
(2019) 11 SHI CK 0126
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 354 Of 2009

State Of H.P.

APPELLANT

Vs

Rakesh Kumar

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Copy Right Act, 1957 — Section 52, 52A, 63, 68A
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 11 SHI CK 0126

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Hemant Vaid, Satyan Vaidya, Vivek Sharma

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The instant appeal, stands directed, by the appellant, State of Himachal Pradesh, against the verdict, recorded, by the learned Sessions Judge, Hamirpur, H.P., in, Criminal Appeal No. 60 of 2008, wherethrough, the latter, after setting aside, the, verdict of conviction, and, consequential therewith sentence, pronounced, upon, the accused, by, the learned Additional Chief Judicial Magistrate, Hamirpur, H.P., on 28.7.2008/31.7.2008, rather pronounced, an order of acquittal, vis-a-vis, the accused.

2. The facts relevant to the case, are, that on 15.2.2007, SI/SHO Raj Kumar met ASI manjeet Singh, HC Sher Singh No. 276, who were on patrolling duty at the bus stand, Sujanpur at about 4.15 pm. Ajay Kumar, an executive Anti Piracy Super Cassette Industries, Ltd. Noida (UP) met them and disclosed that he is employed as an Executive Anti Piracy in the above mentioned company. The company has authorized him to check the production of pirated CDs. He informed the police officials that one Rajesh Kumar, s/o Kundan Kumar, r/o Ward No.9 chaupata Muhala Sujanpur is running a business of selling pirated CDs to the

customers in his shop Ashiana Music Centre. If the raid is conducted, many pirated CDs could be recovered from his shop. The police along with a witness Prahalad sent to the shop of the accused Rajesh and found him in person. They searched his shop and police recovered 17 pirated MP-3 CDs from the drawer of his counter. The CDs were checked and tested by Ajay Kumar which were found to be pirated. The same were taken into possession and sealed in a parcel. The sample of seal 'R' was affixed. The sample of seal was handed over to Ajay Kumar. The same was taken into possession vide seizure memo on the spot and in the presence of the witness. One copy of the seizure memo was supplied to the accused. The accused has committed an offence punishable under Section 52, 52A, 63 and 68A- Copy Right Act No. 14 of 1957. The ruka was sent through HC Sher Singh No. 276 on which the case FIR was registered. SHO prepared the spot plan and recorded the statements of the witnesses. He also obtained the test report from Ajay Kumar and has taken into possession his Authorisation Certificate. After investigation the challan was prepared and was presented before the court. Prima facie evidence was found against the accused on which charge was framed and to which, the accused pleaded not guilty and claimed trial.

3. The accused was charged, for committing, an, offence punishable under Section 63, and, under Section 68A, of, the Copy Right Act. In proof of the prosecution case, the prosecution examined 5 witnesses. On conclusion of recording of prosecution evidence, the statement, of, the accused under Section 313 Cr.P.C., stood recorded, by the trial Court, wherein, he made disclosures qua his false implication. However, he did not choose, to, lead any defence evidence.

4. On an appraisal of the evidence on record, the learned trial Court, returned findings, of, conviction qua the accused/respondent herein.

5. The respondent herein, becoming aggrieved, from, the findings of conviction, recorded, by the learned trial Court, preferred thereagainst, an, appeal before, the, learned First Appellate Court, and, the latter Court set aside the verdict of conviction, as, initially pronounced, by the learned trial Court. The Additional Advocate General, has, concertedly and vigorously contended, qua the findings of acquittal, recorded by the learned first Appellate Court, standing, not, based on a proper appreciation, of, the evidence on record, rather, theirs standing sequelled by gross mis-appreciation, by it, of the material on record. Hence, he contends qua the findings of acquittal rather warranting reversal, by this Court, in the exercise of its appellate jurisdiction, and, theirs being replaced, by, findings of conviction.

6. On the other hand, the learned counsel appearing for the respondent, has, with considerable force and vigour, contended qua the findings of acquittal, recorded, by the learned first appellate Court, rather standing based, on a mature, and, balanced appreciation, by it, of the evidence on record, and, theirs not necessitating any interference, rather, theirs meriting vindication.

7. This Court with the able assistance of the learned counsel, on either side, has, with studied care, and, incision hence evaluated the entire evidence on record.

8. The accused became charged, for, commission of an offence, constituted under Section 63, and, under Section 68A, of, the Copy Right Act. Through recovery memo, borne in Ext. PW-1/A, hence proven by PW-1, the, purported pirated CDs, respectively borne in Ext. P- 1, to, Ext. P-17, became recovered, from, the commercial establishment, of, the accused. The apt penal piracy as ascribed, qua, the afore recovered CDs, as made, through, recovery memo borne, in, Ext. PW- 1/A, is, comprised, in, no validly made T-series logo, rather becoming borne thereon. However, PW-1, in his cross-examination, has, made a statement, vis-a-vis, the recovered CDs, being available blank, in the market, and, has also made, a, further statement, in his cross- examination, vis-a-vis, any person, becoming enabled, to, get songs recorded, on, blank CDs.

9. Be that as it may, from, the afore acquiescences, as, made by PW-1, in his cross- examination, it becomes imperative, to determine, qua the prohibitive mandate, carried, in, Section 52, of, the Copy Right Act, becoming attracted, vis-a-vis, the accused, (i) and, readings thereof, unfold, vis-a-vis, theirs carrying, a statutory interdiction therein, rather against, any, person, publishing the video film, unless, the requisite particulars, are, displayed, in the video, (ii) besides publication thereof also occurring, upon, exhibition being made, hence of the CDs, containing the video film, and, on playing, of, the video cassettes, dehors, the statutorily prescribed particulars becoming rather not carried, in, the seized CDs, hence purportedly containing pirated songs, from, valid T-Series CDs. Consequently, the, penally inculpable statutory piracy rather becomes attracted against the accused, obviously, only upon, the prohibitive requisite statutory requirement, inasmuch as, upon, playing of the CDs, it becoming noticed, vis-a-vis, the, requisite particulars, becoming not carried thereon, hence surfacing. However, when the seized CDs remained unplayed, nor became exhibited, whereas, only, upon, playings thereof, the afore prohibitive statutory requirement, may become surfaced, reiteratedly for non playing, of, the, seized CDs, the, requisite statutory infraction obviously remained unsurfaced, thereupon the mere lack, of, displaying, of, apt particulars, in the CDs, containing purported pirated songs, would not attract, any, penal inculpability against the accused.

10. For the reasons which have been recorded hereinabove, this Court holds that the learned first Appellate Court, has, appraised the entire evidence on record in a wholesome, and, harmonious manner, apart therefrom, the analysis of the material, on record, by the learned first Appellate Court, hence, not suffering from any gross perversity, or, absurdity of mis- appreciation, and, non appreciation of germane evidence on record.

11. Consequently, there is no merit in the instant appeal, and, it is dismissed accordingly. In sequel, the impugned judgment is affirmed and maintained. Bail bonds, if any, furnished by the respondent, are, ordered to be forfeited and

cancelled. Fine amount, if any, be refunded, to, the respondent. All pending applications also stand disposed of. Records be sent back forthwith.