

**(2017) 06 GUJ CK 0049**  
**In the Gujarat High Court**  
**Case No : 10017 of 2012**

|                                |            |
|--------------------------------|------------|
| UMESH BHARATBHAI THAKKAR & ANR | APPELLANT  |
| Vs                             |            |
| STATE OF GUJARAT & ANR.        | RESPONDENT |

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**Date of Decision :** 09-06-2017

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court  
[Copyright Act, 1957](#), [Section 63](#), [Section 65](#) - Offence of Infringement of copyright or other rights conferred by this Act - Possession of plates for purpose of making infringing copies

**Citation :** (2017) 06 GUJ CK 0049

**Hon'ble Judges :** Biren Vaishnav

**Bench :** Single Bench

**Advocate :** MANKAD, HK PATEL

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## Judgement

1. The applicants have invoked the provisions of Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the complaint being II-C.R. No. 3027/12 registered with Mandvi police station, Mandvi-Kachchh for the offences punishable under sections 63 and 65 of the Copyright Act, 1957.

2. The facts of the case are as under: 2.1 The applicants are small shopkeepers of a gift shop under the banner "Real Gift Shop". The shop sells gift articles/merchandise which the proprietors procure from wholesale merchants in Bhuj and Mumbai. On 05.05.2002, one Shri K.G. Pathak, identifying himself as an Investigation Officer of one Kangaroo Agency Pvt. Ltd visited the shop of the applicants. Under an authority to investigate breach of copyright on behalf of two multinationals - Procter & Gamble and Hindustan Unilever Ltd, the individual carried out a raid. Shri Pathak then lodged the complaint in question with Mandvi police station. 2.2 According to the contents as narrated in the complaint, Shri Pathak found the gift shop selling duplicate products like shampoos, soaps and other toiletries of the two multinationals and therefore according to the complainant, the shop had infringed the copyrights of the two companies namely

Procter & Gamble and Hindustan Unilever and therefore was liable of penal action under Sections 63 and 65 of the Copyright Act, 1957.

3. Learned advocate, Mr. B.Y. Mankad appearing for the applicants - accused has taken me through the contents of the complaint and made submissions. In Shri Mankad's submission, apart from anything else, the plain reading of the complaint would indicate that no case for invoking the provisions of Sections 63 and 65 of the Copyright Act are made out. He submitted that in order to invoke the provisions of the Copyright Act there has to be a principal work which has to be a literary, dramatic, musical, artistic work or a cinematographic film. It could also be a sound recording, a programme, performance in which a broadcast reproduction right or a performer's right subsists. 3.1 Reading the complaint would indicate an allegation of sale of duplicate goods such as soap, shampoos etc which apparently would not attract penal action under the Copyright Act according to Mr. B.Y. Mankad. Shri Mankad has relied on the judgements of this court in the case of Binita Rahul Shah vs. State of Gujarat reported in 2009(3) GLR 2688 and a decision of a Single Judge of this court rendered in Criminal Misc. Application No. 8903 of 2013 dated 02.12.2003 which followed the judgement in Binita Rahul Shah (Supra)"s case.

4. Mr. Himanshu Patel, learned Additional Public Prosecutor has opposed the application. To the submission of Shri Mankad that the agency and the person behind it - the first informant who are found to be non existent, Shri Patel submits that now that the State is prosecuting the applicants, this fact is insignificant. Mr. Patel has further submitted that the entire transaction is a question of investigation and therefore powers under Section 482 be not invoked and the investigation must be allowed to proceed.

5. Reading of the complaint reflects that the complainant under an authority of being an Investigating Officer of an Agency raided the shop of the accused. The raid in question revealed that the shopkeepers/proprietors - applicants were selling duplicate goods/toiletries of Procter & Gamble and Hindustan Unilever. Selling of such merchandise, according to the complainant was in violation of the provisions of the Copyright Act, 1957 and therefore the applicants were liable for penal action under Sections 63 and 65 of the Copyright Act, 1957. Evidently, therefore, provisions of the Copyright Act, 1957 were invoked for sale of such merchandise being shampoo, soaps etc. 5.1 Whether such transactions could fall within the purview of the Copyright Act, 1957 begs the question. A close reading of the Statements, Objects and Reasons of the Copyright Act, 1957 would indicate that it was essentially enacted to protect the creative works of persons like artists, musicians and writers who composed their works for fame and recognition. To prevent duplication or infringement of such literary, dramatic, musical or artistic work the Act was enacted. Worthwhile it is to reproduce the definitions of certain expressions used in the Act of 1957 which are as under:

"2. Interpretation.-In this Act, unless the context otherwise requires,-

(a) "adaptation" means,-

(i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;

(ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

(iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;

(iv) in relation to a musical work, any arrangement or transcription of the work;

(v) in relation to any work, any use of such work involving its rearrangement or alteration;

(c) "artistic work" means,-

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) a 4[work of architecture] and"

(iii) any other work of artistic craftsmanship; (d) "author"" means,-

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

[(v) in relation to a cinematograph film or sound recording, the producer; and"

(vi) in relation to any literary, dramatic, musical or artistic work which is computergenerated, the person who causes the work to be created;]

[(dd) "broadcast" means communication to the public-

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire, and includes a re-broadcast;]

(e) "calendar year" means the year commencing on the 1st day of January;

[(f) "cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any

process analogous to cinematography including video films;]

(fa) "commercial rental" does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution;

[(hh) "duplicating equipment" means any mechanical contrivance or device used or intended to be used for making copies of any work;

(k) "Government work" means a work which is made or published by or under the direction or control of-

(i) the Government or any department of the Government;

(ii) any Legislature in India;

(iii) any Court, Tribunal or other judicial authority in India;

[(l) "Indian work" means a literary, dramatic or musical work,-

(i) the author of which is a citizen of India; or

(ii) which is first published in India; or

(iii) the author of which, in the case of an unpublished work is, at the time of the making of the work, a citizen of India;] [(m) "infringing copy" means,-"

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;]

(n) "lecture" includes address, speech and sermon; [(o) "literary work" includes computer programmes, tables and compilations including computer [databases];]

[(p) "musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;]

Section 63 : Offence of infringement of copyright or other rights conferred by this Act. -Any person who knowingly infringes or abets the infringement of-

(a) the copyright in a work, or

(b) any other right conferred by this Act, 1[except the right conferred by section 53A] 1[except the right conferred by section 53A]" [shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees: Provided that [where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.] Explanation.-Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section."

5.2 Reading of the complaint indicates that what is alleged is sale of duplicate merchandise of two merchandise multinational companies dealing in toiletries etc. A plain reading therefore of such a complaint would certainly not be a case of infringement of works such as literary, dramatic, musical or artistic or one which would come within the purview of Section 2(m) of the Copyright Act, 1957. This Court in Criminal Misc. Application No. 8903 of 2013 (para 9) has relied upon the decision rendered by this Court in Binita Rahul Shah (supra) and has observed as under:

"9. This Court (Coram: Hon"ble Mr.Justice D.A.Mehta, as his Lordship then was) in the case of Binita Rahul Shah Vs. State of Gujarat reported in 2009(3) GLR 2688, has observed thus:- "19. Section 63 of the Copyright Act states that any person who knowingly infringes or abets the infringement of the Copyright in a work shall be punishable with infringement etc. The definition of the term infringing copy as appearing in section 2(m) of the Copyright Act reads as under :

2(m) "infringing copy" means, - (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii)in relation to cinematographic film, a copy of the film made on any medium by any means;

(iii)in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

20. A plain reading makes it clear that the principal work has to be either a literary, dramatic, musical, or artistic work; or should be a cinematographic film; or a sound recording, or a programme or performance in which a broadcast

reproduction right or a performer's right subsists under the provisions of Copyright Act. In the facts of the present case, admittedly the provisions cannot be attracted, much less any ingredient thereof is shown to have been satisfied even prima facie. The Court is not concerned in these proceedings whether any violation has occurred under the Provisions of Designs Act, because that is not even the case of the complainant. The settled legal position cannot be understood to mean laying down a proposition of law that the Court in these proceedings is precluded from even a plain reading of the relevant provisions to prima facie see whether any offence can be said to have been committed or not."

5.3 The facts of the present application are therefore squarely governed by the decision rendered in the case of Binita Rahul Shah(supra). The entire case of the complainant is based on infringement under the Copyright Act. It is not even the case of the complainant that there is any violation under the provisions of the Designs Act. In the facts of the present case, admittedly the provisions under the Copyright Act cannot be attracted, much less any ingredient thereof is shown to have been satisfied even prima facie. Therefore, I am of the considered opinion that the continuance of the prosecution for the aforesaid offence alleged would be abuse of process of Court; as such it is liable to be quashed.

6. In view of the fact that no case has been made out in the complaint to invoke the provisions of the Copyright Act, 1957, the complaint being II- C.R. No. 3027/12 registered with Mandvi police station, Mandvi - Kachchh is quashed and set aside. Application is allowed accordingly. Rule is made absolute accordingly.