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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 635/2025 & CRL.M.A. 3030/2025**

YASH RAJ FILMS PRIVATE LIMITED & ANR.Petitioners

Through: Mr. Abhishek Malhotra, Sr. Advocate
with Ms. Anukriti Trivedi,
Advocates.

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Ms. Manjeet Arya, APP for the State
with Insp. Vinit Kumar DIU/ South
Distt.
Mr. H.S. Bhullar and Mr. Aditya Raj,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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31.01.2025

CRL.M.A. 3031/2025

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of.

CRL.M.C. 635/2025 & CRL.M.A. 3030/2025 (stay)

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioners seek quashing of FIR No. 184/2024 dated 01.05.2024 registered under sections 63 of the Copyright Act, 1957 ('Copyright Act') and section 420 of the Indian Penal Code, 1860 ('IPC') at P.S.: Greater Kailash,



Delhi and all proceeding emanating therefrom, contending that no offence as alleged in the subject FIR is made-out against the petitioners.

2. The matter arises from an allegation made by respondent No. 2 that the petitioners have violated his copyright to the literary work (being a film script) titled ‘*Kabhu Na Chhadein Khet*’ conceived in 2006, by using it in a film titled ‘*Shamshera*’ produced by the petitioners. Furthermore, the allegation is that the petitioners have also committed the offence of cheating by inducing respondent No. 2 into sharing his script with them; and then using that script in the production of their film by violating respondent No. 2’s copyright in the script.
3. Mr. Abhishek Malhotra, learned senior counsel appearing for the petitioner submits, that other things apart, the allegation of copyright violation made by respondent No.2 are subject matter of a civil suit bearing CS(COMM) No. 483/2022, in which suit, *vide* judgment dated 20.12.2023 made on I.A. No. 11030/2022 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (‘CPC’), a Coordinate Bench of this court has dismissed the interim application *inter-alia* holding as follows :

“38. Having carefully perused the script of the Plaintiff and having viewed the movie including the detailed comparative tables made by both parties on which they have spent considerable labour, I would first give a summary of the scripts of the Plaintiff. Be it noted that admittedly the script of the Plaintiff has five versions and this too was one of the serious objections of the Defendants.

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“49. There is no uniqueness in these ideas or expression and in the words of the judgements of this Court, almost



every author of a fiction would conjure them as consequential concomitant effects, as a matter of common grasp and “Scenes a Faire” which carry no copyright.

* * * * *

“51. Therefore, to my mind, the dissimilarities between the script and the film outweigh the alleged similarities and the similarities by themselves are not sufficient to raise a presumption of copyright infringement at this stage in favour of the Plaintiff. In R.G. Anand (supra), the Supreme Court has held that idea, principle, themes or historical or legendary facts being common property cannot be the subject matter of copyright of a particular person. It is always open to any person to choose an idea as a subject and develop it in his own way giving an expression to the idea by treating it differently. Where two writers write on the same subject, similarities are bound to occur because the central idea of both is the same and therefore similarities or coincidences by themselves cannot lead to an inevitable conclusion of piracy or plagiarism. Therefore, the fundamental fact which has to be determined by the Court is to see whether the Defendant adopted only the idea of the copyrighted work or also the manner, arrangement, situation to situation, scene to scene with minor changes.

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“56. Therefore, tested on the anvil and touchstone of the law laid down in the aforementioned judgments, Plaintiff is required to prove substantial copying of its work i.e. show that the substance or kernel of Plaintiffs work is copied in order to succeed in his claim of copyright infringement. In the present case, by a comparison of the rival works, this Court is unable to reach a prima facie conclusion at this stage that Defendants have substantially copied the script of the Plaintiff to make the impugned film.

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“60. However, Plaintiff has been unable to make out a prima facie case of copyright infringement and thus no relief can be granted in favour of the Plaintiff injuncting the Defendants from continuing with the telecast of their film on the OTT Platforms.



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“62. For all the aforesaid reasons, the application is dismissed with the usual caveat that observations in the present judgment will not impact the trial or the final adjudication of the suit on merits. Defendants shall, however, file an affidavit disclosing their up-to-date revenues earned from the telecast of the film within 6 weeks from today.”

(underscoring supplied; bold in original)

4. Mr. Malhotra accordingly argues, that the clear inference of the Co-ordinate Bench in the suit (even if on a *prima-facie* basis) is that the dissimilarities between the petitioner’s film and respondent No.2’s script outweigh the similarities and therefore no *prima-facie* case of copyright violation is made-out.
5. It is further pointed-out, that in compliance of order dated 18.08.2022, initially the petitioners had made a deposit of Rs. 1 crore as a *pro-tem* arrangement for release of their film on OTT platforms; but even that amount has subsequently been released to them *vide* order dated 26.02.2024 made in I.A. No. 1127/2024 in CS(COMM) No. 483/2022. A copy of order dated 26.02.2024 has been shown to the court.
6. In this backdrop, learned senior counsel argues, that the allegations in the subject FIR are, in essence and substance, exactly the same as the allegations in the civil suit, *viz.* that the petitioners have infringed respondent No.2’s copyright in the script and are therefore guilty of the offence under section 63 of the Copyright Act.
7. Insofar as the allegation under section 420 IPC is concerned, Mr. Malhotra submits, that that allegation is also premised on the violation of copyright and there is no factual foundation to that offence other



than copyright infringement under section 63 of the Copyright Act. Attention in this behalf is drawn by learned senior counsel to section 63 of the Copyright Act, which reads as under :

63. Offence of infringement of copyright or other rights conferred by this Act.— Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act except the right conferred by section 53A,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation.— Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

8. It is argued that the offence under section 63 only adds the ingredient of *knowledge* to infringement of copyright, by using the phrase “*knowingly infringes*”; but unless infringement of copyright is made-out in the first place, the ingredients of the offence under section 63 cannot be met.
9. In the circumstances, it is submitted, that in the present case, the ingredients of the offence of section 63 of the Copyright Act and section 420 IPC are not made-out against the petitioners and further investigation in the subject FIR ought not to be allowed.



10. Issue notice.
11. Ms. Manjeet Arya, learned APP for the State and Mr. H.S. Bhullar, learned counsel for the respondent No.2 appear on advance copy; accept notice; and seek time to file status report/reply.
12. Let status report/reply be filed at least 03 days before the next date; with copy to the opposing counsel.
13. Mr. Bhullar submits that the petitioners have not just infringed the copyright in the script but have also cheated respondent No. 2 by inducing him to part with his script and by using it for producing their film.
14. Furthermore, Mr. Bhullar contends that the script that was filed alongwith CS(COMM) No. 483/2022 is different from the script that has been filed in the present proceedings; and that both scripts do not align with the actual film that the petitioners have produced.
15. After a brief hearing in the matter, and subject to what the respondents may wish to say in their reply, what prevails with the court *at this stage* is the consideration that by its detailed and reasoned judgment dated 20.12.2023 made on I.A. No. 11030/2022 under Order XXXIX Rules 1 and 2 CPC, the Co-ordinate Bench has expressed a clear inference that *prima-facie* in producing the film ‘*Shamshera*’ the petitioners (defendants in the suit) have not infringed the copyright of respondent No.2 in the script ‘*Kabhu Na Chhadein Khet*’. Furthermore, as seen in the extract set-out above, in its judgment dated 20.12.2023 the Co-ordinate Bench has in so many words recorded that the court had “... .. *carefully perused the script of the Plaintiff... ..*” and “... .. *viewed the movie... ..*”.



16. In this factual backdrop, this court reminds itself that though the law empowers a High Court to stay investigation in a given case, such power is to be exercised with due circumspection and only in cases where it appears necessary to stay investigation to prevent abuse of process and to promote the ends of justice.
17. Tested on this touchstone, this court is of the view that further investigation in the subject FIR may not be warranted since the essential ingredients of the offence under section 63 of the Copyright Act, and consequently of section 420 IPC, are not made-out in the present case. In these circumstances, permitting the investigation to continue while this court is *in-seisin* of the present petition, would result in needless harassment to the petitioners, when *prima-facie* the allegations in the subject FIR are not made-out.
18. Accordingly, further investigation in case FIR No. 184/2024 dated 01.05.2024 registered under sections 63 of the Copyright Act and section 420 IPC at P.S.: Greater Kailash, Delhi *in so far as it relates to* petitioner No. 1/Yash Raj Films Private Limited and petitioner No.2/Aditya Chopra shall remain *stayed* till the next date of hearing.
19. Re-notify on 07th May 2025.

ANUP JAIRAM BHAMBHANI, J

JANUARY 31, 2025

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