

(1978) 04 AHC CK 0106

In the Allahabad High Court

Case No : Criminal Misc. Application No's. 6913 of 1976 and 914 of 1977

G.P. Sippi and Others

APPELLANT

Vs

Vijai Kumar Shukla

RESPONDENT

Date of Decision : 11-04-1978

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 561A

Criminal Procedure Code, 1973 (CrPC) — Section 107, 397(2), 482, 82, 83

Penal Code, 1860 (IPC) — Section 120A, 415, 419, 420, 463

Citation : (1978) ACR 222

Hon'ble Judges : P.N. Goel, J

Bench : Single Bench

Advocate : J.N. Chaturvedi, P.C. Chaturvedi and G.P. Dixit, for the Appellant; S.A. Shah, A.K. Chaudhary, D. Pratap Singh, A.N. Misra and D. Kumar, for the Respondent

Final Decision : Allowed

Judgement

P.N. Goel, J.—These are two connected applications u/s 482 of the Code of Criminal Procedure, 1973.

2. The matter relates to a Film Sholey produced by Sri G.P. Sippi, applicant No. 1, of application No. 6193 of 1976. This film/picture was shown in Deep Cinema in the town of Etawah in or about September, and October, 1976. On 9-10-1976 Sri Vijay Kumar Shukla, opposite party No. 1 in criminal miscellaneous application No. 6913 of 1976 filed a complaint against (1) Sri G.P. Sippi, producer of the film, (2) M/s. Rajshree Pictures Private Ltd., Delhi, Distributors of the Film (3) Sri K.D. Bhalla, Proprietor, Deep Cinema, Etawah and (4) Manager, Deep Cinema, Etawah, under Sections 120A, 415, 419, 420, 463, 464, 470, 471 and 478 IPC in the court of Chief Judicial Magistrate, Etawah. The criminal case which arose on the basis of this complaint was transferred to the court of Munsif Magistrate, Etawah. The Munsif Magistrate summoned the applicants u/s 420 IPC. Thereafter on 8-11-1976 petition No. 6913 of 1976 was moved in this Court

by the four persons who were arrayed as accused in the complaint (copy Annexure A of the application).

3. The Film Sholey was exhibited in Saroj Cinema in the town of Moradabad from September, 1975. On 20-12-1975, Dr. Shabbir Ahmad, opposite party filed complaint in the court of Chief Judicial Magistrate Moradabad against (1) Tara Chand Barjatia, applicant, Distributor of M/s. Rajshree Pictures Private Ltd., Delhi (2) Sri Krishna Kumar Pura of Sapna Talkies, New Delhi and (3) Sri B.S. Sharma, Proprietor, Saroj Cinema, Moradabad, for having entered into a conspiracy to cheat the complainant and the public of Moradabad as well as for cheating them. On 15-2-1977, Sri Tara Chand Barjatia, applicant filed application No. 914 of 1977. In this application he made averment to the earlier application No. 6193 of 1976.

4. It will be seen that the applicants of both the cases have invoked the inherent powers of this Court, Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called the Code) which corresponds to Section 561-A of the Old Code of Criminal Procedure 1898. This section lays down that nothing in this Code shall be deemed to limit or effect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It will be noticed that the Code does not confer inherent powers on any other criminal court and that it simply confers inherent powers on the High Court. The High Court is ordinarily required to exercise this power in 3 cases, (1) to give effect to any order under this Code (2) to prevent abuse of the process of any court and (3) otherwise to secure the ends of justice. It means that the inherent power is to be exercised within the limits mentioned in this section. So far as the present two applications are concerned, Sri P.C. Chaturvedi, Senior Advocate, appearing for the applicants did not urge, that this Court should exercise its inherent power to give effect to any order under this Code or otherwise to secure the ends of justice. He contended that this Court shall exercise this power to prevent abuse of the process of the court. In this connection he urged that the matter involved was trivial and in view of the provisions of Section 95 of the Indian Penal Code, the Magistrates should not have taken cognizance on the basis of the complaints filed by the opposite parties in the two cases. Section 95 simply says:

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

5. Sri P.C. Chaturvedi, referred to the case of Bindeshwari Prasad Singh v. Kali Singh 1978 ACrR 36. In this case there were proceedings u/s 107 Code of Criminal Procedure between the parties. Both the parties applied for copies of these proceedings on 20-12-1965. One set of copy meant for the complaint was prepared, but it was taken by the accused by signing his name. A few days later another copy was prepared which was taken by the complainant. The

complainant then filed a complaint against the accused. The Supreme Court observed, "The complaint itself contains allegations of a very petty nature, of which hardly any cognizance could have been taken and which would be trivial act u/s 95 of the Indian Penal Code for which no criminal proceedings could be taken."

6. Learned Counsel for the opposite parties urged that in the instant cases the matter was not so trivial and that the allegations of the complaints should be analysed. They referred to the case of R.P. Kapur Vs. The State of Punjab, in which the scope of Section 561-A of the Old Code of Criminal Procedure was enunciated at length in the following words:

It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

7. The provisions of Section 482 of the new Code and the case of R.P. Kapoor were considered in a recent case State of Karnataka Vs. L. Muniswamy and Others, . As respects Section 482, it was observed:

In the exercise of this wholesome power, the...made by the legislature.

8. Regarding the case of R.P. Kapoor the relevant observation reads as follows:

Gajendragadkar, J. who spoke for the Court in Kapur's case observes in his judgment that it....within the straight-jacket of a rigid formula.

9. Taking into consideration the scope of the inherent powers of the High Court under the Code and the contentions advanced by the learned Counsel for the parties, it is now appropriate to indicate the allegations of the complaints filed by the opposite parties in the two cases, one at Etawah and another at Moradabad. in this connection it would also be appropriate to indicate the contentions of the applicants in applications u/s 482 Code of Criminal Procedure. At this stage it may be indicated that in the criminal case pending before the Magistrate, Etawah, statements of the complainant and his two witnesses have already been recorded, therefore, it will also have to be considered whether in this circumstance an order sought by the applicants in criminal miscellaneous case No. 6913 of 1976 would be expedient.

9. Sri Vijay Kumar Shukla, complainant of Etawah alleged in his complaint (Annexure "A" of the affidavit of Sri Krishna Deo Bhalla) that on 28-9-1975, he saw Film Sholey at Faridabad, that this film was produced by accused No. 1 Shri G.P. Sippi of Bombay, that it was distributed in Delhi, U. P. Region by accused No. 2 M/s. Rajshree Pictures, that at Faridabad the film was of 23 reels having a comedy sequence of comedian Asrani, a song sequence of actress Jaya Bhaduri and some hilarious scenes played by Jagdeep and other famous comedians, that at Faridabad the picture was in 35 mm. with ordinary sound, that from

24-9-1976 the film was being shown in Deep Cinema, Etawah, that Shri G.P. Sippi, M/s. Rajshree Pictures, Sri K.D. Bhalla, Proprietor, Deep Cinema and Manager, Deep Cinema advertised in the city of Etawah that the said film was being shown on 70 mm. screen with stereophonic sound in which it was originally made, that he was very keen to see the film in 70 mm. with stereophonic sound, that on 8-10-1976, he went to see the picture with his two friends, that he purchased three tickets for Rs. 9.00 that the film was shown on the ordinary screen in 35 mm. with ordinary sound, that the comedy scene of Asrani, sound sequence of Jaya Bhaduri and half of the hilarious scenes of Jagdeep and others were not shown although the name of Jagdeep and Asrani was advertised in the casting of the film and the same was advertised by announcement in the town of Etawah and that, therefore, all the 4 accused persons had cheated the complainant and the public, as such they were guilty of the offences of cheating etc.

10. In their application u/s 482 Code of Criminal Procedure the applicants contended that in the year 1971, there was an agreement between Sri K.D. Bhalla, Proprietor, Deep Cinema, Etawah and Best Films, Delhi, that under the agreement Best Films had taken the Deep Cinema building on rent from Sri K.D. Bhalla, vide copy of the agreement Annexure "B" that the said agreement of 1971 was renewed from time to time and was enforced and the responsibility of showing the pictures and their publicity was of Best Films, Delhi, that the position of Sri Bhalla was no more than that of a landlord, that Sri Bhalla was not responsible for the local publicity of the film, that it was wrong to allege that the film was to be shown on 70 m.m. screen, that the advertisement of Sholey Film was only to the extent that it was shot in 70 m. m. sterophonic sound, that the film Sholey was censored on 14-8-1975 and certain shots were deleted by the Censor Board, that by a further notification dated 19-9-1975, the producer was given an option to delete certain shots from the said Film (vide copy of the notification Annexure "D"), that it was never advertised at Etawah that Asrani was acting in the film, that 23 reels were shown in the cinema hall, that at the beginning of the show the Cinema Board Certificate is exhibited at the screen, that this certificate clearly indicated that the film would be shown in 35 m.m., that the Munsif Magistrate summoned the applicants u/s 420 IPC without applying his mind, that the continuance of the complaint would bring about a lot of harassment to the applicants.

11. In support of the application Sri K.D. Bhalla Proprietor of Deep Cinema gave his affidavit. Agreement Annexure "B" between Sri K.D. Bhalla and M/s. Best Films, Delhi, indicated that K.D. Bhalla, Licensor would run the Deep Talkies with such films as would be supplied by the Best Films, that K.D. Bhalla would pay entire box office collection of each day less entertainment tax to the Best Films and that Sri K.D. Bhalla would make all his entire staff available to the Best Films for the smooth running of the cinema. Taking into account these conditions it cannot be said that Sri K.D. Bhalla had no connection with the showing of films/pictures in Deep Cinema.

12. Vijai Kumar Shukla, complainant filed counter affidavit of his paiokar, Laxmi Kant Saxena in which he deposed that on the basis of the advertisement of the Film the complainant knew that it would be shown on 70 m.m. screen stereophonic sound and 23 reels with hilarious songs of Jagdeep and others, sound sequence of Jaya Bhaduri and comedy scene of Asrani would be shown, that it was wrong to say that the position of K.D. Bhalla, owner of the Deep Talkies was only of a landlord and that the accused applicants had made publicity through pamphletes, papers, photographs and on loud-speakers in the town of Etawah and that, therefore, the Magistrate was justified in summoning the accused persons.

13. Applicants filed rejoinder affidavit of Sri K.M. Sadiq Khan, Pairokar in which he deposed that Sri G.P. Sippi, producer, had nothing to do with the publicity of the film at Etawah or any other place where the film was to be shown, that Sri Tara Chand Barjatia of M/s. Rajshree Pictures was not the distributor of the film Sholey, that he had no concern with the publicity of the film, that it was wrong to say that it was advertised at Etawah that the film would be shown on 70 m. m. screen with stereophonic sound, that the film had been made with specific lenses for 70 m.m. and the recording of the songs etc., had been done with stereophonic facilities and the film could be shown in 70 m.m. with stereophonic sound where-ever facilities were available, that in the city of Uttar Pradesh to the best of his knowledge there was not a single cinema which had such a facility and that the complaint was malafide.

14. Dr. Shabbir Ahmad, complainant of Moradabad alleged in his complaint that film Sholey was produced by Sri G.P. Sippi, that Shri Tara Chand Barjatia of M/s. Rajshree Pictures, Delhi was Distributor of Film Sholey for U. P. that the film was being shown at Moradabad for the last 21/2--3 months in Saroj Cinema which had been taken by Sri Krishna Kumar Puri, accused No. 2 on theka, that Krishna Kumar Puri was running the Saroj Cinema under the supervision of Sri B.S. Sharma, accused No. 3, that Krishna Kumar Puri and B.S. Sharma, accused Nos. 2 and 3 had taken the film for exhibiting to the public of Moradabad, that according to the certificate of the Censor Board the film was of 23 reels, that the names of favourite stars Asrani and Keshto Mukerji were advertised by various ways in the town of Moradabad, that it was also advertised that the film would be shown on 70 m.m. screen, that he saw the film on 21-11-1975, that the film was shown on 35 m.m. screen, that the scenes of Asrani and Keshto Mukerji were not shown, that instead of 23 reels, 18-19 reels only were shown, that, therefore, he felt very bad, that when he came out of the cinema hall many persons of the public said that the public was being cheated, that all the three accused persons had conspired and made false publicity and as such all of them were liable for defrauding/cheating the public.

15. Sri Tara Chand Barjatia contended in his application u/s 482 Code of Criminal Procedure that he was not the Distributor of Film Sholey for Uttar Pradesh, that M/s. Rajshree Pictures Private Ltd. Delhi, was the sole distributor of Uttar

Pradesh, that M/s. Rajshree Pictures Private Ltd. had entered into a contract to supply the film to M/s. Saroj Cinema, Moradabad, that he had nothing to do with the publicity, photograph etc. of the film at Moradabad, that the publicity was made by the exhibitor i. e. the person who really and actually exhibited the film and managed the cinema concerned, that it was wrong to say that it was propagated that the picture would be shown in 70 m.m., that there was no equipment in the cinemas of Uttar Pradesh to show films in 70 m.m., that he had unnecessarily and illegally been dragged into the case, that the censor certificate indicated that the picture is in 35 m. m. packed in 23 reels, that names of Keshto Mukerji and Asrani were not mentioned in the censor certificate, that the picture was shot in 35 m.m. with specific ratio of lenses to blow it upto 70 m.m. in such cinema halls where the facilities of the equipments were available, that if proper lenses and equipments were available in the cinema the film shot in 35 m.m. could be shown upto 70 m.m. and that it appeared that the complainant was not aware of the difference in 35 m.m. and 70 m.m. It was further contended that the Petitioner was impleaded for the sake of harassment.

16. The application was supported by an affidavit of K.M. Sadiq Khan, pairakar of the Petitioner.

17. It may be noted at this stage that the application u/s 482 Code of Criminal Procedure has been moved by Sri Tara Chand Barjatia, accused No. 1 only and that it has not been moved by Krishna Kumar Puri and B.S. Sharma, accused Nos. 2 and 3.

18. Dr. Shabbir Ahmad, complainant opposite party filed counter affidavit in which he deposed that in the criminal case in question accused Nos. 2 and 3 had appeared in the court of the Chief Judicial Magistrate, Moradabad, that the Petitioner, inspite of non-bailable warrants and attachment proceedings under Sections 82 and 83 Code of Criminal Procedure did not appear, that the Magistrate had passed orders for the appearance of the applicant and issued process, that the applicant was deliberately avoiding the service of warrant etc. that he had no right to invoke the inherent jurisdiction of the High Court, that the applicant and the other accused persons did commit an offence of cheating, that all arrangements between Krishna Kumar Puri and B.S. Sharma were made to the knowledge of the applicant, that the applicant often visited Moradabad at the time when the offence was committed by the co-accused, that the publicity of the film was made under the direction of the applicant, that the applicant and the co-accused together did made publicity of the film, that it had 23 reels and would be shown in Saroj Cinema on 70 m.m.

19. Applicant filed rejoinder affidavit of Naresh Chandra Bhargava denying the allegations made by the complainant in his counter affidavit.

20. It is clear from the allegations of the parties that the film was produced by Sri G.P. Sippi of Bombay, that M/s. Rajshree Pictures Private Ltd., Delhi is the sole Distributor of the film for U. P. It is further clear that at Etawah the film was

shown in Deep Cinema, that Sri K.D. Bhalla is the proprietor of Deep Picture Palace, that he had entered into agreement with Best Films, Delhi that he was to exhibit the films supplied to him by Best Films, that he was to pay the entire income less entertainment tax to the Best Films.

21. At Moradabad the film was shown in Saroj Cinema. Sri Tara Chand Barjatia, accused No. 1 has been shown as distributor of the film. The complaint clearly shows that M/s. Rajshree Pictures Delhi, in fact, is the distributor and Sri Tara Chand Barjatia is connected to it.

22. In the complaint filed at Etawah it is not mentioned on what terms the producer had given the film to M/s. Rajshree Distributors Delhi. In the complaint it is also not mentioned on what terms the Distributor had given the film to the Best Films, Delhi for being shown through Sri K.D. Bhalla at Etawah. Likewise in the complaint filed at Moradabad, it is not mentioned on what terms Sri Tara Chand Barjatia or M/s. Rajshree Pictures Delhi had given the film to Krishna Kumar Puri and B.S. Sharma for displaying in Saroj Cinema, Moradabad. In both the complaints the allegation is that publicity was made in the towns of Etawah and Moradabad that the film would be shown on 70 m.m. with stereophonic sound. It stands to reason that the publicity would be made by the exhibitor of the film and not by the producer or its distributor for the State of Uttar Pradesh. In view of this there is considerable force in the contentions of Sri G.P. Sippi and M/s. Rajshree Pictures Private Ltd. so far as the complaint at Etawah is concerned. Similarly there is considerable force in the contention of Sri Tara Chand Barjatia so far as the complaint filed at Moradabad is concerned. Correctly speaking, allegation re: publicity by the producer and Distributor in both the complaints are wholly vague and contradictory to the allegation made in the opening posters of the complaint.

23. While disposing of an application u/s 482 Code of Criminal Procedure this Court is not justified in going into the question as to what publicity was actually made in both the towns and what impression was carried by the people on seeing the posters and hearing the advertisement on loud speaker etc.

24. In the case of State of Karnataka v. L. Muniswamy, cited above, it was clearly observed by the Supreme Court that a court proceeding ought not be permitted to degenerate into a weapon of harassment and that in such a case the High Court exercises its inherent power. In the instant cases taking into account the allegations of the complaints and the facts which have been brought to the notice of this Court by the parties, it is evident beyond doubt that Sri Vijai Kumar Shukla of Etawah has wrongly drawn Sri G.P. Sippi, Producer and M/s. Rajshree Pictures, Distributor of Film Sholey. Similarly Dr. Shabbir Ahmad of Moradabad has wrongly drawn Sri Tara Chand Barjatia. Allowing the criminal cases to continue against the said persons would be an abuse of the process of the court. At Etawah the complainant can proceed against Sri K.D. Bhalla and the Manager of the Deep Cinema. At Moradabad the complainant can proceed against Krishna Kumar Puri and B.S. Sharma, who did not file application u/s 482 Code of

Criminal Procedure. The matter is not so trivial as to attract the provisions of Section 95 IPC.

25. Learned Counsel for the complainants referred to two cases, (1) Akhil Kishore Ram v. Emperor 1938 CriLJ 442, Patna and (2) Tulsi Ram v. State of Uttar Pradesh AIR 1963(sic). In both these cases ingredients underlying the offence of cheating were indicated. Facts of these cases are not at all similar to the facts in the instant cases, therefore, they are of no help so far as Sri G.P. Sippi, M/s. Rajshree Pictures Private Ltd. and Sri Tara Chand Barjatia are concerned.

26. The learned Counsel for the complainants further contended, that the order of the Magistrates summoning the accused persons was interlocutory in nature and as such this Court would not be justified in exercising inherent power in the teeth of the provisions of Section 397(2) Code of Criminal Procedure. This contention is without force. This Court can exercise inherent power to prevent abuse of the process of any court. It has been said above that if the criminal cases are allowed to continue against the producer and the distributor of the film, it would be an abuse of the process of the court. This view is fully supported by the case Madhu Limaye v. State of Maharashtra 1978 AWC 96 = 1978 ACrR 78 and State of Karnataka Vs. L. Muniswamy and Others, .

27. The result is that the application No. 6193 of 1976 has to be allowed so far as Sri G.P. Sippi and M/s. Rajshree Pictures Private Ltd. are concerned and application No. 914 of 1977 of Sri Tara Chand Barjatia has to be allowed.

28. Application No. 6913 of 1976 is allowed in this way that the proceedings of the criminal case pending before the Magistrate, Etawah on the basis of the complaint brought by Sri Vijai Kumar Shukla are quashed against Sri G.P. Sippi and M/s. Rajshree Pictures Private Ltd.

29. Application No. 914 of 1977 is allowed and proceedings in the criminal case pending before the Magistrate of Moradabad on the basis of the complaint filed by Dr. Shabbir Ahmad are quashed against the applicant Sri Tara Chand Barjatia.