

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 18<sup>th</sup> March, 2013*  
*Pronounced on: 20<sup>th</sup> March, 2013*

+ **CRL.M.C. 3488/2012**

STATE GOVT. OF NCT OF DELHI ..... Petitioner

Through: Mr. Pawan Sharma, Standing Counsel  
with Mr. Sahil Mongia, Adv.,  
Ms. Priyanka Kapoor, Adv.,  
Ms. Richa Sharma, Adv.  
Mr. Hemant Kumar, Adv.

versus

NARESH KUMAR GARG ..... Respondent

Through: Mr. Jawahar Raja, Adv. with  
Mr. Ashish Sharma, Adv.  
Mr. A.P.S. Jadaun, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE G.P. MITTAL**

### **J U D G M E N T**

**G. P. MITTAL, J.**

1. The short question falling for consideration in the instant Petition under Section 482 of the Code of Criminal Procedure, 1973 (the Code) is whether the offence punishable under Section 63 of the Copyright Act, 1957 (the Act) is bailable or non-bailable.
2. The case FIR No.164/2011 was registered at Police Station Economic Offence Wing under Section 63 of the Act read with Section 103/104 of the Trade Marks Act, 1999 on the complaint of one Narender Singh. The police raided the premises of one Mohd. Shokeen where huge quantity of the infringing material was seized by the police. According to the prosecution, earlier said Mohd. Shokeen disclosed that the Respondent had supplied the infringing material.

3. Respondent was arrested and his application for anticipatory bail was dismissed on the premise that the offence under Section 63 of the Act was bailable. Indirectly, the SHO/IO was obligated to release the Respondent on bail in the event his arrest was found necessary.
4. The Petitioner/State is aggrieved by the observations on the ground that since the offence under Section 63 of the Act was punishable with imprisonment which could extend to three years and with fine which could extend to ₹ 2 lacs, the offence would not fall in item III of Part II of the Schedule I to the Code as it covers only those offences which are punishable with imprisonment upto three years or with fine only.
5. The distinction which is sought to be drawn by the learned Standing Counsel is that wherever the imprisonment and also fine is provided for any offence it would be out of item III of Part II of Schedule I of the Code and would be cognizable and non-bailable.
6. In *Avinash Bhosale v. Union of India*, (2007) 14 SCC 325 the Supreme Court held that an offence punishable under Section 135 (1)(ii) of the Customs Act, 1962 (Act of 1962) would be bailable. A Review Petition being R.P.(Crl) No.130/2008 in Criminal Appeal No.1138/2007 filed against this judgment was dismissed by the Supreme Court vide order dated 07.05.2008.
7. Admittedly, the offence under Section 135(1)(ii) of the Act of 1962 is punishable with imprisonment for a term which may extent to three years or fine or with both whereas the offence punishable under Section 63 of the Act is punishable with imprisonment which may extend to three years and with fine which may extend to ₹2 lacs. Thus, for an offence under Section 135 of the Act of 1962, an imprisonment for a term of three years

in addition to the fine can be imposed by the Court of the Magistrate trying the offence as is the case for an offence under Section 63 of the Act. Thus, interpretation sought to be placed by the learned standing counsel that there is distinction between the two offences (one under Copyright Act and other under the Customs Act) is really missing.

8. In *Amarnath Vyas v. State of A.P.* 2007 Crl.L.J. 2025 this question directly fell for consideration before the Andhra Pradesh High Court which took the view that the offence under Section 63 of the Act is bailable.
9. In *Rajeev Chaudhary v. State (NCT) of Delhi* (2001) 5SCC 34, the Hon'ble Supreme Court had occasion to interpret the provision of Section 167(2) of the Code for the grant of statutory bail for an offence under Section 386 IPC which is punishable with imprisonment which could extend to ten years. The Supreme Court held that the case would fall under Section 167(2)(ii) of the Code as it was not punishable with death, imprisonment for life or imprisonment for a term not less than ten years. Thus, imprisonment which could extend to ten years was considered to be out of the purview of Section 167(2)(a)(i) of the Code. Para 6 of the report is extracted hereunder:-

*“6. From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term “not less than 10 years”, the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. Hence in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression “not less than” would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more.*

*Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years.”*

10. Thus, the interpretation (of the Supreme Court in *Avinash Bhosale*) of the term *imprisonment which may extend to three years or with fine or with both* which is for an offence under Section 135(1)(ii) of the Act of 1962 will fully apply in case under Section 63 of the Act.
11. Learned standing Counsel for the Petitioner relies on a judgment of the Gauhati High Court in *Jitendra Prasad Singh v. State of Assam* 2003 (26) PTC 486 (Gau.) where the offence under Section 63 of the Act was held to be cognizable and non-bailable; and a judgment of the Kerala High Court in *C.K. Boban v. Union of India*, 2005 CrL. L.J. 2801 where the offence under Section 135 (1) (ii) of the Customs Act, 1962 (the Act of 1962) was held to be non-bailable. The authorities relied upon by the learned Standing Counsel for the Petitioner are of no avail and are impliedly overruled by *Avinash Bhosale v. Union of India*, (2007) 14 SCC 325.
12. In fact in *Mohan Lal Thapar v. Y.P. Dabara, Inspector, Customs, New Customs House New Delhi* 2002 (1) JCC 460; and *Inderjeet Nagpal v. Director of Revenue Intelligence (DRI)*, 2005 (1) JCC 433, two

Coordinate Benches of this Court had taken the view that the offence under Section 135 (i)(ii) of the Act of 1962 is non bailable which no longer holds good in view of the report of the Supreme Court in *Avinash Bhosale*.

13. It would be fruitful to refer to the provision of Section 64 of the Act which empowers a police officer not below the rank of Sub-Inspector to seize the infringing copies of any work. If the offence had been cognizable and non-bailable, there was no necessity to specifically authorize the police officer with the power of seizure.
14. The Petition, therefore, is devoid of any merit; the same is accordingly dismissed.
15. CrI.M.A.17349/2012 also stands disposed of.

**(G.P. MITTAL)**  
**JUDGE**

**MARCH 20, 2013**

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