

Radha Kishna Sinha And Anr. vs The State Of Bihar And Anr. on 21 August, 1978

Equivalent citations: 1979CRILJ757

ORDER

Manoranjan Prasad, J.

1. This application under Section 482 of the Cr.P.C. 1973, is for quashing the order dated the 21st February 1977, passed by Shri L. Narayan, Chief Judicial Magistrate, Patna, in Complaint case No. 429 (C) of 1976 taking cognizance against the two petitioners and one Rameshwar Prasad, Proprietor, Law Printers, Patna, under Section 63 of the Copyright Act, 1957 (hereinafter referred to as "the Act").

2. On the 28th July, 1976, the opposite party No. 2 had filed a complaint petition in the court of the Chief Judicial Magistrate, Patna, against the two petitioners and the above named Rameshwar Prasad, besides two others, under Section 63 of the Act, The case of the complainant was that he was the son and the legal representative of C.P. Malhotra, Proprietor, M/s. Malhotra Bros., Fraser Road, Patna, which deals in the business of law and reference books publication. The said C.P. Malhotra was confined to bed because of his protracted illness since 1973 and, as such, the publication work was being solely managed and done by the complainant for M/s. Malhotra Bros. C.P. Malhotra is the original publisher of the compilation work "The Bihar Service Code", which was for the first time published in the year 1957 in two parts. The latest eighth edition of the Bihar Service Code was printed and compiled in two different designs which were published simultaneously on the 25th May, 1976, in which the complainant by exerting his own labour and skill got cited or enumerated the comments by K. K. Malhotra, Chief Editor, Bihar Revenue and Labour Journal, on the different sections and provisions in a most suitable and impressive way so as to produce easy grasp and understanding of the interpretations in the minds of the readers-The complainant also got inserted summarised case laws in his own language and manner after minute studies of the authorities cited in different journals for its compilation. The compilation work and its arrangements and the citation of commentaries done by K. K. Malhotra are the original work of the complainant with regard to the Bihar Service Code which gives origin to the copyright reserved by him. The Bihar Service Code, eighth edition, was made available in the market in sufficient number and the same was highly appreciated because of the excellent and impressive compilation work and its unique arrangements. Recently, on the 12th July, 1976, the complainant was informed that another publication of the Bihar Service Code under the authorship of petitioner No. 1 was published by his son, petitioner No. 2, the proprietor of the Eastern Law Book Agency, Patna, in which most of the compilation work are reproduction of the original work of Bihar Service Code, eighth edition, published by the complainant. The complainant immediately purchased several Copies of the new Bihar Service Code published by petitioner No. 2, and on its close scrutiny and perusal, it transpired that it was a

complete reproduction of the original Bihar Service Code, eighth edition, published by the complainant. The instances of reproduction and similarity with the original work are fully incorporated in Annexure-A which forms part of the complaint petition. The said Bihar Service Code under the authorship of petitioner No. 1 which was published by petitioner No. 2 was printed by the Law Printers, Patna, exclusively run under the sole proprietorship of Rameshwar Prasad. Some other allegations were also made against two other persons which need not be stated here as no cognizance was taken against them. A prayer was made by the complainant in the complaint petition for taking cognizance of the offence under Section 63 of the Act against the two petitioners and the said Rameshwar Prasad and two others who were made accused in the complaint petition.

3. After examining the complainant on solemn affirmation and also examining two witnesses on behalf of the complainant and after comparing the complainant's publication of the Bihar Service Code, eighth edition, with that published by petitioner No. 2 under the authorship of his father, petitioner No. 1 which was printed by the Law Printers, of which Rameshwar Prasad is the proprietor, the learned Chief Judicial Magistrate, by his order dated the 21st July, 1977, took cognizance of the offence under Section 63 of the Act against the two petitioners and the said Rameshwar Prasad only.

4. Thereupon, the two petitioners have preferred the present application for quashing the said order dated the 21st July, 1977 passed by the Chief Judicial Magistrate, by which he has taken cognizance against them under Section 63 of the Act.

5. Mr. Braj Kishore Prasad No. II, learned Counsel for the petitioners, has contended that no cognizance under Section 63 of the Act could have been 'taken in this case as neither any copyright of the complainant in respect of the Bihar Service Code, eighth edition, was registered under Section 45 of the Act, nor it was alleged by him in the complaint petition that it was so registered. In this connection, he relied on two decisions, namely, one of the Andhra Pradesh High Court in the case of V. Errabhadrarao v. B. N. Sarma, (AIR 1960 Andh Pra 415) and the other of the Madhya Pradesh High Court in the case of Mishra Ban-'dhu Karyalaya v. Shivratanlal Koshal .

6. In the case of V. Errabhadrarao (supra), the provisions of another statute, namely, Hyderabad Copyright Act (2 of 1934F), were under consideration, Section 3 of which provided that an original composition or compilation is only protected if the book is registered according to the provisions of that Act. There is however, -no such provision in the Copyright Act, 1957, Section 3 of which provides, inter alia, that copyright shall subsist throughout India in original "literary works" which has been defined in Clause (o) of Section 2 of the Act to include tables, and compilations. Section 45 of the Act, no doubt, provides for registration of copyright, and Section 63 makes infringement of copyright an offence punishable with imprisonment which may extend to one year, or with fine, or with both. Section 45 is, however, only an enabling section. Anyone who is so minded, may apply for registration. Section 45 does not go further. It nowhere lays down like the Hyderabad Copyright Act that -the original composition or compilation is only protected if it is registered.

7. In the case of M/s. Mishra Bandhu Karyalaya (supra), it had, no doubt, been held by the Madhya Pradesh High Court while construing the relevant provisions and scheme of the Act that the

registration of a book with the Registrar of Copyrights is a condition for acquiring copyright with respect to it, and that a copyright in a book now is secured only if it is an original compilation and has been duly registered according to the provisions of the Act, and, once it is so registered, the author is deemed to acquire property rights in it, and the right arising from the registration of the book can be the subject-matter of civil or criminal remedy, so that, without it, the author can have no rights nor remedies though his work may be original one.

8. The aforesaid view expressed by the Madhya Pradesh High Court, has however, been dissented from by the Calcutta High Court in the case of *Satsang v. Kiron Chandra Mukho-padhyay*. It has been said in the said Calcutta High Court decision that the observations of the learned Judges of the Madhya Pradesh High Court in the case of *M/s. Mishra Bandhu Karyalaya* (AIR 1970 Madh Pra 261) (supra), to the effect that under the Act, unless copyright is registered, the author will not acquire property right in the book and without it the author can have no rights and remedies, are in the nature of obiter dictum. It has further been observed therein that a plain reading of several sections of the Act leaves no doubt that there is no section in the Act to the effect that registration of copyright is compulsory or the author can have no right or remedy unless the work was registered, Section 13 of the Act provides that copyright shall subsist throughout India in certain classes of works which are enumerated in the section. Section 45 of the, Act provides that the author or publisher of, or the owner of or other person interested in the copyright in any work may make an application in the prescribed form accompanied by the prescribed fee t the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights. This section does not say that registration is compulsory. The case of *V. Errabhadrarao* (supra), decided by the Andhra Pradesh High Court was also distinguished by the Calcutta High Court on the ground that it had dealt with the Hyderabad Copyright Act which is a different statute in which there was a clear provision that copyright in a book or drawing is only secured if it is an original compilation and has been duly registered according to the provisions of that Act. The aforesaid view taken by the Calcutta High Court has been reiterated by a Division Bench of the Madras High Court in the case of *Manojoh Cine Productions v. A. Sundaresan* AIR 1976 Mad 22 in which also the view taken by the Madhya Pradesh High Court in the ease of *M/s. Mishra Bandhu Karyalaya* (supra), has been dissented from on the ground that the same is not justified by the language of Sections S3 and 45 of the Act, and the reasonings and the views expressed by the Calcutta High Court in the case of *Satsang* (suprja) have been relied dn and followed.

9. If I may say so, I am in respectful agreement with the reasoning and the views expressed by the Calcutta High Court in the case of *Satsang* (supra) and by the Madras High Court in the case of *M/s. Manojah Cine Productions* AIR 1976 Mad 22, (supra), and, for the same reasons, I am of the view that registration of copyright under the Act is not compulsory, nor it is sine qua non or a condition precedent to the subsistence of copyright or acquisition of ownership thereof or relief for infraction of copyright. Therefore, there is no merit in the point raised by Mr. Braj Kishore Prasad No., II, appearing for the petitioners, that no cognizance of the offence under Section 63 of the Act could have been taken by the Chief Judicial Magistrate against the petitioners in the absence of registration of copyright in favour of the complainant under Section 45 of the Act in respect of his compilation of the book *The Bihar Service Code*.

10. Mr. Braj Kishore Prasad, appearing for the petitioners, has next contended that a comparison of the Bihar Service Code published by the complainant and the Bihar Service Code published by the petitioners would show that the petitioners have not infringed the copyright of the complainant, as a simple reproduction of some passages from the Bihar Service Code published by the complainant in the Bihar Service Code published by the petitioners will not amount to infringement within the meaning of the Act,, because for that it is necessary that there should be a substantial reproduction from the book of the complainant in the book of the petitioners. This is, however, a question of fact on which the trial Court can give its finding after comparing the two copies in detail and it is not for this Court to do so while exercising its inherent jurisdiction under Section 482 of the Cr.P.C. All that can be said at this stage is that in the Annexure to the complaint petition the complainant had given instances showing that some portions in the-Bihar Service Code published by the petitioners are exact copies of the portions of the Bihar Service Code published by the complainant. It cannot, therefore, be said that on the very fact of the complaint petition no case under Section 63 of the Act is made out. The question whether the extent of the reproduction would amount to infringement so as to make the petitioners liable under Section 63 of the Act or not is,, however, a matter for the examination by the trial Court which will come to its own conclusion and, as already mentioned above, it is not for this Court to examine that question at this stage in exercise of its inherent jurisdiction under Section 482 of the Criminal' P. C.

11. In the result, there is no merit in this application which, is accordingly dismissed.