

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1883 OF 2018

1. Maroti s/o. Hanmantrao Kamlapure,
Age 30 years, Occu. Business,
R/o. Anand Nagar, Nanded.
2. Vitthal s/o. Trimbakrao Bayas,
Age 49 years, Occu. Service,
R/o. Shobha Nagar, Nanded.
3. Chaya Sanjay Shinde (Deshmukh),
Age 45 years, Occu. Pvt. Tution Conductor,
R/o. Anand Nagar, Nanded. **....Applicants.**

Versus

1. The State of Maharashtra,
Through Incharge Police Station
Officer, Police Station Airport,
Nanded, Tal. & Dist. Nanded.
2. Karbhari kautikrao Bhutekar,
Age 45 years, Occu. Business,
R/o. Plot No. C-1, Kalyani Sai-Shrushti,
Near Satara Area, Aurangabad,
Dist. Aurangabad. **....Respondents.**

Mr. P.R. Katneshwarkar, Advocate for applicants.

Mrs. D.S. Jape, APP for respondent No. 1/State.

Mr. M.R. Jadhav, Advocate for respondent No. 2.

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.
RESERVED ON : 19/09/2018
PRONOUNCED ON : 25/09/2018**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) Rule. Rule made returnable forthwith. By consent, heard
both the sides for final disposal.

2) The present proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 74/2018 registered with Vimantal Police Station, Nanded for offences punishable under sections 63 and 65 of the Copy Right Act, 1957 (hereinafter referred to as 'the Act' for short) and for offence punishable under section 420 of Indian Penal Code (hereinafter referred to as 'IPC' for short].

3) The report is given by one Karbhari Bhutekar for Smt. Indubai Bhutekar, his wife, who is in the business of publishing books in respect of various competitive examinations. The name of her concern is Nobel Academy and Nobel Publications. Smt. Indubai has obtained registration under the Act and its number is given as 65156/2017 dated 22.3.2017. The F.I.R. is given in respect of book published under title 'Nobel Maths' and 'Nobel 156 Compilation of Question sets for recruitment of Police Force'. It is contended that these books are registered under the Act.

4) It is the case of first informant that few days prior to the date of F.I.R., the first informant learnt that the matter which was there in aforesaid books in 70 pages was copied by Varsha Publications Nanded in their book having title 'Compilation of 250

Mahajumbo Question Papers 2018'. It is the contention of the first informant that he purchased copy of that book from New Uday Book Center, Aurangpura, Aurangabad and he confirmed that applicants have published that book and they have copied the matter which is from books registered by the first informant under the Act. It is contended that due to such act of the applicants, the sale of the book of complainant has come down and the complainant's concern has sustained loss of more than Rs.35 lakh.

5) A copy of certificate dated 22.3.2017 under the Act is produced. This certificate shows that it is in respect of literary work by name 'Nobel Maths'. The book which must have been supplied with application dated 28.3.2015 for registration is not produced even when such direction was given by this Court. In the certificate, the registration number is mentioned as L-65156/2017. A copy of book having title 'Nobel Maths' is produced, but this book is 3rd Edition of September 2017 when the book which must have been supplied to authority was printed prior to 28.3.2015.

6) The particulars of the matter copied by the applicants are given in F.I.R. The number of pages from books of the complainant are given and the number of pages from the book of the applicants are given for comparison. This Court has gone

through that matter.

7) For deciding the dispute like present one, the Court is expected to keep in mind first the relevant provisions of the Act and the Court is also expected to consider the nature of the subject on which the book was published.

8) The meaning of 'author' is given in section 2(d)(i)(vi) of the Act and it is as under :-

“(d) “author” means,-

(i) in relation to a literary or dramatic work, the author of the work;

(ii)

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;”

In section 2 (m) (i) of the Act, the meaning of 'infringing copy' is given and it is as follows :-

“(m) 'infringing copy' means,-

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii)

if such reproduction, copy or sound recording is made or imported in contravention of the

provisions of this Act”

In section 13 of the Act, the works in which copyright subsists are given. The relevant portion of the section is as follows :-

“13. Works in which copyright subsists.- (1)

Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recording.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41, apply, unless,-

- (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;
- (ii) in the case of an unpublished work other than an work of architecture, the author is at the date of the making of the work a citizen of India or domiciled in India; and
- (iii) in the case of an work of architecture, the work is located in India.

Explanation.- In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work."

Section 45 of the Act provides for registration of the work in copyright register. Section 51(a) is deeming provision for infringement of copy right, the provision of section 51 (a) (i) of the Act and explanation is as follows :-

"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 of 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)

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"

9) Section 52 of the Act gives list of some Acts of the persons which do not amount to infringement of copy right. The

relevant portion of this section is as under :-

"52. Certain acts not to be infringement of copyright.-(1) The following acts shall not constitute an infringement of copyright, namely:-

(a) to (h)

(i) the reproduction of any work -

(i)

(ii) as part of the questions to be answered in an examination; or

(iii) in answers to such questions.

(j)"

10) The provision of section 70(1)(2) of the Copyright Rules 2013 framed under the Act is also relevant and it runs as under :-

"70. Application for Registration of Copyright. -

(1) Every application for registration of copyright shall be made in Form XIV and every application for registration of changes in the particulars of copyright entered in the Register of Copyright shall be made in Form XV.

(2) Every such application shall be in respect of one work only, and shall be accompanied by the fee specified in the Second Schedule in this behalf."

It is already observed that 'certified copy' of the book supplied for registration is not produced in the present matter. Due to this single circumstance and the provision of the aforesaid Rule and other

provisions of the Act, it can be said that the F.I.R. can be quashed.

11) The allegations in the F.I.R. are in respect of some questions and answers to the questions which were there in some competitive exams. The exams were mainly taken for recruitment of police force in different districts. Even if aforesaid technical flaws in the present matter are ignored, the provisions show that the work of the complainant needs to be original (underline added). When a question paper is set by person for such examination, he is expected to supply along with question paper the 'key'. In the present matter, the questions relate to mainly 'logic'. In such cases, the 'key' needs to be with reasoning, analysis. It is not disputed that the answers to the questions were made available by the authorities, who had conducted the tests after declaration of the result. The only dispute is about the 'method' or the 'way' given to find answers by the complainant in his book. Whether such 'method' or 'way' is original needs to be ascertained in the present matter.

12) If one goes to 'Wikipedia', he can get literature on 'logic' and 'logical reasoning'. It is a branch of philosophy and it developed more than a century ago in Europe. In Wikipedia, it is mentioned that informally two kinds of logical reasoning can be distinguished in addition to formal deductions. They are induction and abduction.

The details of above literature need not be given for the present purpose. On the basis of the literature available in Wikipidia, it can be said that in the present matter for illustration for question No. 1 appearing on page No. 378 of the book of the complainant, the logical reasoning which can be used for getting answer involves abduction kind. Thus, the pattern followed needs to be ascertained first and the pattern itself gives the answer to the question.

13) The questions involving logical reasoning can be prepared in different way, on different subjects, for different examinations. The questions can be on the basis of technical matters, blood relations, diagrams, sequences, lateral thinking etc. Many books are published on each of these patterns. The person who prepares question on logical reasoning need to show that he has used either new method or he can show that atleast he has used new diagrams. Only after that he can claim copyright in respect of either method or diagrams. Thus, the images or diagrams which is original work of the person who has prepared the questions may be subject matter of copyright. The answer to subject question in which some shapes are used cannot give rise to copyright. For instance, the shapes used by the complainant on page No. 379 of his book produced in the Court are circle, triangle and rectangle. These shapes are used to show as to how value or number given for word

'small' can be identified. For the present purpose and only in respect of this question, it can be said that the way to find answer is to find out first number given for word 'bad' by using first two sentences. For word 'bad' and 'number 5' circles are used by the complainant to show as to how the number given for word 'bad' can be identified. Different shapes could have been used to show the manner by which the number given for word 'bad' can be identified. There cannot be copyright to anybody including the complainant in respect of the shapes like circle, triangle or rectangle. These shapes have been used for hundreds of years. Thus, the shapes used by the complainant are not his original work and they are used only to show the manner in which the number given for word 'small' can be found. Thus, the work as alleged by the complainant cannot be called as his original work. The same reasons are applicable in respect of the other matters mentioned by the complainant.

14) The provisions of sections 51 and 52 of the Act need to be read together. The relevant portions are already quoted. It is already observed that the work of complainant himself is reproduction of questions put in exams and the answers to these questions which are available in the key prepared by the persons who prepared the question. Thus, the work of complainant is nothing but compilation of questions and answers to the questions and it is

not original work. The relevant provision in this regard is already quoted, which is part of section 52 of the Act [52 (i)(ii)(iii)]. This Court holds that it will be abuse of process of law if the case is allowed to be filed against the applicants on the basis of aforesaid allegations made by the complainant. The use of provision of section 420 of IPC is possible in such cases only when the case is made out of infringement of copyright. For this reason, there is no need of separate discussion in respect of the offence punishable under section 420 of IPC. In the result, the application is allowed. Relief is granted in terms of prayer clause 'B'. Rule is made absolute in aforesaid terms.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

SSC/

Salim
Shafi
Choudhari

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signed by
Salim Shafi
Choudhari
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2018.09.25
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