



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Revision Application No.211 of 2024

Mr. Dattatray Bapu Dighe
R/o. Satyanarayan Seva Society Chawl G,
Room No.5, Khardev Nagar, Ghatla,
Chembur, Mumbai 400071. ... Applicant
V/s.
The State of Maharashtra
Through office of Public Prosecutor

2. The Commissioner of Police
Greater Mumbai,
Through Boiwada Police Station
Dadar, Mumbai – 400014.

3. Amiy Vivek Saxena
Proprietor of Eagle Eye Detectives
D-204, Trimurti Apartment,
Model Town, Malviya Nagar,
Jaipur – 302017.

4. RELX India Pvt. Ltd.
818, Indraprakash Building,
8th floor, 21 Barakhamba,
New Delhi. ... Respondents.

Mr. Pankaj Sayajirao Shinde	Advocate for the Applicant.
Ms. S.E.Phad	APP for the State.

CORAM : S.M. MODAK, J

RESERVED ON : 04 September 2024
PRONOUNCED ON : 22 October 2024.

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JUDGMENT:

The only issue arisen in this revision is “whether registration of a copyright is required” prior to launching a prosecution. Relx India Private Limited (REED ELSEVIER INDIA P. LTD.) Gurgaon, State of Haryana is engaged in the business of publishing books. They have authorised Eagle Eye Detectives Proprietor-Amiya Saxena to take action for publication of duplicated books in the name of the said company.

2. The first informant Saxena got information that such duplicated books are available at **Jai Ambe Zerox at Parel**. On 13 June 2017 one Jignesh Patel was found there and he has not noticed any duplicated books and materials. However, when he visited **Janani Zerox**, he found Dattatraya Bapu Dighe-applicant present there. During search he found duplicated books shown to be published in the name of Relx India Pvt. Ltd. which costs about Rs.10,703/-. He has also seized hard disk of a computer. He found various folders in the computer containing the soft files of various books published by Relx India Pvt. Ltd.

3. He realised that the applicant has copied the books published by the company and that is how the provisions of the Copyright Act, 1957 (In short ‘Copyright Act’) were

breached. He lodged the complaint for violation of Sections 63, 63B and 65 of the Copyright Act. **It was lodged with Bhoiwada Police Station.** The applicant was arrested and chargesheet was filed before the Court of Metropolitan Magistrate, Dadar.

4. The Applicant initially filed Criminal Application No.443/2020. In the meantime, the charges were framed against him. The Division Bench granted a liberty to challenge the order of framing of charge and that is how the matter is placed before this Court.

5. I have heard learned Advocate Shri Pankaj Shinde for the applicant at length and learned APP Mrs. Phad appearing for the State.

6. Perused the record and the judgments cited on behalf of the applicant. During investigation the police have collected following materials:-

- (i) The statements of police who were part of the raiding party.
- (ii) The statement of wife of the deceased owner - the shop is rented to the applicant.
- (iii) The Panchnama dated 15 June 2017 - seizure of the books, expansion portable drive and hard

disk from CPU.

- (iv) Arrest form dated 15 June 2017.
- (v) The bail bond furnished before the police.
(Grievance is raised that the police have no authority to grant bail because offences are non-bailable).
- (vi) The letter sent to Forensic Expert dated 7 November 2017 and 23 August 2017.
- (vii) The order by Deputy Commissioner of Police dated 13 June 2017 directing Senior Police Inspector, Boiwada Police Station to register an FIR on the basis of a complaint lodged by the first informant.
- (viii) The complaint given by the first informant to Boiwada Police Station;
- (ix) Copy of the power of attorney given by Relx India Pvt. Ltd. to the Eagle Eye Detectives.
- (x) Copy of the certificate of registration issued by the Registrar of Copyrights, United States of America. It is issued in the name of Elsevier Incorporation.
- (xi) Copy of Certificate of Registration as per Trade Marks Act in the name of ELSEVIER by Indian Authorities.

(xii) Copy of Certificate of incorporation issued by Deputy Registrar of Companies informing that name of REED ELSEVIER INDIA PRIVATE LIMITED is changed to Relx India Pvt. Ltd.

7. Respondent No.3 is the first informant and Respondent No.4 is the publisher of books. They were privately served, however, they have not appeared.

8. **Mr. Shinde made following submissions:-**

(a) The first informant is a power of attorney holder and not a registered holder of a copyright.

(b) The procedure for search and seizure is improper. He relied upon the observations in case of

(i) *Mr. Bharat Vasantlal Mewawala v/s. The State of Maharashtra and others*¹

(ii) *Nirav Danishkumar Shah v/s. State of Maharashtra and others*²

(c) Relx India Company is not having a copyright registered with Indian authorities. It is mandatory. He relied upon following judgments:-

1 Criminal Application No.198 of 2016

2 2018 2 MhLJ(Cri) 752

- (i) *M/s. Gulfam Exporters and another v/s. Sayed Hamid others*³,
- (ii) *Dhiraj Dharamdas Dewani v/s. M/s. Sonal Info Systems Pvt. Ltd. And Others*⁴,
- (iii) *Anand Palan and others v/s. State of Goa*⁵,
*Maharashtra*⁶
- (iv) *B.K. Dani v/s. State of Madhya Pradesh*⁷
- (v) *Brundaban Sahu v/s. B. Rajendra Subudhi*⁸

9. Whereas according to learned APP, registration of the copyright is not mandatory. She submitted that criminal law can be set in motion by any person who is conversant with the facts and the applicant is authorised on behalf of the company. She submitted that copyright of the company is registered with the U.S. authorities.

Consideration

In the case of *B.K. Dani* (supra) it was observed “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 through his work may be

3 2000 2 Bom CR 619.

4 2012 (2) BOM CR 842

5 2019 ALL MR (Cri.) 4592.

6 Cr. Application No.198/2016

7 2004 (3) MPLJ 580

8 1986 2 ArbLR 224

original one.” Even in case of Brundaban Sahu, the Orissa High Court was dealing with a prosecution involving commission of an offence under Section 63 of the Copyright Act and Section 78 and 79 of Trade Marks and Merchandise Marks Act. The wrapper/label of khara masala belonging to complainant was not registered. It was one of the reason for quashing the complaint. Both these Acts stand on a different footing and provisions of registration are different. We are dealing with only a case of infringement of copyright.

10. It is true in the judgments of M/s Gulfam Exporters and Dhiraj Dewani this Court has held that unless and until the copyright is registered, no prosecution can be launched for the offences under Section 63 of the Copyright Act. M/s. Gulfam Exporters is a judgment arising out of a criminal prosecution. It is interesting to note that learned Single Judge in case of M/s. Gulfam Exporters dealt with violation of Copyright Act and Trade Marks Act whereas case before us involves only violation of Copyright Act. Whereas in case of Dhiraj Dewani there was a suit filed before the District Court and there was an application for rejection of the plaint. The ratio is similar. Even for initiating civil remedies, registration is mandatory. Learned Single Judge in that case, has taken overview of the decisions given by various High Courts and concluded :--

“the infringer must be aware that there is owner

of the copyright or such owner has registered his work under Section 44 of the Copy Right Act before attributing infringement on him (Para-24).”

11. Now the issue is whether the observations in both the judgments is only the law interpreted or are there any other interpretations. The learned Single Judge of this Court in the case of *Sanjay Soya Pvt. Ltd v/s. Narayan Trading Company*⁹ observed that for enforcing the rights in Court of law, registration is not mandatory. The provisions of Copyright Act were considered. While arriving at said conclusion, the provisions of Trade mark Act and Indian Partnership Act were also considered. Even learned Single Judge has considered binding effect of the observations in case of *Dhiraj Dewani* and in case of *Gulfam Exporters*. It is observed :--

“Dhiraj Dewani at least implicitly, equates or places on the same pedestal registration under Trade Marks Act with registration under the Copyright Act. This is incorrect. The two are entirely distinct. Registration under the Trade Marks Act confers specific distinct rights unavailable to an unregistered proprietor. Important amongst these is the right to sue for

⁹ 2000 SCC Online Bom 407

infringement. This is only available to a registered proprietor. There is no such requirement under the Copyright Act at ll. In fact the Copyright Act gives a range of rights and privileges to the first owner of copyright with out requiring prior registration.”(para 48)

It was observed “two judgments are *per incuriam*”. It for the reason the law interpreted by this Court in earlier judgments was not considered. These judgments are:-

- (i) *Burrow Wellcome (I) Ltd. v/s. Unisole Pvt. Ltd.*¹⁰.
- (ii) *M/s. Asian Paints (I) Ltd. v/s. Mrs. Jaikisan Paints and Allied Products*¹¹
- (iii) *International Association of Lions Club vs. National Association Lions India*¹²
- (iv) *Anand Patwardhan v/s. Director General of Doordarshan*¹³

12. It is true that few of the above judgments are delivered after the judgment in case of Gulfam and Dewani are delivered. It is also true that all above judgments were pronounced dealing with the same kind of litigation. Whether it is a civil litigation or criminal litigation. When there is a

¹⁰ 1997 III Vol. MLJ 914

¹¹ 2002 4 MHLJ 536

¹² 2006 4 MHLJ 527

¹³ Order dt. 31/3/2009 in Suit No.2259/2004

grievance of infringement of a copyright that grievance is made on the basis of provisions of Copy Right Act only. Because Section 51 of the said Act lays down instances of infringement of a copyright in a work. If there is infringement, the Act provides two remedies:-

- (a) One is under Chapter-12. **Section-55** empowers the owner of the copyright to those remedies prescribed in the Section.
- (b) **Section 63** prescribes the offence when the person infringes a copyright in a work.

On this background it will be relevant to consider few of the provisions of the Act. They are as follows:-

Provisions of Copyright Act

- (a) As per **Section 14**, copyright means exclusive right to do or authorise the doing of a particular act. It depends upon a type of a work that is to say whether it is literary, dramatic or musical. It may deal with computer programming or artistic work or cinematograph film. If it is literary work, it includes reproduction of a work in a material form including storing and issuing copies of the work to the public. If RELX

company has published a particular book, they only have a right to publish it and if someone is publishing without their authorization, it amounts to infringement.

- (b) **Section 44** lays down how the register of copyrights should be maintained in copyright office.
- (c) **Section 45** lays down the procedure for filing an application for registration of copyrights.
- (d) **Section 48** attaches the evidentiary value to the particulars entered in the register of copyrights. It is admissible in evidence in all Court without proof or production of original. Always this provision is quoted in order to buttress a submission that registration of the copyright is mandatory.
- (e) **Section 51** talks about infringement of copyright. When there is exclusive right to do a particular work in favour of one person, another person cannot do that work without the permission of the owner of the copyright. If the conditions of a licence granted by the copyright holder are breached, it also amounts to infringement of copyright. If there is infringement, the aggrieved

person gets two rights (i) under Section 55 about resorting to civil remedies.(ii) it leads to action as per criminal liability under Section 63 of the Act.

Provisions of Trade Marks Act 1999

- (a) It is true that as per **Section 27** of Trade Marks Act 1999, if a person has to recover damages, or to file a preventive suit it can be done only when the trade mark is registered.
- (b) **Section 28** gives exclusive right to the holder to use the trade marks.
- (c) **Section 31** of the said Act says that registration of trade mark is a *prima facie* evidence of its validity.

13. In case of *Sanjay Soya Pvt. Ltd.*, the learned Single Judge of this Court has compared the provisions of Trademarks Act and Copyright Act and opined that “**there are no provisions in the Copyright Act making the registration mandatory.**” Even learned Single Judge also considered the provisions of Copyright Bill 1955 and Copyright Act 1957 enacted by the Parliament. Clause-65(2) of the Bill contains the provision for mandatory registration of the copyright. However, when the Act was enacted, that clause was not

inserted in the same form. Even learned Single Judge also considered the provisions of Indian Partnership Act. Section 69 lays down what are the effects of non-registration of the partnership firm.

14. Considering the overview of the decisions I am not subscribing to the arguments of learned Advocate Shinde for the Applicant that registration is mandatory and then only criminal prosecution is maintainable.

Procedure of search

15. In case of *Anand Palan* (supra), Mr. Shinde relied upon the observations in Para No.11 of the said judgment. So also he relied upon the observations in case of *Bharat Mevawala case* (supra). The issue was whether the power of attorney holder appointed by the companies having copyright is maintainable. On the basis of facts, directions were given to higher police officers to desist from acting on the tip of persons who are doing liaisoning with police machinery. Certain persons were involved in the business of doing a liaisoning with the police and getting FIRs registered. The facts of present case are different. In that case there was settlement and affidavit-in-reply was filed before Division Bench. In this matter the Court is dealing with the issue about framing of charge and not the quashing prayer. It is the applicant only who knows, why he sought liberty from the Division Bench to

challenge the order of framing of charge only (when in fact the petition was for quashing). So these contentions are alien to revision application. Hence, I have not considered them.

16. Few contentions are also taken why the FIR is not registered by Bhoiwada Police Station and they registered the FIR only when Deputy Superintendent of Police gave a letter dated 13 June 2017. Another contention is also raised why police granted bail to the applicant though the offence is non-bailable. I do not think that these issues can be gone into given the reason if he has got some grievance against the acts of police, he can take those grounds for conducting the cross-examination. So I find no merit in the revision application. Hence, it is **dismissed**.

17. Interim order granted earlier, if any, stands vacated.

(S.M. MODAK, J.)