

Irfan Mohammad vs State Of M.P. on 14 October, 2015

MCRC.3850/2012

1

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
JUSTICE SUJOY PAUL.
Misc. Cri. Case No. 3850/2012

Kamal Kishor
Vs.
State of MP

AND

Misc. Cri. Case No. 4196/2012

Manish
Vs.
State of MP

AND

Misc. Cri. Case No. 4197/2012

Parikshat Kushwah
Vs.
State of MP

AND

Misc. Cri. Case No. 4198/2012

Irfan Mohammad
Vs.
State of MP

Shri Atul Gupta, Advocate for the petitioners.
Shri A.S.Rathore, Panel Lawyer for respondent/State.

ORDER

(14/10/2015) Regard being had to the similitude in the questions involved in these cases, these petitions were analogously heard on the joint request and decided by this common order.

2. Facts are taken from M.Cr.C.No. 3850/12.

The Assistant Sub Inspector (ASI), Shri H.R.Godsar lodged an FIR in Crime No.130/10 in Police Station, Karera against all petitioners under Sections 63 and 64 of Copyright Act (for short, the

"Act"). On account of said FIR, criminal cases were registered against all the petitioners. According to FIR, Mico Spark Plugs were found in possession of all the petitioners. These plugs were compared with original plugs. It was found that the spark plugs which were found in possession of the petitioners were not original but were duplicate one. After completing investigation, challans were filed separately against all petitioners before Judicial Magistrate First Class (JMFC), Karera. Cognizance was taken by the Magistrate on 30.12.2010 and charge under Section 63 of the said Act was framed against all the petitioners.

3. The petitioners, feeling aggrieved with the order dated 30.12.2010 filed four criminal revisions before Additional Sessions Judge, Karera. The said court by common order dated 27.4.2012 dismissed the said revisions.

4. Shri Atul Gupta, learned counsel for the petitioner, submits that he is challenging the charge and the order of the revisional court on three points.

5. Firstly, as per Copy Right Act, the officer below the rank of Sub Inspector was incompetent to seize the property or conduct the investigation. In the present matter the ASI has wrongly seized the property and conducted the investigation.

6. Secondly, the aforesaid ASI who was complainant could not have conducted the investigation. This is against the principle of fair play in action. He relied on AIR (1995) SC 2339 (Megha Singh vs. State of Haryana), which is followed by this court in 2002 (3) MPHT 146 (Jeetsingh vs. State of MP).

7. Lastly, it is urged that a bare perusal of FIR and Section 63 of Copy Right Act, it would be clear that no offence for prosecution is made out against the petitioner.

8. Prayer is opposed by Shri A.S.Rathore, learned Panel Lawyer.

9. No other point is pressed by learned counsel for the parties.

10. I have heard the learned counsel for the parties at length and perused the record.

11. Before dealing with rival contentions advanced at the bar, it is apt to refer to the introduction by which the Copyright Act of 1957 was brought into force. In ancient days, creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living, thus, the question of copyright never arose. The importance of copyright was recognised only after the invention of printing press which enabled the reproduction of books in large quantity practicable. In India the first legislation of its kind, the Indian Copyright Act, was passed in 1914 which was mainly based on the U.K. Copyright Act, 1911.

12. During present modern time, new means of communication like broadcasting, litho-photography, television, etc., have made inroads in the Indian economy with the result that it became essential to fulfill international obligations in the field of copyright. This necessitated that a comprehensive legislation may be introduced to completely revise the copyright law. In the result,

Copyright Bill of 1957 was introduced in the Parliament. The Statement of Objects and Reasons of said Act shows that it was introduced in order to protect the rights and obligations of authors. The erstwhile definition of copyright was enlarged to include the exclusive right to communicate works by radio-

diffusion. A cinematograph film will have a separate copyright apart from its various components, namely, story, music, etc. Artistic work under the Act means a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; a work of architecture; and any other work of artistic craftsmanship. Similarly, the words "broadcast" and "cinematograph film" are defined in the definition clause. Section 2 also defines "dramatic work", "lecture", "literary work", "musical work", "performance", "performer", etc. Section 2(y) defines "work" as under:-

"(y) "Work" means any of the following works, namely:--

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a sound recording."

13. Shri Atul Gupta firstly contended that the Assistant Sub-Inspector was not right in seizing the property or conduct the investigation. This argument has a thread relation with his last submission wherein he contended that a plain reading of FIR read with Section 63 of the Act cannot lead this Court to a conclusion that an offence is made out. For better appreciation of this contention, it is apt to quote Sections 63 and 64 of the 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 concerned by this Act except the right conferred by Section 53-A. shall be punishable with imprisonment for a term which shall not be less than six months but which may extended 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.

64. Power of police to seize infringing copies - (1) Any police officer, not below the rank of a sub inspector, may, if he is satisfied that an offence under Section 63 in respect of the infringement of copyright in work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.

(2) Any person having an interest in any copies of a work or plates seized under sub section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application, as he may deem fit."

(Emphasis Supplied)

14. I deem it apposite to first deal with first and last contention of the petitioner. Section 63 is a penal provision. It prescribes offences relating to copyright or other rights conferred by the Copyright Act. This is trite law that a penal provision must receive strict construction. In the present case, the allegation against the petitioners is that certain spark plugs were found in their possession, which are duplicate and not original.

15. The pivotal question is whether this allegation falls within the ambit of Section 63 of the Act. As noticed, Section 63 talks about "copyright in a work". The "work" means a literary, dramatic, musical or artistic work, a cinematograph film or sound recording. The allegation relating to duplicate spark plug, by no stretch of imagination, falls within the ambit of "work", as defined in the Act. If the scheme of the Act is minutely examined, it is clear that it does not cover any other right, which may be even remotely relatable to a spark plug. In other words, the spark plug cannot be treated as an artistic work and, therefore, Copyright Act itself has no application in relation to allegation of possessing duplicate spark plugs. A careful reading of the Act further shows that no other right concerned by the Act is infringed by the petitioners. Thus, as per Section 63 of the Act, no offence is committed by the petitioners. As per story of the prosecution, Section 63 of the Act is not attracted.

16. Section 64 of the Act, in no uncertain terms, makes it clear that any police officer not below the rank of Sub-Inspector can seize copy of the work or plate if he is satisfied that an offence under section 63 in respect of infringement of copyright in any work is made out. Thus, before exercising the power of seizure, there has to be a satisfaction that an offence under section 63 is made out.

17. As analyzed above, Section 63 of the Act itself has no application relating to a duplicate spark plug. Hence, the power under section 64 could not have been exercised. In other words, the satisfaction of police officer about applicability of section 63 is sine qua non for exercising the power under section 64. In the present case, it is clear that section 63 is not attracted, hence, exercise of

power under section 64 is without authority of law. Thus, to the said extent I find force in the argument of Shri Atul Gupta.

18. Second contention of Shri Gupta was that since Asstt. Sub-Inspector was the complainant, he was not competent to conduct the investigation. His contention is based on the judgment of Supreme Court in Megha Singh (supra) and judgment of this Court in Jeetsingh (supra). However, it is seen that Meghasingh (supra) was considered by Supreme Court in subsequent judgments. In (2004) 5 SCC 223 (State represented by Inspector of Police, Vigilance & Anti- corruption, Tiruchirapalli, T.N. vs. V. Jayapaul), the Apex Court opined that on closer analysis of decision of Meghasingh, we do not think that any such broad proposition was laid down in that case. The proposition was that a police officer, who in the course of discharge of his duties, finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of information furnished by him. In (2004) 5 SCC 230 (S.Jeevanantham vs. State through Inspector of Police, T.N.), the Apex Court again considered the judgment of Meghasingh (supra) and opined that the police officer conducted the search, recovered the article and registered the case and even seized the material. As a part of his official duty later he investigated the case and filed the charge sheet. He was not in any way personally interested in the case. Thus, the Supreme Court did not find any bias in the process of investigation and did not interfere with the matter.

19. In (2009) 11 SCC 690 (Bhaskar Ramappa Madar and others vs. State of Karnataka), the judgment of Meghasingh (supra) was again considered. It is held that the decision of the Apex Court in Bhagwan Singh vs. State of Rajasthan, reported in (1976) 1 SCC 15, and Meghasingh (supra) has to be confined to the facts of said cases. In (2013) 3 SCC 594 (State represented by Inspector of Police, Chennai vs. N.S. Gnaneswaran), the Apex Court after considering Meghasingh, Jayapaul (supra) and other relevant judgments opined that the issue requires to be examined on the touchstone of consideration of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, the order/enquiry would not get vitiated. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. See, (1969) 3 SCC 392 (Jankinath Sarangi v. State of Orissa); (1998) 6 SCC 651 (State of U.P. vs. Shatrughan Lal); (1998) 6 SCC 554 (State of A.P. vs. Thakkidiram Reddy); and (2002) 8 SCC 68 (Debotosh Pal Choudhury v. Punjab National Bank).

20. Recently, in (2015) 3 SCC 220 (Vinod Kumar vs. State of Punjab), the Apex Court again considered the earlier judgments on this point. After elaborate analysis, their Lordships of Supreme Court opined that the principle laid down in S.Jeevanantham (supra) would be squarely applicable to the present case. Unless it is shown that the concerned police officer was personally interested to get the appellant convicted, no interference is warranted. Thus, principle of bias/prejudice is again applied by the Apex Court.

21. In the present case, nothing is pointed out to show that the concerned ASI had any bias/prejudice against the petitioner. Hence, the judgment of Meghasingh (supra) cannot be mechanically applied in favour of the petitioner. This point is, therefore, decided against the petitioner.

22. In view of aforesaid findings, it is clear that as per prosecution story, no case is made out to attract the provisions of Copyright Act. Hence, the petitioners deserve to succeed.

23. Resultantly, the proceedings against all the petitioners in Criminal Cases No.1194/2010, 1191/2010, 1192/2010 and 1193/2010 are hereby set aside. Petitions are allowed.

Copy of this order be sent to learned trial Court. Registry is directed to keep a true copy of the order in all the connected Misc.Cri.Cases.

(yog)

(Sujoy Paul)
Judge