

State of A.P.

Vs

Nagoti Venkataramana

Criminal Appeals Nos. 1644-45 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

20.08.1996

ORDER

1. Leave granted.

2. Shri Prakash Reddy, learned counsel for the respondent has raised an interesting question of law in this case. The admitted facts are that the Inspector of Police, Urban Police Station, Tenali, Guntur District of Andhra Pradesh had in a raid on 23-12-1986 seized 90 cassettes of various cinematograph films in Telugu, Hindi and English under a panchnama attested by PW 2 from the video library belonging to the respondent and laid the charge-sheet for an offence under Section 52-A read with Section 63 of the Copyright Act, 1957 (for short, "the Act") as amended in 1984. The trial court after adduction of evidence of PWs 1 to 3 and production of Exs. P-1 and MO-1 convicted the respondent under Section 63 of the Act for minimum sentence of six months and also imposed a fine of Rs. 3000. In default, he was directed to undergo simple imprisonment for a further period of one month. On appeal, the Sessions Judge, Guntur confirmed the same. In Criminal Revision No. 665 of 1989 and CRC No. 666 of 1989 the High Court of Andhra Pradesh by judgment dated 17-9-1990 acquitted the respondent of the offence. Thus these appeals by special leave.

3. The facts as found and not in dispute are that the respondent had kept in his shop by name Video City, various cassettes numbering 90 in Telugu, English and Hindi cinematograph films exhibiting the same either for hire or sale to the customers. The question, therefore, is whether the respondent has committed infringement of a copyright or deemed infringement thereof. The Statement of Objects and Reasons to Amendment Act 65 of 1984 reads as under :

"Piracy has become a global problem due to the rapid advances in technology. It has assumed alarming proportions all over the world and all the countries are trying to meet the challenge by taking stringent legislative and enforcement measures. The problem of piracy and the necessity for taking sufficient anti-piracy measures were also voiced by Members of Parliament at the time of the consideration of the Bill to amend the Copyright Act, 1957, last year.

2. Mainly there are three types of piracy, namely, piracy of the printed word, piracy of sound recordings and piracy of cinematograph films. The object of the pirate in all such cases is to make quick money and avoid payment of legitimate taxes and royalties. In respect of books, it is estimated that four hundred to five hundred titles are pirated every year in India and on each of the pirated titles, the loss to the Government in the form of tax evasion amounts approximately to Rs. 11,000. Apart from books, recorded music and video cassettes of films and TV programmes are reproduced,

distributed and sold on a massive scale in many parts of the world without any remuneration to the authors, artistes, publishers and producers concerned. The emergence of new techniques of recordings, fixation and reproduction of audio programmes, combined with the advent of video technology have greatly helped the pirates. It is estimated that the losses to the film producers and other owners of copyright amount to several crores of rupees. The loss to Government in terms of tax evasion also amounts to crores of rupees. In addition, because of the recent video boom in the country, there are reports that uncertified video films are being exhibited on a large scale. A large number of video parlours have also sprung up all over the country and they exhibit such films recorded on video tapes by charging admission fees from their clients. In view of these circumstances, it is proposed to amend the Copyright Act, 1957, suitably to combat effectively the piracy that is prevalent in the country.

3. The Bill provides, among other things, for the following amendments to the Act, namely-

- (i) to increase the punishment provided for the infringement of the copyright, namely, imprisonment of three years, with a minimum punishment of imprisonment of six months, and a fine up to Rs. 2 lakhs, with a minimum of Rs. 50,000;
- (ii) to provide for enhanced punishments in the case of second and subsequent convictions;
- (iii) to provide for the declaration of the offence of infringement of copyright as an economic offence so that the period of limitation provided for in the Code of Criminal Procedure, 1973, for offences will not be applicable to this offence;
- (iv) to specifically make the provisions of the Act applicable to video films and computer programmes;
- (v) to require the producers of records and video films to display certain information in the records, video films and containers thereof."

4. Section 2(m)(ii) defines "infringing copy" to mean, in relation to a cinematographic film, a copy of the film made on any medium by any means. Section 3 defines 'publication' to mean making a work available to the public by issue of copies or by communicating the work to the public. Section 4 envisages when work is not deemed to be published or performed in public. It provides that except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, without the licence of the owner of the copyright. The permission of the owner for publication is mandatory when it is sought to be brought home to the person violating the publication or performed in public. It excludes the application of infringement of a copyright from the purview of Section 4. Chapter X deals with registration of copyright. Section 44 envisages that there shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which may be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed. The entries under Section 48 in the register of copyrights shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of such entries therein, or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original. Section 51 in Chapter XI deals with infringement of copyrights. It provides, among other things, that a copyright in a work shall be deemed to be infringed when any person makes for sale or hire, or sells or lets for

hire, or by way of trade displays or offers for sale or hire any infringing copies of the work. Section 52-A deals with particulars to be included in sound recordings and video films. Sub-section (2) thereof provides thus :

"52-A. (2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely -

(a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the certificate granted by the Board of Film Certification under Section 5-A of that Act in respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and

(c) the name and address of the owner of the copyright in such work."

5. Section 63 in Chapter XIII provides for penalty thus :

"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 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 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 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."

6. Further amendment with regard to sentence of fine came to be made by Amendment Act 38 of 1994 with which we are not presently concerned.

7. Section 68-A provides for penalty for contravention of Section 52-A. It reads that any person who publishes a sound recording or a video film in contravention of the provisions of Section 52-A, shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.

8. A reading of these provisions does indicate that infringement of a copyright or deemed infringement of a copyright or publication of a work without the permission of the owner are offences under the Act. The question is whether identification of the owner of the copyright is a

precondition for violation of the provisions of Section 63 or 68-A, as the case may be ? The finding of the High Court and ably sought to be supported by Shri Prakash Reddy is that unless the owner is identified and he comes and gives evidence that he had a copyright of the video film which was sought to be in violation of Section 52-A or Section 51 of the Act, there is no offence made out by the prosecution and that, therefore, the conviction and sentence of the respondent is not valid in law. He contends that Section 4 expressly excludes publication of the work to be published. The identification of the owner being an essential element to prove the offence of infringement of copyright, the prosecution has failed to establish the same. In construction of the penal statute strict construction should be adopted and in that perspective the benefit of doubt given by the High Court is well justified and does not warrant interference.

9. It is true that in the interpretation of penal provisions, strict construction is required to be adopted and if any real doubt arises, necessarily the reasonable benefit of doubt would be extended to the accused. In this case, the question arises whether such a doubt has arisen ? The object of amending the Copyright Act by Amendment Act 65 of 1984, as noted above, was to prevent piracy which became a global problem due to rapid advances in technology. The legislature intended to prevent piracy and punish the pirates protecting copyrights. The law, therefore, came to be amended introducing Section 52-A. Thereafter, the piracy of cinematograph films and of sound recording etc. could be satisfactorily prevented. Moreover the object of the pirate is to make quick money and avoid payment of legitimate taxes and royalties. The uncertified films are being exhibited in a large scale. Mushrooming growth of video parlours has sprung up all over the country exhibiting such films recorded on video tapes by charging admission fee from the visitors. Therefore, apart from increasing the penalty of punishment under law it also provides the declaration on the offence of infringement and video films to display certain information on the recorded video films and containers thereof. Section 52-A thus has incorporated specifications of the prints in sub-section (2) thereof. The construction of Sections 52-A, 51, 63 and 68-A should be approached from this perspective. It would be further profitable to read the relevant provisions of the Cinematograph Act, 1952 in this behalf. Section 2(c) defines 'cinematograph' to include any apparatus for the representation of moving pictures or series of pictures. Section 2(dd) defines 'films' to mean a cinematograph film. The question, therefore is whether video film is a cinematograph ? It is settled view that video tapes come within the expression 'cinematograph' in view of the extended definition in Section 2(e) which includes apparatus for the representation of moving pictures or series of pictures as copy of the video should be created in respect of a cinematograph under the Cinematograph Act which gives protection to the purchasers of the cinematograph if they are registered under Chapter X of the Act. Section 44 gives the right of registration and once the entries have been made by operation of Section 48 the entries in the register of copyrights shall be prima facie evidence of the copyright and the entries therein are conclusive without proof of the original copyright which must be taken to have been created in respect of the video tape.

10. In *Balwinder Singh v. Delhi Admn.* [AIR 1984 Del 379 : 1984 Rajdh LR 302] a Division Bench of Delhi High Court had also held that both video and television are cinematographs. Licences for giving their public exhibition is necessary under the Cinematograph Act in spite of their having commercial licences under the Telegraph Act, 1885.

11. It is true that there is no specific charge under Section 52-A. The charge was under Section 51 read with Section 63 of the Act. In view of the above finding and in view of the findings of the courts below that the respondent was exhibiting the cinematograph films in his Video City for hire or for sale of the cassettes to the public which do not contain the particulars envisaged under Section 52-A of the Act, the infringement falls under Section 51(2)(ii) or Section 52-A of the Act. The

former is punishable under Section 63 and the latter is punishable under Section 68-A of the Act. In view of the findings of the courts below, the offence would fall under Section 68-A of the Act. It would, therefore, be unnecessary for the prosecution to track on and trace out the owner of the copyright to come and adduce evidence of infringement of copyright. The absence thereof does not constitute lack of essential element of infringement of copyright. If the particulars on video films etc. as mandated under Section 52-A do not find place, it would be infringement of copyright.

12. In our view, on the facts in this case, the offence would fall under Section 68-A of the Act. Accordingly, the conviction of the respondent is altered to one under Section 68-A. There would be no prejudice to the respondent. In view of the facts and circumstances, we are of the opinion that instead of imposing a sentence of imprisonment, sentence of fine of a sum of Rs. 10,000 would meet the ends of justice. Therefore, the conviction and sentence ordered by the trial court as confirmed by the appellate court are modified to one of conviction under Section 68-A. The respondent is sentenced to pay a fine of Rs. 10,000. In default, he should undergo rigorous imprisonment for a period of three months. Even if he does not pay the fine and undergoes the sentence, the State is at liberty to recover the fine from the respondent.

13. The appeals are accordingly allowed.