

CALCUTTA HIGH COURT

Mohendra Chundra Nath Ghosh

Vs.

Emperor

(C.C. Ghose, J.)

03.05.1928

JUDGMENT

C.C. Ghose, J.

1. These are two Rules calling upon the Chief Presidency Magistrate of Calcutta to show pause why the conviction and sentence under Section 7, Indian Copyright Act (Act 3 of 1914), made and passed on the petitioners, should not be set aside on the ground that on the facts there was no infringement of the copyright of the complainant in the pictures referred to herein.

2. The case for the prosecution is that the complainant is the owner, inventor or designer of certain pictures being Exs. 1, 4 and 7, and that the offending pictures, Exs. 13, 14 and 15, are infringements of the copyrights in respect of the original pictures. The Magistrate has, after careful consideration, come to the conclusion that the case for the prosecution is correct, and has accordingly convicted the petitioners, and has sentenced them each to pay a fine of ₹ 100 or in default to suffer simple imprisonment for a period of one month.

3. The complainant alleges that the offending pictures, Exs. 13, 14 and 15, are copies of his said original pictures and that it is immaterial whether the copy in each case is or is not of the same size as the original pictures. Now, what is a copy? A copy has been defined as that which comes so near the original as to suggest the original to the mind of the spectator: per Kekewich, J., in 1905) I Ch. 519. It is always a question of fact that the Court will examine the degree of resemblance : see *Imperial Tobacco Co. v. Atlantic Tobacco Co^l.*, It is argued, however, that the three pictures, Ex. 1, 4 and 7, are representations of a familiar subject in Vaishnav literature and, unless there is in the offending pictures similarity in the scheme, treatment and design, there can be no infringement: see 8 Hals 197, In this case, the learned Chief Presidency Magistrate has gone into the question very carefully and there are good grounds for his conclusion that the offending pictures have been produced by taking copies of Ex. 1, 4 and 7 by having them retouched, i.e, painted over in different colors and using these retouched pictures as originals for making negatives, blocks and pictures by the ordinary three color process. No doubt the sentiment expressed in the copyright pictures is common in Vaishnav literature, but the question

is whether the offending pictures are copies of substantial portions of the copyright pictures. In my view there can be only one answer to this question and it is in the affirmative. The figures may have been reduced in the offending pictures and slight modifications may have been introduced, or the clothes and

¹ AIR 1925 Cal 220: 84 Ind. Cas. 1014

colours may have been different, but there can be no doubt whatsoever that the main [figures have an identical pose. These are not, in my opinion, coincidences due to the pictures being produced to represent common stock ideas. If once that conclusion is reached, it is difficult to see on what grounds the orders made by the Magistrate can be challenged. In my opinion, the petitioners have failed to show any grounds for interfering with the orders complained of and I would accordingly discharge these rules.

Jackson, J.

4. I agree.

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