

JAMMU AND KASHMIR HIGH COURT

Romesh Chowdhry

Vs.

Ali Mohamad Nowsheri

Criminal Applns. Nos. 57 and 71 of 1964

(S. Murtaza Fazl Ali and J.N. Bhat, JJ.)

28.04.1965

JUDGMENT

S. Murtaza Fazl Ali, J.

1. These two applications arise out of the same proceedings and we propose to decide them by one order.

2. The facts giving rise to the present proceedings may be briefly summarised as follows : The complainant Ali Mohamad who is an Assistant Registrar of the Jammu and Kashmir University, Publication Branch, filed a complaint against the petitioners on the allegation that by publishing notes on certain books namely, Modern English Prose, Foot Hills, Gathering Buds, Selection Prose and Little Treasure of English Verse the petitioners have infringed the Copy Right of the University and have thus committed an offence under Section 63 of the Copy Right Act. The petitioner Nos. 1 and 2 are the proprietors of the press where the notes to these books were published and the petitioner No. 3 is the person who had prepared these notes. The petitioners came up to this Court in order to quash the proceedings on the ground that on the allegations made in the petition of complaint no case for criminal prosecution has been made out. It has been submitted by the petitioners that the notes did not constitute a colorable imitation of the original books but fall within the purview of fair dealing and are merely in the nature of guide to the students in order to appreciate the books prescribed by the university in its syllabus. As the point involved in the case was of first impression and there was no authority of this Court, the case which was originally heard by a single bench has been referred to us.

3. Section 63 of the Copy Right Act makes punishable the infringement of the copy right in a work. In order to determine whether or not the offence is punishable under Section 63 of the Copy Right Act, we have got to take into consideration the provisions of Sections 51 and 52 of the Copy Right Act.

4. Section 51 of the Copy Right Act runs as follows :

"Copy right in a work shall be deemed to be infringed :

(a) When any person without a license granted by the owner of the copy right or the Registrar of Copy Rights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act -

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copy right, or,

(ii) permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for believing that such performance would be an infringement of copyright, or,

(b) When any person

(i) makes for sale or hire, or sells or lets for hire or by way of trade displays or offers for sale or hire

or,

(ii) distributes either for the purpose of trade or to such an extent as to effect prejudicially the owner of the copyright, or,

(iii) by way of trade exhibits in public, or

(iv) imports (except for the private and domestic use of the importer) into India any infringing copies of the work.

Explanation :- For the purposes of this Section, the reproduction of literary, dramatic, musical or artistic work in the form of a cinematograph film should be deemed to be an 'infringing copy.'

Section 52 of the Copy Right Act, however, defines various acts which do not constitute infringement of the Copyright and the relevant clauses of this Section, which fall for determination, in the present case are as follows :-

(a) a fair dealing with a literary, dramatic, musical or artistic work for the purposes of;

* * * * *

(ii) Criticism or review whether of that work or of any other work.

(b) A fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events.

5. The contention of the learned counsel for the petitioners before us was that as the intention of the petitioners in publishing these notes was merely to provide a guide to the students to understand the books prescribed by the university and amounted to a criticism or a review of the original books or at any rate, a fair dealing with these books, the petitioners have not committed any offence. In our opinion, the contention is well founded and must prevail. It is well settled that in order to be actionable, the infringement must be a colorable imitation of the originals with the purpose of deriving profit. We have gone through the notes prepared by the petitioner No. 3 and published by petitioners Nos. 1 and 2 and we do not find anything in these notes to indicate that there is any colorable imitation of the original. The notes are in the nature of a review of the

original books meant as a sort of a guide to the students in order to appreciate the contents of the books prescribed by the university. Reliance was, however, placed by the learned counsel for the petitioners on a decision of the Madras High Court reported in *E.M. Forster v. A.N. Parasuram*¹, where their Lordships while considering almost an identical case, held that there was no infringement of the Copy Right. The Principle is now well settled that under the guise of a copyright the authors cannot ask the court to close all the doors of research and scholarship and all frontiers of human knowledge, as was observed in *Kartar Singh v. Ladha Singh*², where their Lordships observed as follows :-

"Under the guise of the copyright, a plaintiff cannot ask the court to close all the avenues of research and scholarship and all frontiers of human knowledge. In my opinion, interpreting the law in a just and liberal spirit."

The same view has been taken in *S.K. Dutt v. Law Book Co*³, and *Macmillan and Co. v. K. and J. Cooper*⁴,

6. In the instant case, there is no attempt made by the petitioners at imitating the books prescribed by the University. The title of the books (notes) published by the petitioners clearly shows that these are merely in the nature of notes and serve as a guide to the students to understand the books. In the Notes certain quotations from the books have been given in order to explain their meaning and significance. Under these circumstances, therefore, by no stretch of imagination, it can be said that the acts of the petitioners in preparing or publishing these notes amounted to infringement of Copyright as contemplated by Section of the Copy Right Act. The case of the petitioners, in our opinion, clearly falls within the Exception to Section 52, Sub-clauses (a) and (a) (ii) of the Act, quoted above.

7. Apart from this, it seems to us that once the original authors of the books allowed these books to be published by the university in their syllabus and the university in its turn published these books as part of the syllabus prescribed for the students, the matter went into the hands of the public and no copyright in the strict sense of the term remained with the complainant. It was open to any member of the public to publish a review, or a criticism or a guide to these books, which having been published by the university, became more or less public property. I am fortified in my view by a decision of the Allahabad High Court reported in *Mahomed Abdul Jalil v. Ram Dayal*⁵ where their Lordships observed as follows :

"We think that when the plaintiff as a member of the Board of Studies, laid the results of his skill and experience before the Board, and then joined with the other members of the Board in preparing the syllabus for the examinations to be conducted in the Persian language in the year 1914, he placed the results of his labours unreservedly at the disposal of the university authorities. He may have desired that those Authorities should either remunerate him for his labours or take suitable measures to protect the copyright in the selections themselves. But when the University authorities published their syllabus they surrendered any copy right which may or may not have existed owing; to the skill, learning, experience and labour expended on the preparation of these

¹ AIR 1964 Mad 331

³ AIR 1954 All 570

⁵ AIR 1916 All 216

lists of passages from standard authors, unreservedly into the hands of the general public. The avowed intention of the university Authorities was that any enterprising firm of publishers which considered it a remunerative speculation should bring out the passages in question in book form. They were of opinion, that the interests of the public, and of the general body of the students, would best be served by allowing free competition in this matter. We think these facts need only be set forth in order to make it clear that the plaintiff retains no copyright in the selections as such."

8. This is exactly the position in the present case. On this ground also, we are constrained to hold that there has been no infringement of Copyright under the provisions of the Copy Right Act.

9. For these reasons, therefore, we hold that no criminal case has been made out against the petitioners on the allegations made in the petition of complaint.

10. The applications are, therefore, allowed and the proceedings taken against the petitioners are quashed. The petitioners shall stand discharged from their bail bonds. The Rule is made absolute.

J.N. Bhat, J.

11. I agree.

Applications allowed.