

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

**CRIMINAL REVISION CASE Nos.364, 365 & 366 of
2008**

COMMON ORDER:

Heard the learned counsel appearing for the petitioners/A1 to A3 and the learned Additional Public Prosecutor, representing the State.

The facts in brief are as follows:

On 04.06.2004 PW 3, who is working as an Investigator in Indian Music Industry (IMI), Hyderabad, conducted survey to find out illegal duplicating and selling of pirated audio and video CDs and in that process he noticed A1 to A3 indulging in illegal duplicating, illegal selling of pirated audio MP3 CDs at cheaper rate infringing audio music copy rights owned by IMI, member of companies viz., the Gramophone Company of India Limited (HMV), Aditya Music, Sony Music Entertainment (I) Pvt.Ltd. etc., and lodged a complaint before the Station House Officer, III Town Police Station, Nellore. Basing on the said complaint, the police registered a case in Cr.No.96/2004 against A1 to A3. During investigation, PW 4 raided the shops of A1 to A3 on 04.06.2004 at different timings and seized M.Os.1 to 9 pirated audio and video CDs from their possession under cover of panchanama. After completion of investigation, the police filed charge sheet before the Court of II Additional Judicial Magistrate of First Class, Nellore against A1 to A3 for the offences punishable under sections 63 r/w.51, Section 68-A r/w.52-A(1) and Section 65 of Copyright Act, 1957 (hereinafter referred to as "the Act"), which was numbered as CC.No.564/2004.

After appearance of the accused, they were examined under Section 239 Cr.P.C and charges under Sections 63 r/w.51, Section 68-A r/w.52-A(1) and Section 65 of the Act against A1, and under Section

63 r/w.51, Section 68-A r/w.52-A(1) of the Act against A2 & A3 have been framed, for which, they pleaded not guilty.

During the course of trial, to bring home the guilt of the accused, the prosecution examined PWs 1 to 4 and produced Exs.P1 to P12 and M.Os.1 to 9. After closure of the prosecution evidence, the accused were examined under section 313 Cr.P.C, but the accused denied the material evidence. No defence is produced.

On appreciation of oral and documentary evidence, the learned II Additional Judicial Magistrate of I Class, Nellore, vide judgment dated 05.03.2007 found the petitioners/A1 to A3 guilty of the offences alleged and they are convicted and sentenced as under:

- i) A1 to A3 are convicted under Section 63 r/w.51 of Copyright Act and sentenced to undergo rigorous imprisonment for six months each and to pay a fine of Rs.3,000/- each, in default, to suffer rigorous imprisonment for one month each;
- ii) A1 to A3 are further convicted under Section 68-A r/w.52A of Copyright Act and sentenced to undergo rigorous imprisonment for six months each and to pay a fine of Rs.3,000/- each, in default, to suffer rigorous imprisonment for one month each; and
- iii) A1 is further convicted under section 65 of Copyright Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.2,000/- in default simple imprisonment for one month;
- iv) It is ordered that the sentences imposed against A1 to A3 shall run concurrently.

Against the judgment of the trial Court, A1 to A3 filed three appeals individually. A1 filed CrI.A.No.24/2007, A2 filed CrI.A.No.27/2007 and A3 filed CrI.A.No.26/2007 on the file of the Special Judge for trial of offences under the SCs & STs (POA) Act,

1989-cum-V Additional District & Sessions Judge, Nellore individually. The learned Sessions Judge, on re-appreciation of evidence on record, dismissed the three Criminal Appeals filed by A1 to A3 vide three separate judgments on the same day i.e. on 03.03.2008. Aggrieved thereby, A1 to A3 filed separate revisions. A1 filed CrI.RC.No.365/2008, A2 filed CrI.RC.No.366/2008 and A3 filed CrI.RC.No.364/2008.

The point that arises for consideration in these three revisions is whether the conviction and sentence imposed by the Courts below against the revision petitioners/A1 to A3 is legal and sustainable.

Point:

A careful perusal of the material on record including the findings arrived at by the trial Court as confirmed by the appellate Court shows that the following facts have been proved by the prosecution.

A.1 to A.3 are persons who are having kiosks in Nellore town at different places. A.1 is running Nice Musical Shop at Anamvari Street, Nellore; A.2 is running Australian Customs shop situated at Anala Street, Nellore, opposite to Nartaki Threate; and A.3 is doing business in the name of Koniki Venkata Siva Prasad Audio Bunk situated at Trunk Road, Nellore. On 04-06-2004, PW.3 – the Investigating Officer appointed by the Indian Music Industry has verified from those three shops and found that they were selling audio and video cassettes which were not having the requisite information thereon. The original audio and video cassettes will contain the owner's name and address, the year of publication with a picture printed on the disk. The C.Ds., that were possessed and being sold by the accused did not contain any such information. Hence, a complaint was made by PW.3 to the jurisdictional police officer-PW.4 who conducted panchanama in the presence of the two panch witnesses and seized number of audio and video cassettes which are all marked as M.Os.1 to 9.

The main contention of the petitioners/accused is that the alleged

search and seizure was carried out in the presence of PWs.1 and 2, who are said to be the independent panch witnesses, but both of them turned hostile and therefore the evidence of PWs.3 and 4 is not corroborated by independent witnesses. It is no doubt true that the two independent panch witnesses turned hostile but what is noticed from their evidence is that they do admit their signatures on the search and seizure panchanamas and PWs.3 and 4 speak about the contents thereof. Both the Courts below for valid reasons have accepted the evidence of PWs.3 and 4 and found that the accused persons were found dealing with audio and video cassettes which on the face of it were pirated.

Learned Counsel appearing for the petitioners/accused submits that even if the petitioners/accused were found to be dealing with pirated audio and video cassettes, the offence that is attracted is under Section 52-A of the Copyright Act which is punishable under Section 68-A of the Copyright Act. For the sake of clarity, Sections 52-A and 68-A of the Act are extracted hereunder:-

Sec.52A of the Copyright Act, 1957 reads as under:

Section 52-A of the Copyright Act:

(1) No person shall publish a sound recording in respect of any work unless the following particulars are displayed on the sound recording and on any container thereof, namely:-

(a) the name and address of the person who has made the sound recording;

(b) the name and address of the owner of the copyright in such work; and

(c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:

(a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the

certificate granted by the Board of Film Certification under Section [5A](#) of that Act in respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence of consent from the owner of the copyright in such work for making such video film; and

(c) the name and address of the owner of the copyright in such work.

Section 68-A of the Copyright Act reads as under:

“Any person who publishes a sound recording or a video film in contravention of the provisions of Section 52-A, shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.”

In support of his contentions, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in ***State of A.P. v. Nagoti Venkataramana***^[1]. The facts before the Apex Court were that from the shop of the accused therein 90 cassettes of various telugu, hindi and English films were seized. It was proved in that case that the accused was found distributing the said pirated C.Ds. either for hire or sale to the customers. After analysing the entire facts and circumstances, the Supreme Court held that the offence that is committed by the accused therein is punishable under Section 68-A of the Act.

The Apex Court has laid down the law in the above referred decision as under:

“It is true that there is no specific charge under Section [52A](#). The charge was under Section [51](#) read with Section [63](#) of the Act. In view of the above finding and in view of the findings of the courts below that the respondent was exhibiting the cinematograph films in his Video City for hire or for sale of the cassettes to the public which do not contain the particulars envisaged under Section [52A](#) of the Act, the infringement falls under Section [51\(2\)\(ii\)](#) or Section [52A](#) of the Act. The former is punishable under Section [63](#) and the latter is punishable under Section [68A](#) of the Act. In view of the above findings of the courts below, the offence would fall

under Section [68A](#) of the Act. It would, therefore, be unnecessary for the prosecution to track on and trace out the owner of the copyright to come and adduce evidence of infringement of copyright. The absence thereof does not constitute lack of essential element of infringement of copyright. If the particulars on video films etc. as mandated under Section [52A](#) do not find place, it would be infringement of copyright.”

In view of the above authoritative pronouncement and applying the *dicta* as laid down therein to the facts of the present case, it can be said that to the facts of the case in hand as well, the violation that is attracted is punishable under Section 68-A of the Act but not as has been found by both the Courts below.

In the decision referred to supra, the Supreme Court has set aside the sentence of imprisonment and instead sentenced the accused therein to pay a fine. Following the same, in the instant case, the sentence of imprisonment can be set aside and instead each of the accused can be sentenced to pay a fine of Rs.10,000/- for being in possession of pirated audio and video cassettes.

The prosecuting agency has committed serious irregularity in launching the prosecution against the three petitioners/accused jointly. As record discloses, on the same day at different timings three shops/kiosks belonging to the three petitioners/accused situated in different localities were inspected, firstly, by PW 3, thereafter, on a complaint being filed, by PW4, the SI of police and different audio and video Cassettes were seized on being found to be pirated inasmuch as they did not contain the requisite information, which will be found on the genuine audio and video cassettes. Having done so, the Police Officer PW4 registered only one crime and investigated and filed a single charge sheet thereby all the three petitioners/accused faced trial in the same case, even though three petitioners/accused had nothing to do with each other nor were they in any way connected with the

alleged violations. As a matter of fact, this act of the investigating agency will cause prejudice to the accused in setting up their defence and trial be vitiated. Since no such action had been taken by the petitioners/accused through out during the pendency of the trial, appeal and the revision, at this stage, it cannot be said that the trial against them jointly in a single charge sheet has caused any grave prejudice in conducting their case.

In view of the above, the conviction and sentence imposed by the trial Court as confirmed by the appellate Court are modified to one of conviction under Section 68-A of the Act and the petitioners/A.1 to A.3 are sentenced to pay a fine of Rs.10,000/- (Rupees ten thousand only) each, in default, they should undergo simple imprisonment for a period of three months each. The fine already paid by the petitioners/A.1 to A.3 shall be adjusted from the fine imposed now.

These three Criminal Revision Cases are accordingly disposed of.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 03.02.2016
Dsr/Smr

[\[1\]](#) 1997(1) ALD (CrL.) 54 (SC)