

(1965) 03 MAD CK 0013
In the Madras High Court
Case No : Criminal Appeal No. 459 of 1963

A. Susiah	Vs	APPELLANT
S. Muniswamy		RESPONDENT

Date of Decision : 30-03-1965

Acts Referred:

Copyright Act, 1957 — Section 13, 14, 17, 19, 2

Citation : AIR 1966 Mad 175 : (1966) CriLJ 553 : (1965) 2 MLJ 377

Hon'ble Judges : Kunhamed Kutti, J

Bench : Single Bench

Judgement

Kunhamed Kutti, J.—This is an appeal against acquittal. The appellant filed a complaint against the respondent for an offence punishable

under S. 63 of the Copyright Act, 1957, alleging that the respondent had infringed his copyright in what he claimed as a literary work called

Topics in World History"" of which he along with one Mr. S. Rajendran were joint authors. This work was first published by the appellant and Mr.

Rajendran in 1957; but two other editions of the same work are said to have been published by the respondent, one printed at Vasu Press,

Triplicane, and the other, at the Midland Printers, Vepery, Madras. The appellant contended that since the respondent infringed the copyright he

committed an offence under S. 63 and that the infringing copies are liable to be seized under S. 64 of the Act.

2. The Seventh Presidency Magistrate who tried the case found that ""The topics in World History"" is an original literary work and that the

respondent had reprinted the book at Vasu Press of P.W. 2 and also at the Midland Printers of P.W. 3. The plea of the respondent was that the

joint author of the work, Rejendran, had permitted him to reprint the book and

therefore, he had not infringed any copyright. The respondent also examined himself as D.W. 2 and stated inter alia that he had met the appellant in 1961 and he had agreed to his publishing the book. The learned magistrate does not appear to have very much relied upon this plea. On the other hand, he seems to have considered the question and decided the case from the point of view of the rights of one of the joint authors to sustain a criminal action for infringement. According to him the Act sets out a clear distinction between civil and criminal remedies. It is only where a party wants to seek his remedy in a Civil Court, it is not incumbent on him to make the joint owner a party to such suit. But this remedy is not specifically mentioned in Chapter XIII of the Act, so that when a person has to seek his remedy in a criminal Court he has to implead the joint author as well. He further observed that the right claimed by the appellant is an individual one which cannot be demarcated and that when a person is prosecuted for infringement of a copy-right, it must be established that the complainant has absolute right over the copyright. On this reasoning, he took the view that the appellant, by himself, could not have taken action against the respondent criminally and that the joint author Rajendran should also have been impleaded in the action. The acquittal of the respondent was based mainly on this line of reasoning.

3. I am afraid, the aforesaid view of the trial magistrate is not supportable on a reading of the relevant provisions of the Act. Ch. XI of the Act deals with infringement of copyright; and on the facts proved in this case it can hardly be contended that there was no infringement of the work in the absence of a licence, in writing, granted by the owners of the copyright when the work in question has been found to be a literary work. Two kinds of remedies are made available in respect of such infringement; one civil and the other criminal and they are dealt with in Ch. XII and XIII under headings ""Civil Remedies"" and ""Offences"".

4. What is required under S. 63 of Ch. XIII for an action in respect of an offence is, to quote the language of the section; ""knowingly infringes or abets the infringement of--(a) the copyright in a work; or (b) any other right conferred by this Act....."". The word ""infringes"" has not been defined in the Act; but "infringing copy", so far as is relevant for our purpose, has been defined in S. 2(m) of the Act to mean, in relation to literary

work, a reproduction thereof otherwise in the form of a cinematograph film, if such reproduction is made in contravention of the provisions of the

Act. Under S. 13, a copyright shall subsist throughout India in literary works and this right, for the purpose of the Act as defined in S. 14, means

the exclusive right, by virtue of, and subject to the provisions of the Act (to quote only the relevant portion) to do and authorise the doing of the

following acts, viz., (i) to reproduce the work in any material form; and (ii) to publish the work. Section 17 of the Act declares the author of a

work as the first owner of the copyright therein; and S. 18 deals with the assignment of copyright. The mode of such assignment as laid down by S.

19 should be in writing signed by the assignor or by his duly authorised agent and unless this was done, no assignment of the copyright in any work

shall be valid.

5. The only relevant points for the learned magistrate to consider therefore were (1) whether there was any infringement of the copyright in the

work concerned in this case and (2) whether such infringement was with the requisite knowledge. On both these points, on the evidence accepted

by the learned Magistrate, he could have come only to an affirmative conclusion; but he chose to decide the case by drawing a distinction between

civil remedies and offences, relying for his support on S. 56 which appears under Ch. XII and relates to production of separate rights. That section

is to the effect that "subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different

persons, the owner of any such right shall to the extent of that right, be entitled to the remedies provided by this Act and may individually enforce

such right by means of any suit, action or proceeding without making the owner of any other right a party to such suit, action or proceeding". I am

unable to share the learned Magistrate's view that where an offence has been committed in respect of a literary work of two joint authors, as for

instance, the infringement of copyright, one of them who is aggrieved, would not be entitled to maintain a criminal action for the offence.

6. In this particular case, the plea taken by the respondent was wholly untenable. The reproduction of the work in which undoubtedly both the

appellant and Mr. Rajendran had copyright amounted to an infringement of the said right. The plea that Rajendran had given his consent and that

he had paid him a sum of Rs. 200 had not been substantiated by him by calling in Rajendran. As a matter of fact, there was nothing in writing

granted by Mr. Rajendran, though it would still be a question even if there was any whether in the absence of a similar grant in writing from the

appellant, the respondent would be entitled to reproduce the work as had been done by him.

7. At one stage, the appellant, it would appear, prepared to condone the offence; but another edition of the work was brought out by the

respondent with impunity. In the circumstances, I have no doubt that the respondent had committed an offence punishable under S. 63 of the Act.

Accordingly, I set aside the acquittal of the respondent, convict him under S. 63 of the Copyright Act, 1957, and sentence him to pay a fine of Rs.

100 within three weeks from this date; in default, he will undergo simple imprisonment for four weeks. There is no material on record to invoke S.

64 of the Act, as prayed for by the appellant.

8. Appeal allowed.