

(2015) 09 KAR CK 0368
In the Karnataka High Court
Case No : Criminal Petition No. 3131 of 2015

Venkatesh Murthi

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 17, 18, 2(a), 4A
Copyright Act, 1957 — Section 14, 51, 63, 65, 69

Citation : (2015) 09 KAR CK 0368

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : Ravi B. Patil, for the Appellant; Maqbool Ahmed, HCGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.V. Chandrashekara, J—Heard the learned counsel for the petitioner and learned HCGP, Mr. Maqbool Ahmed representing the State. Perused the records.

2. A case is registered by the 1st respondent against this petitioner in a criminal case in Crime No. 84/15 on the basis of first information lodged by the 2nd respondent-Shanwaz Khan, a resident of Humnabad Town, Bidar, on 30.4.2015. He is a cable operator running his business under the name and style Humnabad Networks at Humnabad. The gist of the allegations made in the first information lodged by the 2nd respondent on 30.4.2015 is that the petitioner is illegally transmitting DEN signals and is broadcasting programs of Udaya, Sony, Zee Colors, Discovery, DEN Sports and Star Networks. It is alleged that this petitioner has been doing this illegal transmission along with one Sajjan Tukaram who is also accused in the said case.

3. The main grievance of the learned counsel for the petitioner is that in spite of registration of case in Crime No. 84/15 on 30.4.2015, no progress is made by the 1st respondent and that as a result of registration of the case, the petitioner is forbidden from installing set-up box as to the T.V.s. of the subscribers and

thereby he is deprived of telecasting signals to the subscribers. It is his submission that the provisions of Sections 65, 69, 63 and 51 of the Copyright Act, 1957, invoked by the police are not at all applicable either in law or on facts.

4. Learned HCGP, Mr. Maqbool Ahmed has vehemently argued that the investigation is in progress and the IO has written to the TV channels namely Udaya, Sony, Zee Colors, Discovery, DEN Sports and Star Networks seeking their views about the alleged illegal transmission of their signals by this petitioner. It is further submitted that replies are awaited and that the IO is making all honest efforts to conclude the investigation and to submit final report at the earliest. He has relied on a decision in the case of State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, (2004) CriLJ 598 : (2003) 9 JT 284 : (2003) 9 SCALE 704 : (2004) 1 SCC 691 : (2004) 1 UJ 165 to contend that annexures appended to the petition cannot be termed as "evidence? without being tested and proved, and therefore the said annexures could not have been acted upon by this court. He has relied on Section 70 of the Copyright Act which deals with cognizance of offences. As per Section 70, no court inferior to that of a metropolitan magistrate or a judicial magistrate of first class shall try any offence under this Act.

5. A case is registered on the basis of first information lodged by Shanwaz Khan who is stated to be running a cable network under the name and style "Humnabad Cable Network?. Whether he is competent to file such a complaint in terms of the Copyright Act will have to be looked into. Section 14 of the Copyright Act, 1957, defines the meaning of "copyright? which means the exclusive right subject to the provisions of the Act, to do or authorize the doing of any of the acts stated therein in respect of a work or any substantial part thereof. Admittedly the 2nd respondent does not have any exclusive right in respect of programs telecast by Udaya, Sony, Zee Colors, Discovery, DEN Sports and Star Networks or any channel. Whether he is the authorized representative of these TV channels is to be ascertained by the 1st respondent without any undue delay. If Shanwaz Khan appears to be an authorized representative, he will have authority to file first information in regard to the alleged transmission of signals to these channels. It need not be reiterated that the right sought to be violated must be an exclusive right of a person or an institution in terms of Section 14 of the Copyright Act.

6. The Cable Television Networks (Regulation) Act, 1995, has come into effect from 1.9.2000 by virtue of the central legislation Act No. 36/00. The intention of this legislation is to regulate operation of cable network in the country and for all matters connected thereto and incidental thereto.

7. Section 4A of the said Act which has come into effect from 25.10.2011 by virtue of Act No. 21/11, mandates transmission of programs of any channel in an encrypted form through a digital addressable system with effect from such date as may be specified in the notification and different dates may be specified for different states, cities, towns or areas, as the case may be. The proviso found therein mandates that "the date specified in the notification shall not be earlier

than six months from the date of issue of such notification to enable the cable operators in different states, cities, towns or areas to install the equipment required for the purposes of this sub-section.?

8. What is submitted by the learned counsel for the petitioner, Mr. Ravi B. Patil is that a notification has been issued by the Central Government mandating the completion of digitalization on or before 31.12.2015 by installing DAS (Digital Addressable systems or commonly called as Set-up Box) in the house of every subscriber in Humnabad town.

9. Therefore the police cannot keep investigation pending for a long time. He has heavily relied on Sections 17 and 18 of the Cable Television Networks (Regulation) Act, 1995, to contend that if the offence is committed by any company, the person who is in charge and responsible to the company for the conduct of its business will have to be made a party and that no court can take cognizance of any offence punishable under the Act except upon a complaint in writing made by any "authorized officer.?

10. The "authorized officer?, according to Mr. Ravi Patil, learned counsel for the petitioner, is enumerated in Section 2(a) of the said Act which means, "within his local limits of jurisdiction, (I) a district magistrate, or (ii) a sub-divisional magistrate, or (in) a commissioner of police, and includes any other officer notified in the Official Gazette by the Central Government or the State Government to be an authorized officer for such local limits of jurisdiction as may be determined by that Government: The said provision has come into effect from 1.9.2000.

11. It need not be reiterated that the IO has to take into consideration not only the relevant provisions of the Copyright Act, but also the provisions of the Cable Television Networks (Regulation) Act, 1995, and Telecommunication Regulatory Authority of India Act, 1997, Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012, which has come into effect from 10.2.2014. The Copyright Act, 1957, is a general law; whereas the Cable Television Networks (Regulation) Act, 1995 being a special law specifically deals with telecasting of TV programs through digitalization. It need not be reiterated that the IO has to expedite investigation after taking into consideration all the relevant provisions of the above legislation without fail.

12. In the result, the following order is passed:

ORDER

The petition is disposed of directing the IO to conduct investigation without any undue delay, keeping in mind the provisions of the Copyright Act, 1957, the Cable Television Networks (Regulation) Act, 1995, and to submit final report at the earliest. If the petitioner is able to avail any other remedy before any other forum, he is at liberty to do so.