SUPREME COURT OF INDIA

M.R. SHAH, B.V. NAGARATHNA, JJ.

M/s Knit Pro International – Appellant

Versus

The State of NCT of Delhi and Another – Respondents

Criminal Appeal No. 807 of 2022

20.05.2022

(i) Copyright Act, 1957 , S. 63 and 65 – Offence under Section 63 of Copyright Act is a cognizable and non-bailable offence – Offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine – Therefore, the maximum punishment which can be imposed would be three years – Therefore, the learned Magistrate may sentence the accused for a period of three years also. – In that view of the matter considering Part-II of the First Schedule of the Cr.P.C. if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence – Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable – Cr.P.C. First Schedule , Part-II.

(ii) Cr.P.C. First Schedule , Part-II – If the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence – Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable – Where the offence is punishable for imprisonment for three years, the offence shall be cognizable and non-bailable.

Cases Referred:

1. Rakesh Kumar Paul vs. the State of Assam, (2017) 15 SCC 67 – Distinguished [Para 3.1] – Referred By Intelligence Officer, Narcotics Control Bureau vs. Sambhu Sonkar, AIR 2001 SC 830 – Relied [Para 3.2] – Referred By

For the Appellant(s) : Mr. R.K. Tarun, Adv. Capt. S. Rani, Adv. Mr. Rohit Shukla, Adv. Ms. Pinky, Adv. Mr. Abhay Sholanki, Adv. Mr. Yadav Narender Singh, AOR. For the Respondent(s) : Mr. Ajay Marwah, AOR Mr. Tapan M., Adv. Mr. Agush Gupta, Adv. Mr. Aditya Srinivasan, Adv. Mr. Rajan Kr. Chourasia, Adv. Mr. Anukalp Jain, Adv. Mr. Gurmeet Singh Makker, AOR

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.11.2019 passed by the High Court of Delhi at New Delhi in Writ Petition (Crl.) No. 3422 of 2018 by which the High Court has allowed the said writ petition and has quashed the FIR bearing No. 431 of 2018 filed against the respondents for the offences under Sections 63 and 65 of the Copyright Act, 1957 (hereinafter referred to as 'Copyright Act') the original complainant has preferred to the present appeal.

2. That the appellant herein filed an application under Section 156(3) Cr.P.C. and sought directions from the learned Chief Metropolitan Magistrate for the registration of FIR against the respondent No. 2 herein for the offences under Sections 51, 63 and 64 of the Copyright Act read with Section 420 of the IPC. By order dated 23.10.2018, the learned CMM allowed the said application and directed the concerned SHO to register the FIR under the appropriate provision of law. That pursuant to the said order, FIR bearing No. 431 of 2018 came to be registered with PS Bawana. That thereafter respondent no. 2 herein-original accused filed the present petition before the High Court with a prayer to quash the criminal proceedings on various grounds. However, at the time of hearing, the original writ petitioner – accused prayed to quash the criminal proceedings on the sole ground that the offence under Section 63 of the Copyright Act is not a cognizable and a non-bailable offence.

2.1 By the impugned judgment and order the High Court has allowed the said writ petition and has quashed the criminal proceedings and the order passed by the learned CMM passed in Criminal Application under Section 156(3) Cr.P.C. by holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence.

3. Mr. R.K. Tarun, learned counsel appearing on behalf of the appellant has vehemently submitted that the High Court has committed a grave error in observing and holding that the offence punishable under Section 63 of the Copyright Act is a non-cognizable offence and it does not fall within Part-II of the First Schedule of the Cr.P.C.

3.1 It is submitted that while holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence, the High Court has not properly appreciated the decision of this Court in the case of *Rakesh Kumar Paul vs. State of Assam,* (2017) 15 SCC 67 and has misinterpreted the said judgment.

3.2 It is submitted that in the case of *Intelligence Officer, Narcotics Control Bureau vs. Sambhu Sonkar*, AIR 2001 SC 830, it is specifically observed and held by this Court that the maximum term of imprisonment that is prescribed for the said offence, cannot be excluded for the purpose of classification of the offence.

3.3 It is submitted by learned counsel for the appellant that for the offences under Section 63 of the Copyright Act, the punishment shall be imprisonment for a term which shall not be less than six months but which may extend to three years. It is submitted that therefore the punishment of three years can be imposed for the said offence. It is submitted therefore that Part-II of the First Schedule of the Cr.P.C. would be applicable. It is submitted that only

in a case where the offence punishable with imprisonment for less than three years or with fine only offence shall be non-cognizable. It is submitted that as per Part-II of the First Schedule of the Cr.P.C. if the offence is punishable with imprisonment for three years and upwards but not less than 7 years, the offence would be cognizable. It is submitted that in that view of the matter the High Court has committed a grave error in quashing the FIR while holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence.

4. Present appeal is vehemently opposed by Shri Siddhartha Dave, learned Senior Advocate appearing on behalf of respondent no. 2.

4.1 Shri Dave, learned Senior Counsel has heavily relied upon the decision of this Court in the case of Rakesh Kumar Paul (supra). It is submitted that in the aforesaid decision the expression “not less than 10 years” has been interpreted by this Court and it is held that the said expression would mean punishment should be 10 years and therefore, Section 167(2) (a)(i) would apply. It is submitted that in that view of the matter the High Court has not committed any error in holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence.

4.2 In the alternative, it is prayed by Shri Dave learned Senior Advocate appearing on behalf of respondent no. 2 that if this Court holds that the offence under Section 63 of the Copyright Act is a cognizable offence, in that case, the matter may be remanded to the High Court to decide the writ petition on merits on other grounds, as no other grounds were pressed into service.

5. We have heard learned counsel for the respective parties at length.

5.1 The short question which is posed for consideration before this Court is, whether, the offence under Section 63 of the Copyright Act is a cognizable offence as considered by the Trial Court or a non-cognizable offence as observed and held by the High Court.

5.2 While answering the aforesaid question Section 63 of the Copyright Act and Part-II of the First Schedule of the Cr.P.C. are required to be referred to and the same are as 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.

(b) any other right conferred by this Act, except the right conferred by section 53A 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 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."

II – CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	*Cognizable or non-cognizable*	*Bailable or non-cognizable*	*By what court triable*
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*	*Magistrate of the first class*
If punishable with imprisonment for less than 3 years or with fine only.	*Non-cognizable*	*Bailable*	*Any Magistrate*

5.3 Thus, for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter considering Part-II of the First Schedule of the Cr.P.C. if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable. In view of the above clear position of law, the decision in the case of *Rakesh Kumar Paul* (supra) relied upon by learned counsel appearing on behalf of respondent no. 2 shall not be applicable to the facts of the case on hand. The language of the provision in Part-II of First Schedule is very clear and there is no ambiguity whatsoever.

6. Under the circumstances the High Court has committed a grave error in holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence. Thereby the High Court has committed a grave error in quashing and setting aside the criminal proceedings and the FIR. Therefore, the impugned judgment and order passed by the High Court quashing and setting aside the criminal proceedings/FIR under Section 63 of the Copyright Act deserves to be quashed and set aside.

7. In view of the above discussion and for the reason stated above, it is observed and held that offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence. Consequently, the impugned judgment and order passed by the High Court taking a contrary view is hereby quashed and set aside and the criminal proceedings against

respondent no. 2 for the offence under Sections 63 and 64 of the Copyright Act now shall be proceeded further in accordance with law and on its own merits treating the same as a cognizable and non-bailable offence.

8. Present appeal is allowed to the aforesaid extent. However, in the facts and circumstances of the case there shall be no order as to costs.

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