

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.25579 of 2010

ORDER:

1. The 1st petitioner is a company registered under the provisions of the Companies Act, 1956 and the other petitioners are its directors. The main activity of the 1st petitioner is printing the study material meant for the students of Narayana Educational Institutions, which established several colleges/institutions in the erstwhile State of Andhra Pradesh. While so, the 3rd respondent lodged a complaint on 09.09.2010 before the 2nd respondent alleging that the 1st petitioner has been printing the books having copyright by the 3rd respondent and it causes heavy financial loss to the 3rd respondent. On receipt of the said complaint, a case in Crime No.356 of 2010 was registered on 09.09.2010 under Section 63 of the Copy Right Act, 1957 (for short "the Act"). It is the case of the petitioners that the 1st petitioner is a sister concern of Narayana Educational Institutions, which is running several junior colleges all over the State and the books printed by the petitioners are not Governmental work within the meaning of Section 2K of the Act. The 1st petitioner has been printing/publishing books/material according to the syllabi prescribed by the Department of Education and they do not have any similarity to that of the books published by the Telugu Academy. In any event, the petitioners have not used any hologram that is being used by the Telugu Academy. The ingredients of the complaint do not disclose any cognizable offence much less an offence under Section 63 of the Act.

2. A counter-affidavit is filed by respondent No.4 stating that the Secretary, Board of Intermediate Education authorized the Academy to publish text books of Physics, Chemistry, Mathematics, Botany and Zoology for the academic year 2008-2009 onwards for the benefit of the first year students and that the Telugu Academy prepared text books and distributing the same to its authorized agents. After printing the text books, the Telugu Academy obtained copy right and also notifying the

same in the books along with a hologram. It also published paper advertisement for awareness of students/teachers and general public about pirated publications. Due to publication of books by the petitioners, heavy financial loss was incurred by the 4th respondent and in those circumstances only, a complaint dated 09.09.2010 was filed before the 2nd respondent, who registered the same as a case in Crime No.356 of 2010.

3. Learned Senior Counsel, Sri Kanakamedala Ravindranath, appearing for the petitioners submits that the offence under Section 63 of the Copy Right Act is not a cognizable offence as the punishment for it is below three years and drew the attention of this Court to Schedule-II of the Code of Criminal Procedure. In those circumstances, he submits that the police cannot register a case without permission of the Court as provided under Section 155 of the Code of Criminal Procedure.

4. In view of Section 63 of the Copy Right Act, 1957, the submission made by the learned Senior Counsel appearing for the petitioners cannot be disputed as Section 63 of the Act reads as follows:

“63. Offence of infringement of copyright or other rights conferred by this Act:---Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act, (except the right conferred by Section 53-A),

Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

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 not less than six months or a fine of not less than fifty thousand rupees.

Explanation:--Construction of a building or other structure which infringes or which, if completed, would

infringe the copyright in some other work shall not be an offence under this Section.”

5. In view of the above, it is not necessary for this Court to go into the merits of the case and hence the registration of the complaint by the 2nd respondent without permission of the Court under Section 155 of Code of Criminal Procedure is prima facie illegal and is liable to be quashed.

6 Accordingly, the Writ Petition is allowed and F.I.R.No.356 of 2010 on the file of the 2nd respondent is quashed. However, this order will not prevent the respondent Nos.2 and 4 from taking appropriate proceedings in accordance with law subject to the provisions of the Limitation Act and other defences. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

17-03-2016

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