

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.48 OF 1999

Indian Music Industries)....Appellant

V/s.

State of Maharashtra & Ors.)....Respondents

None for appellant.

Ms.Anamika Malhotra APP for respondent no.1-State.

CORAM : K.R.SHRIRAM,J

DATE : 15.10.2019

P.C.:-

1. When the matter was listed yesterday i.e., on 14.10.2019 and called out twice, none appeared for appellant. Matter was therefore, stood over to today. Even today nobody is present for appellant but with the assistance of the learned APP for respondent no.1-State of Maharashtra, the evidence recorded and the impugned judgment was considered.

2. This is an appeal against acquittal. The appellant had filed the complaint against the accused for the offences punishable under Sections 51, 52(A), 63 & 68(A) of the Copy Rights Act 1957. It is

alleged that the accused was found in possession of duplicate audio cassettes containing music in which appellant's copy right was infringed. According to the appellant 59 companies were its members and the complainant's field officer had received information on 9.9.1997 that the accused was in possession of some duplicate cassettes. Accordingly, the complainant informed the police, police raided the place where the alleged duplicate cassettes were kept and it is stated that the duplicate cassettes were also found and seized. The number of audio cassettes seized was 16515.

3. The accused was accordingly arrested on 9.9.1997 and released on bail on 12.9.1997. After investigation, charge-sheet was filed on 7.10.1997 and the plea of the accused was recorded. Accused pleaded not guilty and claimed to be tried. The defence was of total denial and false implication as per the statement recorded under section 313 of Cr.P.C.

4. The prosecution in all, examined six witnesses and also relied upon the complaint at Exh.18, panchanama at Exh.24, authority letter and other documents.

5. The defence did not lead any evidence.

6. The Court after considering all the evidence recorded, the complaint, documents and considering the arguments, acquitted the accused and one of the primary ground of acquittal was the audio cassettes seized were never played, for the prosecution to come to a conclusion that those audio cassettes contained music infringing copy rights of the appellant.

7. I cannot disagree with the Court for having dismissed the complaint on this very vital aspect of requirement. The onus was on the prosecution to prove that the 16515 cassettes seized, contained music which infringed the copy rights of the complainant. Without playing those cassettes, certainly it is impossible to come to a conclusion that the cassettes contained music that infringed complainant's rights.

8. In ¹*Rohtash Vs. State of Haryana* the Supreme Court held that the law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the

¹ (2012) 3 SCC (Cri) 287

acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

9. In the circumstances, no interference was called for. Appeal dismissed.

(K.R.SHRIRAM,J)