
(1968) 12 BOM CK 0018

In the Bombay High Court

Case No : Criminal Revi. Applns. No's. 390, 391, 392 of 1967 and Criminal Reference No's. 78 and 84 of 1967

J.N. Bagga and others

APPELLANT

Vs

All India Reporter Ltd., Nagpur

RESPONDENT

Date of Decision : 16-12-1968

Acts Referred:

Contract Act, 1872 — Section 2, 2(a)

Copyright Act, 1957 — Section 1, 2(2)(a), 51, 51(b)(i), 62

Citation : (1969) MhLj 188

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Advocate : M.N. Phadke, M.W. Puranik and M.R. Adtani, for the Appellant; D.M. Lapalikar, G.B. Shidhye, M.S. Ghoudhari for Complainant and S.M. Hajarnavis, Addl. Govt. Pleader for State, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Deshmukh, J.

1, These five matters involve common points of law and hence would be disposed of by a common judgment. The facts are mostly similar except for the slight difference in the allegation regarding certain acts committed by the accused which indicate the place of suing in respect of the offence concerned. These five matters arise out of five complaints filed by All India Reporter, Limited, a Joint Stock Company, having its branch office at Congress Nagar, Nagpur, through Mr. P. V. Chitaley, Power of Attorney Agent, Nagpur. All the five criminal cases contain an allegation that the accused persons in the respective cases have infringed certain copyrights belonging to the complainant Company. Five different works published by the accused persons are the subject-matter of the alleged infringement of copyrights. It is not necessary in this order to refer in detail to the names of the books written, printed and published by the accused persons. A broad fact that may be noted is that the accused persons in each case, except

the criminal case which is the subject-matter of Criminal Reference No. 78 of 1967, contain the author or authors of the book, the Company or firm that published the book and the partners of the publishing firm.

2. The main question that was raised before the trial Magistrate by the accused persons by filing applications in each of the cases was that the Criminal Court at Nagpur had no jurisdiction to entertain the complaints filed. This is because the authors as well as the partners of the firm that published the book were residents of Allahabad. The firm, which is required to be treated as a Company for the purpose of the Copyright Act, 1957, has its registered office at Allahabad. The writing of the book and the publishing of it have taken place at Allahabad. Assuming for argument's sake, at this stage before merits are heard that the copies which are produced for consideration of the Magistrate are infringing copies, no part of the offence is committed in Nagpur and a Criminal Court at Nagpur cannot entertain the complaints. So far as the Copyright Act, 1957 is concerned, there is a specific provision contained in section 62 relating to the place of suing in a civil proceeding. There is no specific provision in the Copyright Act, 1957 regarding the place of suing for the commission of a criminal offence. One has, therefore, to go to the provisions of the Criminal Procedure Code for finding out whether the Nagpur Court could entertain the present complaints.

3. It is a moot point to consider whether an advertisement for sale in a journal amounts to "offer for sale" within the meaning of that expression as used in section 51 (b) (i) of the Copyright Act, 1957, and assuming that it is so, whether the "offer for sale" could be deemed to have been made at every place where a journal in which the advertisement is given, is either published or reaches by way of circulation. This point of law is the main question that was debated before me though there was also ancillary question relating to the responsibility of the firms which are also made accused as independently responsible to answer the charge of breach of copyright.

4 In the next two matters, namely, the reference to a jurisdictional clause in the complaint is slightly different though it is almost identical in the two cases. For instance, in Criminal Reference No. 78 of 1967, the jurisdictional clause is paragraph No. 11. It is as follows:

Para. 11. The offer for sale is given by an advertisement in Law Journals at Nagpur. This Court, therefore, has jurisdiction to try the offence.

5. In the next case, which is the subject-matter of Criminal Reference No. 84 of 1967, paragraph No. 11 relating to jurisdiction is as follows:

The offer for sale of the infringing book is made by the accused in Nagpur and in Congress Nagar within the jurisdiction of this Court by their advertisements in "the Rajas-than Law Weekly" dated 4-12-1965 and in a monthly magazine named "Laws and Flaws" published by accused No. 1 in its issue dated 15-2-1966. This Court therefore has jurisdiction to try the offence.

In respect of these paragraphs, what is to be remembered is that the publication alleged in Criminal Reference No. 78 of 1967 is in a Law Journal published at Nagpur. There is no specific reference in paragraph No. 11 of that case that all the accused have given that advertisement. It is vaguely stated that the "offer for sale" is given by an advertisement in Law Journal and hence the Court has jurisdiction. It is required to be assumed from the general tenor of that complaint that all the accused have given that advertisement. Whether that is so or not is a question of fact yet to be decided. No evidence has yet been led in any of the cases. On a preliminary objection regarding jurisdiction being raised, all the five matters have come to this Court. It will be assumed for the purpose of this order that the complainant alleges that all the accused in each case have given the advertisement. This assumption is made only for the disposal of the point of law and the question of fact which is assumed, is still at large. It is not only open but it is necessary for the Magistrate to find out the real position after the evidence is led. The findings to which he can come on fact will then have their own effects in view of the order that is being passed.

6. The point of law, which is being agitated, may now be noted. I have already pointed out that there is no specific provision in the Copyright Act, 1957, regarding the place for filing criminal complaints. The provisions of the Criminal Procedure Code regarding the place of an enquiry and trial in Chapter XV are the only provisions which would help a Court in finding out whether it has jurisdiction. What is, therefore, alleged is that the advertisement in Journals published at Nagpur as well as advertisement in Journals which may be published elsewhere but which are circulated in Nagpur amount to "an offer for sale" as contemplated by section 51 (b) (i) of the Copyright Act, 1957. Not only the advertisement amounts to "an offer for sale", but if the Journal containing the advertisement reaches a place, then the "offer for sale" must be deemed to have been made where the journal so reaches. If both these statements are correct in law, then the Criminal Courts at Nagpur will have jurisdiction to entertain and enquire into the five complaints filed by the complainant. It is being alleged that the All India Reporter and Nagpur Law Journal were journals published and circulated at Nagpur. It is further alleged that Rajasthan Law Weekly and Laws and Flaws, though published in other States, the copies thereof containing the advertisement relating to the alleged infringing works, have reached Nagpur. These are the allegations of fact which are open for enquiry by the Magistrate but are being assumed for the time being for the purpose of deciding the point of law.

7. It is necessary at this stage to note what amounts to infringing the copyright. If the Court has jurisdiction and it is required to enquire into it, the complainant will prove the allegations of infringement and the accused persons might put forward their defence. In order that the Criminal Court at Nagpur ought to get jurisdiction for entertaining the complaints, it must be shown that the facts alleged fall in some of the provisions contained in sections 177 to 187 of the Code of Criminal Procedure. What is alleged is that the offence is committed in Nagpur because of the advertisement for sale contained in a Journal circulated at

Nagpur. Reliance for this purpose is being placed upon the provisions of section 51 (b) (i) of the Copyright Act, 1957. The relevant portion of that section is as follows:

51. Copyright in a work shall be deemed to be infringed-

* * * *

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or.

By looking to the above provisions of infringement of the copyright, it is alleged that all the accused persons have offered for sale an infringing work by inserting an advertisement in a journal having circulation in Nagpur. What is precisely meant by "offering for sale" has to be found out by looking to the language used in section 51 and taking into account the scope and the object of the Act.

8. I will assume for the time being as is alleged in the complaints that the said Journals have circulation in Nagpur. I may indicate the nature of the advertisements. In these Journals, a long list of publications by Law Book Company, Allahabad, has been notified as selected books on Criminal Law. One of them in each of these advertisements is the alleged "infringing works." A list contains the name of the author, the name of the book, the year of publication and the price. At the end of the list is a note "place your orders with the publishers". Then follows the name of the publishers. The advertisements in the various Journals are more or less identical. The complainant says that these advertisements soliciting customers to purchase the books and to place their orders with the publishers amount to "an offer for sale" u/s 51 (b) (i) of the Copyright Act, 1957. The Additional Sessions Judge, who made a reference on this point, has taken a contrary view.

9. The two points of view, which are canvassed before me, may be very briefly indicated. According to the complainant, the prohibition contained in clause (i) of sub-section (b) of section 51 makes everything an offence which is connected with the process of making an infringing copy upto the final sale thereof. Every process is included in the wording of that clause. In that context, an "offer for sale or hire" need not be confused or identified with a proposal u/s 2 (a) of the Indian Contract Act. An "offer for sale" is in the nature of an intimation to people that certain articles are meant for sale and they are called upon to give their own proposals for the purchase thereof. Such proposals by the intending purchasers are also loosely termed as "offers" given by the intending purchasers. This terminology is used not only in the common life but also in the judgments delivered by Courts. That is because the word "offer" is used in the sense of a proposal in English Common Law. English Parliament has also adopted that word "offer" in the Legislation, and hence in India the word "offer" is otherwise freely used as synonym for proposal in section 2 (a) of the Indian Contract Act.

However, so far as the provisions of the Copyright Act, 1957, are concerned, taking into account the intention of the Act and the object which it seeks to achieve, the expression "offers for sale" must be taken in generic or dictionary sense. In that view, advertising the fact that there are copies of a certain book available for sale and that orders are solicited which may be placed with the publishers, amounts to offering the book for sale. Since this offer is made in Nagpur in a Journal which is intended to reach Nagpur, and has so reached, the offence is committed and complete in Nagpur.

10. The other point of view which is accepted by the learned Additional Sessions Judge and which is pressed by Mr. Phadke on behalf of the accused persons is that the words "offers for sale" must be accepted in its restricted sense. There are good reasons for confirming the view taken by the learned Additional Sessions Judge. The Copyright Act, 1957, more or less, embodies in it several provisions of the Copyright Act of 1914 without any change whatsoever. The 1914 Indian Copyright Act was the adoption of the 1911 Copyright Act of England. The origin of this Act is in an English Statute and the concept of copyright has been mainly derived by us by our association with the English people. The word "offer" has been interpreted in England by Judges while dealing with some other Acts, to mean the firm offer or a proposal given by A to B, a specific person, which would result in a promise by acceptance. It also includes offers by A to many and unspecified persons, but capable of resulting in a promise by performing the service advertised, by a specific person. It is that kind of proposal which is being styled as "offer" in English Law and also in their interpretation by English Judges. When a Statute has been copied mainly, if not wholly, from an English Statute, there is no reason why the words and expressions used in the later Act should have different meaning than they have in the earlier Act. It is on this approach that Mr. Phadke says that I should accept the same interpretation of the word "offer" as is found in some of the English cases relied upon by him. In that sense, "offer" would amount to a proposal, the acceptance of which would result in a contract or a promise. It is further pointed out to me that newspaper advertisement or advertisements at large are never considered as proposals by Indian Courts. There is consistent case-law which says that an advertisement is merely an invitation of an offer or an invitation of a proposal. When such a proposal is made in response to an advertisement, it is for the vendor to consider whether he will accept that proposal or not. An acceptance of that proposal alone leads to the formation of a contract. In that sense, newspaper advertisement or an advertisement in Law Journal would never become an offer for sale. Even if the Journals have reached Nagpur, there is no offer for sale in Nagpur. At best, it may be an offer for sale where the book is made and published.

11. Before I go to consider the real meaning that should be attached to the expression "offers for sale" as used in section 51 (b) (i), I will point out that neither side cited an English case before me which directly deals with the provisions of infringing copyright by "offer for sale". The English Copyright Act of

1911 deals with the provisions of Copyright in section 1 and the infringement thereof in section 2. Clause (a) of sub-section (2) of section 2 of the Copyright Act of 1911, lays down that "Copyright in a work shall also be deemed to be infringed by any person who sells or lets for hire, or by way of trade exposes or offers for sale or hire etc.". The other clauses are not relevant for the present discussion. This clause from the English Statute appears in the Indian Copyright Act more or less in the same words. The "offer for sale" or "the display of an infringing copy" is qualified by the expression "by way of trade". This qualification is common in both the Statutes. The offer for sale or display of it for which the word used by the English Legislature is "exposing for sale" has got to be by way of trade. Though it may be open to challenge, a publisher getting a book printed and published *prima facie* does it for the purpose of selling it by way of trade. I would, therefore, assume that whatever is being done by the accused is by way of trade though as I said even that question may be agitated by the accused and it would be necessary for the Court to give a finding in that behalf. The expression "by way of trade" will have, in my view, a different significance which I shall point out in its appropriate place.

12. Though the expression "offers for sale" is common in the English as well as Indian Statutes, neither parties have cited before me a judgment of the English Court dealing with these provisions. I tried to go through Copinger and Skone James on Copyright, 10th Edition, but could not find any specific case dealing with this expression in the Statute. The wording of the section has been reproduced by the Commentator in two places but there is no further elucidation nor any citation in that behalf. In order to canvass the point of view that the word "offer" is treated as an equivalent or synonym of a proposal by Indian Courts, Mr. Phadke relied upon a judgment of the Supreme Court in *Col. D.I. Mac Pherson Vs. M.N. Appanna and Another*, . In that case, the Supreme Court was dealing with a suit for specific performance of contract. The plaintiff alleged that a concluded contract was arrived at between him and the defendant because of a certain correspondence relied upon. The plaintiff made an offer to purchase the Morvern Lodge owned by the defendant for Rs. 6,000. He wrote a letter in that behalf making this offer to the agent of the defendant. The agent of the defendant wrote back to the plaintiff in which he said that the agent had received a cable from the defendant regarding the offer of the plaintiff. In that cable the defendant said "Wont accept less than rupees ten thousand". It may be noted that the plaintiff had also made it dear while giving an offer for Rs. 6,000 that he would be willing to pay a higher price if a reasonable demand is made in that behalf by the defendant. On receipt of the letter quoted above, the plaintiff insisted upon purchasing the lodge. On refusal a suit for specific performance came to be filed. It is not necessary for me to point out that no firm contract was held proved by the Supreme Court in that case. What their Lordships held on the facts of that case is not relevant, nor is that portion of the authority being relied upon before me. In describing the offer of the plaintiff and in describing the defendant's reply that he would not accept less than Rs. 10,000, the words used

by their Lordships are "offer and counter-offer". The judgment says that on reading of the correspondence the defendant did not make any counter-offer in the cable to the plaintiff. Instead of using the words "proposal and counter-proposal" which would be consistent with the provisions of section 2 of the Contract Act, the Supreme Court used the words "offer and counter-offer". It is only this part of the judgment which is emphasised by Mr. Phadke to point out that Indian Courts make no difference between "offer and proposal".

13. Apart from the fact that whether on an authority of this type which dealt with an entirely different proposition of law, any assistance could be derived in interpreting the expression "offers for sale" in the Copyright Act, I must first point out that the judgments of the Supreme Court and the High Courts cannot be read out of context, even though, propositions of law appear to be laid down in general terms. In deciding a lis, primarily the Court is considering the set up of facts, the nature of the dispute and the legal conclusions which ought to flow from the facts found. When the plaintiff was desirous to purchase a certain piece of property belonging to the defendant and the defendant was unwilling to sell it, the only question that arose for consideration in that litigation was whether there has been a contract at all in terms of the Indian Contract Act which could be enforced. In order that the Court's aid may be obtained for specific performance of the contract which again is a discretionary relief, the minimum that must be proved by the party is that he had a firm contract in his favour which he was willing to perform but the other side was not. That being the very basis of a litigation of that type, the Supreme Court was merely endeavoring to find out whether there was such a contract between the parties. Whatever the language used, the attention was concentrated on finding out whether a firm contract in terms of the Indian Contract Act was traceable in the facts and circumstances placed before the Court. We therefore, need not be misled by the synonyms used because the emphasis must be laid upon the Statute that was before their Lordships and the particular part of that Statute which was being interpreted.

14. In the same way, I might point out that a judgment of the Queen's Bench in *Fisher v. Bell* (1961) 1 Q B 394 referred to by the counsel for the complainant would also be of limited assistance. The offence that was being considered in that case was one of offering for sale a flick knife. It was a prosecution under the Restriction of Offensive Weapons Act, 1959, section 1 (1) of that Act laid down that "Any person who manufactures, sells, or hires or offers for sale or hire or lends or gives to any other person-(a) any knife.....shall be liable on summary conviction." In the first gap left above, there is description of the type of knife of which manufacture, sale, hire etc. is prohibited, and the later gap includes the punishment which could be bestowed. On the provisions of section 1 (1) which fell for consideration, it is held that offer for sale of the knife not having been defined by the provisions of the Act, one has to go to the general law of the land. The Bench, therefore, refers to the common law concept of "offer for sale" which is equivalent to our statutory provision of section 2 (a). The conclusion reached is that in the absence of any definition in the Statute, the common law concept

"offering for sale" must be accepted as a guiding factor. In that view, mere display of a knife in the shop would not amount to "an offer for sale". Their Lordships pointed out that mere advertisement has never been construed as "an offer for sale". "Exposing for sale" is not the expression used in the Statute anywhere. Display of the knife in the shop window would not, therefore, amount to "an offer for sale". Merely keeping an article in the shop is not "offering for sale" in the sense in which a proposal for sale is conceived of by section 2 (a) of the Indian Contract Act. This is a case which goes nearest to the interpretation of an expression "offers for sale." To me, it appears that though some assistance undoubtedly could be derived from this case, the help must be strictly limited. That judgment deals with a different statute, having a different purpose and a different language than I have to construe while considering the provisions of section 51 of the Copyright Act. If "offer for sale" could be treated as a synonym for "proposal for sale or purchase", then there is no doubt that further conclusion would follow in terms of this judgment. In that case, reliance is placed upon *Wiles v. Maddison* (1). Mr. Phadke independently pressed that judgment into service to further his point of view. I am afraid *Wiles v. Maddison* (1) can be of no assistance or relevance in deciding the present dispute.

15. The facts in *Wiles v. Maddison* (1) were entirely different. In that case, the accused was a meat vendor catering to customers in an area of several miles roundabout. There was a Rationing Order which strictly prohibited sale of meat at a price higher than nominated by the Order. The accused kept apart three bundles of meat with a label of the three customers to whom the goods were to be supplied. The label contained the name of the customer, the quantity and the price. If calculation was made on that basis, the price that was intended to be charged, was in excess of the controlled price. The accused was prosecuted while the goods were still in his shop but were bearing the labels mentioned above. The charge that was levelled against the accused was of offering excessive quantity of meat at an excessive price. The defence was simple. The labels may indicate that the intention was to offer the excess quantity or the intention was to charge excess price. Mere intention has not been made an offence. The goods were still in the shop. The customer was not informed that any excess quantity was being offered to him or a certain price was being charged to him. The accused had, therefore, neither offered the excessive quantity nor offered to sell at an excessive price. On the facts of that case, it was held that offering to sell in terms of the English Common Law was the same thing as making a proposal for Bale u/s 2 (a) of the Indian Contract Act. By the mere affixing of a label in the shop, nothing had happened which amounted to offering either excess quantity or offering it at excess price. I do not think that the judgment in *Wiles v Maddison* (1943) 1 All E R 315 can assist me in any manner in deciding the present dispute.

16. I am inclined to take the view that the provisions of the Copyright Act must be interpreted as the provisions of the Act made by a Sovereign Legislature of this land. If historically some roots of this legislation are to be found in English

Statutes, they may be read and the judgments may be cited as an aid to thinking. However, the interpretation of this statute must primarily be based upon the object of this legislation and the language used. The Copyright Act of 1957 contains detailed provisions of what is a copyright and what amounts to infringement. The infringement conceived of by section 51 (b) (i) appears to be based upon a scheme. Mere making of an infringing copy or an infringing work is not made by itself an offence under clause (i) of sub-section (b) of section 51. It is the making for sale or hire that is an offence. If an infringing work is made with a view to sell or hire, then it falls within the purview of this Act.

17. The next provision relates to the selling or letting for hire of that book. The second part of this clause refers to the achievement of the intention, namely, the intention to make the book for sale or hire. The third type of infringement conceived of is the displaying or offering for sale by way of trade. If a book is displayed in the window of a shop, undoubtedly it would be a display by way of trade. By such display, there will be no firm proposal by the shopkeeper to any particular customer or to customers generally. Even a label of price on books displayed in the window of a shop would not amount to a definite proposal by the shopkeeper to a customer. By merely offering the price the customer may not get the book. He may get it when the seller agrees to sell him that book. However, such display by way of trade is by itself made an independent offence. The reason is obvious. Making of an infringing works for sale is itself an offence. When it is displayed in the window of a shop, that intention is obvious namely, making it for sale, and it is capable of leading to the further mischief of the book being actually sold, this intervening stage is also made an offence. Consistent with this and in keeping with the intention of the Act, a further factual aspect is included viz. "offering for sale or hire by way of trade". The earlier expression "by way of trade" governs both displaying as well as offering for sale or offering for hire. When commodities are offered for sale by way of trade, it is not conceived of that a firm or a definite proposal is made by the vendor. What the vendor notified is that he has certain commodity for sale. He intends to sell it and orders are solicited. When a particular proposal is made to him, he will either accept it or negotiate, and some agreement will be reached. In order to make it known that there is a commodity available for sale, advertisement is an accepted modern method of declaring the intention that the holder of a particular commodity is intending to sell it. Those who want may approach him and get the commodity at the price that will be settled. Though, at times, the advertisement contains a reference to prices, they do not create a right in the reader of advertisement to compel the sale at that price. The reason is again obvious. The mention of the price in the advertisement is not a proposal in the sense in which that expression is understood in the Indian Act.

18. I will here point out that the Indian Contract Act was before the eyes of the Indian Legislature when the Copyright Act of 1957 was drafted and passed. It is true that the wording of this Act is to a large extent borrowed from the wording of the English Copyright Act of 1911. If the intention of the English Legislature

was that "offer for sale" as known to the common law alone should be included in the Copyright Act, they would have used the same wording which the common law uses. The Indian Parliament could have drafted this clause in a different way if the proposal for sale as conceived of by section 2 (a) of the Indian Contract Act was meant to be incorporated in the infringing section 51 (b) (i) of the Copyright Act of 1957. In spite of the history of this legislation being known to the Indian Parliament and further being aware of the different terminology used in the Indian Contract Act, the Legislature has chosen to draft section 51 (b) (i) in a certain manner. The intention to guard the Copyright, as well as to indicate several modes in which it is infringed, must be taken into account in giving due meaning to each expression used in that section. In that view of the matter, the expression "offering for sale" or "offers for sale by way of trade" must include the newspaper advertisement where the traders merely solicit customers to address enquiries to them. They are not definite proposals though an advertisement making a definite proposal could be conceived of. Essentially, the advertisement is meant to attract offers. The offers could be by individual customer buying a copy or two for his private use and the offer could be also from a book-seller who would buy several copies for the purpose of his own sale. If such book-sellers or private individuals have to place an order, they must have some knowledge as to who possesses such articles and whether he is willing to sell. A newspaper advertisement is, therefore, in the nature of an intimation which serves two purposes. One is that it discloses the fact that the advertiser has certain articles. It further makes it known that he is willing to sell them, or in other words, he is offering those articles for sale. Of course, the price is to be negotiated and fixed. In this manner, I am inclined to think that the expressions "by way of trade" and "offers for sale" must include a newspaper advertisement by which the book-seller-accused have disclosed the fact of possessing certain books and the willingness to sell. The willingness to sell is to be inferred primarily from the fact of advertisement itself. In addition, in this case, the advertiser says "Place your orders with the publishers" whose name is given below. Undoubtedly, therefore, the publishers in my view have offered for sale the books which are enumerated in the body of the advertisement. If any one of these books could be shown to be an infringing work, then such infringing copies are offered for sale at each of the places where the advertisement reaches. I have already pointed out that the complainant is making an allegation in this case that the advertisements issued by the accused persons relating to an infringing work have, in fact, reached Nagpur. I have also made it dear that that fact will have to be found by the Magistrate on evidence. If he so finds, then in the view I take of the legal provisions, the offence of offering for sale would undoubtedly take place in Nagpur and the Magistrate will have jurisdiction.

19. Having dealt with the provisions of section 51 (b) (i) of the Copyright Act, 1957, it would be now necessary to consider the position of the firms which are made accused persons in the various cases. The complainant has included in the list of accused, not only the firms by the trade names in which they are doing

business but also all the partners of that or those firms. If the partners of the firm are made as party accused, it is argued that the firms independently could not be added as separate accused persons. After going through the provisions of section 69 of the Copyright Act, 1957, I am satisfied that the partnership firm, which has otherwise no separate legal existence, have been separately made liable under the provisions of this Act. Sub-section (1) of section 69 of the Copyright Act, 1957, deals with the offence being committed by a company. When a company commits an offence under this Act, namely, the Copyright Act, every person, who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company, shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly. Prima facie, therefore, not only the company but every person in management and responsible to the company for the conduct of the business is made liable along with the separate liability of the company itself. There is undoubtedly a proviso which says that nothing contained in that sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. This proviso merely points out the defence that can be available to Borne of the persons in management in certain circum-stances. Sub-section (2) of section 69 further extends the liability of the offence committed by the company to any director, manager, secretary or other officer of the company, provided it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of these persons. There is an Explanation added to this section after subsection (2). That Explanation says that for the purposes of this section, "company" means any body corporate and includes a firm or other association of persons; and "director" in relation to a firm means a partner in the firm, The main body of the section deals with a company and the liability of directors and others in management of the company. The Explanation equates a firm or association of persons with a company, and a partner of a firm with a director of the company.

20. With these provisions, it becomes apparent to me that like a company, a firm is criminally liable in its own name apart from the partners thereof. The partners are also liable as being in the position of the directors of the company, though the proviso to sub-section (1) of section 69 of the Copyright Act, 1957, will also be available to the partners in a given set of circumstances. The proviso being an exception and the liability of a company being the normal incident, I am of the view that the firms, which are made accused persons, are properly so made. Their names could not be deleted.

21. It was also argued before me that even if the Court is inclined to take the view that the advertisement in the Journal amounts to "an offer for sale" at Nagpur, that allegation could not be made against the authors of the book. The authors have written the book at Allahabad, may be for or without remuneration. The act with which they are associated, namely, the writing of the book, is

complete in Allahabad. At any rate, the authors should be deleted from the prosecution in all the complaints as not properly joined as persons answerable to a charge. It is not necessary to decide at this stage whether the book has, in fact, been written at Allahabad or at some other place. It may be assumed that the books which are subject-matters of prosecution have not been written in Nagpur. However, the difficulty in the case of the authors is that a general allegation has been made in each of the complaints that the accused persons have done certain acts. The acts of "offering for sale" or "selling books in Nagpur" have been made in general terms so as to impute both the acts to the authors themselves. That aspect being a question of fact, it is not possible to express any opinion at this stage. When evidence will be led, each of the accused will put forward his case in the cross-examination of the witnesses. It is the duty of the trial Magistrate to enquire in the first instance about a prima facie case against each of the accused and when satisfied about each of the accused then to frame a charge. The agitation on behalf of the authors is also premature in that sense.

22. This being my view of the matter, the revision applications are dismissed and the references are rejected. All the five complaints will go back to the trial Court for further disposal according to law in the light of the observations made in this judgment.