BOMBEY HIGH COURT

Dinesh Kumar Hanumanprasad Tiwari

Vs.

State of Maharashtra

Criminal Application No. 448 of 1983

(Qazi, J.)

14.10.1983

ORDER

Qazi, J.

1. This order shall also dispose of Criminal Appeal Nos. 470/83, 471/83, 479/83, 480/83, 483/83 and 558/83. In all these petitions, the petitioners are the proprietors of cafe and restaurants which are being run in different parts of the State of Maharashtra. The petitioners are exhibiting films in their restaurants to their customers, free of charge, through Video and T.V. sets. According to them, the exhibition of cinema, through Video and T.V. sets. According to them, the exhibition of cinema, free of charges, to the customers with the aid of magnetic tape cannot come under the provisions of the cinematograph Act, 1952. They have further stated that the Video Cassette Recorder, popularly known as VCR is designed to record sound and the pictures in both black and white as well as colour on magnetic tape. The tape that is used is a magnetic tape without having nitrocellulose or some other synthetic base and, therefore, cannot be called "film" as the word was understood when the Cinematograph Act, 1952 was enacted. According to them, at that time, the film meant a sheet or ribbon of celluloid or the like prepared with the coating for ordinary photographs or for instantaneous photographs by projection by cinematograph.

2. Mr. Padhye has invited my attention to the definition of "cinematograph" and "film" as given in the Cinematograph Act, 1952.

> "(c) "Cinematograph" includes any apparatus for the representation of moving pictures or series of pictures."
> "2. (dd) "Film" means a cinematograph film."

The only point which Mr. Padhye seriously pressed was that the Cinematograph Act was enacted in the year 1952 by the Parliament when VCR and TV were not introduced in India. Therefore,

according to him, the Legislature could not have intended to include VCR and TV within the meaning of "cinematograph" as defined under the ACt. According to him, we cannot read in the definition something which was not in existence in the country and, therefore, the Legislature could never have intended to include such instruments and appliance which were almost unknown in India. He has further submitted that the only method that was known in the year 1952 was sheet or ribbon of celluloid or the like prepared with the coating for ordinary photographs or for instantaneous photographs by projection by cinematograph and therefore, VCR and TV sets cannot be included within the definition of "cinematograph".

3. Mr. S.A. Jaiswal, Advocate, appearing for one of the petitioners, has adopted the arguments advanced by Mr. Padhye.

4. Mr. Sinha appearing on the behalf of the State, has taken me through the various provisions of the Cinematograph ACt, 1952 and the Bombay Cinemas (Regulations) Act, 1953 and the rules made thereunder. However, in view of the limited challenge raised at the time of arguments, it may not be necessary for me to discuss all the provisions referred to by Mr. Sinha. According, to Mr. Sinha, the definition of "cinematograph" is wide enough to include VCR and TV and to hold otherwise, would mean doing violence to the plain language used in the definition. According to him, the definition is not restricted to projectors ordinarily used in cinema for showing photographicals. He has submitted that when VCR is used for playing pre-recorded cassettes of movies on TV screen it is certainly used as an apparatus for representation of moving pictures or series of pictures and comes within the definition of Cinematograph Act. Hence, exhibiting movies by playing pre-recorded cassettes in VCR in cafe and restaurants, comes within the has contained in Section 3 of the Bombay Cinemas (Regulations) Act, 1953.

5. Another limb of the arguments of Mr. Sinha, was based on Sections 6-A and 7 of the Cinematograph Act, according to which, no film other than a film certified by the Board can be exhibited and any contravention thereof, is punishable under Section 7 of the Act of 1952. He has vehemently argued that the films which are being exhibited by the petitioners are not certified and censored. Yet another limb of his arguments was that in the year 1952 the State Legislature enacted Bombay Cinemas (Regulations) Act, 1953 to make provisions for the regulations of cinemas including their licences. Section 3 requires that "no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act or otherwise than in compliance with any conditions and restrictions imposed by such licence." Section 4 provides for the Licensing Authority. He has submitted that the petitioners are exhibiting video films which fall within the ambit of cinema, without licence, and have thus committed breach of Section 3 read with Section 7 of the Bombay Cinemas (Regulations) Act, 1953.

6. Now, turning to the point raised by Mr. Padhye that the Legislature could not have intended to include VCR and TV (without having nitrocellulose base) within the meaning of

"cinematograph" as defined under the Act of 1952 when these instruments and appliances were not even introduced in India. In my view, there is no substance in this argument. The argument appears to have been based upon the maxim contemporaneous expositor test option statute. I do not think this doctrine can be applied to the modern legislation in a developing society. It is true that the fundamental rule of construction is what is the intention of the Legislature. But in a fast developing society, it would be correct to confine the intention of Legislature to the meaning attributable to the word used at the time of enactment. In a scientific age, the Legislature must be presumed to be aware of an enlarged meaning of the word which it may attract with the advance of science and technology. There is no reason as to why the word "apparatus" used in the definition of "cinematograph" be given restricted meaning so as to mean only a sheet or ribbon of celluloid or the like prepared with the coating for ordinary photographs. On the other hand, any apparatus, as long as it is capable of the being used for representation of moving pictures or series of pictures notwithstanding whether it is used with the aid of magnetic tapes, would be an apparatus" within the meaning of the word "cinematograph" as defined under the Act. In my view, the definition of "cinematograph" is wisely couched in widest possible terms and as long as any apparatus which answers the description given in the definition of "cinematograph", must be held as cinematograph and any place wherein exhibition is given by means of cinematograph, must fall within the mischief of cinema.

7. Mr. Sinha has argued that it is possible that in the course of time., some other method may be discovered and the apparatus may be used with the aid of the a cloth or leaves or paper instead of magnetic tape and yet, it would fall within the definition of the word "cinematograph" as long as it answers the description of "apparatus" as given in the definition. The argument cannot be said to be without any substance since the definition of "cinematograph" has been made inclusive of any apparatus. what is important is that it must answer that description and I have no doubt that VCR and TV does answer that description fully and would very much fall within the definition of cinematography" as defined under the Act.

8. Mr. Sinha has rightly relied on the decision *reported in (Senior Electric Inspector v. Laxminarayan Chopra[1])* and in my view, this is a complete answer to the challenge raised in the petition. In this case, one Chopra carried on business as motor-coach builder having his factory in the suburbs of Calcutta. In the said factory a number of "Universal Electric Motors" were operated for the purpose of working electric drills Within a distance of 100 feet of the said factory, there was a Post and Telegraph W1 recess Station which handled public messages in large volume from various places. In or about April 1953, serve electrical interference was observed in the said station and experts attributed the same to local induction from Chopra's factory. The Senior Electric Inspector issued a notice to Chopra to show cause as to why an order under Section 34(2)(b) of the Electricity Act, 1910 requiring discontinuation of the operation of the Universal Electric Motors in the said factory premises should not be made. It was contended on behalf of the Chopra that there was no "telegraph line" in the post and Telegraph Wireless Station within the meaning of Section 34(2)(b) of the Electricity Act, 1910 and therefore, the

notice issued by the Senior Electric Inspector was without jurisdiction. Sinha, J., rejected the contention and dismissed the petition. But on appeal, the Division Bench of the High Court of Calcutta accepted the contentions of Chopra and issued a writ as prayed for. It is under these circumstances that the department moved the Supreme Court. The contention raised before the Supreme Court was that the expression "telegraph line" as used in Section 34(2)(b) of the Electricity Act, 1910 has, in the absence of any new definition in that Act, to be given the same sense as the Legislature had intended in 1885 by the definition of that expression in the earlier Act. It was further contended that in the year 1885, the Legislature could not intended to use the expression 'telegraph line" in a comprehensive sense so as to take in electric wires of a receiving station of wireless telegraphy. It is in this context that the Supreme Court observed (at p. 163) :-

[1] AIR 1962 SC 159

> "But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time & with the revolutionary changes brought about in social, economic, political & scientific and other fields of human activity."

Their Lordships held that the expression "telegraph line" is sufficiently comprehensive to take in the wires used for the purpose of the apparatus of the Post and Telegraph Wireless station.

9. Mr. Sinha has also relied on a decision *reported in (Restaurant Lee, Jagdalpur v. State of M.P.[2])*. Almost identical question was raised there and the M.P. High Court observed as under (at p. 150) :-

> "We have already seen that "cinematograph" is defined in Section 2(a) of this Act to include any apparatus for the representation of moving pictures or series of pictures. The definition of moving pictures or series of pictures. The definition is wide in terms. It is not restricted to projectors ordinarily used in cinemas for showing photographic films. The inclusive definition is quite general and wide to include any apparatus for the representation of a moving pictures or series of pictures. Now when a VCR is used for playing pre-recorded cassettes of movies on the TV screen, it is certainly used as an apparatus for the representation of moving pictures or series of pictures and comes within the definition of "cinematograph."

Similarly, the activity of the petitioners of exhibiting movies by playing pre-recorded cassettes in VCRs in their restaurants comes within the ban contained in Section 3 of the Act. Section 3, as already seen, prohibits exhibition by means of a cinematograph elsewhere than in a place licensed under the Act." I am in respectful agreement with the view expressed by the M.P. High Court.

10. Another ground raised in the petition is that with the introduction of television in India, it become necessary for the Parliament to enact Telegraph Laws (Amendment) Act, 1961 to amend the definition "telegraph" in the Telegraph Act, 1885 and the definition of "wireless communication" in Wireless Telegraphy Act, 1933 for making the said two definitions wide enough to include "transmission and receiving visual images by television". On this analogy, it is stated in the stated in the petition that with the invention of new techniques, old definitions have to be amended for increasing the sweep of such definitions to include an instrument employing newly invented techniques that were not in existence when the definition was made. On this basis, it was argued that the definition of "cinematograph" and "film" should have been amended so as to include magnetic tape and projection of pictures by conversion of electronic signals recorded on such a tape and received by the television, which converts it into an image. In this context, a passing reference was made to the decision of the Rajasthan High Court in Writ Petition No. 877 of 1983 decided on 9.6.1983 by D.L. Metha, J. It is true that Rajasthan High Court held

[2]1983 MPLJ 543

hat the proper meaning of the words "film" should be that given under Rule 3(g) of the Cinematograph Rules, 1948. These rules are framed under Section 29 of the Petroleum Act, 1934, Rule 3(g) of the Cinematograph Film Rules, 1948 reads as under :

> "3(g). "Films" means motion picture or sound recording film having a nitrocellulose base whether in the form of exposed or unexposed film, positives, negatives scraped or used film ."

The word "nitrocellulose base" falls within the definition of Petroleum" as it is an inflammable mixture. The material then used for manufacturing of film had nitrocellulose base which is inflammable and, therefore, it became necessary to frame the Cinematograph Film Rules, 1948. It appears that, under the Petroleum Act, the definition has been given for the purpose that if any film which is stored or transported or exported, should be governed by the provisions of petroleum Act, 1934. In this view of the matter, it would not be proper to hold that cinematograph film should be constructed in the same way as defined under Rule 3(g) of the Cinematograph Film Rules, 1948.

11. I was shown a film journal relating to news, that the single Judge view of the Rajasthan High Court is reversed by the Division Bench of the same Act. Apart from the authenticity of this news, with great respect I may say that I find it difficult to agree with that view. In all fairness I may say that even Mr. Padhye did not place much reliance on this decision though it is in his favor.

12. All India Film Producers' Council and Central Circuit Cine Association have appeared as intervenor with the permission of this Court Mr. Akhani, the learned Advocate appearing on their behalf, has urged that the petitioners have infringed various provisions of the Copyright Act. he

has also invited my attention to the various provisions of the Copyright Act. But in view of the limited challenge raised at the time of the argument, it is not necessary for me to refer to all those provisions. Suffice it to say that Mr. Akhan has submitted that it is really his clients who stand to suffer most as a result of the exhibition of the films on VCR and TV sets. It is true that the whole principle underlying the complex law of Copy wright is that the creative people should allowed to control the exploitation of their work to enable them to secure a proper reward for their creative efforts. Be that as it may, the question whether the petitioners have violated the provisions of the Copyright Act cannot be answered in the abstract. As I have observed above, the challenge in the present petition is extremely limited. The petitioners have rushed to this Court as soon as the raid is effected or as soon as the challan was filed on the ground that the provisions of the Cinematograph Act, 1952 are not at all attracted in these cases. However, since I have taken a view that VCR and TV sets are covered by the definition of "cinematograph" as defined under the Cinematograph Act, the provisions of the Act are very much attracted. The trial will now proceed on merit.

13. At the close of the argument, Mr. Jaiswal requested that though I am dismissing the petitions, the stay which has already been granted by this Court to the petitioners, should be continued for certain period. His apprehension appears to be that are no rules framed so far, to enable the petitioners to ask for the licence for VCR and TV sets for commercial purposes. This point is not directly involved in the present petitions. If the State Government has not framed the rules so for as contended by Mr. Jaiswal, then that by itself, may be a good defense for the petitioners against their prosecution.

14. The petitions fail and are dismissed, but without any order as to costs.
Petitions dismissed.