



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.07.2020

Delivered on : 03.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.2724 of 2018

and

CrI.M.P. (MD)Nos.1256 and 1257 of 2018

Senthilkumar, S/o.Ponraj

... Petitioner

Vs.

1.State Rep. by

The Inspector of Police,
IPREC - CBCID, VPC - Cell,
Tirunelveli,
Tirunelveli District.
(Crime No.329 of 2017)

2.Umesha, T.

... Respondents

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the Charge Sheet in S.T.C.No.9 of 2018, filed by the first respondent before the Judicial Magistrate Court No.III, Thoothukudi, and quash the same as against the petitioner.

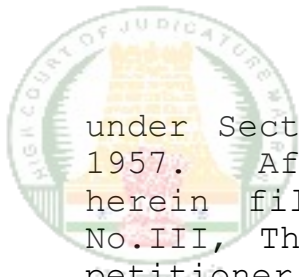
For Petitioner	: Mr.B.Rajesh Saravanan
For R1	: Mr.S.Chandrasekar
	Additional Public Prosecutor
For R2	: Mr.Raguvaran Gopalan

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.9 of 2018, on the file of the Judicial Magistrate Court No.III, Thoothukudi.

2.The case of the petitioner is that he is the Manufacturer of Iodized Salt in the name and style of 'Anandhapurani', which is accepted by the Registrar of Trade Marks and advertised. In the said circumstances, the second respondent herein by falsely alleging that he is working as Manager of Anvesh IPR Services at Bangalore and he had been authorized to give complaint on behalf of M/s.Hindustan Unilever Limited, lodged a complaint before the first respondent police on 11.11.2017 alleging that the petitioner herein infringed the copyright in respect of the product namely, Annapurna Salt, which is manufactured by M/s.Hindustan Unilever Limited.

3.The further case of the petitioner is that on receipt of the compliant from the second respondent, a case has been registered against the petitioner in Crime No.329 of 2017, for the offence



under Section 51(b)(i) read with Section 65 of the Copyright Act, 1957. After completing the investigation, the first respondent herein filed final report before the Judicial Magistrate Court No.III, Thoothukudi, on 23.11.2017, in which, he alleges that the petitioner herein had committed the above said offence. Subsequent to that, the learned Judicial Magistrate No.III, Thoothukudi, took cognizance of the offence on 06.02.2018 in S.T.C.No.9 of 2018 and issued summon to the petitioner, for answering the above said charge. Therefore, the petitioner is before this Court with the present petition seeking to quash the charge sheet in S.T.C.No.9 of 2018, pending on the file of the Judicial Magistrate Court No.III, Thoothukudi.

4.The learned counsel appearing for the petitioner would submit that during the time of lodging the complaint before the first respondent police, the second respondent had assumed that M/s.Hindustan Unilever Limited had registered their product viz., Annapurna Salt under the Copyright Act, 1957. But, in order to prove the same, during the time of investigation, he has not produced any document to show that M/s.Hindustan Unilever Limited is the copyright owner for the said 'Annapurna Salt'.

5.Per contra, the learned counsel appearing for the second respondent would submit that M/s.Hindustan Unilever Limited had commissioned an Artist for creation of the brand logo, which would be used on all packaging bags, labels and covers for the products. The Artist had created the specific brand logo for 'Annapurna Salt' and the same was assigned to M/s.Hindustan Unilever Limited under the registered Assignment Deed, dated 08.12.2005. In order to substantiate the same, the learned counsel has produced the Assignment Deed given in favour of M/s.Hindustan Unilever Limited.

6.At this juncture, it is relevant and useful to see the copy of the final report filed by the first respondent, in which it was stated that during the time of occurrence, the petitioner herein had committed an offence under Section 51(b)(i) read with Section 65 of the Copyright Act, 1957. So, it is relevant and useful to extract below the said provisions for ready reference.

'51.When copyright infringed.-

(b) when any person

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

65.Possession of plates for purpose of marking infringing copies.- Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.'

7.Now, on applying the said provisions with the facts of this case, it is relevant and necessary to find out whether the



petitioner is in the habit of producing the logo, which has already been assigned to the second respondent and made an attempt to sell his product by advertising the second respondent's logo.

8. The copy of the charge sheet filed by the first respondent reveals the fact that during the time of investigation, the investigation officer had recovered the covers containing the word 'Anandhapurani' which is used for packing the salt, which were available in the custody of the petitioner. However, the words alleged to be used by the second respondent and the words found in the cover recovered from the petitioner, are entirely different.

9. In the said circumstances, it is necessary to see Section 14 of the Copyright Act, 1957, which reads as follows:-

''14. Meaning of copyright.— For the purposes of this Act, 'copyright' means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

(i) to do any of the acts specified in clause (a); (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including —



(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two dimensional work; or

(C) deception in two-dimensions of a three-dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

(i) to make a copy of the film including—

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it including storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;

(iii) to communicate the sound recording to the public.

Explanation.— For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.'

10.A reading of the said Section as a whole, which prescribes the meaning of copyright, shows that reproduction of work in any material form by a person, is necessary to attract the offence mentioned in the Copyright Act, 1957. But, here in this case, it is apparent that the covers, which were recovered from the petitioner, does not contain the name 'Annapurna', which belongs to the second respondent. Further, there is no case against the petitioner that the covers used by him for selling the Anandhapurani Salt, are the reproduction of the covers used by the second respondent.

11.Further, it is relevant to see the definition of Section 2 (t) of the Copyright Act, 1957, which reads as follows:—

<https://hcservices.ecourts.gov.in/hcservices/>

**''2.Interpretation.-**

(t) plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, duplicating equipment or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which sound recording for the acoustic presentation of the work are or are intended to be made;"

12.Since the case has been registered against the petitioner under Section 51(b)(i) read with Section 65 of the Copyright Act, 1957, it is for the prosecution to prove that the covers used by him, is the reproduction of the covers used by the second respondent. On this score alone, filing of charge sheet under Section 65 of the Copyright Act, 1957, is abuse of process of law.

13.In fact, Copyright law, is in essence, concerned with the negative right of preventing the copyright of physical materials existing in the field of literature and arts. Its object is to protect the writer and artist from the unlawful reproduction of his material. Under Section 13 of the Copyright Act, 1957, copyright subsists in original literary, dramatic, musical and artistic works. The meaning of 'copyright' has been given in Section 14, which means, the exclusive right in a particular matter referred to therein subject to the provisions of the Act. Looking at the allegations made in the complaint, it would be difficult at this stage to come to the conclusion that the provisions of the Copyright Act are not attracted to the allegations contained in the complaint.

14.In the present case, it will at once be seen that if, as alleged by the second respondent, the petitioner is infringing his copyright, he is committing an act, which is contrary to law, and consequently an injury. It would also be obvious that the second respondent cannot protect himself from the consequence of such an injury except by an injunction, which is one of the remedies open to him under the Copyright Act. On this view, it also follows that an injunction in the present case is the appropriate relief and I do not think that is necessary to demonstrate that unless the petitioner is restrained by a temporary injunction, the second respondent will suffer an irreparable injury or inconvenience by the production of the covers in question.

15.Further, on a conjoint reading of the above said provisions, it is clear that mere possession of the labels, which is different from the labels used by the second respondent, is not sufficient to prove the allegation levelled against the petitioner. Further, on going through the details available in the copy of the Registration Certificate issued in favour of the petitioner under the Trade Marks Act, 1999, it appears that the licence to use the word 'Anandhapurani' was given to him. In the said circumstances,



permitting to continue the proceedings in S.T.C.No.9 of 2018, on the file of the Judicial Magistrate Court No.III, Thoothukudi, against the petitioner is unnecessary.

16.In fact, for establishing a copyright, a creativity standard applies is not that something must be novel or non-obvious, but some amount of creativity in the work to claim a copyright is required. It does require a minimal degree of creativity. Therefore, this Court is of the considered view that filing of charge sheet against the petitioner is abuse of process of law. Hence, the proceedings initiated against the petitioner in S.T.C.No.9 of 2018, on the file of the Judicial Magistrate Court No.III, Thoothukudi, is liable to be quashed and accordingly, the same is quashed.

17.In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.III,
Thoothukudi.

2.The Inspector of Police,
IPREC - CBCID, VPC - Cell,
Tirunelveli,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.RAGUVARAN GOPALAN, Advocate (SR-15910[F] dated
04/09/2020)

order in
CRL OP(MD)No.2724 of 2018
03.09.2020

VB (09.09.2020) 6P 5C