

Sajan K. Varghese and Others

Vs

State of Kerala and Others

Slp (Cri) Nos. 1127-28 and 1148-49 of 1988

(CJI R. S. Pathak, S. Natarajan JJ)

15.02.1989

JUDGMENT

NATARAJAN, J. –

1. The four special leave petitions have been filed against a common order passed by the High Court of Kerala in Criminal M.C. Nos. 49 of 1988 and 63 of 1988 filed respectively by the petitioners in the two sets of special leave petitions. Counter-affidavits have been filed by respondents 3 and 4.
2. For the sake of convenience, we will refer to the petitioners in S.L.P. Nos. 1127-28 of 1988 as Sajan K. Varghese and the petitioners in S.L.P. Nos. 1148-49 of 1988 as M/s. Super Film.
3. Sajan K. Varghese is the Managing Partner of a film producing concern M/s. Saj Productions and also a Finance Company known as the Oriental Exchange and Finance Company, Kottayam (for Short 'the Finance Company'). It would appear that the Finance Company offered very high rates of interest to investors and depositors and this led to a large number of people investing crores of rupees with the Finance Company and in the case of many, their entire savings. Taking advantages or his position as the Managing Partner of M/s. Saj Production as well as the Finance Company, Sajan K. Varghese began to utilise considerable sums of money from out of the deposits with the Finance Company for production of films by M/s. Saj Productions. The last film in the production of which Sajan K. Varghese engaged himself is a production titled as "Kadathanadan Ambadi". The film is said to be based on the life of a legendary hero of Kerala folklore. The film was produced on a very lavish and extravagant scale and according to Sajan K. Varghese himself, he had invested more than 82 Lakhs of rupees in the production of the incomplete film. In spite of such lavish spending only about 90 per cent of the shooting of the film is over and the rest of the shooting has to be completed and thereafter the film has to be edited and colour prints taken for the film to be commercially screened in theatres. It is common ground that a major portion of the investment of 32 lakhs of rupees for shooting the incomplete film was met by utilisation of funds invested by the public in the Finance Company as deposits.
4. Besides the amount taken from the Finance Company, M/s. Saj Productions is also said to have borrowed an amount of Rs. 10 lakhs from M/s. Super Film under an agreement, dated December 12, 1986. As per the agreement M/s. Super Film is to have a charge over the for the sum of Rs. 10 Lakhs advanced by it. There is a further provision in the agreement that should the production of the film be not completed on or before March 31, 1987, M/s. Super Film will be entitled to take over the negative and complete the picture.
5. Smooth sailing of operations of the Finance Company came to face rough weather when several

advertisements of allegedly questionable nature made by the Finance Company came to the adverse notice of the Monopolies and Restrictive Trade Practices Commission and the Commission passed an order restraining the Finance Company from publishing such advertisements. Thereafter the investments by the public in the Finance Company dwindled and the Company came to face financial crisis when depositors clamoured for return of their deposit amounts. This led to a total cessation of activity of the Finance Company. There was public uproar, and some of the depositors filed a police complaint which resulted in a criminal case being registered against Sajan K. Varghese and he was eventually arrested and remanded to custody.

6. Beside the criminal case filed against Sajan K. Varghese, an insolvency petition O.P. No. 10 of 1987 also came to be filed against the Finance Company, Sajan K. Varghese and his parents brothers in the Court of the Subordinate Judge of Kottayam. The insolvency petition was filed by Shri V. K. Kuruvilla respondent 4 herein. Besides being a creditor himself respondent 4 is also the President of the Association of the depositors in the Finance Company. It is stated that about 3500 depositors of the Finance Company have formed themselves into an Association to safeguard their interest and it was on behalf of all the members of the Association the insolvency petition was filed in the Court of the Subordinate Judge, Kottayam. One of the items included in Schedule 'B' of the insolvency petition is the negatives of the unfinished film, 'Kadathanadan Ambadi'. The sub-Judge appointed the Official Receiver attached to the District Court of Kottayam (respondent 3 herein) to be the Interim Receiver under Section 20 of the Kerala Insolvency Act.

7. Besides the insolvency petition filed in the Subordinate Judge's Court, Kottayam, two more insolvency petitions also came to be filed on the original said of the Madras High Court against the Finance Company represented by Sajan K. Varghese. Respondent 3 would say that those petitions have been engineered by Sajan K. Varghese himself in order to thwart the insolvency proceedings in the Sub-Court at Kottayam. We are not however concerned with that aspect of the matter. We are making mention of the filing of the insolvency petitions in the Madras High Court only to show that more than one insolvency petition has been filed against the Finance Company and Sajan K. Varghese.

8. Pursuant to the registration of a criminal case against Sajan K. Varghese and his arrest by the C.B., C.I.D. (FS), Trivandrum, the police took into their custody the semi-processed film and the negatives of the unfinished film of 'Kadathanadan Ambadi' and produced the same before the Chief Judicial Magistrate, Trivandrum. The Magistrate directed the film and the negatives to be kept in safe custody in a cinema studio known as Chitranjali Studio in Trivandrum. Subsequently, the High Court deemed it advisable to take into its custody the negatives and have kept in a place of safe custody.

9. After getting himself enlarged on bail, Sajan K. Varghese filed Criminal M.C. No. 49 of 1988 before the High Court praying that the incomplete film may be returned to M/s. Prasad Laboratories, Madras wherefrom they were seized and that he be permitted to complete the film by making further investments and also effect sales of distribution rights and make arrangements for the screening of the film. To the said petition Sajan K. Varghese impleaded only three respondents viz. the State of Kerala, the Deputy Superintendent of Police, C.B., C.I.D. (F.S.) Trivandrum and the Advocate Receiver in I.P. No. 10 of 1987 on the file of the Sub-Court, Kottayam.

10. In its turn, M/s. Super Film filed a petition Criminal M.C. No. 63 of 1988 praying the High Court to hand over the negatives of the incomplete film to it so that it can complete the picture and make arrangements for the sale of distribution rights and the exhibition of the film. M/s. Super Film

based its claim on the rights conferred on it under the agreement executed by M/s. Saj Productions when it advanced a loan of Rs. 10 lakhs to M/s. Saj Productions.

11. Respondent 4 got himself impleaded as a party in the petitions filed by Sajan K. Varghese and M/s. Super Film before the High Court. Respondents 3 and 4 opposed the applications of Sajan K. Varghese and M/s. Super Film on various grounds, the principal one among them being that thousands of creditors have been defrauded of several crores of rupees by Sajan K. Varghese and therefore the interests of the general body of creditors needed protection and as such the negatives should not be handed over either to Sajan K. Varghese or M/s. Super Film. They also disputed the genuineness of the loan transactions between M/s. Super film and Sajan K. Varghese and attributed collusion between them.

12. The High Court explored the possibility of some workable arrangement being arrived at so that the could be completed and commercially exploited so that the money derived from the collections could be made use of to satisfy the claims of the creditors to the best extent possible. The efforts of the High Court did not prove successful and the High Court has observed that "prolonged negotiations, and several adjournments, did not yield meaningful results, and stalemate prevailed".

13. At that stage of the matter, the counsel for the Receiver sought the permission of the court to find out whether any other producer could be secured to complete the film on terms advantageous to the creditors. After making diligent enquiries, the counsel for the Receiver found that M/s. Navodaya, respondent 7 would be a competent and suitable agency for entrusting the task of completing the unfinished picture and releasing it for commercial exhibition. Consequently, respondent 7 was impleaded as a party. Shri M. C. Punnose alias Appachan who owns Navodaya is by all accounts an experienced and reputed film producer with a standing of 38 years in the field. The High Court took note of his credentials and standing in the filed and was satisfied that he was the best suited person to whom the onerous task of completing the film could be entrusted. The High Court also found that the terms offered by Navodaya for completing the film and releasing it for commercial exhibition were more advantageous to the creditor than the terms offered by Sajan K. Varghese or M/s. Super Film. Consequently, the High Court declined to grant the request of Sajan K. Varghese and M/s. Super film for the return of the negatives to them and instead passed an order for the handing over of the negatives of the film to Shri M. C. Punnose alias Appachan of M/s. Navodaya. The High Court also gave detailed directions as to how the film was to be completed and the collections realised from the screening of the film are to be utilised. It is not necessary to set out those details in this order. Aggrieved by the order of the High Court, Sajan K. Varghese and M/s. Super Film have filed the two sets of special leave petitions.

14. Dr. Chitale, Senior Advocate, appearing for Sajan K. Varghese and Mr. Kapil Sibal, learned counsel appearing for M/s. Super Film International strenuously contended that the order of the High Court suffered from a two fold error, the first being that it has exceeded its powers under Section 415 of the Code of Criminal Procedure and the second being that the High Court has failed to take note of the fact that the terms offered by the petitioners were more advantageous to all concerned, including the general body of creditors of the Finance Company than those offered by respondent 7. The further contention of Mr. Kapil Sibal was that M/s. Super Film is entitled in law to get the custody of the negatives by virtue of the rights conferred on it under the agreement executed by M/s. Saj Productions.

15. Mr. Krishnamurthy Iyer and Mr. Subramaniam Poti, senior counsel appearing for respondents 3 and 4 respectively were equally vehement in contending that neither of the petitioners is a fit person

to be entrusted with the negatives of the film or to be permitted by the courts to perform the task of completing the film and arranging for its screening. Mr. Balakrishnan, learned counsel, appearing for respondent 7 stated that on account of the popularity of some of the leading artists acting in the film having wanted among the cinema-going public, respondent 7 is no longer interested in obtaining the negatives and completing the film and releasing it for exhibition.

16. We have given the matter very careful and anxious consideration. On such consideration we find that the Court was fully justified in having declined to grant the prayer of Sajan K. Varghese as well as M/s. Super Film for the return of the negatives to either of them and to permit the one or the other of them to undertake the task of completing the film and releasing it for commercial exhibition.

17. We will briefly give the reasons for our conclusion. We must, however, state that we feel constrained to a large extent from giving full expression to our views of the fact that insolvency proceedings and a criminal case are pending against Sajan K. Varghese and the Finance Company and likewise the bona fides of the loan transaction between M/s. Super Films and Saj Productions is disputed by the Receiver representing the general body of the creditors. As any expression of view by us, one way or the other, beyond the limited extent of traversal in these petitions, is likely to prejudice the rights and interest of the parties in the proceedings pending in the other courts, we have restricted our expression in the matter to the limited confines of these petitions.

18. As we have already stated, the first ground of attack against the order of the High Court was that the High Court should have dealt with the petitions strictly in accordance with the terms of Section 451 Criminal Procedure Code and the High Court was not entitled to invoke under Section 482 Criminal Procedure Code or exercise its powers under the Kerala Insolvency Act for passing the order under challenged directing the handing over of the custody of the negatives and the semi-processed films to respondent 7 and calling upon respondent 7 to complete the film in accordance with the terms offered by it. So far as these contentions are concerned we think that they suffer from a misconception. In the circumstances of the case Section 451 Criminal Procedure Code would strictly have no application. Chapter XXIV in which Section 451 occurs deals with the disposal of property produced before any criminal court during any enquiry or trial and the powers of the court to pass orders for the custody and disposal of the property pending trial. In this case it is, doubt, true that the semi-processed films and the negatives were seized by the police during the investigation of the criminal case registered against Sajan K. Varghese. However, it has to be noted that the semi processed films and the negatives are not themselves items of property regarding which offences have been committed. On the other hand the gravamen of the accusation made against Sajan K. Varghese is that he had induced thousands of investors to deposit crores of rupees in the Finance Company on the assurance that he would pay them high rates of interest and thereafter defrauded them and secondly he had committed breach of trust by utilising the deposit amounts for the production of the film in question. That apart this is not a case where the creditors have stopped with preferring a report to the police of the commission of offenses by Sajan K. Varghese. About 3500 creditors have formed themselves into an Association and filed an insolvency petition through respondent 4 in the Subordinate Judge's Court at Kottayam. In the insolvency petition the unfinished film has been shown as an item of asset of the respondent to be secured by the Insolvency Court. The Insolvency Court has appointed respondent 3 as interim receiver and ordered him to take possession of the assets of Sajan K. Varghese and the Finance Company. Consequently, by reason of the insolvency proceedings which are pending, the unprocessed films and negatives cannot be strictly said to be properties over which an order of disposal could be made only under Section 451 of the Code. Be that as it may, there remains the further fact that the semi-processed films and the

negatives can be of no use to anyone unless further investment to the tunes of several lakhs is made and the picture is completed so that it can be made suitable for commercial exhibition. Insofar as this aspect of the matter is concerned, viz., securing the large amount of money that would be required to complete the film and the expertise that would be needed for completing the film are also relevant factors to be considered by the court before deciding upon the question as to whom the custody of the semi-processed films and the negatives should be given. It is with reference to all these factors the High Court has passed the order under challenged in these petitions. As regards the negatives being handed over to Sajan K. Varghese so as to enable him to complete the film, two relevant factors would require consideration. The first would be whether he would be able to muster the requisite finances for completing the film in his present of circumstances. The Finance Company run by him has virtually closed down and all his assets now stand vested with the Interim Receiver. The second aspect of the matter would be that even if he is in a position to raise funds for meeting the expenses for completing the film, whether it would be in the interest of the general body of the creditors to hand over the negative and semi-processed films to him. Factors of prudence and equity constitute sufficient deterrents for the court taking the risk of accepting in prayer of Sajan K. Varghese, irrespective of the terms offered by him, for handing over the negatives to him and allowing him to complete the picture and release the same for exhibition. While on this aspect of the matter we must also refer to a concession made by Sajan K. Varghese before the High Court, which concession he now refutes having made. The relevant portion in the order of the High Court is set out in the following terms :

During the hearing, Shri M. N. Sukumaran Nair, appearing for the petitioner (Sajan K. Varghese) submitted that the petitioner will be amenable to any direction, including direction to anyone else to complete the film, as it will be to the advantage of the petitioner. I record this submission.

Before us it was sought to be contended that Sajan K. Varghese had not made any such concession but we can hardly give any credence to this statement in view of the categorical statement by the High Court in its order.

19. Insofar as M/s. Super Film is concerned, its claim for the return of the semi-processed films and the negatives to it is purely founded on the terms of the agreement executed in its favour by M/s. Saj Productions. The genuineness of the loan transaction between M/s. Super Films and M/s. Saj Productions is itself seriously disputed by respondent 3. It has also been averred by respondent 4 in his counter that the agreement in favour of M/s. Super Film appears "to be made out later" and that it is highly improbable that Sajan K. Varghese would have agreed "to surrender the negatives eventually worth Rs. 82 lakhs for a mere 10 lakhs if the film is not completed by March 31, 1987" and that "even assuming Super Film has given an advance of Rs. 10 lakhs for film rights to the petitioner, the property actually belongs to Oriental depositors since the sum of Rs. 82 lakhs of the investor's money is at stake in the film." In such circumstances it would equally be a risky and unwise proposition to return the semi-processed films and negatives to M/s. Super Film and entrust them with the task of completing the picture and releasing it for exhibition and realise the collections.

20. In the light of these overwhelming factors we do not find any necessity, since no purpose would be served, by going into the details of the terms offered by Sajan K. Varghese and M/s. Super Film and find out whether those terms are more favourable than the offered by respondent 7, for completing the film and releasing it for exhibition.

21. Coming not to that part of the order of the High Court which pertains to the selection of respondent 7 as the best suited agency for completing the film and releasing it for exhibition and the acceptance of the terms offered by it, the High Court was influenced by several relevant considerations. We have already referred to the fact the High Court and earlier afforded ample opportunity to the parties to offer a workable solution, which would safeguard the interest of all parties concerned, for completing the picture but eventually the High Court found that in spite of prolonged negotiations and several adjournments no meaningful results could be achieved and that the stalemate continued. It is only thereafter the High Court accepted the suggestions of the advocate for the Receiver and impleaded respondent 7 as a party and examined the credentials of respondent 7 and its suitability for being entrusted with the task of completing the film and releasing the picture so that the net collections realised after reimbursing respondent 7 the amounts invested by it, could be made available for the general body of creditors of the Finance Company. The High Court has also taken into consideration the fact that Shri M. C. Punnose alias Appachan, owning M/s. Navodaya had produced several films which were box-office hits and which had won him National and State awards, and that he had all the facilities at the command including equipment and finances for completing the film. It may be that in certain aspects the terms offered by respondent 7 were higher than the terms offered by Sajan K. Varghese and M/s. Super Film but it the larger perspective of the interests of the general body of creditors of the Finance Company which needs safeguarding the High Court has deemed it fit and proper to accept the terms of respondent 7 and to entrust it with the task of completing the film and realising the collections.

22. It now only remains for us to deal with the statement of the counsel for respondent 7 that respondent 7 is no longer interested in taking up the assignment given to him by the High Court. As already stated the reason for the change of attitude of respondent 7 is that some of the artists acting in the film have lost their charisma to some extent. We are of the view that there would be neither grace nor justice if respondent 7 were to go back on the offer made by it to the High Court. Shri Jose Punnose s/o Shri M. C. Punnose alias Appachan has filed an affidavit before the High Court and has stated therein that respondent 7 deems it a great privilege to have been summoned and impleaded in the criminal miscellaneous case, and that in volunteering its services to take up and complete the picture its was willing to provide, as an act of humane gesture, their existing studio facilities such as shooting floor, quarters for accommodation, editing facilities, shooting facilities and the services of the production staff etc. free of charge. Respondent 7 had further offered to complete the film with its own money. Shri Jose Punnose has stated as follows :

Subject to the conditions mentioned in para 14 above, and as detailed in the earlier paragraphs, this respondent is willing to complete the film "Kadathanadan Ambadi" in this noble venture and as desired by this Hon'ble Court to relieve the hardships and miseries of the poor creditors of the Oriental Finance and Exchange Company.

This respondent shall complete the film "Kadathanadan Ambadi" within three months from the date of receipt of items (1) to (7) to the best of our ability and knowledge, so that the film may generate as much income as possible.

23. Having gone so far and having persuaded the High Court to accept its terms and conditions and having expressed its willingness to provide its services to the maximum extent possible so as to provide relief to the poor and distraught creditors of the Finance Company, it would not be just and fair nor would it benefit the status and standing of respondent 7 and its proprietors to go back on the offer made accepted by the High Court. We cannot, therefore, accept the statement of respondent 7 that it is no longer interested in taking the assignment of completing the film and arrange for its

release.

24. For the abovesaid reasons, we find no ground to interfere with the order passed by the High Court. Accordingly the special leave petitions will stand dismissed with no order as to costs.

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