the Act is in pari materia with Section 141 of the Negotiable Instruments Act and Section 17 of the Food Adulteration Act. In [Smt. Neeta Bhalla Vs. S.M.S. Pharmaceuticals Ltd. and Another](#), relied on by learned counsel for the petitioners, a learned single judge of this court, after referring to the observation of the Supreme Court in *K. P. G. Nair v. Jindal Menthol India Ltd.* [2001] 104 Comp Cas 290 ; [2001] 2 Supreme 311 observing :

"a person other than the company can be proceeded against under those provisions only if that person was in charge of and was responsible to the company for the conduct of its business, held that in order to fasten vicarious liability against the director of the company, there must be clear, specific and unambiguous allegations made in the complaint. It is not as if every director of the accused-company can be roped in automatically and be proceeded against for the offence committed by the company u/s 138 of the Act. The complainant can proceed against only such persons who at the time the offence was committed by the company were in charge of and were responsible to the company for the conduct of its business. Such persons could be directors, managers, secretary or the other officers of the company. Such persons "in charge" must mean that they were in overall control of the day-to-day business of the company or firm, as the case may be. A complaint based on wild imaginations is not a complaint at all in the eye of law. The accusation against each of the director/person/accused must be specific and unambiguous. The role played by each of the accused must be clearly stated in the complaint. The complaint if read as a whole must clearly disclose the role played by each of the directors of the company in the case of an offence committed by the company."

held that if the directors of a company are to be made liable for an offence u/s 138 of the Negotiable Instruments Act, by invoking the aid of Section 141 of the said Act, there should be clear and categorical averments in the complaint as to the role played by the directors in the conduct of the business of the company, while issuing the cheque which is dishonoured.

7. In this case, as rightly contended by learned counsel for the petitioners, the complainant does not state anything about the role played by any of petitioners Nos. 3 to 7 in telecasting the film "Badi" by the first petitioner. In his sworn statement, the manager of the first respondent, except baldly stating that petitioners Nos. 3 to 7 are directors of the first petitioner-company, did not state anything as to how they are liable for the offence alleged. He did not even state that petitioners Nos. 3 to 7 are in charge of the day-to-day affairs of the first petitioner-company. In my considered opinion [J.N. Bagga and Others Vs. All India Reporter Ltd.](#), relied on by learned counsel for the first respondent has no application to the facts of the case. In that case a learned single judge of the Nagpur Bench was considering the question whether a firm, which has no legal existence, can be proceeded against for an offence under the Act or not. The learned judge held that complaint against a firm and its partners for an offence under the Act is maintainable. The question as to whether a complaint against a partner of a firm, against whom no allegation is made, is maintainable or not was not considered in that case. So, that decision has no application to the facts of this case.

8. In [Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others](#), , relied on by learned counsel for the first respondent it was observed that the complainant gave the details of the role played by the respondents and the extent of their liability. In the circumstances, it was held that since clear averments regarding active role played by the respondents and the extent of their liability are mentioned, it cannot be said that there are

no averments in the complaint to make the directors etc., vicariously liable for the offence committed by the company.

9. In this case, as stated earlier, there is nothing in the complaint to show how petitioners Nos. 3 to 7 are liable for the offence allegedly committed by the first petitioner-company. There is not even whisper in the complaint that petitioners Nos. 3 to 7 are in charge of or were looking after the day-to-day affairs of the first petitioner-company. Therefore, in view of the ratio in [Smt. Neeta Bhalla Vs. S.M.S. Pharmaceuticals Ltd. and Another](#), complaint against petitioners Nos. 3 to 7 is liable to be quashed.

10. As rightly contended by learned counsel for the petitioners an offence u/s 63 of the Act is committed only if a person "knowingly" violates the copyright of other person. In para. 14 of the complaint, it is stated :

"the complainant submits that the accused having knowledge of the copyrights of the complainant illegally and dishonestly for wrongful gains and to cause hardship and loss to the complainant, telecasting the film "Badi" illegally."

11. When there is specific allegation about the knowledge of copyright in the complaint, merely because the accused says that he has no knowledge that the complainant had a copyright, the complaint cannot be quashed in a proceeding u/s 482 of the Criminal Procedure Code, in view of the ratio in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#). So, the question of quashing of the complaint against the company (first petitioner) does not arise.

12. The first petitioner (A-1 company is described as "Vissa Television Network Limited, represented by its M. D., Mr. Ravindran, Corporate Office, 12-B, Poes Road Second Street, Teynampet, Chennai". The second petitioner-(A-2) is described as "M/s. Vissa Television Network Limited, represented by its managing director, Regd. Office 157-A, Kamalapuri Colony, III Phase, Hyderabad". So, it is clear that the same company is made accused twice. Since the company is one, irrespective of the fact, whether it has branch offices or not, and since showing the same company as two accused persons is but harassment, if not abuse of process of law, the complaint against second petitioner who is the same as the first petitioner is liable to be quashed.

13. In the result, the petition is allowed in part. The petition of the first petitioner is dismissed. The petition of petitioners Nos. 2 to 7 is allowed and the complaint filed by the first respondent in C. C. No. 856 of 2003 on the file of 5th Metropolitan Magistrate, Hyderabad, against petitioners Nos. 2 to 7 is quashed.