
(1984) 05 CAL CK 0009
In the Calcutta High Court

Govt. of West Bengal

APPELLANT

Vs

Nitya Gopal Basak and Others

RESPONDENT

Date of Decision : 04-05-1984

Acts Referred:

Copyright Act, 1957 — Section 44, 45, 63

Trade and Merchandise Marks Act, 1958 — Section 50, 78, 79

Citation : (1985) CriLJ 202

Hon'ble Judges : Monoj Kumar Mukherjee, J

Bench : Single Bench

Judgement

Monoj Kumar Mukherjee, J.—Nitya Gopal Basak, Biswanath Basak and Hari Gopal Basak, the three respondents in this appeal, were placed on trial before the learned Metropolitan Magistrate, 11th Court, Calcutta, pursuant to a charge-sheet submitted by the Police, with charges under & 63 Copyright Act, 1957, and u/s 78, Trade and Merchandise Marks Act, 1958, framed against them. The former was based on the allegation that they knowingly infringed the copyright of the Bengali book "Adarshalipi-O Saral Barna parichay" owned by Sri Sita Nath Basak. The other was for falsifying trade mark in respect of the said book and for being in possession of dyes, blocks and other instruments for that purpose. Against Nitya Gopal Basak and Biswanath Basak a separate charge u/s 79, Trade and Merchandise Marks Act 1958, was also framed on the ground that they had sold and had in their possession for sale, and for other purposes of trade, spurious copies of the said book. The trial ended in an order of acquittal and aggrieved thereby the State of West Bengal through its Superintendent and Remembrancer of Legal Affairs, filed this appeal

2. While recording the order of acquittal in respect of the charges framed under the Trade and Merchandise Marks Act (T.M. Act for short) the learned Magistrate observed that u/s 50 of the T. M Act it was obligatory on the part of the owner of the trade mark to have it registered within a period of 3 years from the date of coming into force of the Act, that is from 18-10-58, and since there was nothing on record that the trademark was registered within the stipulated period no

offence could be said to have been committed under the T. M Act As regards the charge u/s 63 of the Copyright Act (C.R. Act) the learned Magistrate similarly held that as the copyright was not registered as required under Sections 44 and 45 of the C.R. Act the prosecution was not maintainable. The learned Magistrate also held that in the absence of any expert opinion it was not possible for the Court to come to a finding that the materials of the book, in respect of which copyright was claimed were reproduced in the books printed and published by the respondents.

3. Mrs. Moitra appearing for the appellant did not challenge the observations of the learned Magistrate so far as they related to the charges under the T.M act After going through the relevant provisions of the said Act I am also in agreement with the learned Magistrate that in the absence of any evidence to show that the trade mark in respect of the book in question was registered the respondents cannot be said to have committed any of the two offences under the T.M Act, alleged against them.

4. As regards the charge u/s 63 of the C.R. Act Mrs. Moitra, however, assailed both the findings of the learned Magistrate. She first contended that registration under C.R. Act was optional and therefore the learned Magistrate could not have recorded an order of acquittal in favour of the respondents for absence of such registration in favour of the de facto complainant Mr. Sur, appearing for the respondent, fairly conceded that in view of the provisions of Sections 44 and 45 of the C.R. Act he was unable to support the above finding of the learned Magistrate Mrs. Moitra also strongly urged that considering the nature of the publications and contents of the books the learned Magistrate was not justified in acquitting the respondents for absence of any expert opinion to prove piracy. According to Mrs. Moitra, if the learned Magistrate had cared to go through the offending publications he would have found that there were patently strong similarities in the lay outs and the contents which clearly indicated that there was an infringement of the copyright which was admittedly held by the de facto complainant Mr. Sur did not dispute the fact that the de facto complainant had a copyright in respect of the book in question but he contended that there was no such similarity from which it could be conclusively inferred that the respondents infringed the copyright

5. In view of the respective contentions of the parties the only question that falls for determination in this appeal is whether the learned Magistrate was justified in acquitting the respondents of the charge u/s 63 of the C.R. Act for absence of any expert opinion to prove that the offending books of the respondents were reproduction of the book printed and published by the de facto complainant It appears from the impugned judgment that in insisting upon an expert opinion in deciding such a case, the learned Magistrate relied upon a Division Bench judgment of this Court in the case of Sita Nath Basak Vs. Mohini Mohan Singh and Others, . It is interesting to find that the case arose out of the copyright which is the subject matter of this appeal It was held therein that the Court

should be reluctant to sit as an expert to decide the question of infringement of copyright and the proper course, in ordinary circumstances, was to get the opinion of experts, On a careful perusal of the judgment in that case I find that the above view was expressed primarily on the ground that the Court would have to take great pains and would have to waste its valuable time to ascertain how far the piracy extended and it was desirable therefore to seek opinion of expert to compare the works and to ascertain the details to avoid excessive expenditure of time and labour. The Court also pointed out that such a course was also necessary as the Court might not be conversant with the alphabets of the book.

6. In view of the above judgment, this Court, in ordinary circumstances, would have referred the matter to the learned Magistrate to get the evidence of experts to ascertain whether the offence under the C.R Act was committed or not for the learned Magistrate was not justified in recording an order of acquittal for absence of any expert opinion When the books were before him the Court could have, on its own motion, examined such experts for ends of justice." But then, considering the fact that the offences were allegedly committed in the year 1972 and the case was instituted in 1973 such a direction would cause further delay. That apart considering the contents of the book I do not think it necessary to get the evidence of experts, particularly when this Court is acquainted with the alphabets. As pointed out in the judgment of Sita Nath Basak (Supra) in ordinary circumstances expert opinion is necessary particularly when the contents of the book are such that the Court, being not an expert cannot decide whether there is a piracy or not Considering all these facts and aspects, I proceed to decide whether the books printed and published by the respondents can be said to have infringed the copyright of the book owned by the de facto complainant. Before so doing it will be necessary to state the nature and contents of the books.

7. The book, in respect of which the de facto complainant has the copyright, is meant to introduce to the children the Bengali alphabets and letters, the vowels and the consonants, the combinations of the consonants with vowels, short sentences beginning with the alphabets ; and short and simple stories written on those basis. To enable the children to learn the alphabets easily and comfortably, pictorial descriptions are also given. The offending books also seek to serve the same purpose. It has, therefore, to be ascertained whether the contents and forms of the books are so noticeably similar as to prove infringement of the copyright. It has to be borne in mind that the sources of both the books are the same, namely, the Bengali alphabets ; and the purpose which they seek to serve, namely, imparting knowledge to the children about the Bengali alphabets and their user is the same. In such circumstances, it is inevitable that there would be similarities, as both would have to contain matters of common knowledge and it is difficult to make variations in respect of such materials either in their substance or in their presentation Having carefully perused the offending books and comparing the same with the books of the de facto complainant in those perspectives, I am unable to hold that the copyright of the de facto complainant has been infringed

8. Needless to say, the sequence of alphabets is the same in the two books, but whenever the mode of presentation or illustrations admitted of a variation, there is abundant evidence of such variation in the respondents books which show independent exercise of industry, intelligence and skill on their part. Mrs. Moitra however brought to my notice similarities in various pages of the books, regarding juxtaposition of vowels and consonants and similar such matters. I have looked into this aspect of the matter in the light of the contents ; and it appears to me that those are unavoidable, as the contents originate from common source and common sequence, and are meant for easy learning. I am, therefore, unable to hold that the respondents have infringed the copyright of the book of the de facto complainant so as to make them liable for punishment u/s 63, Copyright Act.

9. For the foregoing discussions I dismiss this appeal