

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**CRIMINAL PETITION Nos.1728, 7813, 1729 of 2017 and
8104 of 2018**

CRIMINAL PETITION NO.1728 OF 2017

Between:

Koratala Siva s/o.late K.Mohan Rao

... Petitioner/Accused No.1

And

1. The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana.

2. R.D.Wilson alias Sarath Chandra

... Respondents/Defacto Complainant

CRIMINAL PETITION NO.7813 OF 2017

Between:

Yerneni Naveen

... Petitioner/Accused No.2

And

1. The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana.

2. R.D.Wilson alias Sarath Chandra

... Respondents/Defacto Complainant

CRIMINAL PETITION NO.1729 OF 2017

Between:

G.Mahesh Babu Entertainment Pvt.Ltd.
(Wrongly shown in the complaint as M.B.Creations)
Rep.by its Authorised Representative
Mr.Panagatla Tatagiri Giridhara Rao
S/o.Yadagiri Rao.

... Petitioner/Accused No.3

And

1. The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana.

2. R.D.Wilson alias Sarath Chandra

... Respondents/Defacto Complainant

CRIMINAL PETITION No.8104 OF 2018

Between:

R.D.Wilson @ Sarath Chandra

... Petitioner/Defacto Complainant

And

1. The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana.

2. Koratala Siva

3. Yerneni Naveen

4. MB Creations

Rep.by G.Mahesh Babu.

... Respondents/Accused

DATE OF JUDGMENT PRONOUNCED: 22.11.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRIMINAL PETITION Nos.1728, 7813, 1729 of 2017 and
8104 of 2018**

% Dated 22.11.2023

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Rep.by G.Mahesh Babu.

... Respondents/Accused

! Counsel for the Petitioner in Crl.P.No.1728/2017: Sri K.Siddharth Rao

! Counsel for the Petitioner in Crl.P.No.7813/2017: Sri N.Naveen Kumar

! Counsel for the Petitioner in Crl.P.No.1729/2017: Sri N.Naveen Kumar

^ Counsel for the Respondents in the above petitions: Sri S.Sudershan
Additional Public Prosecutor for R1
Sri Challa Ajay Kumar for R2

! Counsel for the Petitioner in Crl.P.No.8104/2018: Sri Challa Ajay Kumar

^ Counsel for the Respondents in Crl.P.No.8104/2018:

Sri S.Sudersan, Addl.Public Prosecutor for R1
Sri K.Siddharth Rao for R2
Sri N.Naveen Kumar for R3 & R4

>HEAD NOTE:

? Cases referred

1. (1978) 4 SCC 118
2. (2008) 1 Supreme Court Cases 1
3. 2003 SCC Online Cal 323
4. 2003 (3) MHLJ 695
5. 2001 SCC Online Kar 757
6. 2000(4) BomCR 680

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION Nos.1728, 7813, 1729 of 2017 and
8104 of 2018****COMMON ORDER:**

1. Criminal Petition No.1728 of 2017 is filed by the petitioner/A1, Criminal Petition No.7813 of 2017 is filed by the petitioner/A2, Criminal Petition No.1729 of 2017 is filed by the petitioner/A3, to quash the proceedings against them in CC.No.21 of 2017 on the file of VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. The offences alleged against the accused are under Section 63 of the Copy Right Act and Section 420 r/w.120-B and 34 of the Indian Penal Code.

2. Criminal Petition No.8104 of 2018 is filed by the petitioner/Defacto complainant seeking direction to the Court below to take cognizance of the offences committed by the accused under Sections 420, 468, 471 of the Indian Penal Code in CC.No.21 of 2017.

3. Since the petitioners in CrI.P.Nos.1728, 7813 and 1729 of 2017 are A1 to A3, respectively, and the petitioner in CrI.P.8104 of 2018 is the defacto complainant in CC.No.21 of 2016, all the petitions are heard together and disposed by this common order.

4. Briefly, the facts of the case are that a complaint was filed by the 2nd respondent/complainant namely R.D.Wilson @ Sarath Chandra who is a Novelist and poet. It is his case that he is a writer and wrote

many short stories and he is a regular contributor to various weeklies and dailies. He has literary skills and served for development of Telugu Literature. He wrote a Novel namely 'Chachhenta Prema' which was published in 'Swathi' Magazine in February-2012. It was selected by a committee of experts as one of the best Novel.

5. The said Novel dealt with issues of love between Hero and Heroine and the social problems faced by the villagers when displacement of villages takes place on account of the small landlords colluding with big contractors for construction of a project. In his Novel he had suggested a formula of 'land for land' which was sub-merged in the project and lost by the farmers. The said Novel had a circulation of two lakhs copies as such, he is the copyright owner.

6. In the month of June, 2012 he was approached by movie producers for making a film on the basis of this Novel and advance amount was also given.

7. A film named 'Srimanthudu' was released in which actor Mahesh Babu was hero and Sruthi Hasan was Heroine. It was produced by Accused No.2 and released on 07.08.2015. Accused No.1 claimed himself to be the story writer, director and also responsible for screenplay. In the said film the father of the Heroine and the father of the Hero are friends and fought for cause of farmers against the Government for providing 'land for land' as compensation for the

construction of a project. The Hero has acquaintance with Heroine in the College and comes to know of the villainous nature of his father and goes incognito to the village to know about the problems and solve the problems.

8. The complaint at paras 7 & 8 narrates the story line of the said Novel and the movie,

7. It is submitted that the story line of the 'novel' is that father of the hero namely Chakradhar and the father of the heroine Narasimhudu were friends once upon a time both of them were fighting for the cause fo the farmers against Government for providing land for land as a compensation for the construction of Velugonda Project and in that process Chakradhar becomes M.L.A but he was warned by the Chief minister in conspiracy with the contractor that unless he (MLA) consents for the proposal of the Government for giving meager compensation to the farmers who lose their land, his friend may be eliminated by the police which fact was revealed later and hence Chakradhar left the village and later got elected as MLA from other constituency and becomes Minister. The villagers were under the Impression that he (chakradhar) conspired with the contractor and the politicians. Hero is the son of the said Chakradhar, studying in the same college where daughter of Narasimhudu i.e, the Heroine was studying and he was in love with her but she came to know that he was the son of Chakradhar who was considered by her and her villagers as the villain and she hates the hero only on that ground, otherwise she has love towards him. In order to win the heart of the heroine and to know the reason for her hatred towards his father by the heroine and her villagers, he enters into the village Devarakonda Incognito and tries to know the problems of the village. The hero by wielding the influence of his father who was minister, solves the problems of the villagers and the village by providing bus, reopening of the closed school and road etc. Later the hero having come to know the truth that his father was innocent, with the support of his father got the heroine elected as MLA of the constituency with thumping majority and for some time he disappears and comes back as a special officer on

selection in civil services, got posted there to that place, supports the efforts of the heroine through the PMO (Prime Minister's office) and achieves the goal of the heroine and her late father and the villagers by convincing the villagers to agree for the formula put forth by him and thereby completes the task of giving the land to land for the farmers who lost land for the construction of the project.

8. It is submitted that the story line of the 'movie' is that the hero is son of rich person namely Ravikanth, who belongs to Devarakota village to which the heroine also belongs to. Heroine is the daughter of Narayan Rao who was once a close friend of Ravikanth, Ravikanth fought against the villains namely 1.Venkatarathnam (Central Minister) 2) Sasi who are brothers and who are criminal elements, sends Ravikanth to Jail on false accusation, thereby Ravikanth left the village, migrates to city where he amasses wealth becomes crorepathy. Hero joins Rural Development Course in a college where heroine also was studying the same course and he develops liking towards her village Devarakota. Heroine moves away from the hero and questions the hero of his roots and on coming to know that he is the son of rich person Ravikanth who established a diary in the village Devarakota and he left the village by leaving the people of the village to their owes. Later the hero goes to the said village Devarakota and adopts the village for development by investing his funds and comes close to the family of heroine by staying in their house only. The heroine comes to the village after completion of her course though initially she hates him but later by witnessing the developmental activities and fighting against the villains for the cause of villagers, she fell in love with him. The villains made attempt on the hero on an occasion which results in hospitalization of the hero and the father of the hero initially discourages him not to go to the village, but as the hero was adamant and convinces his father, thereafter the hero goes to the village and at that time the villains have taken over the lands and documents of the villagers to sell the land in the name of coastal corridor announced by the Government to an Industrialist and at that point of time the hero enters the village and finishes the villains and at the end of the film both the families of hero and heroine comes together."

9. Since the film was copied, the complainant approached the Telugu Cine Writers' Association by submitting a representation in

October, 2015 to evaluate as to whether the movie was made by copying his Novel and to decide on the issue. The said association formed a committee comprising of eight writers. The said committee submitted a report stating that the movie was indeed a copy of the Novel written by the complainant. Thereafter a legal notice was issued to Accused No.2.

10. It was also known that A1 and A2 entered into an agreement with Hindi Movie Hero Hrithik Roshan for remaking the movie in Hindi Language. However, the complainant approached the Civil Court and filed OS.No.126 of 2016 seeking an injunction restraining the petitioners/accused from making the movie by copying the Novel 'Chachhenthaprema' written by the defacto complainant.

11. Basing on the said complaint filed by the 2nd respondent/complainant, the learned Magistrate recorded the statement of complainant and took cognizance under Section 63 of the Copyright Act and Section 120-B of the Indian Penal Code against the accused and directed issuance of summons. Aggrieved by the said order of asking the petitioners to face criminal trial, petitioners have approached this Court seeking quashing of the proceedings against them.

12. Criminal Petition No.8104 of 2018 is filed by the complainant aggrieved by the order of the learned Magistrate in not taking

cognizance for the offence under Section 420, 468 and 471 of the Indian Penal Code against the petitioners. According to the complainant, the statement recorded, *prima facie* make out the offence of cheating, forgery and using the forged document as genuine which are offences punishable under Sections 420, 468 and 471 of the Indian Penal Code.

13. Learned counsel appearing for the petitioners/accused would submit that even assuming that the concept or idea was copied, it does not amount to infringement of a copyright. Though a civil suit was filed before Civil Court, the civil court has not passed any orders in favour of the complainant restraining the petitioner/accused in any manner.

14. Learned Counsel for the petitioners/accused relied on the Judgment of the Supreme Court in ***R.G.Anand v. Delux Films and others***¹, wherein the Honourable Supreme Court at para-46 held as follows;

“46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur.

¹ (1978) 4 SCC 118

In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."

15. He also relied on the Judgment of Honourable Supreme Court in ***Eastern Book Company and others v. D.B.Modan and another*** ² wherein the Hon'ble Supreme Court at paras 57 and 59 held as follows;

“57. The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, coordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. On the face of the provisions of the Copyright Act, 1957, we think that the principle laid down by the Canadian Court would be applicable in copyright of the judgments of the Apex Court. We make it clear that the decision of ours would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Act there is no copyright in the original text of the judgments. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author.

59. The aforesaid inputs put by the appellants in the judgments would have had a copyright had we accepted the principle that anyone who by his or her own skill and labour creates an original work of whatever character, shall enjoy an exclusive right to copy that work and no one else would be permitted to reap the crop what

² (2008) 1 Supreme Court Cases 1

the copyright owner had sown. No doubt the appellants have collected the material and improved the readability of the judgment by putting inputs in the original text of the judgment by considerable labour and arranged it in their own style, but that does not give the flavour of minimum requirement of creativity. The exercise of the skill and judgment required to produce the work is trivial and is on account of the labour and the capital invested and could be characterised as purely a work which has been brought about by putting some amount of labour by the appellants.”

16. He further relied on the following Judgments of Honourable Supreme Court in;

Barbara Taylor Bradford v. Sahara media Entertainment Ltd.³

Zee Telefilms Ltd. V. Sundilal Communications Pvt.Ltd⁴

Zac Poonen v. Hidden Treasures Literature⁵

Bunny Reuben v. B.J.Panchal⁶

17. On the other hand learned counsel appearing for the complainant would submit that it is not only concept which was copied but the entire story line of the complainant’s Novel was copied. Making minor changes in the story line and the most part of the Novel being the same including the characters, their roles etc., it cannot be said that the offences alleged are not attracted. Accordingly prosecution has to continue.

³ 2003 SCC Online Cal 323

⁴ 2003 (3) MHLJ 695

⁵ 2001 SCC Online Kar 757

⁶ 2000(4) BomCR 680

18. The complainant had preferred a complaint before the Telugu Cine Writers' Association. The association formed a committee in which 8 prominent writers in the field formed the committee and submitted report that the movie was copied from the Novel penned by this complainant.

19. A reading of the complaint would reflect that *prima facie* it is not only the concept which was copied but also the story line of the Novel. Making minor changes and copying the main story, will not make it as his own creation and thought process. Since both the story in the movie and also the Novel of the complainant were compared by eight prominent writers and their opinion was that the movie was a copy of the novel, it cannot be said that there is no infringement of copyright.

20. According to complaint and also the committee of eight prominent writers, the movie is nothing but an imitation of the novel with some variations here. *Prima facie* it appears that there is violation of the copyright. The theme is the same and also the storyline. The Hon'ble Supreme Court in R.G.Anand's case while laying down various tests to determine whether there is an infringement of copyright or not held that '*as a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down*'. When there is ample evidence to support the case of the complainant that his novel was

copied and found to be correct by eight writers who have examined both the 'novel' and the 'movie', the complainant should be given a chance to adduce evidence before the trial Court.

21. However, it is A1, who claimed to be the 'Director', 'Writer' and the 'screenplay writer' of the movie. It cannot be said that there was any criminal conspiracy amongst A1, A2 and A3. Though, A2 and A3 were involved in the process of producing the movie, no criminal intention can be attributed to A2 and A3 when A1 himself claimed that he was the writer of the story. An assumption that A2 and A3 in conspiracy with A1 made the movie, the same cannot form basis to continue criminal prosecution. Though, criminal conspiracies are hatched in secrecy, in the present case, when the Producer invested such huge amounts in the movie and pays A1 for directing, writing the story and also writing the screenplay for the movie, proceedings cannot be permitted to continue on assumption of the complainant against A2 and A3.

22. Copying a story is an offence under the Copyright Act. As argued by the complainant, that the complaint makes out offences of cheating, forgery cannot be accepted. To attract an offence of cheating, there has to be an act of deception pursuant to which the person deceived should have delivered the property or deliberately caused wrongful loss.

23. None of the averments in the complaint make out the offence of cheating. When the offence is violating a copyright, the question of forgery in the present case does not arise.

24. In view of the above discussion, prima facie case is made out against Accused No.1. As such, criminal petition No.1728 of 2017 filed by Accused No.1 is partly allowed quashing the charge under section 120B IPC and he shall be proceeded against for offence under Copy Right Act.

25. However, since there is no tangible and acceptable evidence except an assumption of complicity of Accused Nos.2 and 3, the proceedings against A2 and A3 are liable to be quashed.

26. Criminal Petition Nos.7813 and 1729 of 2017 are allowed.

27. Criminal Petition No.8104 of 2018 fails and dismissed.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 22.11.2023

Note: L.R.Copy to be marked.

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