
(2002) 02 MP CK 0059

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6077 of 2001

Khajanchi Film Exchange and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Copyright Act, 1957 — Section 51, 63, 64

Citation : AIR 2002 MP 181 : (2002) 3 MPHT 97 : (2002) 3 MPLJ 501 : (2002) 3 MPLJ 490

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Kishore Shrivastava, for the Appellant; Sanjay Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The petitioners are seeking relief to direct respondents to prevent infringement of the Copyright of the petitioners and also to restrain illegal screening of film titled "Kabhi Khushi Kabhi Gum".

The petitioners apprehended that the said cinematograph film would be duplicated and screened by the Cable T.V. Network Operators and other private operators which would be defeasive of the right of the petitioners under Copyright Act. Producers have not released video rights of the film. The petitioners submit that violation of the provision of Copyright Act by illegal and inconvenient duplication and screening of the cinematograph film has reached immeasurable proportions; video piracy is on rise and it is their common experience that in order to provide for entertainment to their customers. Cable operators indulge in pirated video cassettes screening by using their network without proper authorisation or permission from the Copyright owners; statutory power vests with the police under Sections 63 and 64 to take the cognizance and

seize infringed copies under Copyright Act, but action is hardly taken by the police.

Counsel for the petitioners submits that film was to be released on 14th December, 2001. The writ petition was filed before this Court by the petitioners on 28-11-2001 before 16 days of released of the film.

In the writ petition, fifteen District Magistrates and fifteen Superintendents of Police of fifteen districts are impleaded as respondents which fall in the jurisdiction of main seat at Jabalpur.

Director General of Police, State of M.P. and respondent Nos. 2, 34 and 35, who are Cable Operators, are also impleaded as parties.

The first question which arises for consideration is whether the writ petition can be said to be maintainable. Firstly, the film was not yet released. Both the petitioners did not approach any of the respondents. There was no failure on the part of any of the respondents in performance of any of their legal duties with respect to the right complained of. The entire machinery was put to doubt by the petitioners on the basis of averments made in the writ petition that it is to the common knowledge that they do not take action. Thus apprehending infringement of their right, the writ petition was filed before this Court.

Learned Counsel for the petitioners submits that writ petition can be filed for preventing infringement of the right which is imminent. Learned Counsel further submits that under Regulation 321 of M.P. Police Regulations, it is duty of the police to prevent commission of offence. Learned Counsel further places reliance on decision of Supreme Court in the case of Delhi Administration Vs. Ram Singh, , wherein Paragraph 18 duties of the Police in connection of performance of its work were discussed. Paragraph 18 is quoted below:--

"The entire police duties in connection with the purposes of the Act within a certain area have been put in the charge of a special police officer. There must be a definite purpose behind the provision of appointing a police officer in charge of the police duties within a specified area for the purpose of this Act. If the ordinary police can also perform the police duties for the purposes of the Act, there can be no special reason for making the provision for the appointment of a special police officer. The expression "police duties" will include all the functions of the police in connection with the purpose of the Act and in special context of the Act they will include the detection, prevention and investigation of offences and the other duties which have been specially imposed on them under the Act."

Learned Counsel further presses into service decision of Supreme Court in the case of The State of Punjab Vs. Barkat Ram, Paragraph 8 which is quoted below:--

"The Police Act, 1861 (Act V of 1861), is described as an Act for the regulation of police, and is thus an Act for the regulation of that group of officers who come within the word "police" whatever meaning be given to that word. The preamble

of the Act further says : "whereas it is expedient to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime, it is enacted as follows". This indicates that the police is the instrument for the prevention and detection of crime which can be said to be the main object and purpose of having the police. Sections 23 and 25 lay down the duties of the police officers and Section 20 deals with the authority they can exercise. They can exercise such authority as is provided for a police officer under the Police Act and any Act for regulating criminal procedure. The authority given to police officers must naturally be to enable them to discharge their duties efficiently. Of the various duties mentioned in Section 23, the more important duties are to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances and to detect and bring offenders to justice and to apprehend all persons whom the police officer is legally authorised to apprehend. It is clear, therefore, in view of the nature of the duties imposed on the police officers, the nature of the authority conferred and the purpose of the Police Act, that the powers which the police officers enjoy are powers for the effective prevention and detection of crime in order to maintain law and order."

Learned Counsel further places reliance on the decision of Supreme Court in the case of Mani Subrat Jain and Others Vs. State of Haryana and Others, , Paragraph 9 which is quoted below :--

"The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England 4th Ed. Vol. I, Paragraph 122); The State of Haryana Vs. Subash Chander Marwaha and Others,); Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others,) and Ferris Extraordinary Legal Remedies Paragraph 198."

In the case of Mani Subrat Jain and Ors. v. State of Haryana and Ors. (supra) their Lordships of the Supreme Court clearly laid down that a person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. In the instant case, the petitioners were not denied any legal right nor any of the respondents abstained from performance of any of their duties. They were not at all approached. The film was not at all released when writ petition was filed.

Truly, Paragraph 8 of the decision of Supreme Court in the case of State of Punjab v. Barkat Ram (supra) deals with the duty of the police officers and in Delhi Administration v. Ram Singh's case also duties of the police officers were discussed. No doubt that counsel is right in the submission that Police's main action is to prevent the commission of crime but that by itself is not enough to enable the petitioners to doubt the effectiveness of the entire state machinery

and put it into writ jurisdiction of this Court. The petitioners should have approached the concerned authorities first; and in the event of their failure to take preventive measures/seizure of cassettes under M.P. Police Regulations and the Copyright Act, the petitioners should have approached this Court.

It was laid down in *Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI)*, and *State of Haryana and Another Vs. Chanan Mal and Others*, , that as a general rule the writ will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that such demand was met with a refusal. Demand and refusal is not merely a technical point but is a point of substance as laid down in *Sheoshankar v. State Govt. of Madhya Pradesh and Ors.* AIR 1951 Nag. 58. In the instant case there is not even implied refusal by the respondents. If a writ is entertained and relief readily granted before release of a movie without approaching respondents who have to prevent threatened violation of Copyright. We are opening a flood gate of litigation. The Copyright Act provides adequate safeguards and procedure. It cannot be said that mere an apprehension that certain offence may take place a writ can be filed seeking a direction that no such offence be allowed to take place. First authorities have to be asked to prevent it. The function of the police is to prevent piracy and unauthorised exhibition. In the instant case there was no inaction on the part of police and other concerned officials and they were unnecessarily dragged in writ petition without even putting them to notice of proposed writ. No demand notice was served, no specific complaint was lodged. Thus writ is not maintainable. In *re Robert v. Catting* (1877) 24 Law ED 45 (51): 94 US 14, it was held that mandamus is never granted in anticipation of an omission but only after actual default. In *Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another*, , Apex Court laid down that a mere apprehension of petitioners that they would be deprived of their fundamental rights in future is not enough to issue of mandamus.

Filing of such writ petition before the release of the film is to be deprecated. It amounts to gross misuse of the writ jurisdiction of this Court. The notices in the instant case were issued to the respondents who have been unnecessarily put to notice of the writ petition by the petitioners.

Writ petition is wholly misconceived and is dismissed with cost of Rs. 15,000/- (Rupees fifteen thousand).