

Dr. A.K. Mukherjee vs State And Another on 8 April, 1994

ORDER

1. The petitioner Dr. A. K. Mukherjee filed a complaint before a Metropolitan Magistrate under section 63 of the Copyright Act, 1957 alleging that M/s. Chand & Co. Ltd. had knowingly infringed the copyright in a book authored by him. During the pendency of the proceedings Dr. Mukherjee moved an application that since the Copyright Board in proceedings under section 19A of the Copyright Act, 1957 had held that the respondents were guilty of infringing the petitioner's copyright the learned Metropolitan Magistrate, being bound by the said finding, had no option but to forthwith convict the respondents. However, the application did not find favor with the learned Metropolitan Magistrate. As per him, the respondents could not be convicted without trial and that too merely on the basis of the above noted finding of the Copyright Board. Hence this petition.

2. It was contended by the learned counsel for the petitioner that in view of the finding of the Copyright Board that the respondents had infringed the copyright of the petitioner in the book in question, it was not open to the learned Metropolitan Magistrate to proceed further with the trial and that in fact, he had no option but to convict the respondents forthwith under section 63 of the Copyright Act, 1957. In support he placed reliance upon a judgment of the Supreme Court in M/s. Karam Chand v. Union of India, and more particularly on the following observations made therein :

"It is a well established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."

The main stay of the contention, it must be noticed, was that the finding of the Copyright Board operated as res judicata.

3. The perusal of the order of the Copyright Board would go to show that though it did, during the course of general discussion of the case, find that there was infringement of the Copyright of the petitioner in the book in question, it ultimately dismissed the petition on the ground that it was not maintainable under section 19A of the Copyright Act.

4. It is not suggested nor can it possibly be, that the general principle of res judicata which is treated as a part of the principle of estoppel in 15 Halsbury's Laws of England Part II, would not apply to a final decision by a competent judicial Tribunal. It would, provided of course, that it determines the same question as is sought to be controverted in the litigation in which the plea of res judicata is raised, and provided further, the parties to both the proceedings are the same. However, I do feel that the principle so stated would not apply to the case in hand. Let me elaborate.

5. Section 19A of the Copyright Act, 1957 covers only disputes which arise with regard to the assignment of a "Copyright" or the terms of an assignment of a "Copyright" only. However, in the petition before the Board neither party had pleaded that there was any dispute regarding any assignment of the "Copyright" in the book in question. It was for this reason that the Copyright Board held the petition to be not maintainable under section 19A. And, this being the position, I feel,

with respect, that the Copyright Board was not justified in going into the question as to whether there was really any infringement or not of the Copyright. It was an issue which was beyond the pale of Section 19A which, even otherwise, was held to be inapplicable. In other words, the Copyright Board gave a finding on an unnecessary or irrelevant issue, an issue into which neither it could go nor there was any necessity for it to go. And, once this position is accepted, the finding cannot operate as *res judicata* (see *Issazt-un-Nissa v. Kaniz Fatima*, AIR 1916 Oudh 6, *Sri Gopal v. Radha Binode Mondal*, .)

6. In any case, the finding in question of the Copyright Board cannot be said to be final, inasmuch as there could be no appeal against it by the respondents, the decree (if at all it was one) being in favor of the party against whom the finding was recorded (See *Latchayya v. Katamma*, ; *Jamaitun-Nissa v. Lutfun Nissa* (1885) 2nd 7 All 606 (FB); *Madras Corporation v. P. R. Ramachandriah*, AIR 1977 Mad 35; *Bai Nathi v. Narohi Dullabh* AIR 1920 Bom 335; *Nana Tukaram v. Sonabai*, .

7. This, however, is still not the end of the matter. Section 63 of the Copyright Act runs as follows :

, "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, shall be punishable with imprisonment for a term which shall not be less than six month 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, 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."

8. A bare perusal of the provision would go to show that emphasis is on the words "knowingly infringes the Copyright in a work". These words clearly postulate a knowledge on the part of the accused that he was infringing the Copyright in a work. Mere possibility of his having known it would not suffice. There has to be clear and conclusive proof of the requisite knowledge. Even the existence of reasonable means of knowing would not be enough. In short thus the use of the word "knowingly" in the provision results in requiring "mens read in the full sense" (See Prof. J. C. Smity, "The Guilty Mind in the Criminal Law" 1960 Law Quarterly Review Vo. 76, p. 79). This in short, being the legal requirement under Section 63 of the Copyright Board, evidence shall have to be led to bring home the required guilty knowledge.

9. For the reasons recorded above, I find no merit in the petition. It is dismissed in liming.

10. Petition dismissed.