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OFFENCES UNDER THE COPYRIGHT ACT AND THE TRADE MARKS ACT ARE NON-BAILABLE, HOLDS BOMBAY HIGH COURT

11 March 2021

In the matter of *Piyush Subashbhai Ranipa v. The State of Maharashtra, Anticipatory Bail Application No 336 of 2021* (Application), the Learned Single Judge of the Bombay High Court (Court), rejected the anticipatory bail to the Applicant (defined hereinafter) in a criminal matter for the various offences under Indian Penal Code 1860 (IPC), The Copyright Act 1957 (Copyright Act) and The Trade Marks Act 1999 (Trade Marks Act). The Court held that the offences under Section 63 of the Copyright Act and Section 103 of the Trade Marks Act (collectively, Acts) are non-bailable.

Factual Background

On 19 December 2020, Jain Irrigation System (Complainant) lodged First Information Report (FIR) against Piyush Subhashbhai Ranipa (Applicant) being the CEO of an entity named Tera Flow Pipes, under Sections 418, 465, 482, 483, 485, 486, 488 r/w 34 IPC and under Section 63 (offence of copyright infringement) of the Copyright Act. Subsequently, Section 103 of the Trade Marks Act (offence of falsification of a trade mark) was also applied. The Complainant alleged that the Accused was dealing in products (Infringing Products) bearing the Complainant's trade mark 'Jain HDPE' (Trade mark) as well as forged stamp bearing the Complainant's manufacturing license number. Accordingly, the investigation was conducted and the Infringing Products bearing the Trade mark were seized.

The Applicant filed the Application before Court seeking an anticipatory bail. The Applicant contended that the offences under the Acts are bailable, and hence, bail ought to be granted to him. The Applicant also relied upon the order passed by a Magistrate Court granting bail to a co-accused in the case under Section 418 IPC which carries similar punishment and is classified as a bailable offence under the Code of Criminal Procedure 1973 (CrPC).

Issue

The Court framed an issue for considering whether the offences under Section 63 of Copyright Act and Section 103 of Trade Marks Act, both of which are punishable with imprisonment which may extend to three years, were bailable or non-bailable.

The above issue arose as under Part II of Schedule I of the CrPC, offences under other laws except IPC, punishable with '*imprisonment for 3 years and upwards*' are classified as cognizable and non-bailable and those punishable with '*imprisonment for less than 3 years*' are classified as non-cognizable and bailable.

Rival contentions

The Applicant contended that Schedule I of CrPC ought to be applied to the Acts keeping in mind objects and reasons thereof, and looking into the scheme of the Acts, the offences under the same are bailable.

In response, the State of Maharashtra contended that this issue is settled and various courts including a Division Bench of the Court have held that the offences wherein punishment can extend up to 3 years are non-bailable.

Findings and Decision

After considering the rival contentions and the past orders passed by various courts in similar matters including the recent Judgment dated 19 February 2021 passed by Division Bench of Rajasthan High Court (in the case of *Nathu Ram v The State of Rajasthan*, which held that such offences are non-bailable), the Court observed that offences which are punishable upto 3 years, would be non-bailable, as it is possible to impose sentence of exactly 3 years in such offences. Accordingly, the Court held that the offences under Section 63 of Copyright Act and 103 of Trade Marks Act are non-bailable. In the facts of the case, the Court rejected the anticipatory bail to the Applicant under Section 103 of Trade Marks Act.

Comment

Some High Courts like the Delhi High Court (*State of NCT of Delhi v Naresh Kumar Garg*) and the Andhra Pradesh High Court (*Amarnath Vyas v State of Andhra Pradesh*) have taken a contrary view and held that the offence under Section 63 of Copyright Act is bailable and non-cognizable. Interestingly, the Decision has been passed at a time when the Government is mulling over decriminalization of certain minor offences, including under certain provisions of the Copyright Act.

It remains to be seen if the Decision will be contested in appeal. However, presently the offences under Section 63 of Copyright Act and 103 of Trade Marks Act are non-bailable in the State of Maharashtra. Like other criminal offences, the threshold of establishing *mens rea* will be applicable for offences under the Acts. The Decision is an alarming call for citizens and corporations to be more diligent while dealing with intellectual property rights. It would not be out of place to mention that the Decision could be misused as a frivolous complaint under these Acts could land senior personnel of corporations in turmoil.

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