

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1379 of 2019
W.P.No.1484 of 2019
and Crl.O.P.No. 6100 of 2019
and Crl.MP.Nos. 913 & 2325 of 2019
in Crl OP No.1379 of 2019
& W.M.P.No. 1651 of 2019

CRL.O.P.No.1379 of 2019
and Crl.MP.Nos. 913 & 2325 of 2019

M/s. Sivaji Hi-Tec Foods Pvt Ltd.,
Rep by its Director,
KSS Karunakaran,
No.100, Medavakam Main Road,
Keelkattalai,
Chennai - 600 117. Petitioner

Vs.

1. The State rep by
The Inspector of Police,
IPR Enforcement Cell- Unit II,
VPC-CID, Chennai -II,
Egmore, Chennai - 600 008.

2. Yuvraj
Manager & Power of Attorney Holder,
VKR Prakash Modern Rice Mill,
No.34/8, Kalleripattu Colony Road,
Arni Taluk,
Thiruvannamalai District. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of the FIR No.6 of 2019 dated 12.01.2019, on the file of the VPD-CIF, Chennai II Police, IPRE Cell, Unit II and quash the same.

For Petitioner : Mr. ARL.Sundresan
Senior Counsel
For Mr.L.P.Maurya
For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.
For R2 : Mr.Prakash Goklaney

W.P.No.1484 of 2019
& W.M.P.No. 1651 of 2019

M/s. Sivaji Hi-Tek Foods Pvt Ltd.,
Rep by its Director,
KSS Karunakaran,
No.100, Medavakam Main Road,
Keelakattalai,
Chennai - 600 117. Petitioner

Vs.

The Inspector of Police,
IPR Enforcement Cell- Unit II,
VPC-CID - Chennai - II,
Egmore, Chennai - 600 008. Respondent

Prayer : Writ petition filed under Article 226 of the
Constitution of India for issuance of a Writ of Mandamus
directing the respondent to de-seal the premises at No.100,
Medavakkam Main Road, Keelakattalai, Chennai - 600 117 and
forbear the respondent police from interfering with the
petitioner business.

For Petitioner : Mr. ARL.Sundresan
Senior Counsel
For Mr.L.P.Maurya

For Respondent : Mr.Mohammed Riyaz
Additional Public Prosecutor.

CrI.O.P.No. 6100 of 2019
Murugan Thangamani Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Intellectual Property Enforcement,
(IPRE Cell), Unit - II
Ayanavaram, Chennai - 23. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the respondent to register a FIR based on the petitioner complaint dated 05.02.2019 and investigate the same, file a report within a stipulated period.

For Petitioner : Mr.A.Swaminathan

For Respondent : Mr.C.Raghavan
Government Advocate (Crl. Side)

C O M M O N O R D E R

The criminal original petition in Crl.O.P.No.1379 of 2019 has been filed to quash the FIR in Crime No. 6 of 2019 on the file of the first respondent police registered for the offence under Section 51(b)(i) and 63(a) of Copy Right Act 1957.

2. The learned Senior Counsel appearing for the petitioner in Crl.O.P. No.1379 of 2019, submitted that the petitioner is arraigned as A2 and it is alleged that the petitioner has supplied duplicate Sivaji Brand products and thus infringed the copy right and trade marks of the defacto complainant. The second respondent claimed that he has given copy right for the artistic work comprising of Get-up and colour scheme associated with Sivaji Brand. He further submitted that the complaint is not maintainable since the defacto complainant is not the only person using the said trade mark and copy right application itself is not maintainable and it ought to have been rejected for the reason that it is not an original artistic work as mandated under Section 13 of Copy Rights Act 1957. He further submitted that the offence registered by the first respondent is non cognizable offence. Therefore under Section 155 of Cr.P.C., no police officer can investigate the non cognizable offence without the order of the Magistrate. As the impugned FIR has been registered by the first respondent without any order of Magistrate, it is liable to be quashed.

2.1. In support of his contention, he relied upon the judgment reported in 2015 SCC Online Raj 5637 in the case of Pintu Dey Vs. State of Rajasthan & Anr. Therefore, he sought for quashment of the FIR.

2.2. He further submitted that when the first respondent has no power even to register the FIR, he has no power to seal the premises belonging to the petitioner. Therefore he sought for a direction to de-seal the premises of the petitioner in the writ petition filed before this Court viz., W.P.No.1484 of 2019.

3. Insofar as the petition in Crl.O.P.No.6100 of 2019 is concerned, the learned counsel appearing for the petitioner submitted that the petitioner lodged a complaint before the respondent, but the respondent did not register the case for the

reason that the crime committed by the accused is allegedly for the offence under the provisions of Copy Rights Act and as such the police officer has no power to register the same, since the offence is a non cognizable offence. Therefore, the petitioner sought for a direction to register the complaint dated 05.02.2019.

4. Per contra, the learned counsel appearing for the second respondent/ defacto complainant in Crl.O.P.No.1379 of 2019 submitted that the offence committed by the petitioner is cognizable offence. Since it is coming under Part II of Schedule I of Cr.P.C., the offence punishable with imprisonment for three years and upwards, but not more than seven years is a cognizable one and non-bailable. The offence punishable under Section 63 of Copy Right Act is imprisonment for a term which may extend upto three years and as such an offence punishable under Section 63 of Copy Right cannot be considered as non cognizable offence. Therefore, the procedure laid down under Section 155 of Cr.P.C. is not applicable to the case on hand. Further, he submitted that when the police officer registered a case under the Copy Rights Act, he has the power to seal the premises and seize the goods infringed. He also relied upon the judgments reported in CDJ 2007APHC 617 in the case of Amarnath Vyas @ Vijay Prakash Vyas Vs. The State of A.P. Rep, by its Public Prosecution and CDJ 2007 Ker HC 977 in the case of Abdul Sathar Vs. Nodal Officer, Anti Piracy Cell, Kerala Crime Branch & another and CDJ 2003 Assam HC 374 in the case of Hridayananda Sharma Vs. State of Assam. Therefore, he sought for dismissal of the quash petition.

5. The learned Additional Public Prosecutor would contend that FIR has been registered in Crime No. 6 of 2019 for the offence under Section 51(b)(i) and 63(a) of Copy Right Act 1957, as against four persons, in which the petitioner is arraigned as A2. The petitioner's company has been using the mark namely Sivaji Brand in respect of the goods sold by them viz., Sivaji Brand Rice, thereby infringed the complainant's right under the Copy Rights Act and Trade Marks Act. He further submitted that the offence committed by the petitioner is a cognizable offence and the police officer has power to register a case under the Copy Rights Act and the police has power to seal the premises and seize the infringed goods. Therefore, he sought for dismissal of the quash petition.

6. Heard Mr.ARL.Sundaresan, learned Senior Counsel appearing for the petitioner in Crl.O.P.No. 1379 of 2019 and W.P.No. 1484 of 2019, Mr.A.Swaminathan, learned counsel appearing for the petitioner in Crl.O.P.No.6100 of 2019, Mr.Prakash Gokulaney, learned counsel appearing for the second

respondent in Crl.O.P.No.1379 of 2019 and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondent police in Crl.O.P.No. 1379 of 2019 and W.P.No. 1484 of 2019, and Mr.C.Raghavan, learned Government Advocate (Crl.Side) appearing for the respondent in Crl.O.P.No.6100 of 2019.

7. The petitioner in Crl.O.P.No. 1379 of 2019 is arraigned as A2. The FIR has been registered in Crime No. 6 of 2019 for the offence under Section 51(b)(i) and 63(a) of Copy Right Act 1957, by the first respondent as against the four accused persons. The allegation is that the petitioner without having any Copy Right and Trade Mark, was selling rice brand called Sivaji Brand to other seller, thereby the petitioner infringed the defacto complainant's Copy Right and Trade Marks. The second respondent/defacto complainant has a valid trade mark in his favour under Copy Right Act and hence no copyright could have been granted in the name and style in "Siviaj" as has been used by the second respondent/defacto complainant, as the second respondent holds copy right for the brand "Sivaji".

8. The point for consideration is that whether the offence under Section 63 of the Copy Rights Act is a cognizable one?

9. In this regard, it is relevant to extract the offence under Section 63 of Copy Rights Act which reads as follows :-

"63. Offence of infringement of copyright or other rights conferred by this Act.—Any person who knowingly infringes or abets the infringement of—
(a) the copyright in a work, or
(b) any other right conferred by this Act,
1[except the right conferred by section 53A] 1[except the right conferred by section 53A]" 2[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 3[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 judgment, 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."

10. As per Section 63 of the Copy Rights Act, the offence under the said Act is punishable with imprisonment for a terms which shall not be less than six months but which may extend to three years with fine. In this regard, there are conflict of opinion between the single learned Judges of High Court of Kerala and High Court of Andra Pradesh. Therefore, the matter has been referred before the Division Bench of High Court of Gauhati in which the said Court held, in the judgment reported in CDJ 2003 Assam HC 374 in the case of Hridayananda Sharma Vs. State of Assam, that :-

"4. The learned trial Court in Rajiv Chaudhary's case (supra) took the view that as detention of a person up to 90 days under Clause(i) of Proviso (a) of Section 167(2) is permissible where the investigation relates to an offence punishable with death or imprisonment for life or imprisonment for a term of not less than 10 years, it is Clause(ii) which prescribed a period of 60 days that would apply in view of the fact that the punishment prescribed under Section 386 IPC is for a term which may extend to 10 years. As charge-sheet had not been filed and period of 60 days was over, the accused was held to be entitled to bail. The view taken by the learned Magistrate was disapproved by the revisional Court where after the matter was taken before the Delhi High Court and the Delhi High court, on an elaborate consideration of the provisions of Section 167 Cr.P.C., and the earlier decision, rendered by the Court, upheld the order of the revisional Court holding that for an offence under Section 386 IPC, the maximum period of detention without submission of charge-sheet could be 90 days as contemplated by Clause (i) of Proviso A to Section 167(2) Cr.P.C. The reasoning of the High Court of Delhi for the conclusion reached as contained in paragraph 4 of the judgment may be usefully extracted herein below:

"The expression "imprisonment for a term of not less than ten years" used in clause(i) of proviso (a) to sub-section 2 of Section 168 includes imprisonment for a

term of ten years as well as imprisonment for a term of more than ten years. In other words, Clause(i) of proviso(a) to sub-section (2) of Section 167 will be applicable where the investigation relates to an offence punishable with imprisonment for a term of ten years or more. The crucial test is whether the offence is one for which the punishment of imprisonment for a term of ten years or more can be awarded. It is immaterial that the Court may have also the discretion to award the punishment of imprisonment for a term of less than ten years. In the case of a particular offence even though the Court may have discretion to award punishment of imprisonment for a term of less than 10 years, the above mentioned clause (i) will apply if the accused can be punished with imprisonment for a term of ten years. Where the offence is punishable with "imprisonment for a term which may extend to ten years the Court has the discretion to sentence the accused to under imprisonment for a term of ten years or for a term of less than ten years. Hence the above mentioned clause (i) will be applicable where the investigation relates to an offence punishable with imprisonment for a term which may extend to ten years". It should be borne in mind that the expression used by the Legislature in clause (i) of proviso (a) of Section 167(2) is not "imprisonment for a minimum term of ten years". If the Legislature intended to restrict the application of the said clause (i) to offences punishable with imprisonment for a minimum term of ten years, the Legislature could have used the expression "offence punishable with death, imprisonment for life or imprisonment for a minimum term of ten years". Significantly the legislature did not use such an expression".

The Apex Court, on being moved by the accused against the aforesaid judgment of the Delhi High Court, upheld the view taken by the High Court. A reading of the judgment of the Apex Court would clearly go to show that the view taken is that under

Section 386 IPC the punishment provided is imprisonment for a term which may extend to 10 years, which means that imprisonment can be for a clear period of 10 years or even less. As the imprisonment prescribed can be up to a maximum period of 10 years, the Apex Court held that the punishment prescribed cannot be said to be not less than 10 years. The Apex Court having upheld the view of the Delhi High Court by dismissing the appeal filed by the accused there can be no two opinion that the view taken by the Apex Court is that the punishment under Section 386 IPC, i.e., for a term, which may extend to 10 years would be covered by the expression "imprisonment for a term not less than 10 years" as prescribed in Clause (i) of proviso (a) to Section 167(2) Cr.P.C. Following the ratio of the Apex Court judgment in Rajeev Chaudhary's case (supra) what would logically follow is that the punishment prescribed under Section 68 A of the Copyright Act being for imprisonment which may extend to period of 3 years, the punishment prescribed cannot be said to be less than 3 years as required under Part-II of Schedule-I of the Code of Criminal Procedure to make the offence bailable. Consequently, we answer the question raised, holding that the offence under Section 68A of the Copyright Act is a non-bailable offence."

11. The above decision rendered by the High Court of Gauhati in respect of bailable or non bailable offence for the offence punishable under Section 68A of Copy Rights Act and it held that the offence punishable under Section 68A is non bailable offence and entertained the Anticipatory bail petition. The Division Bench considered the judgment of the Hon'ble Supreme Court of India in Rajeev Chaudhar Vs. State (NCT) of Delhi reported in 2001 AIR SC 2369 and held that the offence under Section 68A of Copy Rights Act is non bailable offence. Whereas the High Court of Andhra Pradesh held in the petition under Section 482 of Cr.P.C. reported in CDJ 2007 APHC 617 in the case of Amarnath Vyas @ Vijay Prakash Vyas Vs. The State of A.P. Rep, by its Public Prosecution as follows :-

"11. Both these judgments discussed herein above have not considered the judgment of the Apex Court in Rajeev

Chaudhary v. State (N.C.T.) of Delhi. The provisions of Section 167(2) Clause (1) proviso (a) of the Cr.P.C. came up for consideration before the Apex Court in the said judgment. The offence involved, as can be seen from the matrix of that case, is extortion punishable under Section 386 of IPC. The punishment prescribed therefor is imprisonment of either description for a term, which may extend to 10 years and shall also liable to fine. The expression 'imprisonment which may extend to 10 years' was discussed by the Apex Court in juxtaposition to the other expression 'imprisonment for 10 years or more'. The proviso under Clause (1) of Section 167, Sub-clause (2) of the Cr.P.C. reads that if the period of ninety days exceeds in the case of investigation relating to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, the remand prisoner, as a matter of right, is entitled to bail. Therefore, the expression used therein inter alia that imprisonment for a term not less than ten years, as per the judgment of the Supreme Court, could not be equated with imprisonment for ten years or more; and that the expression would cover only those offences punishable with imprisonment for a clear period of ten years or more. Inasmuch as under Section 386 IPC the punishment provided is imprisonment for either description for a term which may extend to ten years, it was considered by the Apex Court and held that such an imprisonment cannot be equated with the sentence of imprisonment for ten years or more. In the view of the Apex Court, imprisonment for a term, which may extend to ten years cannot be construed as similar to the sentence of ten years or more. In paragraph No. 6, the Apex Court held thus:

In this context, the expression 'not less than' would mean imprisonment should be ten (10) years or more and would cover only those offences for which punishment could be imprisonment for a clear period

of ten (10) years or more. Under Section 386 punishment provided is imprisonment of either description for a term, which may extend to ten (10) years and also fine. That means, imprisonment can be for a clear period of ten (10) years or less. Hence, it could not be said that minimum sentence would be ten (10) years or more. Further, in context also if we consider Clause (i) of proviso (a) to Section 167 (2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than ten (10) years. Under Section 386 of the I.P.C., imprisonment can vary from minimum to maximum of ten (10) years and it cannot be said that imprisonment prescribed is not less than ten (10) years." In view of the said authoritative pronouncement of the Apex Court, the expression used in Second category of II-Part of Schedule-I of the Cr.P.C. viz., that the term of imprisonment for three years or upwards, but not more than seven years, cannot be equated with the expression used in Section 63 of the Act viz., the imprisonment which may extend" to three years.

12. It is trite that the penal provisions shall have to be construed strictly. True there may be certain other class of offences which may fall in between classification II and classification III of Second Part of Schedule-I. Merely because they are not coming squarely within the domain of classification-III, they, cannot automatically be treated as included in the classification-II. By default, they cannot be considered as coming within the purview of the classification-II. Having regard to the fact that the judgments of Kerala and Gauhati High Courts supra have not considered the judgment of the Apex

Court in Rajeev Chaudhary's case 2001 Cri LJ 2941 (supra), with due respect, they cannot be considered as having laid down the correct proposition of law. Therefore, the expression 'imprisonment for a term which may extend upto three years', in my considered view, would not come squarely within the expression 'imprisonment for three years and upwards'. Therefore, the offence punishable under Section 63 of the Act cannot be considered as 'non-bailable' one. For the foregoing reasons, I am afraid, I cannot accept the contentions of the learned Public Prosecutor and there is nothing to recall the order passed by this Court earlier. Accordingly CrI.M.P. No. 3567 of 2006 is dismissed."

A similar judgment viz., Rajeev Chaudhar Vs. State (NCT) of Delhi reported in 2001 AIR SC 2369 arising out of the offence under Section 386 of IPC held that the offence punishable under Section 63 of the Copy Right Act cannot be considered as non bailable one, since the exact imprisonment for the term which may extend upto three years would not come squarely within the expression "imprisonment for three years and upwards".

12. The learned Senior Counsel appearing for the petitioner in CrI.O.P.No.1379 of 2019, relied upon the judgment reported in 2015 SCC Online Raj 5637 in the case of Pintu Dey Vs. State of Rajasthan & Anr, in which, the High Court of Rajasthan held as follows :-

"7. As per section 63, the offence under the said Act is punishable with imprisonment for a terms which shall not be less than six months but which may extend to three years and with fine. The offence falling under section 65 of the Act of 1957 is punishable with imprisonment which may extend to two years and an offence falling under section 68A of the Act of 1957 shall punishable with imprisonment, which may extend to three years.

8. Hon'ble Supreme Court in Rajeev Chaudhary's case (supra) has held as under:

"In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment

provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 of the IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be aid that imprisonment prescribed is not less than 10 years."

9. In Amarnath Vyas vs. State of A.P. (supra), the Andhra Pradesh High Court after relying on the decision of Hon'ble Supreme Court in Rajeev Chaudhary's case (supra), has held as under:

"11. Both these judgments discussed herein above have not considered the judgment of the Apex Court in Rajeev Chaudhary v. State (N.C.T.) of Delhi AIR 2001 SC 2369: (2001 Cri LJ 2941). The provisions of Section 167(2) Clause (1) proviso (a) of the Cr.P.C. came up for consideration before the Apex Court in the said judgment. The offence involved, as can be seen from the matrix of that case, is extortion punishable under Section 386 of IPC. The punishment prescribed therefor is imprisonment of either description for a term, which may extend to 10 years and shall also liable to fine. The expression 'imprisonment which may extend to 10 years' was discussed by the Apex Court in juxtaposition to the other expression 'imprisonment for 10 years or more'. The proviso under Clause (1) of Section 167, Sub-clause (2) of the Cr.P.C. reads that if the period of ninety days exceeds in the case of investigation relating to an

offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, the remand prisoner, as a matter of right, is entitled to bail. Therefore, the expression used therein inter alia that imprisonment for a term not less than ten years, as per the judgment of the Supreme Court, could not be equated with imprisonment for ten years or more; and that the expression would cover only those offences punishable with imprisonment for a clear period of ten years or more. Inasmuch as under Section 386 IPC the punishment provided is imprisonment for either description for a term which may extend to ten years, it was considered by the Apex Court and held that such an imprisonment cannot be equated with the sentence of imprisonment for ten years or more. In the view of the Apex Court, imprisonment for a term, which may extend to ten years cannot be construed as similar to the sentence of ten years or more. In paragraph No. 6, the Apex Court held thus:

"In this context, the expression 'not less than' would mean imprisonment should be ten (10) years or more and would cover only those offences for which punishment could be imprisonment for a clear period of ten (10) years or more. Under Section 386 punishment provided is imprisonment of either description for a term, which may extend to ten (10) years and also fine. That means, imprisonment can be for a clear period of ten (10) years or less. Hence, it could not be said that minimum sentence would be ten (10) years or more. Further, in context also if we consider Clause (i) of proviso (a) to Section 167 (2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than ten (10) years. Under Section 386 of the I.P.C., imprisonment can vary from minimum to maximum of ten (10) years and it cannot be said that imprisonment

prescribed is not less than ten (10) years." In view of the said authoritative pronouncement of the Apex Court, the expression used in Second category of II-Part of Schedule-I of the Cr.P.C. viz., that the term of imprisonment for three years or upwards, but not more than seven years, cannot be equated with the expression used in Section 63 of the Act viz., the imprisonment which may extend to three years.

12. It is trite that the penal provisions shall have to be construed strictly. True there may be certain other class of offences which may fall in between classification II and classification III of Second Part of Schedule-I. Merely because they are not coming squarely within the domain of classification-III, they, cannot automatically be treated as included in the classification-II. By default, they cannot be considered as coming within the purview of the classification-II. Having regard to the fact that the judgments of Kerala and Gauhati High Courts supra have not considered the judgment of the Apex Court in Rajeev Chaudhary's case 2001 CriLJ 2941 (supra), with due respect, they cannot be considered as having laid down the correct proposition of law. Therefore, the expression 'imprisonment for a term which may extend upto three years', in my considered view, would not come squarely within the expression 'imprisonment for three years and upwards'. Therefore, the offence punishable under Section 63 of the Act cannot be considered as 'non-bailable' one."

10. Admittedly, offences punishable under sections 63 and 68A of the Act of 1957 carry maximum punishment which can be extended up to three years.

Part-II of Schedule-I of CrPC reads as under:

"II - CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
1	2	3	4
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable	Court of Session.
If punishable with imprisonment for 3 years, and upwards but not more than 7 years.	Cognizable	Non-bailable	the first
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any

12. As held by the Andhra Pradesh High Court in Amarnath Vyas's case (supra), there may be certain other class of offences which may fall in between Classification II and Classification III of second part of Schedule-I of CrPC but merely because they are not falling squarely within the domain of Classification III, they cannot automatically be treated as included in Classification-II. By default, they cannot be considered as coming within the purview of Classification II, I am totally in agreement with the above proposition laid down by Andhra Pradesh High Court.

13. Hence, as per the law laid down by Hon'ble Supreme Court in Rajeev Chaudhary's case (supra) and by Andhra Pradesh High Court in Amarnath Vyas's case (supra), the expression "imprisonment for a term which may extend up to 3 years" would not come within the expression "imprisonment for 3 years and upwards". Therefore, the offence punishable under sections 63 and 68A of the Act of 1957 cannot be considered as

cognizable offence.

14. Sub-section (2) of section 155 of CrPC reads as under:

"(2) No police officer shall investigate a noncognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

15. As per the above provision, no police officer shall investigate a non-cognizable case without an order of a Magistrate.

16. In view of the above discussions, the action of registration of the impugned FIR against the petitioner without there being any order of the Magistrate having power to try such case or commit the case for trial is violative of sub-section (2) of section 155 of the CrPC."

13. On going through all the judgements of the various Courts, the Division Bench of High Court of Gauhati has not considered the judgment of Rajeev Chaudhar case passed by the Hon'ble Supreme Court of India. In the Pindu Dey case, the High Court of Rajasthan has followed the case with the proposition made by the High Court of Andhra Pradesh reported in CDJ 2007APHC 617 in the case of Amarnath Vyas @ Vijay Prakash Vyas Vs. The State of A.P. Rep, by its Public Prosecution.

14. After analyzing all the above judgments, this Court is of the view that the offence punishable under Section 63(a) of the Copy Right Act is non cognizable offence by virtue of Part II of Schedule I of Cr.P.C., since it carries imprisonment which can be extended upto three years and therefore as per Section 155 of Cr.P.C., no police officer can investigate a non cognizable offence without an order of a Magistrate. Hence as per the law laid down by the Hon'ble Supreme Court of India in Rajeev Chaudhar Vs. State (NCT) of Delhi reported in 2001 AIR SC 2369 and Andhra Pradesh Court reported in CDJ 2007APHC 617 in the case of Amarnath Vyas @ Vijay Prakash Vyas Vs. The State of A.P. Rep, by its Public Prosecution, the expression imprisonment for terms which may extend upto three years would not come within expression of "imprisonment of three years onwards". Therefore, the offence under Section 63(a) of Copy Right Act cannot be considered as cognizable offence and the police officer has no power to register a case.

15. In this regard, it is relevant to extract Section 155 of Cr.P.C. which as follows:-

"155. Information as to non-cognizable cases and investigation of such

cases

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable"

Accordingly the police officer cannot register a case for the non cognizable offence, without an order of concerned jurisdictional Magistrate.

16. In view of the above, the impugned FIR in Crime No.6 of 2019 is hereby quashed and the criminal original petition in CrI.O.P. No.1379 of 2019 stands allowed. Consequently, connected miscellaneous petitions are closed.

17. After registering the FIR, the respondent has sealed the premises of the petitioner. The question is when the offence registered in the FIR itself is non cognizable, whether the police has power to seal the premises or not?

18. It is answered that when the police has no power to register and investigate the non cognizable offence, as contemplated under Section 155(2) of Cr.P.C., he has no power to seal the premises, without an order of concerned jurisdictional Magistrate. Therefore, the respondent is directed to de-seal the premises at No.100, Medavakkam Main Road, Keelakattalai, Chennai - 600 117, forthwith and the respondent are restrained from interfering with the petitioner's business, in pursuant to the quashment of FIR in Crime No.6 of 2019 in CrI.O.P. No.1379 of

2019 forthwith. Accordingly, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

19. In view of the order passed in Crl.O.P.No.1379 of 2019, the direction sought for in the petition in Crl.O.P.No.6100 of 2019, cannot be issued to the respondent to register the case on the complaint lodged by the petitioner dated 05.02.2019, for the offences under the Copy Rights Act. Therefore, the petition in Crl.O.P.No.6100 of 2019 stands dismissed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

rts
To

1. The Inspector of Police,
IPR Enforcement Cell- Unit II,
VPC-CID, Chennai -II,
Egmore, Chennai - 600 008.
2. The Inspector of Police,
Intellectual Property Enforcement,
(IPRE Cell), Unit - II
Ayanavaram, Chennai - 23.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+4cc to Mr.S.T.Raja, Advocate SR.No.28092,28093

+2cc to Mr.S.Sivalingakesavan, Advocate SR.No.28774

CRL.O.P.No.1379 of 2019
W.P.No.1484 of 2019
and Crl.O.P.No. 6100 of 2019
and Crl.MP.Nos. 913 & 2325 of 2019
& W.M.P.No. 1651 of 2019

VP (CO)
GMY (07/05/2019)