



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2018

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

Crl.A.No.28 of 2012

State represented by
The Inspector of Police,
Video Piracy Cell,
CBCID, Salem District.
(Crime No.59 of 2006)

... Appellant/Complainant

Vs.

Ranganathan

... Respondent/Accused

Prayer:-

Criminal Appeal is filed under Section 377 of the Code of Criminal Procedure against the Judgment dated 19.01.2010 in C.C.No.9 of 2008 on the file of the learned Judicial Magistrate No.2, Salem.

For Appellant : Mr.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

For Respondent : Mr.C.Sivakumar

JUDGMENT

This Criminal Appeal has been preferred against the Judgment and conviction made in C.C. No.9 of 2008 on the file of the learned Judicial Magistrate No.II, Salem, vide his Judgment dated 19.01.2010.

2.According to the appellant/prosecution, a case was registered against the respondent/accused on 25.08.2006 for the alleged offences punishable under Sections 51(b)(i) read with 63 and 52-A read with 68-A of the Copyright Act, 1957, in Crime No.59 of 2006 on the file of the appellant/police.

3.According to the appellant/prosecution, after investigation of the case, charge sheet was filed against the respondent/accused for the aforesaid offences under the



Copyright Act. Before the trial Court, the respondent/accused had accepted his guilty by filing a guilty memo and having considered the said admission of guilty on the side of the respondent/accused, the learned Magistrate has convicted and sentenced the respondent/accused to undergo Simple Imprisonment for one week and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for six months for the offence punishable under Section 52-A read with 68-A of the Copyright Act, 1957 and also, to undergo Simple Imprisonment for one week and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for six months for the offence punishable under Section 51(b)(i) read with 63 of the Copyright Act. The learned Magistrate has also directed that the pre-trial conviction of the respondent/accused from 25.08.2006 to 01.09.2006 shall be set off under Section 428 of the Code of Criminal Procedure.

4.Since the said conviction has been issued only for a period of one week and also, the trial Court ordered the sentences to run concurrently, the respondent/accused has been in jail as a pre-trial prisoner for the said period of one week, on paying the penalty amount for both the offences, he had been released.

5.Aggrrieved over the said Judgment and conviction made by the trial Court, the appellant/prosecution has preferred this appeal on the ground that, under Section 63 of the Copyright Act, the minimum sentence to be imposed for the offence under the said Section, including the offence under Section 51(b)(i) of the Copyright Act, shall be six months and it can be extended up to three years. Therefore, the learned Magistrate, having found the respondent/accused guilty, should not have imposed the conviction of one week, which is less than the minimum punishment of six months, as contemplated under Section 63 of the Copyright Act. Therefore, against the said sentence of one week imposed against the respondent/accused, the present appeal has been preferred.

6.Heard Mr.Shanmuga Rajeswaran, learned Government Advocate (Criminal Side) appearing for the appellant/prosecution and also, Mr.C.Sivakumar, learned counsel, who had been nominated by the Tamil Nadu legal Services Authority to defend the accused for the respondent/accused.

7.The learned counsel appearing for the respondent/ accused would submit that, insofar as the offence punishable under Section 52-A is concerned, the maximum punishment prescribed is 3 years and also, he shall be liable to pay fine amount, if anyone is found guilty for the offence punishable under Section 52-A of the Act, but the minimum sentence alone has been imposed



by the trial Court. Therefore the learned counsel appearing for the respondent/accused would also submit that the sentence of one week against the respondent/accused for the offences committed by him under Section 52-A of the Copy Right Act can be justified, in view of the period of conviction mentioned in Section 68-A of the Copyright Act.

8.The learned counsel appearing for the respondent /accused would further submit that insofar as the offence punishable under Section 51(b)(i) read with Section 63 of the Act is concerned, though a six months minimum sentence has been prescribed with a maximum sentence of 3 years with a fine under Section 63 of the Act, for the offences punishable under various provisions of the Act, including the offence under Section 51(b)(i) of the Act, such a minimum punishment can be reduced even to six months or any reasonable period, as the learned Magistrate thinks, provided, recording special reasons for such a lower sentence than the minimum sentence prescribed under the provisions. In this regard, the learned Counsel appearing for the respondent/accused has heavily relied upon the proviso to Section 63.

9.I have considered the rival submissions made by the learned counsel appearing for both sides.

10.Insofar as the offences committed by the respondent/accused are concerned, in view of the guilty memo filed by the respondent/accused before the trial Court, admitting the guilt on the part of the accused that he has committed the offences as charged by the prosecution, there can be no quarrel on the conviction made against the respondent/accused.

11.Insofar as the quantum of sentence is concerned, it is the grievance of the prosecution that when there is a minimum sentence prescribed under the provisions of the Act, there is no scope for giving any lesser sentence than the minimum sentence prescribed under the provision of the Act. The prescription or imposing of lesser sentence of one week for the offence punishable under Section 51(b)(i) read with 63 of the Act is palpably wrong on the side of the learned Magistrate and therefore, the Judgment and conviction, in this regard, is liable to be interfered with by this Court. For better appreciation of the issue raised herein, the relevant provision of the Act namely, 63 of the Copyright Act, 1957, is extracted hereunder:

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



WEB COPY

(a) the copyright in a work, or

(b) any other right conferred by this Act, [except the right conferred by section 53A] [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 judgement, impose a sentence of imprisonment for a term of less than six months or a fine of 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."

12. Though it has been argued by the learned counsel appearing for the respondent/accused that under the proviso as referred to above to Section 63 of the Act, the learned Magistrate is empowered to give lesser sentence than the minimum punishment of six months prescribed under the provisions for adequate and special reasons to be mentioned in the Judgment, whether in this case such a special and adequate reasons were available to the learned Magistrate for his conclusion for lesser than minimum punishment under the Act.

13. In this regard, the learned counsel appearing for the respondent/accused has invited the attention of this Court on the guilty memo filed by the respondent/accused, which reads as follows:

Petition filed by the petitioner u/s. 241 of Cr.P.C

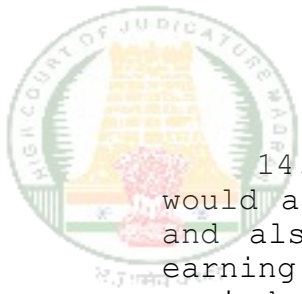
The petitioner/accused above named most humbly begs to submit as follows:-

That the petitioner is charged for an alleged offence punishable u/s. 51 r/w. 63 of Copyright Act. Now the petitioner pleads guilty of the said offence.

That the petitioner is a first offender and he is from a very poor family. Further, he is the only earning person in his family. If he went to jail, his family will suffer.

Therefore, it is prayed that this Hon'ble Court may be pleased to impose lenient fine to the petitioner and thus render justice.

Petitioner Counsel for the petitioner/accused"



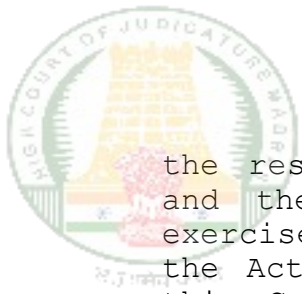
14.The learned counsel appearing for the respondent /accused would argue that, since the petitioner is a first time offender and also, he is from a very poor family and he is the only earning member in his family and if he went to jail for a long period, his family will suffer, and these are the reasons given, which the learned Judge had taken into account and has come to the conclusion that there are certain reasons available on the side of the accused and therefore, considering these reasonings only, the learned Magistrate imposed a lesser sentence prescribed under the provisions of the Act. The said submission of the learned counsel appearing for the respondent/accused is not appealing to this Court and the same is liable to be rejected for the reason that if we look at Section 63 of the Act, it makes very clear that the Court may, for adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees, where the infringement has not been made for gain in the course of trade or business. The words "where the infringement has not been made for gain in the course of trade or business" mentioned in the proviso makes it abundantly clear that, such a special concession of giving lesser punishment for adequate and special reasons can be made only, when such offence had been committed not in the course of trade or business.

15.Here in the case in hand, it is the case of the prosecution that the respondent/accused had been in trade and business by infringing the Copyright Act under the provisions of the Copyright Act and that is why he had been charged under Section 51(b)(i) and Section 52-A of the Copyright Act.

16.The said charges since had been accepted by filing a guilty memo before the trial Court and the same also having been accepted by the trial Court, who has not recorded any special reasons in the order impugned herein, and the Court has found the respondent/accused guilty under the provisions mentioned by the prosecution for the said offences, the learned Judge cannot invoke the proviso to Section 63 of the Copyright Act.

17.Moreover, on perusal of the impugned Judgment and conviction, this Court finds no reason, much less no adequate or special reasons have been given by the learned Magistrate for imposing lesser punishment than the minimum punishment imposable under the Act. Assuming that the learned Magistrate has given any special or adequate reasons for giving such lesser than minimum one prescribed, even such adequate reasons must satisfy the necessary ingredient that the said offence by the accused was committed not in the course of trade or business.

18.Here in the case in hand, this is an offence committed by



the respondent/accused during the course of trade or business and therefore, the benefit conferred on the accused to be exercised by the trial Court under the proviso to Section 63 of the Act, cannot be invoked in the present case and therefore, this Court has no hesitation to hold that such invocation of proviso to Section 63 of the Act, as claimed by the learned counsel appearing for the respondent/accused, by the trial Court, is absolutely unjustifiable.

19.Hence, the imposition of lesser punishment of one week Simple Imprisonment for the offence punishable under Section 51 (b)(i) read with 63 of the Copyright Act, 1957, as has been imposed by the learned Magistrate in the impugned Judgment, is liable to be interfered with.

20.Accordingly, the impugned Judgment is set aside and the matter is remitted back to the learned Magistrate to re-hear the issue by applying his mind under the provisions of the Copyright Act, 1957, especially, under Section 63 of the Act and pass a fresh Judgment, as he thinks fit, but, having in mind, the mandatory minimum punishment of six months imposable under the provisions, as has been quoted therein.

21.It is made clear that insofar as the conviction made by the trial Court in the Judgment impugned for the offences punishable under Sections 52-A read with 68-A of the Copyright Act, this Court does not want to interfere with, as there is no minimum sentence prescribed under Section 63-A of the Act and therefore, in this regard, the imposition of lesser punishment of one week Simple Imprisonment with a fine of Rs.1,000/- made by the learned Magistrate for the said offences under Sections 52-A read with 68-A of the Copyright Act, is remained intact.

22.With these observations and directions, this Criminal Appeal is ordered with a direction to the learned Magistrate to re-hear the matter from the stage, where the guilty memo was filed by the respondent/accused and decide the quantum of punishment for the offences punishable under Sections 51(b)(i) read with 63 of the Copy Right Act, within a period of two months from date of receipt of a copy of this order by following the procedure established in the Code of Criminal Procedure, 1908.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mps



To

1. The Judicial Magistrate No.II, Salem.

2. The Public Prosecutor,
High Court, Madras

Copy To
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.C.Sivakumar, Advocate, S.R.No.18731

Crl.A.No.28 of 2012

VGII(CO)
CS/20/08/18