

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Crl. Revision No.92/2018
Waseema Farooq & another
versus
The State & another

Petitioners by: Sardar Abdul Raziq Khan, Advocate.

Respondents by: Mr. Khurram Mehmood Qureshi,
Advocate for respondent No.2.
Raja Muhammad Aftab Ahmad, AAG.
Muhammad Qamar/S.I., FIA.

Date of Hearing: 18.06.2019.

MOHSIN AKHTAR KAYANI, J: Through this criminal revision, petitioners have impugned order dated 15.10.2018 of the learned Presiding Officer, Intellectual Property Tribunal, Islamabad, passed in case FIR No.21, dated 03.10.2018, under Sections 66, 66-A & 70 of the Copyright Ordinance, 1962 and Section 470 PPC, P.S. FIA (ACC), Iqbal Town, Islamabad.

2. Brief facts referred in the aforesaid FIR are that Muhammad Akhtar E..jwa/respondent No.2 being a representative of Dar-e-Arqam Schools (Pvt.) Ltd. had filed a complaint against the petitioners and consequent upon enquiry of the FIA/ACC, Islamabad, it transpired that petitioners, who have been operating 07 franchises of the said school in Islamabad, Rawalpindi and Peshawar, in violation of copyrights have been found involved in making, designing, publishing, selling and using pirated workbooks of the said school without prior approval of the complainant/respondent No.2. After registration of the aforesaid FIR, challan was submitted and charge was framed against the petitioners on

15.11.2017, whereupon the petitioners filed an application for appropriate order seeking return of the case to FIA Prosecutor, however the said application was dismissed vide order dated 13.12.2017. Later on, the petitioners filed writ petition in this Court seeking quashing of the aforesaid FIR, though petitioners contended therein that they have no objection on disposal of their writ petition if direction is issued to Court concerned to decide application under Section 265-K Cr.P.C. of the petitioners, and accordingly, the said writ petition was disposed of vide order dated 22.05.2018 in terms of direction sought by the petitioners. Accordingly, petitioners filed application under Section 265-K Cr.P.C., which was dismissed by learned Presiding Officer, Intellectual Property Tribunal Islamabad vide impugned order dated 15.10.2018. Hence, the instant criminal revision.

3. Learned counsel for petitioners contends that the impugned order has been passed in derogation of directions issued by this Court vide order dated 22.05.2018, which is not sustainable; that framing of charge neither means that the accused is held guilty nor it becomes rigid or irrevocable, rather the charge can be amended or altered at any stage, which has no bearing upon the powers of the Court to be exercised under Section 265-K Cr.P.C. at any stage; that according to Section 51 of the Copyright Ordinance, 1962, no Court shall take cognizance of any offence punishable under the said Ordinance except on the complaint made by an officer empowered in this behalf by the Central Government, whereas in this case an FIR has been lodged on the basis of complaint filed by a private individual; that all the proceedings conducted by FIA are illegal, unlawful and *void ab initio* for FIA has no

jurisdiction to register the case and assume the investigation with regard to dispute between two private individuals; that there is no probability of the petitioners being convicted of the offence; that the impugned order suffers from grave illegalities and infirmities, which should be set-aside and petitioners may be acquitted from the charge.

4. Conversely, learned AAG as well as learned counsel for complainant contends that charge against the petitioners has duly been framed on 15.11.2017, which has not been challenged by the petitioners, rather they filed application for appropriate orders seeking return of the case to the Prosecutor FIA, which was dismissed vide order dated 13.12.2017, though the petitioners again did not challenge the said order; that petitioners filed writ petition for quashing of FIR, but instead of arguing the case, they sought direction to be issued to the Court seized with the matter to decide application under Section 265-K Cr.P.C. of the petitioners; that the case in hand lacks development required for acquittal of the petitioners, therefore, application under Section 265-K Cr.P.C. has rightly been dismissed by the learned Presiding Officer vide the impugned order.

5. Arguments heard, record perused.

6. Perusal of record reveals that FIR No.21, dated 03.10.2018, under Sections 66, 66-A & 70 of the Copyright Ordinance, 1962 and Section 470 PPC, P.S. FIA (ACC), Iqbal Town, Islamabad has been registered against the petitioner on the complaint filed by Muhammad Akhtar Bajwa/respondent No.2, wherein it has been alleged that petitioners namely Waseema Farooq/petitioner No.1 and Farooq Sadiq/petitioner No.2 were found involved in making, designing, publishing, printing,

selling and using pirated workbooks in their schools with the name of Dar-e-Arqam Schools (Pvt.) Ltd. without any authority/permission given by the complainant. At the initial stage, the petitioners have filed a writ petition for quashing of FIR vide W.P. No.4026/2017, which was disposed vide order dated 22.05.2018 on the request of petitioners to seek a remedy in terms of Section 265-K Cr.P.C. from the learned Trial Court. Similarly, the charge has been framed against the petitioners and the same has not been agitated since 15.11.2017. The petitioners have filed application under Section 265-K Cr.P.C. contending therein that according to Section 51 of the Copyright Ordinance, 1962, no court shall take cognizance of any offence punishable under the Copyright Ordinance, 1962, except on the complaint made by an officer empowered in this behalf by the Central Government.

7. I have gone through the provisions of Section 51 of the Copyright Ordinance, 1962 and observed that the same provide the concept of permission for taking cognizance of offences provided in Chapter 10 of the Ordinance, which relates to delivery of books to public libraries, delivery of periodicals and newspaper to libraries, even otherwise, the scope of Section 51 of the Ordinance is limited. In present case, the record, *prima facie*, reflects that no offence under the Copyright Ordinance, 1962 has been leveled.

8. The second objection raised by the petitioners is in terms of Section 57(i) of the said Ordinance, which deals with research or private study which comes with the literary, dramatic, musical or artistic work for the said purpose. However, at this stage, this Court in criminal revision could not evaluate the material collected by the FIA during the

investigation in terms of Section 57(i) as to whether the same is for research or private study, therefore, the ground raised by the petitioners in their application under Section 265-K Cr.P.C. is not made out

9. The petitioners claim that franchise agreement executed between the parties explains the use of the name of Dar-e-Arqam Schools (Pvt.) Ltd. and its trademark, even otherwise, in case of any dispute, alternate dispute mechanism has been provided in arbitration clause of the agreement, whereas the parties are also involved in civil litigation before the competent Civil Court. On the strength of this argument, it has been claimed that probability of conviction is not visible.

10. In view of above, the question of determination of civil right *vis-a-vis* the terms of franchise agreement as to whether the same have been complied with or breached by any of the parties is yet to be determined, which only provides the concept of damages or compensation.

11. The petitioners have raised a legal question as to whether the FIA authorities have any jurisdiction in the matter to investigate or otherwise, therefore, I have gone through Section 17 of the Intellectual Property Organization of Pakistan Act, 2012 and observed that it provides exclusive criminal jurisdiction to the tribunal to try offences punishable under the said Act and can also exercise same powers vested in the court of Session under the Criminal Procedure Code, 1898. In terms of Section 17(4) of the Act, it is provided that no Court, other than tribunal, shall have or exercise any jurisdiction with respect to *any matter*, to which jurisdiction of tribunal extends under the Act. By virtue of referred position, the tribunal has been empowered to try an offence.

Similar exclusivity of jurisdiction is provided in Sub-Section 2 of Section 18 of the Act, likewise Section 13(xix) and (xx) provides powers and functions of Intellectual Property Organization, who can initiate and conduct inquiry, investigation or proceedings relating to offences in prescribed manner. This also shows that Intellectual Property Organization has the authority to investigate into the offences arising out of the Copyright Ordinance, 1962. In order to understand said provision of Section 13, the same is reproduced as under:

13. *Powers and Functions of the Organization:--- The powers and functions of the Organization shall be to---*

- (xix) initiate and conduct inquiries, investigations and proceedings related to offences in the prescribed manner.*
- (xx) refer matters and complaints, related to offences under the laws specified in the schedule to the concerned law enforcement agencies and authorities as may be necessary for the purposes of this Act.*

(Underlining is provided for emphasis)

12. Whereas, in the schedule of Intellectual Property Organization of Pakistan Act, 2012, the Copyright Ordinance, 1962 is mentioned at Serial No.2 under the heading "The Schedule". Similarly, Section 66 of the Copyright Ordinance, 1962 relates to offences and penalties of infringement of copyright or other rights conferred by the Ordinance. For ready reference, Section 66 of the Copyright Ordinance, 1962 is reproduced as under:

"66. Offences of infringement of copyright or other rights conferred by this Ordinance:--- Any person who knowingly infringes or abets the infringement of:

- (a) The copyright in a work*
- (ab) The rental rights in cinematographic works and computer programmes;*

- (ac) *The rights of performers or producers or sound recording;*
or
- (b) *Any other right conferred by this Ordinance shall be punishable with [imprisonment which may extend to three (03) years, or with fine which may extend to one hundred thousand rupees] or with both.*

The juxtaposition which emerges out from the above discussion is that any person who is alleging infringement of copyrights should have to approach Intellectual Property Organization of Pakistan created under the Intellectual Property Organization of Pakistan Act, 2012 and as provided under Section 13(xix) of the Act *ibid*, it is the power and function of the Intellectual Property Organization of Pakistan to initiate and conduct inquiries and proceedings related to offences in the prescribed manner. Whereas, Section 13(xx) of the Act *ibid* empowers the Intellectual Property Organization of Pakistan to refer matters and complaints relating to the offences under the laws specified in the Schedule to the concerned law enforcement agencies, whereas, in the Schedule of the Intellectual Property Organization of Pakistan Act, 2012 at Serial No.2, the Copyright Ordinance, 1962 (XXXIV of 1962) is mentioned. Under Section 66 of the Copyright Ordinance, 1962, offences and penalties of infringement of copyright have been mentioned. The net result in light of the above analysis of law on the subject is that, appropriate forum against infringement of Intellectual Property Rights, is Intellectual Property Organization created under the Act of 2012 *ibid*, which is empowered to deal with such like issues and as such none of the law enforcement agencies can initiate inquiry in any matter relating to infringement of copyrights unless the same

is referred by the Intellectual Property Organization of Pakistan to any law enforcement agency.

13. I have also gone through the judgment given by the apex Court reported as 2016 SCMR 447 (D.G. FIA vs. Kamran Iqbal, etc.) together with the FIA Act, 1974, which provides the constitution of Federal Investigation Agency for investigation of certain offences committed in connection with matters concerning with Federal Government and matters connected therewith. The said concept, clearly spells out that the jurisdiction of FIA is an exclusivity with the affairs of Federal Government, although the Copyright Ordinance, 1962 has been referred at Serial No.26 of the Schedule of FIA Act, which deals with offences punishable under the Copyright Ordinance, 1962, however this does not mean that FIA can proceed with offences under the Copyright Ordinance, 1962. I have also gone through another case reported as 2010 P.Cr.LJ 518 (The State through DAG vs. Ameen Haroon), in which it has been held that the FIA having being concurrent jurisdiction can take cognizance of such cases where violation of some Government work is involved and has no jurisdiction in respect of infringement of copyright between private parties or disputes which are civil in nature.

14. While considering the entire background, this Court is of the view that exclusive jurisdiction qua the infringement of any intellectual property right i.e. copyrights, trademarks, etc. falls within the purview of Intellectual Property Organization of Pakistan Act, 2012 or the tribunal, as the case may be, who can refer the matter to any of the law enforcement agency for the purpose of inquiry or investigation in a prescribed manner and as such, there is no direct jurisdiction available

to any law enforcement agency, therefore, the instant criminal revision succeeds and the proceedings initiated by the FIA authorities from the very inception at their own on the complaint of respondent is unlawful as the complainant should have approached the Intellectual Property Organization at the very first instance.

15. In view of above discussion, the instant Civil Revision is ALLOWED, the application filed under Section 265-K Cr.P.C. stands ACCEPTED and the petitioners are acquitted from the said charge i.e. case FIR No.21, dated 03.10.2018, under Sections 66, 66-A & 70 of the Copyright Ordinance, 1962 and Section 470 PPC, P.S. FIA (ACC), Iqbal Town, Islamabad.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 5th July, 2019.

JUDGE

Khalid Z.