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**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 6165/2017

Akshay Kumar Actor, Movie Jolly L.L.B.-2 S/o Shri Hari Om Bhatia, R/o 203, Wing Lakhandwala Complex, Juhu, Mumbai, Present R/o 201, Prime Beach, Gandhi Gram Road, Juhu Mumbai-400049.

----Petitioner

Versus

1. State of Rajasthan, through P.P.
2. Tikam Chand Sharma S/o Shri Gyarsi Ram Sharma, R/o Plot No. 21, Gopi Nagar, Near Sangam Cinema, Sanganer, Jaipur, Rajasthan.

----Respondents



For Petitioner(s) : Mr. Rajendra Prasad, Senior Counsel
with Ms. Purvi Mathur
Mr. Kushagra Sharma
Mr. Nitin Sharma, through VC
Mr. Sumant Narang

For Respondent(s) : Mr. Shyam Prakash Sharma, PP
Mr. Y.V. Nandwana
Mr. Nikhil Sharma
Mr. Abhishek Sharma
Mr. R.S. Solanki for
Mr. Rajesh Goswami

HON'BLE MR. JUSTICE SATISH KUMAR SHARMA

Order

04/08/2021

1. This Petition has been filed under Section 482 Cr.P.C. against the order dated 6-2-2017 in Cr.Case No.661/2017, passed by Additional Chief Metropolitan Magistrate No.20, Jaipur Metropolitan Sanganer whereby cognizance has been taken under Section 500 IPC against the present petitioner on the basis of trailer of film Jolly LLB 2.



2. Though the present petition under Section 482 Cr.P.C. challenging the order of cognizance has been directly filed before availing the remedy of Revision, however, since this court had entertained the petition and interim order was also passed way back on 4-12-2017, therefore, this petition is being disposed of on hearing learned counsel for both the parties on merits.

3. Heard learned counsel appearing on behalf of both the sides and perused the material made available on record.

4. Learned Senior Counsel Mr. Rajendra Prasad appearing on behalf of the petitioner submits that the complaint has been filed on the basis of trailer of film Jolly LLB 2, whereas the entire film Jolly LLB 2 was scrutinised by the High Court of Judicature at Bombay (Aurangabad Bench) in PIL No.11/2017, Ajay Kumar Vs. The Union of India & others, and in compliance of its order dated 6-2-2017, some scenes were deleted. Thereafter necessary certificate was issued by the Central Board of Films Certification (hereinafter `CBFC'). In the past four years, no objection from any sect of the Society has been levelled against the film so released after above certification. The trailer was also approved by the CBFC and the presumption is in favour of the film so released after due certification by the CBFC that the same has no content of defamation against any one.

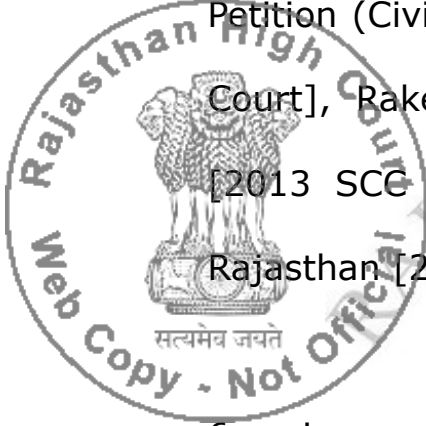
5. Learned Senior Counsel has further contended that for the offence of defamation under Section 499 IPC, the alleged defamatory content should be such, which may cause defamation



of a particular person or persons whose identity can be established. In this case, the complainant individually has not been defamed in any manner. Besides this, the film is a work of fiction and an Artist has to execute his skilfull role and he has no personal opinion or intention to defame any one. The impugned order of cognizance is also violative of fundamental rights of freedom of speech and expression as guaranteed under Article 19(1)(a) and 19(1)(g) of the Constitution of India. The learned Additional Chief Metropolitan Magistrate was obliged to ponder over all aspects of the matter, but the impugned order itself indicates that the cognizance has been taken in cursory manner without due application of mind. Thus the impugned order is not sustainable in the eyes of law and liable to be quashed and set side. Reliance has been placed on G. Narasimhan, G. Kasturi and K. Gopalan Vs. T.V. Chokkappa [(1972)2 SCC 680], Anand Bazar Patrika (P) Ltd. Vs. State of West Bengal [2005 Cri.L.J. 1126], Smt. Aruna Asaf Ali Vs. Purna Narayan Sinha [1984 Cri.L.J. 1121], Government Advocate Vs. Gopal Bandu Das [AIR 1922 Pat 101], Shilpesh Chaudhary Vs. Union of India [W.P.(C) No.1492/2013 decided on 8-3-2013 by Division Bench of Delhi High Court], Shah Rukh Khan Vs. State of Rajsthan [RLW 2008(1) Raj. 809], Asha Parekh Vs. State of Bihar [1977 Cri.L.J. 21], Narottamdas L. Shah Vs. Patel Maganbhai Revabha [1984 GLH 687], M.J. Akbar Vs. Nurul Alam [Manu/WB/0444/1985], Mattel Inc. Vs. Ms. Aman Bijal Mehta [CS (Comm) 803/2017, order dated 22-11-2017 by the High Court of New Delhi], Raj Kapoor Vs. Laxman [(1980)2 SCC 175], Priya Singh Paul Vs. Madhur Bhandarkar [Special Leave to Appeal No.19194/2017 decided on 27-7-2017], Prakash Jha



Productions Vs. Union of India [(2011)8 SCC 372], Pepsi Food Ltd. Vs. Special Judicial Magistrate [(1998)5 SCC 749], Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar [AIR 2017 SC 2392], Mallika Sherawat Vs. State of Maharashtra [2015 SCC Online Bom 5912], S. Khushboo Vs. Kanniammal [(2010)5 SCC 600], Nachiketa Walhekar Vs. Central Board of film Certification [Writ Petition (Civil) No.1119/2017 decided on 16-11-2017 by Supreme Court], Rakeysh Omprakash Mehra Vs. Govt. of NCT of Delhi [2013 SCC Online Del 6], Sanjay Leela Bhansali Vs. State of Rajasthan [2018 RLW (Raj) 513].



6. Learned counsel appearing on behalf of complainant submits that the trial court at the preliminary stage of cognizance is not obliged to minutely or meticulously examine the merits of the case. Rather cognizance has to be taken if sufficient grounds for proceedings exist on a complaint and statements recorded under Sections 200 and 202 CrPC. Learned Additional Chief Metropolitan Magistrate has taken cognizance in the matter on the basis of complaint and supporting materials placed before him. The matter does not come in any of the exception of Section 499 IPC, therefore, the present petition deserves to be dismissed. Reliance has been placed on Fiona Shrikhande Vs. State of Maharashtra [(2013)14 SCC 44], State of Bihar Vs. Murad Ali Khan [(1988)4 SCC 655] and Jagdish Ram Vs. State of Rajasthan [(2004)4 SCC 432].

7. Heard. Considered.



8. Having heard learned Senior Counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the complainant and on perusal of the material made available on record, this court finds that admittedly the complaint has been filed on the basis of certain scenes in the trailer of the film Jolly LLB 2, which was released after certification by the CBFC. The High Court of Bombay in the case of Ajay Kumar (supra) appointed an expert Committee and after making scrutiny of entire film appropriate directions were issued to delete some scenes from the film Jolly LLB 2. In turn, the CBFC issued the certificate to release the film. After issuing certificate by the CBFC under the special provisions of the Section 5-A of the Cinematograph Act, a justification in law within Section 79 for public display of the film exists and subsequent prosecution is not sustainable, as has been held in the case of Raj Kapoor (supra).

9. The learned trial court was obliged to consider the trailer in context of the entire film and then only a logical conclusion was required to be drawn. Admittedly, the impugned order of cognizance has been passed on the basis of trailer only.

10. Besides above, the petitioner is an artist, who has no personal opinion or intention or any ill will against any individual or the petitioner or the class of lawyers. Thus, the impugned order also tends to violate fundamental rights of the petitioner of freedom of speech and expression as guaranteed under Articles 19(1)(a) and 19(1)(g) of the Constitution of India.



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11. True it is that in view of legal position expounded in the judgments cited by the complainant, the trial court is not supposed to meticulously examine the merits of the case at the stage of summoning accused under Section 204 CrPC. But, at the same time, it is imperative on the part of the trial court that it should be satisfied before summoning the accused that sufficient grounds for proceeding are available on record. In this matter, as discussed above, the trial court before summoning the accused has not applied its mind on the relevant and necessary aspects of the matter, which were required to be considered before summoning the accused. Therefore, the facts and circumstances of the case are quite distinguishable and the above cited judgments do not help the complainant.

12. In view of the above, this court finds that the impugned order has been passed without due application of mind and without considering all relevant aspects of the matter. Therefore, the petition is allowed. The impugned order dated 6-2-2017 in Cr. Case No.661/2017 passed by the Additional Chief Metropolitan Magistrate No.20, Sanganer Jaipur Metropolitan is quashed and set aside. The complaint is dismissed.

(SATISH KUMAR SHARMA),J

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