

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.482 of 2012

State represented by:

The Inspector of Police,

Video Piracy Cell,

CB CID, Salem District.

(Crime No.54 of 2005)

... Appellant/Complainant

/versus/

Ravi,

S/o.Selvam,

Door No.150, Narayan Nagar,

I Cross, Salem-15.

... Respondent/Accused

Prayer:- Criminal Appeal is filed under Section 377 of Cr.P.C, praying to enhance the sentence passed by the learned Judicial Magistrate No.II, Salem in C.C.No.8 of 2008 dated 19.01.2010 and impose the maximum sentence and fine in conformity with Section 63 of the Copy Right Act, 1957 on the respondent/accused.

For Appellant : Ms.Kritika Kamal

Government Advocate (Crl.Side)

For Respondent : No appearance

O R D E R

When the matter was taken up for final disposal, the respondent neither appeared in person or engaged counsel to defend him. The Registry records reveals that the notice in Criminal Appeal was served on the respondent on 15.02.2012 and he has signed acknowledging the receipt of the notice.

2. This appeal is preferred by the state on the ground that the learned Judicial Magistrate No.2, Salem has grossly erred in imposing fine of Rs.1,500/- for offence under Section 51(b)(1) r/w 63 of Copy Rights Act instead of sentencing him to minimum terms of imprisonment, not less than 6 months. The impugned order reveals that the appellant/police has rided the residence of the respondent on 30.08.2005 and seized 86 Tamil movie DVD's, 265 Tamil movie VCDs, 210 English movie DVD, without any Copy

Right or licence to possess the same. Therefore, he was arrested and produced before the Learned Judicial Magistrate No.2, Salem for infringement of Copy Right. After furnishing copies of the documents to the accused, as per Section 207 of Cr.P.C was questioned about the offence. The accused/respondent has pleaded guilty and filed guilty memo through his counsel. As a consequence, the trial Court has sentenced him to pay a fine of Rs.1,500/- and in default to undergo 6 months R.I.

3. The Learned Government Advocate (Crl.Side) would draw the attention of this Court to the provisions of Copy Right Act, 1957 and would submit that under Section 63 of the Copy Rights Act, any person who knowingly infringes any Copy Right or any other right conferred under this Act shall be punished with imprisonment for a term which shall not be less than 6 months but may extend to 3 years and with fine shall not be less than Rs.50,000/- but may extend to Rs.2,00,000/-. Though proviso to this Act, enables the Magistrate to impose lesser sentence than the sentence prescribed under this Section, if the Learned Judicial Magistrate is of the opinion that, he want to impose sentence lesser than the term prescribed, he should mention the reason and impose lesser sentence. Only for adequate and special reason expressly mentioned in the order, punishment lesser than the prescribed minimum can be imposed.

Section 63 of Copy Rights Act reads under:-\

"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.]

4. I am fully convinced with the submissions made by the learned Government Advocate (Crl.Side). The Judgment of the trial Court is ex facie illegal, erroneous and contra to the

law. Hence the Criminal Appeal is Allowed. The matter is remanded back to the trial Court for fresh trial. The Learned Judicial Magistrate is directed to complete the trial within the period of three months from the date of receipt of this order. After serving notice to the respondent, the Court shall proceed in accordance to procedure. The Appellant is directed to secure the respondent and produce before the trial Court forthwith.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Learned Judicial Magistrate No.II,
Salem.
2. The Additional Public Prosecutor,
High Court, Madras.
3. The The Inspector of Police,
Video Piracy Cell,
CB CID, Salem District.
4. The Section officer,
Criminal Section,
High Court, Chennai.
(To send back th records forthwith)

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C.A.No.482 of 2012

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