

(1965) 03 PAT CK 0010

In the Patna High Court

Case No : Criminal Revision No's. 1600, 1601 and 1602 of 1963

Jagdish Prasad Gupta

APPELLANT

Vs

Parmeshwar Prasad Singh and Others

RESPONDENT

Date of Decision : 30-03-1965

Acts Referred:

Bihar School Examination Board Act, 1952 — Section 6(2)
Copyright Act, 1957 — Section 13(1), 17, 2
Criminal Procedure Code, 1898 (CrPC) — Section 202

Citation : AIR 1966 Patna 33 : (1966) CriLJ 54

Hon'ble Judges : Tarkeshwar Nath, J

Bench : Single Bench

Advocate : S.N. Sahai and Nawal Kishore Pd. Sinha, for the Appellant; Devendra Pd. and Surendra Pd., No. 2 (in Nos. 1600 and 1602) and Nageshwar Pd., B.K. Banerjee, M.N. Mitra, Akhourri Basudeva Pd. and S.N. Misra, (in No. 1601), for the Respondent

Final Decision : Allowed

Judgement

Tarkeshwar Nath, J.—These are three applications directed against separate orders dated 1-6-1963 passed by the Sub-divisional Magistrate, Sadar Patna, dismissing the petitions of complaint filed by the petitioner. The complainant is the petitioner in each case but the accused persons are different. One Tapan Kumar Bose (accused) as well was impleaded as opposite party 3, Criminal Revision 1601 of 1963, but the application stands dismissed against him for default and non-compliance of an order passed by this Court for the filing of the process and supplying correct address of that opposite party.

The petitioner filed three petitions of complaint on 11-12-1962 for summoning the opposite parties in respect of the offences u/s 63 of the Copyright Act (14 of 1957). His case in each complaint was that the Bihar School Examination Board reserved its copyright in respect of every question paper for its secondary examination and in token of it the words "copyright reserved" were printed on each question paper for the various subjects in which the examination were held.

The old question papers of the said Bihar School Examination Board were compiled together and bound in booklet form for sale so that the examinees might make use of those question papers.

The petitioner was the sole proprietor of the concern named Vidya Kendra located in Muradpur Mahalla in the town of Patna and this concern published and sold books of various kinds for the convenience of the students. Vidya Kendra was appointed the sole agent for the sale of old question papers of the Bihar School Examination Board, Patna, on terms and conditions contained in the letter of Board dated 3-7-1962 and by the same letter the said Board assigned its right to the petitioner to institute actions against any person for the infringement of the copyrights of the Board in respect of those question papers.

The petitioner alleged that Parmeshwar Pd. Singh and Dilleshwar Pd. Singh, opposite party in Criminal Revision 1600 of 1963, were the proprietors of the concern Lakshmi Pushtakalaya, Publishers and Booksellers, having their business in Chowhatta Mahalla, Patna, and they were displaying, offering for sale and selling "Free India Test Papers" containing question papers of the Bihar School Examination Board, Patna, in which the Board had a copyright as its owner and thus they had infringed the copyright of the said Board. "Free India Test Papers" for the year 1962-63 contained old question papers of the Bihar School Examination Board and the opposite party had sold on 4-12-1962 to the petitioner a copy of the said papers for Rs. 8.95 nP. and the sale of the same was continuing with the result that the Board and the petitioner had suffered loss.

In the complaint against Ram Mohan Bose and others giving rise to Criminal Revision No. 1801 of 1963 the petitioner alleged that Ram Mohan Bose, Mohit Mohan Bose, Tapan Kumar Bose, Tarit Kumar Bose and Niru Kumar Bose were the proprietors of the concern Bharti Bhawan, Publishers and Booksellers, having their business premises on the Govind Mitra Road, Patna, and they were displaying, offering for sale and selling "Golden Test Questions with Answers" containing question papers of the Bihar School Examination Board, Patna, in which the Board had a copyright as owner and as such the said accused had infringed the copyright of the Board. "Golden Test Questions with Answers" for the year 1962 and 1963 compiled separately contained old question papers of the Bihar School Examination Board and the said accused sold to the petitioner a copy of the said questions and answers for the year 1962 for Rs. 9/- only on 1-12-1962 and the sale of the same was continuing to the detriment of the Board and the petitioner.

In the third petition of complaint giving rise to Criminal Revision No. 1602 of 1963, the petitioner alleged that Har Sahay Mehta and Din Dayal Mehta were the proprietors of the concern Mehta Book Depot, Publishers and Booksellers, and their business was located on the Khazanchi Road, Patna. The said accused were displaying, offering for sale and selling "Mehta Test Papers with Answers" containing question papers of the Bihar School Examination Board, Patna, in which the Board had a copyright as owner and as such the said accused had

infringed the copyright of the Board. "Mehta Test Papers with Answers" for the year 1963 contained old question papers of the said Board and the accused had sold to the petitioner a copy of the "Mehta Test Papers with Answers" for 1983 for Rs. 9.50 nP. on 8-12-1962 and the sale of the same was continuing to the detriment of the Board and the petitioner.

2. The petitioner (complainant) was examined, on solemn affirmation in each case on 11-12-1962 and the Sub-divisional Magistrate by his order dated 11-12-1962 in each case directed Sri J.P. Srivastava, Magistrate first class, to enquire and report by 3-1-1963. The said Magistrate having been posted at Dinapure, the enquiry was entrusted in each case to another Magistrate Mr. A.N. Prasad. Mr. A.N. Prasad made an enquiry and he submitted separate reports dated 28-2-1963 in each case to the effect that a prima facie case u/s 63 of the Copyright Act was made out against the accused of each case and they should be summoned and put on trial.

3. On receipt of the said reports, the Sub divisional Magistrate heard arguments at length on behalf of the complainant and the accused persons and dismissed the complaints under S. 203 of the Code of Criminal Procedure by a separate order dated 1-6-1963 passed in each case. The main reason for dismissing the complaints was that the petitioner failed to make-out a prima facie case that either the Bihar School Examination Board or he had the copyright in respect of the old question papers. In other words, those question papers were set by other persons and they being the authors of those question papers, they alone had the copyright. Being aggrieved by the dismissal of the complaints, the petitioner filed three applications, Criminal Revisions Nos. 156, 144 and 158 of 1963 before the Sessions Judge of Patna for further enquiry and these petitions were heard together but he dismissed them summarily by his order dated 20-7-1983. Hence, the petitioner has filed three applications in revision in this Court for further enquiry. The question in each case is as to whether either the Bihar School Examination Board or the petitioner or the another had a copyright and hence these petitions have been heard together and they will be governed by this judgment.

4. The case of the petitioner (complainant) was that the old question papers of the Bihar School Examination Board were compiled together and bound in a booklet form for sale and the Board had copyright in respect of those question papers. In fact, the words "copyright reserved" were printed on each question paper. The accused in each case had copied those old questions and they were selling the same with the result that they had infringed the copyright of the Board and made themselves liable for art offence u/s 63 of the Copyright Act, 1957. A copy of the "Mehta Test Papers with Answers" was filed before the Sub-divisional Magistrate for showing that the accused persons concerned with the publication of those test papers and answers had reproduced the old question papers of the Bihar School Examination Board and put them to sale. The Sub-divisional Magistrate observed that the facts relating to the publication of the

"Mehta Test Papers with Answers" and their sale were not challenged in course of the enquiry by the accused persons.

Similarly, a copy of the "Golden Test Papers" was filed before the Magistrate to show that the accused concerned with the publication of those papers had reproduced the old question papers of the Bihar School Examination Board and put them to sale. The Sub-divisional Magistrate observed that the facts relating to the publication of the "Golden Test Papers" and putting them to sale were not challenged in course of the enquiry by the accused persons. A copy of the "Free India Test Papers" as well was filed for proving the reproduction of the old question papers of the Bihar School Examination Board and the learned Sub-divisional Magistrate further observed that the facts relating to the publication of the "Free India Test Papers" and sale thereof were not challenged in course of the enquiry by the accused persons.

He then proceeded to find out as to whether a prima facie case for summoning the accused persons was made out. He held that the question papers of the Bihar School Examination Board as produced in each case were original literary works within the meaning of Section 13 of the Copyright Act, 1957. His other conclusion in each case was that the authors of those question papers had copyright but not the Bihar School Examination Board and the petitioner and as such the petitioner had no locus standi for filing these complaints. This finding has been seriously commented upon and contested by learned counsel for the petitioner in these cases.

5. The Copyright Act was enacted to amend and consolidate the law relating to copyright. According to Section 2(y)(i), "work" means a literary, dramatic, musical or artistic work as well. Section 2(o) provides that "literary work" includes table and compilations. Section 13(1)(a) provides that subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in original literary, dramatic, musical and artistic works as well. The old question papers were set by different persons in the previous years but the Magistrate observed that the accused filed "a long list" to show that those questions were copied out from different text books printed much earlier and as such those question papers were not original literary works. In other words, the contention was that those questions were borrowed and copied from different text books and the paper setters did not exert themselves at all and they had mechanically picked out those questions from those text books without applying their mind and intelligence.

The Sub-divisional Magistrate observed that it was really revealing that the picking out of the different questions constituted only a work of compilation by the paper setters appointed by the Board and then he proceeded to consider as to whether such a mediocre work of compilation could be deemed to be an original literary work within the meaning of Section 13(1)(a) of the Indian Copyright Act. He relied on a decision in the case of *University of London Press Ltd. v. University Tutorial Press Ltd.* (1916) 2 Ch D 601, and came to the

conclusion that those old question papers of the Bihar School Examination Board were original literary works as envisaged in Section 13. The relevant observations of Peterson J. in that case were as follows :

"In my view the words "literary work" cover work which is expressed in print or writing, irrespective of the question whether the quality or style is high. The word "literary" seems to be used in a sense somewhat similar to the use of the word "literature" in political or electioneering literature and refers to written or printed matter. Papers set by examiners are, in my opinion, "literary work" within the meaning of the present Act" (Copyright Act of 1911).

Another question which arose for consideration in that case was as to whether the papers set by examiners could be said to be "original literary work". The learned Judge expressed his views in these terms :

"The word "original" does not in this connection mean that the work must be the expression of original or inventive thought. Copy-right Acts are not concerned with the originality of ideas, but with the expression of thought and in the case of "literary work", with the expression of thought- in print or writing. The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work--that it should originate from the author."

In that case, it was not suggested that any of the papers were copied. Professor Lodge and Mr. Jackson had proved that they had thought out the questions which they had set and that they had made notes or memoranda for future questions and drew on those notes for the purposes of the questions which they set. Accordingly the papers which they prepared originated from themselves, and were, within the meaning of the Act, original. In that case, the questions set were not copied from the book and, on the other hand, "those questions were prepared by the examiner for the purpose of testing the students" acquaintance with the book. It was admitted that the papers involved selection, judgment and experience. In those circumstances, it was held that the papers set by Professor Lodge and Mr. Jackson were "original literary work" and proper subject for copyright under the Act of 1911.

This view of Peterson J. with regard to the meaning of the words "original literary work" used in sub-section (1) of Section 1 of the Copyright Act of 1911 was approved by the Judicial Committee in *Macmillan & Co. Ltd. v. K. and J. Cooper* AIR 1924 P. C. 75 . I can usefully quote the following passage from page 39 of Chapter 4 of the *Law of Copyright* by Copinger's and Skone James (9th edition) :

"While the mere copyist of a written document does not obtain copyright in his copy, it is clear that, neither original thought nor original research is essential, and that the standard of originality required is a low one. But it is difficult to state any principle upon which the standard is based. Copyright protection is given to literary, dramatic, musical and artistic works and not to ideas and

therefore it is original skill or labour in execution, and not originality of thought which is required."

In *Jarrold v. Houlston* (1857) 3 K & J 708 : 69 E R 1294 , the plaintiffs were the publishers of a work written by Dr. Brewer, called "the Guide to Science," the purpose of which was to explain upon scientific principles, and by means of questions and answers arranged in the form of a systematic course of instruction, some of the ordinary phenomena of nature, for the benefit of young persons and others who had not received a scientific education. The defendants were the publishers of a book called "The Reason Why." purporting to be written by Mr. Philp, the general scope and design of which was similar to that of the plaintiffs; and in which, as in the plaintiffs', the instruction was given by means of questions and answers, arranged under heads, and in the form of a systematic course. The bill was for an injunction to restrain the defendants from publishing, selling or disposing of any copies or copy of "The Reason Why." The following observation is relevant :

"If anyone by pains and labour collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to those questions, and explanations of those phenomena, whether such explanations and answers are furnished by his own recollection of his former general reading, or out of works consulted by him for the express purpose, the reduction of questions so collected, with such answers under certain heads and in a scientific form, is amply sufficient to constitute an original work of which the copyright will be protected. Therefore, I can have no hesitation in coming to the conclusion that the book now in question is in that sense an original work, and entitled to protection."

Learned counsel appearing for the accused-opposite parties in Criminal Revision Nos. 1600 and 1602 urged that the paper-setters of these questions having copied those questions from some text books, their work could not be deemed to be original. The Magistrate took the view that the work of compilation was a mediocre one, but at the same time this work of compilation involved labour and skill. A syllabus is prescribed for the examination in each subject and in setting questions the paper-setter has to keep in view the syllabus and the questions must be set within the four corners of that syllabus. The questions should not be lengthy as they have to be answered within specified hours. The questions should be such so that they cover the entire syllabus as far as practicable. These things have to be kept in constant view by a paper-setter and he has to devote himself and apply his mind for the purpose of selecting and arranging the questions, even if he chooses to take the help of some text books for picking out his questions. Section 2(c) itself indicates that "literary work" includes compilations as well. I am accordingly of the view that the Magistrate was right in holding that the question papers of the Bihar School Examination Board were original literary works within the meaning of Section 13(1)(a) of the Copyright

Act, 1957.

8. The learned Magistrate took the view in these cases that the paper setters had the copyright in respect of these question papers and not the Bihar School Examination Board. He further held that the complainant failed to adduce any evidence with regard to the copyrights of the said Board and mere printing of the words "copyright reserved" on those question papers could not give such a right either to the Board or to the complainant. Learned counsel for the petitioner contested this finding and urged that the Magistrate had not properly appreciated the decision in (1916) 2 Ch D 601 . The next question which arose in that case was as to in whom did the copyright in the examination papers vest when they were prepared? Section 5 of the Copyright Act, 1911, was considered and section 5 (1) provided that subject to the provisions of that Act

"the author of a work shall be the first owner of the copyright therein". The exception provided in section 5 (1) (b) also was taken into consideration and it was held that the examiners were no doubt employed by the University of London, and the papers were prepared by them in (he course of their employment, but that exception did not apply as the examiners did not prepare the papers "under a contract of service."

Professor Lodge and Mr. Jackson were regularly employed in other educational establishments and were not part of the staff of the London University, and it was not suggested that the other examiners were on the staff of the University. Accordingly it could not be said that the examiner could be appropriately described as the servant of the University or that he prepared those papers under a contract of service. A distinction was made between a person who was employed under a contract of service and a person who was employed on a contract for service. Section.

5 (2) of that Act provided that the owner of the copyright in any work might assign the right, either wholly or partially and either generally or subject to limitations, but the assignment could not be valid unless it was in writing and signed by the owner or his agent. It was held (in that case) that the examiner was the first owner, and he had not assigned the copyright in writing signed-by him or his agent. The copyright therefore remained in the examiners, subject to the obligation under the contract of employment to assign it to the University or as it might direct.

It was observed that in order to sue for infringement of the copyright, the plaintiff company had to either obtain a proper assignment of the copyright or join the examiners, who were the legal owners of the copyright, as parties. The plaintiff company had not obtained an assignment but it had in the course of the action joined Professor Lodge and Mr. Jackson as co-plaintiffs. It was thus held that the plaintiff could sue for infringement of the copyright in the papers prepared by Professor Lodge and Mr. Jackson, but, in the absence of the other examiners, the action must fail in respect of the copyright in the papers which

were composed by them. This decision undoubtedly lays down that the person who sets the question paper is the author of it and as such he has got the copyright in that question paper, Learned counsel for the petitioner urged that that decision would be of no avail inasmuch as the question for consideration in that case was as to who was the owner of copyright in accordance with section 5 of the Copyright Act of 1911 but not according to the present Copyright Act of 1957.

But, in the present Act as well there is a similar provision inasmuch as Section 17 provides that.

"subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein"

and there are certain provisos to this section. Clause (c) of the proviso provides that

"in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which Clause (a) or Clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein".

Proviso (b) of section 5 (1) of the Copyright Act, 1911, also contained the words "under a contract of service" and the same words are to be found in proviso (c) of Section 17. It was not disputed that the question papers were set by the paper setters appointed by the said Board. Section 6 (1) of the Bihar School Examination Board Act (Bihar Act VII of 1952) provides that the Board shall be responsible for making all arrangements for the conduct of examinations held under this Act. and generally for formulating ways and means for the purpose of improving the machinery for the assessment of the attainments of the students studying in high schools. Sub-section (2) (a) provides that

"in particular and without prejudice to the generality of the foregoing powers, the Board shall, in consultation with the Committees of Courses for different subjects constituted u/s 7, prepare lists of persons suitable for appointment as paper-setters, moderators, examiners, tabulators, supervisors and invigilators for examinations and shall make such appointments".

Accordingly the Board appointed suitable persons as paper setters and it is they who set these questions.

"Author" has been defined in Section 2(d) of the Copyright Act, 1957, and this expression means the author of the work in relation to a literary or dramatic work. The word "author", according to the dictionary, means originator or writer of a book or treatise. It is thus obvious that the persons who set these question papers were the authors of this work and according to Section 17, those authors were the first owners of the copyrights therein. I am therefore of the view that the learned Magistrate was right in holding that the paper-setters were the first owners of the copyrights in those question papers.

7. The old question papers for different years were bound in a booklet form and title pages were given to these booklets. These old questions were undoubtedly printed by the Board. These old questions were collected together and it was urged on behalf of the petitioner that this compilation was done by the Board and the Board had thus a copy right on that basis, in answer to this, Mr. Nageshwar Prasad rightly pointed out that according to the petition of complaint the copyright of the Board was claimed in respect of the question papers and not in their compilation and binding in the form of a booklet. Raghubans Sahai, the Superintendent of the Board was examined on behalf of the complainant at the stage of the enquiry and he stated that the Board had the copyright in the question papers set at the secondary school examinations of Bihar School Examination Board. He stated further that on each question paper the words "copyright reserved" were printed at the top indicating that the Board had the copyright. The old question papers of the Board in four booklets were marked exhibits 2 to 2/c. It thus appears that copyright of the Board was claimed in the question papers and not in the compilation thereof in the form of booklets.

8. Section 14(1) of the Copyright Act, 1957, provides that for the purposes of this Act "copyright" means

"the exclusive right, by virtue of, and subject to the provisions of, this Act,--(a) in the case of a literary, dramatic or musical work to do and authorise the doing of any of the following acts, namely : (i) to reproduce the work in any material form; (ii) to publish the work ;"

The old question papers were set by the paper-setters but they were published by the Board. The learned Magistrate came to the conclusion that the complainant failed to adduce any evidence that the Board had acquired the copyrights from the authors of those question papers. The words "copyright reserved" were no doubt printed on the question papers, but that was not deemed to be sufficient to support the case of the complainant that the Board had a copyright.

Section 17 (d) of the Bihar School Examination Board Act 1952, provides that the Board may, after previous publication and subject to confirmation by the State Government, make regulations consistent with this Act and the rules made thereunder to provide for the conditions and mode of appointment and duties of examiners and the conduct of examinations. The Board had thus power to make regulations for various matters and it could fix the terms of appointment of a paper-setter and examiner. It was open to the Board to lay down a term at the time of appointment of a paper-setter that he will not have the copyright and the Board itself will have that right in a question paper. A person could be appointed as a paper-setter on those terms and if the person appointed agreed to those terms, then the position would be that from the very time of his appointment he relinquished and surrendered his copyright, although he happened to be the author of a question paper.

In case the Board did not make any regulation, Section 18 of the Bihar Act VII of 1952 provides that the regulations made under the Patna University Act, 1917, appertaining to the conduct of the Matriculation Examination which were in force immediately before the said Act ceased to be in force, shall continue to be in force so far as they were not inconsistent with the provisions of Bihar Act VII of 1952, subject to such modifications and adaptations if any, as might be made therein by the Board and approved by the State Government and those regulations would be deemed to be the regulations made under the corresponding provisions of Act VII of 1952.

The appointments had thus to be made, either according to the regulations made under the Patna University Act, 1917, or those made by the Board. In any event, the person appointed as paper-setter could relinquish his copyright in the very beginning. The letter appointing a person as paper setter and the communication made to him in that connection would indicate the terms of appointment. Similarly, the letter sent by way of reply accepting the offer of the Board, and indicating willingness to work as paper-setter can be useful for finding out as to which rights were retained by the paper-setter and which were relinquished by him. These cases have not been examined from this point of view and these matters as well have to be looked into and further enquiries have to be made on this basis.

9. Section 21(1) of the Copyright Act, 1957, provides that the author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights and thereupon such rights shall, subject to the provisions of Sub-section (3), cease to exist from the date of the notice. Subsection (2) lays down that on receipt of a notice under Sub-section (1), the Registrar of Copyrights shall cause it to be published in the official Gazette and in such other manner as he may deem fit. It was thus open to the author of a work, and in these cases the paper-setters of the question papers, to relinquish their copyrights in favour of the Board and the attention of the learned Magistrate has not been drawn to this provision. Section 18 of the Copyright Act, 1957, no doubt deals with an assignment of the copyright and the assignment has to be in the manner provided in Section 19, but apart from assignment there could be relinquishment as provided in Section 21. The question as to whether there was relinquishment by the author has to be gone into and it can be preferably enquired into at the time of trial.

10. Section 44 of the Copyright Act, 1957, makes a provision for maintenance of a register of copyrights mentioning therein, inter alia, the names and addresses of authors, publishers and owners of copyright. Section 45 provides for making certain entries in the register of copyrights with regard to the particulars of the work in case the author or publisher of, or the owner of or other person interested in the copyright in any work makes an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars. It is not known so far as to whether the paper-setters or the

Board got their copyrights, if any, mentioned in the register of copyrights. This also is a matter to be looked into and considered in a case of this kind. These facts have to be ascertained and examined afresh and then only there can be a proper conclusion as to whether the Board had the copyright. The learned Magistrate has failed to notice these aspects and accordingly the orders dismissing the complaints are vitiated and must be held to be erroneous.

11. Before noticing another illegality in the enquiry and the procedure adopted by the Sub-divisional Magistrate, it would be proper to mention the other points urged by learned counsel for the parties. Mr. Nageshwar Prasad referred to the evidence of Raghubans Sahai, the Superintendent of the Board (examined as witness No. 1 for the complainant), and pointed out that the said witness had no information as to whether the copyright was registered or not and he could not say how the Board had got the copyright. These answers given by the witness have been recorded under the heading "suggestions" and it cannot be said with certainty as to who made these suggestions while the enquiring Magistrate was recording the statement of this witness. The order dated 9-2-1963 of the enquiring Magistrate indicates that both parties (meaning thereby the complainant and the accused) were present before him and then two witnesses were examined and discharged and he adjourned the enquiry to 18-2-1963 for arguments. This is (he position in each case. The enquiring Magistrate had in fact recorded the following order on 9-2-1963 :

"Parties present, two witnesses examined and discharged. To 18-2-63 for argument.";

Similar order was passed in each case. It is clear from the order dated 9-2-1963, referred to above, (which is on record) in the case against Parmeshwar I'rasad Singh and Dilkeswar Prasad Singh giving rise to Criminal Revision 1600 of 1963 that the enquiring Magistrate had written the word ""cross-examined" in between the words "examined" and "discharged", but the word "cross-examined" has been scored. In each of the other two orders dated 9-2-1963 as well, one word written previously between the-words-"examined" and "discharged" has been scored through. The subsequent orders of the enquiring Magistrate indicate that the lawyer for the accused as well was present and he as well was heard by the enquiring Magistrate. This being the position, I have mentioned above that it could not be said with certainty as to who had made the suggestions to the said witness in course of which he gave those answers.

On the receipt of a complaint the Magistrate has to find out as to whether a prima facie case for summoning the accused has been made out and the enquiry should be from that point of view. Evidence at the stage of the enquiry has to be adduced only to support the truth of the complaint and this evidence is different from the evidence which is required for supporting the conviction. The letter appointing a person as paper-setter and the reply sent by him would be the best evidence for determining the terms of appointment and for finding out as to whether there was any relinquishment of the copyright. I am, therefore, of the

opinion that the statements of Raghubans Sahai, referred to above, cannot be deemed as conclusive at this stage for dismissing the complaints of the petitioner.

Mr. Nageshwar Prasad referred to the provisions of sections 51 and 52 of the Copyright Act, 1957, but those sections occur in Chapter XI relating to the infringement of copyright. Section 52 provides that certain acts shall not constitute an infringement of copyright. The question as to whether there was an infringement of the copyright by the accused need not be gone into at this stage and it is not necessary to express any opinion in this connection.

12. Learned counsel for the petitioner has referred to section 54 of the said Act, but this deals with civil remedies which an owner of copyright may have.

13. The enquiries in these cases and the orders of the learned Sub-divisional Magistrate are further vitiated as they have failed to appreciate properly the scope of the provisions of Section 202 of the Code of Criminal Procedure. I can usefully refer to the decision of the Supreme Court in Chandra Deo Singh v. Prokash Chandra AIR 1983 S C 1430. The case there was that a man, named, Nageshwar Singh Darwan, was shot with a gun and he succumbed to his injuries. On 3-11-1958 one Mahendra Singh claiming to be a distant relative of the deceased Darwan filed a complaint before the Sub-divisional Magistrate against the final report of the police relating to a previous first information report by another person regarding the very same incident and asked for processes to be issued against certain other persons on the allegation that those persons had murdered Nageshwar Singh. He further alleged that the first information report lodged by Panchanan Roy was false. After examining Mahendra Singh on oath and looking into the police papers the Sub-divisional Magistrate asked Mr. N. M. Chowdhry, Magistrate, First Class, to hold a judicial enquiry into the allegations made by Mahendra Singh and to submit a report to him.

During the pendency of the enquiry into the complaint of Mahendra Singh, Chanara Deo Singh, the nephew of the deceased, filed a complaint before the Sub-divisional Magistrate on December 30, 1958, stating therein that Prokash Chandra (respondent 1) had fired a shot at Nageshwar Singh and thereby murdered him. The Sub-divisional Magistrate examined this complainant and referred the matter again to Mr. N.M. Chowdhry, Magistrate, First Class, for enquiry and report. During this enquiry, respondent 1 was permitted by the Magistrate to appear through counsel. Seven witnesses were produced by the complainant Chandra Deo Singh and examined by the learned Magistrate, but in addition to it two persons who were alleged to be the associates of respondent 1 were examined as Court witnesses and the suggestion was that the learned Magistrate did this at the instance of the counsel for respondent 1.

The enquiring Magistrate submitted report that a prima facie case was made out against three persons other than respondent 1 u/s 302/34 of the Penal Code and there was another report that there was no prima facie case against respondent 1. On the basis of the first report, the Sub-divisional Magistrate directed

summonses to be issued against the three persons named in that report and commenced committal proceedings against them. He, however, on seeing the second report dismissed the complaint of Chandra Deo Singh without assigning any reason. Chandra Deo Singh preferred an application in revision before the Sessions Judge and the Sessions Judge directed the Sub-divisional Magistrate to make further enquiry against respondent 1. Respondent 1 preferred an application in revision before the High Court and the three persons against whom summonses were to be issued also filed an application in revision before the High Court.

The High Court granted the application of respondent 1 as well as that of Upendra Neogy, one of the three persons against whom summonses were ordered to be issued by the Sub-divisional Magistrate. Aggrieved by the order of the High Court, the appellant Chandra Deo Singh obtained a certificate and filed an appeal in the Supreme Court. The first ground taken on his behalf was that respondent 1 had no locus standi to appear and contest a criminal case before the issue of process. The second ground was that the test propounded by the learned single judge for determining the question whether any process should be issued by the Court was erroneous. The third ground was that a Magistrate making an enquiry under S. 202 of the Code of Criminal Procedure had no jurisdiction "to weigh the evidence in golden scales" as was done in that case. Dealing with the first contention, Mudholkar J. observed as follows !

"Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any Jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued: nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go. It was, however, contended by Mr. Sethi for respondent No. 1 that the very object of the provisions of Ch. XVI of the Code of Criminal Procedure is to prevent an accused person from being harassed by a frivolous complaint and, therefore, power is given to a Magistrate before whom complaint is made to postpone the issue of summons to the accused person pending the result of an enquiry made either by himself or by a Magistrate subordinate to him. A privilege conferred by these provisions can, according to Mr. Sethi, be waived by the accused person and he can take part in the proceedings. No doubt, one of the objects behind the provisions of Section 202, Cr. P. C., is to enable the Magistrate

to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a "view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry u/s 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the Legislature has made no specific provision permitting an accused person to take part in an enquiry. It is true that there is no direct evidence in the case before us that the two persons who were examined as Court witnesses were so examined at the instance of respondent No. 1 but from the fact that they were persons who were alleged to have been the associates of respondent No. 1 in the first information report lodged by Panchanan Roy and who were alleged to have been arrested on the spot by some of the local people, they would not have been summoned by the Magistrate unless suggestion to that effect had been made by counsel appearing for respondent No 1. This inference is irresistible and we hold that on this ground, the enquiry made by the enquiring Magistrate is vitiated."

With regard to the second ground, his Lordship took the view that for determining the question whether any process was to be issued or not, what the Magistrate had to be satisfied was whether there was "sufficient ground for proceeding" and not whether there was sufficient ground for conviction. Whether the evidence was adequate for supporting the conviction could be determined only at the trial and not at the stage of enquiry. His Lordship referred to a catena of decisions and observed that in all those decisions it was held that the object of the provisions of Section 202 was to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he might have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. Those decisions further laid down that what the Magistrate had to see was whether there was evidence in support of the allegations of the complainant and not whether the evidence was sufficient to warrant a conviction and an enquiry u/s 202 was not to be likened to a trial which could only take place after process was issued inasmuch as there could be only one trial.

It is not necessary to refer to the consideration of the third and the fourth grounds. In the light of the principles laid down in these decisions, it has to be ascertained as to whether there was any illegality at the time of the enquiry or in the procedure adopted by the learned Subdivisional Magistrate. I have already

referred to the order dated 9-2-1983 passed in each case. The next order of the enquiring Magistrate in each case was dated 18-2-1963 and I would quote the order dated 18-2-1963 passed in the case against Har Sahay Mehta and Din Dayal Mehta giving rise to Criminal Revision No. 1602 of 1963. The order runs thus:

"Both parties in person present, the lawyers for both the sides orally pray for adjournment. Adjourned to 25-2-63." Then the order dated 25-2-1963 runs thus :

"Both parties present. Arguments heard. To 28-2-63 for report."

The orders dated 18-2-1963 passed in the other two cases also indicate that the lawyers for both the parties made a prayer for adjournment and the enquiries were adjourned to 25-2-1963. All the three reports were dated 28-2-1963 and in each report the following passage occurs :

"The only point pressed and urged for the accused is that the question papers are not the original literary work as contemplated in Section 13 of the Copyright Act."

It was open to the accused persons to be present at the time of the enquiry and watch as to what was happening, but they had no right to take part in the proceedings. Similarly, they had no right to be heard at that stage as till then no processes had been issued against them. The enquiring Magistrate was entirely wrong in permitting them to intervene during the enquiry and the procedure adopted by him is wholly unwarranted. Accordingly the enquiry in each case must be held to be vitiated.

14. Turning to what happened before the Sub-divisional Magistrate, it appears that he also committed the same error. The order dated 8-4-1963 in the case against Parmeshwar Prasad Singh and Dilkeshwar Prasad Singh giving rise to Criminal Revision No. 1600 of 1963 runs thus :

"Parties present, Heard argument at length on behalf of complainant and on behalf of accused persons. The argument is still incomplete. Put up tomorrow for further hearing."

Similar orders were passed in the other two cases as well. Further arguments were heard, however, on 30-4-1963 in each case on account of some adjournments and then the Magistrate passed the order dated 1-6-1963 dismissing the complaint in each case. After the receipt of the reports, the Sub-divisional Magistrate had to take into account those reports and the statement on oath of the complainant and the statements of witnesses for deciding as to whether there was a sufficient ground for either proceeding against the accused or dismissing the complaint, but he was not authorised to hear the accused inasmuch as the accused was not in the picture at all before issuing of the processes. The accused had no right to be heard by the Sub-divisional Magistrate and the procedure adopted by him is not at all justified and warranted by law. On

account of this illegality as well, the orders passed by the Sub-divisional Magistrate dismissing the complaints are vitiated.

15. In the result, all the three applications are allowed, the orders dismissing the complaints are set aside and it is directed that further enquiries into these complaints be made, subject to this that there will be no enquiry so far the complaint and allegations against Tapan Kumar Bose (one of the accused) are concerned, inasmuch as Criminal Revision No. 1601 of 1963 has been already dismissed against him.