

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.2478 of 2007

- 1) Parmindersingh s/o Ashok Grover,
Age 37 years,
Occupation : Business,
R/o 22, Samarth Nagar, "Mother Gift",
Opposite Tilak Nagar, Aurangabad,
Taluka & District Aurangabad.
- 2) Armindersingh s/o Ashok Grover,
Age 35 years,
Occupation : Business,
R/o As above.

.. Applicants.

Versus

- 1) The State of Maharashtra,
Through the Police Inspector,
Mukundwadi Police Station,
Aurangabad,
Taluka and District Aurangabad.
- 2) Padamshil s/o Ramchandra Dhale,
Age 31 years,
Occupation: Legal Practice,
R/o "Sahas Homes",
Beside Janki Hotel,
Near Petrol Pump,
Garkheda, Aurangabad,
Taluka and District Aurangabad. .. **Respondents.**

Shri. Rajendra Deshmukh, Advocate, for applicants.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for
respondent No.1.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 8 JUNE 2018

JUDGMENT (By T.V. Nalawade, J.):

1) The proceeding is filed under section 482 of Code of Criminal Procedure for the relief of quashing of F.I.R. No.I-95/2007 registered in Mukundwadi Police Station, Aurangabad for offences punishable under sections 420, 406 read with 34 of Indian Pena Code and Sections 51, 63, 64 of the Copyright Act, 1957. Both the sides are heard.

2) The F.I.R. is given by respondent No.2. He has made allegation that the present applicant contravened the provisions of the aforesaid special legislation and when he had not given licence to the applicants under the provisions of the Copyright Act, the applicants published his creature, book by using the name of other author and by changing the title of the book. The respondent No.2 had written a book on J.M.F.C. Service Examination and he had written one more book containing essays etc. which

could have been used for the same examination. Copyright was given to the applicants to publish an edition as mentioned in the agreement. It is his case that without seeking his permission the applicants published second edition and for that the consideration was not paid and further the name of the author was different and the title was also changed.

3) Copy of the agreement is produced on the record and it shows that the respondent No.2 had agreed to allow the applicants to publish the books and for the first 1100 prints the consideration of Rs.15,000 was to be given and then more consideration of Rs.10,000 was to be given for the 2nd Edition. Though the wording is not clear, prima facie it can be inferred that for further prints the consideration of Rs.10,000 was given and the prints would be of similar quantity. Allegation is made that even in respect of the first edition the agreed consideration was not given and in respect of the second edition no consideration at all was given.

4) The learned counsel for the applicants, publisher, submitted that the dispute is of civil nature and police could not have taken cognizance of the breach of contract. He submitted that offence punishable under sections 420 and 406 IPC was not committed but the crime is registered for those offences also and the act of the applicants does not fall under any of the provisions of the Copyright Act in view of the existence of the agreement.

5) Both the aforesaid contentions of the applicants are not acceptable. Firstly, even if there was agreement, as per provisions of sections 51, 63 and 64 of Copyright Act, only after getting licence, permission from the author, the applicants could have published the next edition. There is correspondence showing that the author was in service for some time in subordinate judiciary and he had obtained permission of the High Court also for publishing his book. After that he had contacted the applicants but the applicants had expressed that the applicants were not willing to publish new edition as there was no demand for the books in the market. After that, admittedly the

applicants published the next edition. This shows nothing but intention to make wrongful gain of the applicants. Even when permission was not granted by the respondent No.2, the next edition was published and money was made. Apparently, such activity falls under section 406 IPC also in addition to aforesaid provision of the Copyright Act. There is deeming provision in the aforesaid provision of Copyright Act. The aforesaid material and the contentions show that there was infringement of copy right.

6) Learned counsel for the applicants placed reliance on some observations made by Rajasthan High Court in **Criminal Misc. Petition No.2499/2017 (Mahendra Bhati v. The State of Rajasthan)** and submitted that considering the punishment provided for the offences under the Copyright Act, there was no power to police to make investigation. This Court has carefully gone through the scheme of the Act. In the scheme of the Act itself power is given to police of seizure when there is infringement of copyright. The provision made for trial shows that it is specifically provided that such cases can

be tried only by Judicial Magistrate First Class (not by Magistrate of Second Class). There is no provision in the special legislation making it compulsory to file private complaint in the matter when there is other provision enabling police to make the seizure even without warrant. In the same section procedure is given of having redressal to grievance if there is such seizure and in that case the Magistrate can make inquiry. In any case, the crime is registered for other offences like sections 420, 406 of Indian Penal Code and there is material of aforesaid nature to make out *prima case* at least for both these offences. In view of these circumstances, it cannot be said that there is no *prima facie* case and there was no power with police to make investigation.

7) The learned counsel for the applicants placed reliance on some observations made by the Apex Court in the case reported as **AIR 2009 SC 59 (V.Y. Jose v. State of Gujarat)**. In this case, the Apex Court has discussed the ingredients of section 420 IPC and it is observed by the Apex Court that the ingredients for offence punishable under section 420 of IPC need to be made out and if they

are not made out, power given under section 482 Cr.P.C. can be used. This Court has already mentioned the relevant material of the present matter and that shows that there was dishonest intention on the part of the applicants and probably they tried to misuse the circumstance that the respondent No.2 had joined the judiciary and they published the book by showing the name of other author. In the result, the application stands dismissed. Interim relief is vacated. Rule is discharged.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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