

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.359 OF 2008

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 25-02-2008 passed by the Metropolitan Sessions Judge, Hyderabad, in CrI.A.No.106 of 2007 whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Sections 51 r/w 63 and 52A(2) r/w 68-A of Copy Right Act (for short " the Act"), vide the judgment dated 24-02-2007 in C.C.No.1736 of 2005 by the XIV Additional Chief Metropolitan Magistrate was confirmed.

2. The revision petitioner herein is the accused and respondent herein is the complainant in C.C.No.1736 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the prosecution in brief is that

on 21-11-2005 PW.1 who is working as Assistant

Co-ordinator of Andhra Pradesh Film Chamber of Commerce, Hyderabad gave report to the police Punjagutta and the same was registered as case in Cr.No.1157 of 2006. In pursuance of said report, the Sub-Inspector of Police secured two panch witnesses and got prepared search proceedings and all of them proceeded to the New Universal V.C.D. at Yellareddyguda, Hyderabad and found that the accused is running the business. The Sub-Inspector of Police, Punjagutta disclosed his identity and informed the purpose of his visit to the accused and examined the accused who inturn confessed the offence. The Sub-Inspector of Police recorded the confession, seized (09) Telugu Film VCDs and Hindi Film VCDs under the cover of panchanama and effected the arrest. After completing the investigation, he filed charge sheet into the Court.

4. The learned XIV Additional Chief Metropolitan Magistrate, Hyderabad took

cognizance of the case and framed a charge for the offence punishable under Sections 51 r/w 63 and 52A(2) r/w 68-A of the Act against the accused. During trial, to prove the case of prosecution, PWs.1 and 2 were examined and Exs.P1 to P5 were marked. Mos 1 and 2 were also marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

6. The trial Court, after perusing the oral and documentary evidence convicted the accused for the offence punishable under Section 51 r/w 63 and 52A (2) r/w. 68-A of the Act and sentenced him to undergo Simple Imprisonment for a period of six months under each count and to pay a fine of Rs.5000/- for the offence punishable under Section 51 r/w 63 of the Act in default of payment of fine to under go Simple Imprisonment for a period of thirty days and Rs.500/-for the offence punishable under Section 52A (2) r/w 68-A of the Act and in default of payment of fine to under go Simple Imprisonment for a period of seven days respectively.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.106 of 2007 before the Metropolitan Sessions Judge, Hyderabad. On 25-02-2008 learned Sessions Judge, Hyderabad passed the judgment confirming the judgment of the trial Court and dismissed the appeal.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.106 of 2007, the accused preferred the present revision case.

9. Learned counsel appearing for the revision petitioner/ accused argued that the person who registered the First Information Report is not the person who investigated the case. Two panch witnesses for the seizure of VCDs also not examined. Further nine VCDs of different Telugu movies and VCDs of Hindi movies were seized. There is no complaint from infringement of Copy Right Act for the Hindi VCDs. Further there is no disclosure by the accused about the VCDs. As such, non-examination of the panch witnesses is fatal to the case of the prosecution. This case is foisted against the accused for

the statistical purpose and no proceeding under Section 165(3) Cr.P.C. was issued and finally prayed that a lenient view may be taken in this regard and to reduce the sentence. He also relied on a judgment of this Court in **Naresh Singh Thakur v. State of A.P. rep.by its Public Prosecutor, High Court of A.P..** Wherein, this Court held in para No.13 as follows:

It is no doubt true that the landlord of the premises had not been examined, but however on the material available on record the evidence of PW.1 and PW.2, findings had been recorded by both the courts below in detail. These are well considered findings recorded by both the Courts of first instance and also the appellate court on appreciation of the evidence. The relevant provisions of the Act also had been taken into consideration by both the courts below. The only question which had been argued in elaboration is in relation to PW.3 having been declared hostile. In the light of the decisions relied on by the learned Additional Public Prosecutor supra, especially in the light of the convincing reasons recorded by both the Courts below on appreciation of evidence of PW.1 and PW.2 as well, the findings recorded by both the Courts below cannot be found fault. But however, as already aforesaid, relating to the person running the shop whether the petitioner/accused was actually running the shop or his brother, there appears to be some controversy. Be that as it may, whether by virtue of such infringement any gain had been obtained by the petitioner/accused as such or not, it being doubtful, without expressing any further opinion, this Court is inclined to modify the sentence and reduce the same for a period of one month. It is stated that already the petitioner had undergone imprisonment for some period. It is needless to say that apart from the sentence which had been already served, the rest of the sentence to be served by the petitioner.

10. On the other hand, the learned Public Prosecutor appearing for the State argued that the evidence of Pws 1 and 2 along with documentary evidence Exs P.1 to 5 proved that the revision petitioner is the owner of the shop and he is knowingly infringed the copy rights and he has knowledge about the infringement of Copy Rights. As such, both the Courts concurrently gave finding about the offence committed by the petitioner and the said finding needs no interference and prayed the Court to dismiss the Revision.

11. Now, the point for determination is --

Whether the petitioner is entitled to set aside the judgment of the

appellate Court in Criminal Appeal No.106 of 2007 dated 25.02.2008 as prayed for?

POINT:

12. A perusal of the oral and documentary evidence shows that the petitioner is the proprietor of New Universal VCD at Yellareddyguda, Hyderabad and he is running the shop by displaying pirated VCDs of Telugu and English. PW.1 who is the Assistant Co-ordinator of Andhra Pradesh Film Chamber of Commerce, Hyderabad gave complaint under Ex.P.1 to the police about the infringement of Copy Right Act against the petitioner. After receiving the complaint, PW.2 Sub-Inspector of police, Punjagutta raided the shop of the accused and seized 19 Telugu and Hindi VCDs under the cover of seizure panchanama Ex.P.2 and thereafter, PW.2 arrested the accused and produced before the Court. In this case though several pleas were taken by the petitioner's counsel, the fact remains that PW.2 the Investigating Officer was not at all cross-examined in the lower Court by the defence counsel to elicit the reason for non-examining the panch witness and the reason why nine VCDs of Hindi films were seized under the cover of panchanama and why the registers from the shop of the accused were not seized. As the evidence of PW.2 was unchallenged who categorically stated about the search proceedings were made under the cover of panchanama and the said evidence became final against the revision petitioner. In the evidence of Pws 1 and 2, the charges against the petitioner was proved beyond all reasonable doubt for the offence punishable under Sections 63 and 68-A of the Act. Learned counsel for the petitioner argued that due to discrepancies in the evidence of prosecution witnesses and due to non-examination of the panch witness which is fatal to the prosecution, both the Courts have not considered the said fact and further a lenient view is to be taken for reducing the sentence. As discussed above, though the evidence of PW.1 was cross-examined by the defence counsel in the trial Court, the evidence of PW.2 was not cross-examined. It is no doubt true when search proceedings were made, the independent witnesses presence is required. In this case though there are two witnesses were present, they were not examined by the prosecution. Therefore, a lenient view will be taken for reducing the sentence under the proviso to Section 63 of Copy Right Act.

“ 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”.

13. Considering the facts and circumstances of the case,

I am of the view that a lenient view shall be taken in favour of the revision petitioner by reducing the sentence of imprisonment to three months from six months. Therefore,

I am inclined to dispose of the revision as under.

14. The conviction recorded against the revision petitioner/Accused by the XIV Additional Chief Metropolitan Magistrate, Hyderabad in C.C.No.1736 of 2005 as confirmed by Metropolitan Sessions Judge, Hyderabad in CrI.A.No.106 of 2007 is hereby confirmed. But, the sentence of imprisonment of six months Simple Imprisonment imposed by the trial Court is hereby modified and reduced to three months. The sentence of fine is not interfered with. The period of imprisonment already suffered by the revision petitioner/accused is directed to be given set off.

15. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

19-02-2015

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