

(2004) 02 MP CK 0014

In the Madhya Pradesh High Court

Case No : M.Cr.C. No's. 2430, 2861 and 3891 of 1997

B.K. Dani and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Copyright Act, 1957 — Section 45, 63
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2005) CriLJ 876 : (2004) 3 MPLJ 580 : (2004) 4 RCR(Criminal) 458

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Sardar Rajendra Singh and R.K. Shukla, for the Appellant; Wakeel Khan and D.S. Chouhan, for the Respondent

Final Decision : Allowed

Judgement

S.K. Pande, J.

By these petitions u/s 482, Cr. P.C. petitioners request for quashing of Criminal Case No. 498/95, pending in the Court of MFC, Bhopal.

Petitioners are publishers and book sellers. In respect of model questions and answers said to have been published and sold by petitioners, Secretary, Board of Secondary Education, Madhya Pradesh on 14-10-1994, lodged a report with Maharana Pratap Nagar Police Station alleging that the petitioners have committed Offence by infringing the copyright in a work which consisted of a book on model questions and answers published by it. It was further alleged that the aforesaid publication of the petitioners was without permission or consent of the Board. On the report aforesaid, offence u/s 63 of the Copyright Act, 1957 has been registered and petitioners have been charge-sheeted. Arising out of this, they are facing trial in Criminal Case No. 498 / 95 before the MFC, Bhopal. On appearance, petitioners contended that there has been no infringement of copyright as such they be discharged for an offence u/s 63 of the Copyright Act. However, the MFC proceeded with the framing of charges against the petitioners.

Criminal Revision Nos. 88/96, 89/ 96 were accordingly preferred by petitioners B.K. Dani and Oswal Book Agency before VII ASJ. However, vide order dated 31-8-96, the aforesaid criminal revisions were dismissed. It has been contended that the respondent-Board of Secondary Education, Bhopal in the absence of registration of copyright cannot claim infringement. Even according to the charge-sheet, the publication of the petitioners were in fact never compared with the model questions and answers as has been published by the Board.

Admittedly, in respect of the publication of the Board, there had been no registration of copyright u/s 45 of the Copy-Right Act, 1957. A Division Bench of this Court in *Mishra Bandhu Karyalaya and Others Vs. Shivratanlal Koshal*, , held :

There was no provision for registration of copyright under the 1914 Act. A person had an inherent copyright in an original composition or compilation without registering it. *Balantrapur Venkatarao Vs. Valluri Padmanabha Raju and Others*, , Rel. on.

Under the Act of 1957, the registration of the book with the Registrar of Copyrights is a condition for acquiring copyright with respect to it. A copyright in a book now is secured only if it is an original compilation and has been duly registered according to provisions of 1957 Act. Once it is so registered the author is deemed to acquire property right in it. The right arising from the registration of the book can be the subject-matter of civil or criminal remedy, so that, without it the author can have no rights nor remedies though his work may be original one." A Single Bench of this Court in *Shiv Lal Agarwals & Co. Publishers, Indore v. State of M. P.* in M.Cr.C. No. 4765/96 also held that registration of copyright is a condition acquiring copyright in a book. Therefore, in the absence of registration, the respondent-Board of Secondary Education, M.P., Bhopal never acquired copyright in respect of model question and answers said to have been published by it.

In the instant case, as has been pointed out even according to the charge-sheet filed, the publication of the petitioners were in fact never compared with the publication of the Board and, therefore, there was no basis to allege and infer that there was deceptive similarity between the two publications. In the circumstances, there appears to be no legal basis to frame a charge for infringement of the copyright u/s 63 of the Copyright Act, 1957 against the petitioners. Thus, from the allegations as levelled and documents taken at their face value, there being no material to support the charge against the petitioners. It would be clearly an abuse of the process of Court to permit the case to proceed further. So far as the petitioners are concerned, the allegation of breach of copyright was misconceived.

Accordingly, petitions u/s 482, Cr. P.C. succeed and are allowed. Proceedings in Criminal Case No. 498/95 of the Court of MFC, Bhopal against the petitioners are quashed and they shall stand discharged.