

(2018) 08 DEL CK 0197

In the Delhi High Court

Case No : Criminal Miscellaneous Case No.4559 OF 2015 and CrI.M.A.16253 OF 2015

Star India Pvt Ltd

APPELLANT

Vs

State Nct Of Delhi & Ors

RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 156(3), 482

Indian Penal Code, 1860 — Section 120B, 379

Copy Rights Act, 1957 — Section 37, 51, 63, 65, 69

Citation : (2018) 08 DEL CK 0197

Hon'ble Judges : R.K.GAUBA, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

R.K.GAUBA, J

1. The petitioner herein had approached the court of the Chief Metropolitan Magistrate (CMM) with a criminal complaint invoking the provision

contained in Section 156 (3) of the Code of Criminal Procedure, 1973 (Cr. P.C.) on 06.07.2015 seeking a direction to the Economic Offences Wing

(EOW), Crime Branch, of Delhi Police, to investigate into certain acts of commission and omission allegedly constituting offences punishable under

Sections 379 and 120-B of the Indian Penal Code, 1860 (IPC) read with Sections 37/51/63/65/69 of the Copy Rights Act, 1957, attributing the said

acts of commission and omission to the company named as M/s Home Cable Network Pvt. Ltd (the third respondent) and its managing Director Mr.

Vikky Choudhary (the second respondent).

2. The CMM called for a report from the police with regard to the action taken by it with respect to the complaints that had been earlier lodged with

the Deputy Commissioner of Police (DCP) on 10.04.2015 and 27.05.2015. A report dated 18.08.2015 was submitted by Sub-Inspector Dharmender

Kumar of District Investigation Unit (DIU) of the South-East District to which the said earlier complaints to the police appeared to have been made

over for inquiry.

3. Upon consideration of the said report of DIU, the CMM proceeded to take a decision on the prayer of the petitioner for direction to the police under

Section 156 (3) Cr.P.C. By order dated 08.10.2015, he found the dispute raised to be civil in nature and the matter â??sub judiceâ? before the

appropriate authority, and, therefore, considering it improper to issue such directions as were sought.

4. Feeling aggrieved, the petitioner has approached this court invoking its inherent power under Section 482 Cr.P.C. praying, inter alia, for the

aforementioned order of the CMM to be set aside and for direction to the police to investigate into the matter.

5. When the petition was filed, only the State (NCT of Delhi) was made a party respondent. The learned senior counsel appearing for the petitioner at

the very inception on 04.11.2015 regretted and sought opportunity to implead the second and third respondents as parties, it being fair and just to hear

them. The request was accordingly allowed. The second and third respondents upon being served have filed their reply and also written submissions

resisting the prayer in the petition, broadly terming the allegations of the petitioner in the complaints to the police and to the CMM, to be false and

motivated.

6. Having heard submissions in the matter and having gone through the record, this court finds the approach of CMM in the impugned order to be

wholly mis-directed, it requiring this court to step in and make the necessary amends.

7. As has been brought out at the hearing, there is a history to the dispute between the petitioner on the one hand and the second and third respondents

on the other. It appears that the second respondent is a Multi System Operator (MSO) engaged in the business of providing cable network of certain

TV channels. It had earlier taken a licence from the petitionerâ??s company which owns/manages/controls/broadcasts a number of TV channels in

India, such channels being pay channels, the signals whereof are encrypted/

scrambled, the licensee(s) being permitted to receive and re-transmit the decrypted signals to the subscribers with the aid and assistance of, inter alia, integrated digital satellite receiver cum decoder box (DSR's).

Suspecting abuse of the said licence and unauthorized transmission of signals to subscribers leading to revenue loss for the petitioner's company, it

had issued disconnection notice on 09.12.2013 followed by another notice dated 28.01.2014. This led to a petition No.466/C of 2013, coming up before

the Telecom Dispute Settlement Appellate Tribunal (TDSAT for short). The TDSAT by its directions issued in March, 2015 called for an

audit through a governmental agency known as Broadcast Engineering Consultants India Limited (BECIL for short). BECIL submitted its

audit report dated 15.04.2015, upon consideration of which the petition of the third respondent came to be disposed of by order dated 01.05.2015.

8. While the matter was pending before the TDSAT, the petitioner lodged two complaints with the DCP (South-East) first on 10.04.2015 and the

second on 27.05.2015 each based on video recordings of certain transmissions made from the facilities of the third respondent, each intercepted at two

different locations, one in Zakir Nagar, Jamia, New Delhi and the other in Zakhir Nagar, Okhla, New Delhi on 26.03.2015 and 26.05.2015, each

intercept revealing the logos both that of the petitioner company as also of the third respondent company being carried through Direct to Home (DTH)

decoders presenting the intercepts as proof of the offences mentioned above being committed by the second and third respondents, requesting for

suitable action in accordance with criminal law.

9. The summary of the findings of BECIL, in its audit report dated 15.04.2015, would be relevant for the present purposes and the same may be

extracted as under:-

(a) The petitioner's system does not comply with the security provisions mandated by the Regulations.

(b) There are serious deficiencies in the system of the petitioner, as specified in paragraph 17, that have implications in terms of piracy detection and

the same compromise the security features of the petitioner's system.

(c) There is high probability of the petitioner's system being used for taking the broadcaster's signals outside the DAS area of Delhi for the

reasons specified in paragraph 14.

(d) In so far as the CDs are concerned, the time of the recording as evident from the CDs matches the time of the live telecast of the programmes

featuring in the CDs. This is evident from the electronic programme guide and the timings appearing in the telecasts. This would prima facie be

indicative of the recordings being made of live transmissions and not a pre-recorded transmissions.

(e) However, this circumstance cannot be considered to be conclusive since technically it is possible to change/tamper with the identification label

number on the mobile phone and/or while transferring the content to a CD. Whether in this case such tampering/change has taken place or not can

only be determined and the forensic examination of the mobile phone and the device on which the CD was created. Therefore a conclusive finding

cannot be recorded in the absence of examination by a forensic lab/agency.

(f) It appears that the petitioner's system was being used for taking the Broadcaster's signals beyond the DAS areas of NCT of Delhi.

Whether the same was with the consent of the petitioner is a matter that can only be determined after a forensic examination of the mobile phone and

the system that has been used to create the CD. Since Home Cable does not have any agreement for distribution of sports channels of Respondent

No.2 either in Delhi or in Gurgaon, the availability of these records

in the SMS & CAS of Home Cable indicates the piracy of sports channels of Respondent No.2 on the Home Cable network which, though not

conclusive, is indicative of the petitioner's consent.

(g) The fact that the STB/VC of the petitioner, involved in the piracy was active till the last date of the audit is also indicative of the petitioner's

system being willingly used for taking the broadcaster's signals beyond the DAS area of NCT of Delhi.

(h) None of the above circumstance is conclusive by itself but considered in conjunction with each other are indicative of the knowledge and consent

of the petitioner.

10. Accepting the above mentioned audit report of BECIL, TDSAT, by its order dated 01.05.2015 concluded that it was a case not only of piracy

being carried out using the systems and equipment of the third respondent but also reflecting that this activity was being undertaken with its full

knowledge and consent. The petition of the third respondent was disposed of

with penalty of Rs.25 lacs being imposed against him.

11. The order dated 01.05.2015 of the TDSAT was challenged before this Court invoking its writ jurisdiction by Writ Petition (Civil) No.4754/2015.

The said writ petition was dismissed by a learned Single Judge by his judgment dated 15.05.2015. It appears, the said order of the learned Single Judge

was challenged in appeal " letters patent appeal (LPA) No.715/2015 before a division bench of this Court. As was pointed out by the learned senior

counsel during the course of arguments, having regard to the registration number of the LPA, it would have come to be presented and pressed for

consideration by the division bench in the year 2016 and yet in the report of DIU dated 18.08.2015 there is a reference to "appeal being pending at

that stage"

12. Be that as it may, a copy of the order dated 12.07.2017 whereby LPA No.715/2016 was disposed of has been presented at the hearing, which

would show the third respondent having given up the challenge to the order of TDSAT and of the learned Single Judge and restricting the prayer for

reduction of the penalty on the ground it was not justified, it being excessive, the prayer to that effect being allowed by the division bench, the penalty

being reduced to Rs.1,00,000/- only.

13. Against the above material on record pertaining to the order of TDSAT which includes the independent audit report of BECIL, it could not have

been observed by the Chief Metropolitan Magistrate that it is a dispute purely civil in nature. There is material prima facie showing illegal interception

and re-transmission of the TV signals of the petitioner. The case could not have been closed by mere observation that since matter was "sub

judice" before appropriate authority, no action on the part of the Metropolitan Magistrate was called for in terms of Section 156(3) Cr.P.C. The

complaints of the petitioner having revealed cognizable offences being committed, they not being allegations made just in the air but having been

supported by some material, the Magistrate ought to have issued requisite directions under Section 156(3) Cr.P.C. for the investigation to be carried

out. It must be added that the manner in which the DIU of Delhi Police handled the complaints of the petitioner also leaves much to be desired. It is

hoped that pursuant to the directions which are being hereby passed, a more responsible investigative action would be undertaken.

14. The impugned order dated 08.10.2015 of Chief Metropolitan Magistrate is set aside. The Commissioner of Police, Delhi is directed to have the

complaint(s) of the petitioner properly investigated so as to take the matter to the logical end under the criminal law. Needless to add, for carrying out

such investigation under Section 156 (3) Cr.P.C., the Commissioner of Police will have to first get FIR registered which, it is hoped, would be

entrusted to an agency equipped to carry out an investigation of a case of such nature.

15. The petition is disposed of in above terms.

16. Pending application also stands disposed of.