

(1969) 02 MAD CK 0039
In the Madras High Court

Radhakrishna Films (P.) Ltd., by Chairman S. Kumaraswamy Reddiar APPELLANT

Vs

Newtowne Studios (P.) Ltd., Director, Jittan Banerjee and Another RESPONDENT

Date of Decision : 14-02-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 418

Citation : (1970) 83 LW 459 : (1970) 2 MLJ 462

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—On 27th October, 1960, a decree for a sum of Rs. 2,48,623 was passed in favour of the plaintiff in C.S. No. 38 of 1958 and certain charges with reference to the said amount were created in respect of materials in the Newtons Studios. Subsequently, E.P. No. 85 of 1961 was filed in execution of that decree and on 5th May, 1961, an order was passed by this Court, on consent of the parties. Under the terms of the consent order, the 1st defendant Company's Managing Director, Dinshaw K. Teherani was appointed Receiver with liberty to draw a sum of Rs. 1,000 per mensem as Receiver's remuneration and the said Receiver was directed to pay the plaintiff-decree-holder on or before 15th day of every month a minimum amount of Rs. 6,500 or net collections whichever was more, towards the satisfaction of the decree dated 27th October, 1960. Certain defaults having been committed by the Receiver, Application No. 895 of 1963 was filed by the 1st defendant before this Court, and in that application also an order based on the consent of the parties was passed on 18th June, 1963, and the Receiver was permitted to lease out Messrs. Newtowne Studios (P.) Ltd., to Messrs. Venkateswara Cinetone, Madras, on a monthly rent of Rs. 4,000. The said rent of Rs. 4,000 was directed to be apportioned as follows : Rs. 3,000 to the plaintiff-decree-holder and a sum of Rs. 600 to Messrs. Photophone Equipment Ltd., Bombay, towards the amount due to them under a decree, and Rs. 400 to the 3rd respondent in that application, namely, L. Nataraja Chettiar

and his wife K. P. Mangayarkarasi towards the amount due to them under the decrees in O.S. No. 53 of 1968, Sub-Court, Devakottai, and O.S. No. 3 of 1960, Sub-Court, Devakottai, respectively, the said amount of Rs. 400 being apportioned as Rs. 200 towards each of the said decrees. Thereafter the Receiver is said to have been adjudged an insolvent in December, 1964. Application No. 204 of 1966 was preferred by ore K. Balasundaram for a direction to the Receiver to make the monthly deposits from and out of the rental income of the Newtowne Studios in discharge of the amount, namely, Rs. 50,000 due to the applicant and 17 others, ex-employees of the 1st defendant in the above suit, under the terms of the common order dated 31st March, 1962, made by the Labour Court, Madras, in C. P. Nos. 62 to 71 and 73 to 80 of 1962 on its file. This application was disposed of by Kunhamed Kutti, J., on 28th July, 1966, with the following order:

The Receiver who was in charge of the Newtowne Studios" assets is said to have been adjudged insolvent on his own application. He could not therefore function as a Receiver of Court. The applicant may renew his application after a new Receiver is appointed in the place of Dinshaw K. Teherani who has been functioning as Receiver. This application is therefore closed.

2. Thereafter, Application Nos. 1618, 1619, 1896 and 2278 of 1967 were filed on the file of this Court by the Receiver, in one of which the Receiver claimed his remuneration. All these applications were disposed of by Ramamurti, J., on 18th October, 1967. The learned Judge stated that after the entire facts commencing from May, 1960 and ending with the order of Kunhamed Kutti, J., dated 28th July, 1966, made in Application No. 204 of 1966 that the applicant could not function as Receiver after his adjudication as an insolvent were discussed, the learned Counsel Sri Padmanabhan appearing for the Receiver realised the position and stated on behalf of his client that no useful purpose would be served by prosecuting these applications. The learned Judge proceeded to state that it was clear that after the lease deed executed in favour of Venkateswara Cinetone on 1st June, 1963, the applicant was no longer a Receiver and all that remained was merely a formal order to be passed discharging him, but that had not been done. Subsequently, Application No. 1790 of 1968 was filed by the Receiver for discharging him and by an order dated 18th September, 1968, I discharged the Receiver from his office of Receiver, subject to the accounts being passed. It is against this background the present application has to be considered.

3. The present application has been taken out for an injunction restraining the respondent herein from prosecuting C.C. No. 11905 of 1968 on the file of the VII Presidency Magistrate Court, Egmore, Madras. A complaint was preferred by the Plaintiff-decree-holder under sections 409 and 418, Indian Penal Code, on the allegation that there were huge sums of money lying outstanding and the accused (the applicant herein) had to pay to the complainant the net collections of the income from the studio premises or at least a minimum of Rs. 6,500 as per the directions of this Court, but the accused had collected several sums of

money and without bringing them into account has appropriated the same. The complaint particularises the allegation that the accused had collected from the proprietor of the Central Cine Laboratory a sum of Rs. 3,500 by cheque in favour of his advocate and that amount has been used by the accused and that amount represented the rent for the period from 1st May, 1961 to 30th June, 1963. The further allegation in the complaint was that the accused has nowhere brought this amount into account and has dishonestly misappropriated the same; the amount having been entrusted to him, he has wilfully violated the directions to pay over to the complainant, and by such acts of commission and omission he has rendered himself liable to be prosecuted for criminal breach of trust and by his act of wilful cheating he caused loss to the person, whose interest he is bound to protect under the law. The accused, namely, the applicant herein took up the plea before the learned Magistrate that without obtaining the sanction of this Court, the complainant should not have rushed to the criminal Court, since the complaint related to the acts of the appellant in his capacity as Receiver appointed by this Court. However, obviously not being convinced with the soundness of this contention, the learned Magistrate proceeded to frame charges against the appellant and it is at this stage this application has been filed by the applicant before this Court for the relief of injunction.

4. Mr. Padmanabhan, learned Counsel for the applicant, confined himself to the sole and single basis that the applicant having been appointed as a Receiver by an order of this Court, with regard to anything he might have done, the respondent herein could not have taken proceedings before the criminal Court without obtaining the leave of this Court and the failure to obtain such leave and the prosecution of the applicant before the Magistrate constituted contempt of orders of this Court and only on the basis of this contention, the present application for the issue of an injunction has been filed. Therefore, the important question that arises for consideration is whether the respondent herein was under an obligation to obtain the leave of this Court before preferring the complaint and in not obtaining the leave of this Court before preferring the complaint has he committed contempt of this Court so as to authorise and warrant the issue of the injunction applied for?

5. In support of his arguments, Mr. Padmanabhan relied on a decision of the Patna High Court in *Braja Bhushan Trigunait v. Sris Chandra Tewari* (1918) 47 I.C. 719, where the learned Judges has observed:

There is no statutory provision which requires a party to take the leave of the Court to sue a Receiver. The rule has come down to us as a part of the rules of equity, binding upon all English Courts of Justice in this country. It is a rule based upon public policy which requires that when the Court has assumed possession of a property in the interest of the litigants before it, the authority of that Court is not to be obstructed by suits designed to disturb the possession of the Court. The institution of such suits is in the eye of the law a contempt of the authority of the Court and, therefore, the party contemplating such suit is required to take

the leave of the Court so as to absolve himself from that charge.

6. With reference to these observations of the learned Judges of the Patna High Court, I want to make one comment. That is that the learned Judges were confining their observations to a case where the authority of the Court which appointed the Receiver is sought to be obstructed by suits designed to disturb the possession of the Court and as far as the present case is concerned, with reference to the facts mentioned by me, there is no question of the respondent herein obstructing the authority of this Court or disturbing the possession of the property through the Receiver. Consequently, whether the observations of the learned Judges of the Patna High Court are sound or not, they have no application to the facts of this case.

7. On the other hand, there are decisions of this Court holding that with reference to a complaint before a criminal Court in respect of the conduct or action of a Receiver, there is no statutory provision either in the Indian Penal Code or in the Code of Criminal Procedure requiring the complainant to obtain the leave of the Court which appointed the Receiver as a condition precedent for prosecuting the Receiver or taking proceedings against him. In *Raja Veerabasava Chikka Royal V.B. Varu Zamindar and Receiver of Punganur Estate In re* (1944) 1 M.L.J. 121, Kuppaswami Iyer, J. had occasion to consider the question. The subject-matter of the controversy in that case was the prosecution of a Receiver for running a private market without obtaining licence as required by Section 171 of the Madras Local Boards Act. The argument that was advanced before the learned Judge was that the Receiver should not have been prosecuted without obtaining leave of the Court which appointed him as Receiver. Dealing with that argument, the learned Judge stated:

With regard to the argument that the sanction of the Court which appointed the petitioner as Receiver has not been taken, it is not a universal rule of law that in respect of all prosecutions against Receivers the permission of the Courts which appointed them as Receivers should be taken. This was pointed out in *Nagendranath Srimony v. Jogendranath Srimony* (1912) 15 I.C. 491. It is not the petitioner's case that he wrote to the Court and he was asked by the Court not to take out a license. Nor did the Court tell him at any time that he can keep the market without a license.

If in respect of the act done by him under the orders of the Court he is prosecuted there will be some justification for considering the question whether it would be proper to prosecute him without first intimating to the Court under whose orders he was acting. If the law required any person having a private market to take out a licence and if the Receiver in respect of the property which formed part of the estate vesting in him had to take out a licence it was his duty as receiver appointed by the Court to take out a licence, and his proper course would be to take a licence or take the orders of the Court. When he has not taken any such orders I am not able to see how it could be said that the prosecution is improper by reason of the fact that the sanction of the Court which

appointed him receiver had not been obtained.

8. This decision of the learned Judge was approved by a Bench of this Court in *Shyamalambal Ammal v. Ramamurthy* ILR (1948) Mad. 639 : (1948) 1 M.L.J. 2, where it was stated:

Nowhere in the Code of Criminal Procedure is there any reference to leave of a Court being required before prosecuting a Receiver. A Receiver is not referred to in Section 195 of the Code which requires fulfilment of its provisions in respect of prosecution of certain individuals. In the absence of any authority, I would have ventured to come to the conclusion, which I am expressing here, that when a Receiver commits an offence in relation to property in his possession, then he can be prosecuted without leave being obtained from the Court by which he is appointed.

This observation in the Bench decision of this Court would really conclude the question against the applicant herein. In view of the fact that the prosecution is still pending, I do not propose to say anything on the merits except what the applicant himself has admitted in the affidavit filed in support of this application. The case of the applicant in the affidavit filed by him in support of this application is that though he received the sum of Rs. 3,500 and appropriated a major portion of the same, he is entitled to have his remuneration taken out of the rental receipts. I am mentioning this particular fact with reference to the observation of Kuppaswami Ayyar, J., which I have already extracted. If the applicant had appropriated that amount on the specific orders of this Court, there may be some justification, in the language of the learned Judge, for contending that with reference to such appropriation under the express orders of the Court there should not have been a prosecution without obtaining the leave of this Court. As far as the present case is concerned, clearly there was no order of the Court authorising the applicant herein to specifically appropriate the amount in question. As a matter of fact, I have already referred to the order of Ramamurthi, J., in Application Nos 1618,1619, 1896 and 2278 of 1967, one of which was for appropriation of payment of the remuneration to the applicant herein. Under these circumstances, it cannot be contended that in relation to the appropriation of the amount made by the applicant herein the leave or sanction of the Court is necessary before the respondent can launch a prosecution or prefer a complaint before a Magistrate. Therefore, in law, there is nothing to indicate or suggest that before a party seeks to prosecute a Receiver in respect of an offence committed by him with reference to the property coming into his possession in the capacity of a Receiver, he must obtain the prior leave or sanction of the Court which appointed the Receiver. The offence is one certainly outside the scope of the functions and powers of a Receiver and it cannot be lightly assumed or suggested that when a person was appointed Receiver, the Court authorised him to commit the offence and therefore when he is sought to be prosecuted in respect of the offence, leave of the Court which appointed him is essential as a condition precedent for the launching of the said prosecution.

Equally if there is nothing in law requiring a party to obtain the sanction or leave of the Court before launching a prosecution, even by implication, it cannot be contended that such a party is guilty of contempt of the orders of the Court. Under these circumstances, the contention of the applicant that the respondent ought to have obtained the leave of this Court before preferring a complaint and not having done so, he is guilty of the contempt of the orders of this Court must fall and therefore the relief of injunction prayed for cannot be granted.

9. In view of this conclusion of mine, it is unnecessary to consider the other argument of the learned Counsel for the respondent that at the time when the amount of Rs. 3,500 was received by the applicant on nth December, 1964, he ceased to be the Receiver by virtue of the fact that the Studio has been leased to Venkateswara Cinetone or by virtue of the fact that he was adjudged an insolvent in December, 1964.

10. Under these circumstances, this application is dismissed with the costs of the respondent. Counsel's fee is fixed at Rs. 250.