

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.8922 of 2011

ORDER:

The criminal petition is filed by the petitioner seeking for quash of the proceedings in CC.No.603 of 2010 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad.

2. Heard counsel for the petitioner and the learned Public Prosecutor, who takes notice for respondents.

3. The complaint is filed by the SI of Police, Mahankali Police Station stating that on 14.06.2010 at about 16.390 Hrs a credible information was received that the accused, who are the shop keepers/owners of the shop Nos.67 and 23, Chandralok Commercial Complex, SD Road, Secunderabad are indulging in possession, sale and installation of pirated software and games in violation of the provisions of the Copyright Act, 1957 (for short 'the Act'), after informing the superiors, a *suo motu* case was registered against the accused. The petitioner herein is arrayed as A1.

4. The counsel for the petitioner mainly rests his argument on the contention that the complaint is not maintainable by any person other than the author or assignee or licensee of a work. He takes support of a decision of the High Court of Allahabad in NAGIN CHAND JAIN v. STATE OF UTTAR PRADESH¹ wherein it was held that for prosecution of an offence under Section 63 of the Act, only the author, assignee or licensee of the work can file a complaint for protection of his copyright.

¹ LAWS (ALL) 1981 936

5. Unfortunately, the aforesaid decision does not persuade this Court. A crime was registered for the offence under Sections 63, 68 (a) read with 51 and 52 (a) of the Act. Section 51 of the Act is extracted for ready reference:

51. When copyright infringed.—Copyright in a work shall be deemed to be infringed—

(a) When any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

[(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person—

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India,"

any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work, for the private and domestic use of the importer.

Explanation.—For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

6. The above provision is worded in such a fashion that not only the person who is competent to grant license i.e. the owner of the copyright but also the Registrar of Copyrights would also be offended by the violation of the provisions of the Act as he is also the person

who has to grant license. It also can be understood that licence can contain conditions imposed by a competent authority under the Act. The infringement of copyright would not only offend the owner of the copyright but would also result in deceiving the public, who get deceived by the usage of the unauthorized copyright by the accused persons. Hence, saying that only the author or assignee or licensee if can maintain a criminal action would defeat the theme of Section 51 of the Act. However, Section 52 (a) of the Act seems to be not a relevant provision as it speaks about only the acts which do not constitute infringement of copyright. It appears that instead of Section 52(a) of the Act the crime ought to have been registered under Section 52A of the Act, which can be corrected while taking cognizance of the case. Section 68 of the Act is, however, attracted to the facts of the case, as the usage of copyright by an unauthorized person would result in deceiving the authorities and officers while executing the provisions of the Act. Hence, this Court does not find any ground to quash the proceedings against the petitioner.

The criminal petition is dismissed. Interim stay granted earlier in CRLPMP.No.9669 of 2011 dated 23.09.2011 shall stand vacated. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

November 29, 2017
DSK

T. RAJANI, J