

(1991) 05 CAL CK 0030
In the Calcutta High Court
Case No : Criminal Revision No. 1394 of 1990

Jogendra Nath Sen and another

APPELLANT

Vs

State of another

RESPONDENT

Date of Decision : 16-05-1991

Acts Referred:

Copyright Act, 1957 — Section 14, 17, 18(1), 18(2), 19

Citation : AIR 1991 Cal 308

Hon'ble Judges : Ajoy Nath Ray, J; A.M. Bhattacharjee, J

Bench : Division Bench

Advocate : Dilip Dutt and P.K. Ghosh, for the Appellant; Dipak Sengupta, S.K. Layek and Debkumar Chatterjee, for the Respondent

Judgement

A. M. Bhattacharjee, J.—Notwithstanding my appreciation of and concurring in the judgment of my learned brother Ray, J., appearing hereinafter, I have thought it advisable to add a few words for more reasons than one. One reason is the importance of the question, on which our attention could not be drawn to any reported decision of this Court. Another reason is that at some places the precision of the observations of Ray, J., has almost reached the state of aphorism (Sutra), which may require some amount of amplification (Vasva), so that persons not trained in law, but more concerned with copy-right, like authors and publishers, may know where they are.

2. The work in question, being a book on Anatomy, is a "literary work" within the meaning of Clauses (y) and (o) of Section 2 of the Copyright Act, 1957 (hereinafter "Act" for short). The author of the work is therefore the first owner of the Copyright therein u/s 17 and when published in his lifetime, his right shall subsist until fifty years after his death u/s 22.

3. u/s 14 of the Act, Copyright in a literary work, includes, among others, the exclusive right to publish the work. But the author, as owner of the right to publish, may assign the said right to another u/s 18(1) and Section 18(2) provides that when such a right, say, to publish the work, is assigned to another,

the assignee, as respects the right so assigned, is to be treated "as the owner of the Copyright and the provisions of the Act shall have effect accordingly". And, in such a case, the author or the assignor shall, only as respects the other rights specified in Section 14, which are not so assigned, continue to be treated as the owner of the Copyright. In other words, if an author assigns the right to publish his work to another, it is the latter who thenceforward is to be treated for all purposes as the owner of the Copyright as respects the right to publish, even though the author may still continue to be the "owner of Copyright" as respects all the other rights, except the right to publish. And as respects the "right to publish" so assigned, even the author, though still owning all the other rights may be held guilty for infringement for publication without the latter's consent.

4. It is admitted that the author by a written instrument signed by him as provided in Section 19, granted to the petitioner No. 1 the right to publish the work, then in manuscript. But the allegation is that the Petitioner No. 1 has, in conspiracy or connivance with his son, the Petitioner No. 2, got the same published by the latter. If the Petitioner No. 1 has, as indicated hereinabove, become the "owner of Copyright" in respect of the work as respects the right to publish as a result of assignment as aforesaid, his allowing the Petitioner No. 2 to publish the same cannot give any cause of action to the author. Even if the Petitioner No. 2 has done it on his own without any authority from the Petitioner No. 1, the latter only can proceed for the infringement of his right to publish, but not the author, who has already parted with his Copyright as respects the right to publish.

5. u/s 51 of the Act, Copyright in a work shall be deemed to have been infringed if one does something which only the "owner of the Copyright" has the exclusive right to do and Section 63 provides for the punishment for such infringement. But where, as here, the accused-Petitioner No. 1 is the "owner of the Copyright" as respects the right to publish and has the exclusive right to do so, his doing so by or through or conjointly with another, the Petitioner No. 2, cannot obviously amount to infringement of the Copyright to publish belonging to the Petitioner No. 1 himself, Section 51 accordingly cannot show its head and Section 63 must also duck.

Ajoynathray. J.

6. By an agreement of 26th. August, 1979 entered into between Dr. Sahana, the father of the complainant, and the first accused, the former parted pro tanto with his copyright for the book "Practical Anatomy -- superior extremity", allowing the latter to print and publish the book on the agreed terms. The complaint is that the second accused, the son of the first, has published the book and declared himself as such in print. It is said to be a violation of copyright.

7. Unfortunately the allegations in the complaint or the evidence taken during, or the report given on, investigation make out no case of infringement. Once copyright was parted with, the first accused became the owner thereof to that

extent and could publish himself or through another. Vide in this regard Sections 14 and 18 of the Copyright Act, 1957. If the son were publishing without authority of the father, the matter would be otherwise, but far from alleging so, the case run is one of conspiracy between the father and the son. There is, thus, no case to go to trial.

8. The learned Magistrate framing charges, with respect, went wrong in law in holding that since the written agreement did not authorise publishing through another, the father could not publish through or with the help of the son. In law, after the agreement, the father became the owner of part of the copyright in place of Dr. Sahana, and it was the father, i.e., the first accused, who was solely entitled to choose how he would use his copyright, he could publish himself, through another and prosecute even Dr. Sahana if his part of the purchased copyright was infringed upon.

9. The criminal case was launched where the disputes are mainly money disputes. Both the accused have been previous publishers of Dr. Sahana's works. It is said that even in the preface of the disputed book Dr. Sahana has thanked the second accused's concern; that the complaint came a year after the book went into the market and after payments for royalty have been accepted from the second accused. It does smack of unwarranted user of the criminal procedure for pressing civil claims indirectly.

10. I would therefore allow the revision both in law in the interest of preventing abuse of the process of criminal law, and make the rule absolute in terms prayed for, quashing altogether the proceeding in G. R. case No. 3087/86.

11. Revision allowed.