

APHC010327112008



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3560]

WEDNESDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1840/2008

Between:

GAJULAPALLI MALLIKARJUNA PARASAD, S/O. SUBBARAYUDU, R/O.
TEACHERS COLONY, PRODDATUR

...PETITIONER

AND

STATE OF A P REP BY PP, rep by Public Prosecutor, High Court, Andhra Pradesh.

...RESPONDENT

Revision filed under Section 397/401 of Cr.P.C., praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to present this Memorandum of Grounds of Criminal Revision Case to this Hon'ble Court against the Judgment of the II Addl. Sessions Judge, Kadapa at Proddatur, in CrI.A.No. 80 of 2005, dated 4th day of December, 2008

IA NO: 1 OF 2008(CRLRCMP 2517 OF 2008)

Petition under Section 151 C.P.C., praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the production of the certified copy of the Judgment in CC.No.116 of 2004 on the file of the II Addl. Judicial First Class Magistrate, Proddatur

IA NO: 2 OF 2008(CRLRCMP 2523 OF 2008)

Petition under Section 151 C.P.C., praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution of sentence and release the Petitioner on bail, pending disposal of the Crl.R.C.,.

IA NO: 1 OF 2016(CRLRCMP 44932 OF 2016)

Petition under Section 151 C.P.C., praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Petitioner:

1.C SHARAN REDDY

Counsel for the Respondent:

1.PUBLIC PROSECUTOR

The Court made the following:

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1840/2008

ORDER:

1. Being aggrieved by and dissatisfied with the concurrent findings of the learned Courts below, against the present Petitioner for recording an order of conviction for offences punishable under Sections 63, 65, 68A of the Copyright Act, the instant Criminal Revision Case has been preferred.

2. Brief facts of the prosecution case are that:-

i. P.W.1 was an Investigator, appointed by Indian Music Industry, to investigate the violations of Copyright Act to the products obtained by the said industry. On the basis of a written complaint of P.W.1-Syed Gulam Ghouse, the Sub-Inspector of Police, Proddatur II Town Police Station, visited the shop of the accused on 18.07.2000 and found number of duplicate audio cassettes along with original copies of Indian Music industry. Police seized those cassettes under panchanama and arrested the accused. Investigation of police ended in charge sheet for the offence punishable under Sections 63, 65 and 68A of the Copyright Act (for short the Act).

ii. During trial, the prosecution has examined total four (4) witnesses and marked nine (9) documents as Ex.P.1 to Ex.P.9, some material objects were also placed before the Trial Court and the same were marked as material Objects (M.Os) 1 to 15. After completion of trial, the Trial Court has found the

Petitioner to be guilty for the offence punishable under Section 52A r/w 68A and 63 of the Copyright Act and recorded the Order of conviction. The said order of conviction went up to appeal before the Appellate Court. The Appellate Court has also confirmed the Order of conviction, subject to reduction of some portion of sentence. Hence, this Criminal Revision Case has been filed.

3. The learned Counsel for the Petitioner submits that the learned Court below has committed error both in Law and facts. In the particular case under Copyright Act, the holder of the Copyright was not examined; P.W.1 was arrayed as Investigator of Indian Music Industry, but no such certificate of Copyright has been placed before the Trial Court, thus, in the absence of any paper of Copyright or certificate thereof, the order of conviction for violation of Copyright against the present Petitioner is illegal. He further argued that there are no mediators at the time of alleged seizure made at the shop of the Petitioner. The mediator happens to be present at the Police Station, thus the panchanama is made in violation of provisions under Section 100(4) of Criminal Procedure Code (for short Cr.P.C.). He further submits that the basic ingredients of the offence regarding Copyright Act have not been determined by any of the Courts below. There are no evidences regarding the fact that who hold the Copyright of those Cassettes. No witnesses were produced before the learned Court having Copyright. Thus, the prosecution has miserably failed to bring home the charge against the present Petitioner. He further alleges that the ingredients of charge

punishable under Section 52A of the Copyright Act have not been properly proved. The prosecution has failed to establish any infringement of Copyright by the Petitioner. Thus, the Order of conviction is required to be set aside.

i. In support of this contention, he cited a decision of the Single Bench of the Hon'ble **Kerala High Court** in **O.P.Ashraf ... Revision Petitioner; V. The State of Kerala and Others... Respondents, Criminal Revision Petition No.866 of 2024, decided on 04.10.2024**, wherein, in similar factual situation, the Hon'ble Kerala High Court has opined that the prosecution has failed to establish the ingredients of offence under Section 51A r/w 55 of the Act as well as the offence attract under Section 52A of the Act. Paragraphs 18 and 19 of the above judgment are as follows:-

“18. To attract the offence under Section 52A, the prosecution has to establish that the accused published a sound recording in respect of any work without displaying the particulars as referred to in the Section namely the name and address of the person who has made the sound recording, the name and address of the owner of the copyright and the year of its first publication. The prosecution has no case that the cassettes allegedly seized contained any sound recording, and the particulars as required under Section 52A were not displayed. The prosecution miserably failed to establish the ingredients to attract Section 52A of the Act.

19. The trial Court and the Sessions Court did not consider these vital aspects while entering into a conviction. The conviction of the accused without establishing the necessary ingredients of the offences alleged is unreasonable. The conviction recorded by the Courts below is liable to be set aside”.

ii. He also cited another decision of **Kerala High Court** in **Criminal Revision Petition No.345 of 2016, Vineeth Kumar V. State of Kerala, decided on 07.11.2024** and relied on paragraphs No.9 and 10 of the said Judgment –

"9. As argued by the learned Counsel for the revision Petitioner, at the time of evidence PW7, the Detecting Officer has not stated as to which of the particulars to be included in the seized CDs, so as to attract the penalty under Section 68-A of the Copyright Act, were omitted to be included in the seized videos. At 2024:KER:83052 the time of evidence, he also conceded that he has not displayed any of the CDs to ascertain whether it contains the particulars required under Section 52-A. Since PW7 has not specified the particulars, which are required under Section 52-A, are absent in the seized CDs, I am constrained to hold that the prosecution has not succeeded in proving the offence under Section 68-A of the Copyright Act.

10. The other offence alleged against the revision Petitioner is under Section 63 of the Copyright Act, which relates to infringement of Copyright or other rights conferred by this Act. In this case, as argued by the learned Counsel for the revision Petitioner, PW7, the Detective Officer has not specified the names of the copyright holders of the movies in the seized CDs seized. None of the persons having such right were brought on record or examined as a witness before the court. At the time of evidence, PW7 deposed that the accused has not produced any documents to prove his ownership and that is why the case was registered against him. It is the burden of the prosecution to prove that the accused has infringed the Copyright or other rights conferred by the Copyright Act, so as to attract the offence under Section 63 of the Copyright Act. In this case there is no evidence to prove that the revision Petitioner has infringed the copyright of anybody. In 2024:KER:83052 words, the prosecution has not succeeded in proving the offence under Section 63 of the Copyright Act also".

iii. Finally, learned Counsel for the Petitioner submits that the allegation against the present Petitioner, if appears to be proved by the prosecution, this Court may release the Petitioner under Section 360 of Cr.P.C., on Probation of Good Conduct, as the Petitioner had no any previous criminal antecedents.

4. Sri C.Panini Somayaji, Learned Additional Public Prosecutor representing the State submits that the learned Trial Court while passing the Order of conviction has categorically observed on the basis of which the conviction was recorded. He particularly referred the observation in paragraphs 10, 11, 12 and 13 of the Judgment of the learned Trial Court and he submits that P.W.1 is de-facto complainant, on the basis of whose complaint the police

authority seized large number of fake cassettes. During trial, P.W.1 has deposed regarding his capacity to file complaint before the police on behalf of the Indian Music Industry. Learned Additional Public Prosecutor also referred the specific portion of the Judgment of the learned Trial Court, wherein the provision under Section 52A of the Copyright Act has been properly dealt with and infringement thereof has been noted. He further argued that the ingredients under Section 52A(1) of Copyright Act are absent in the pirated audio cassettes, which were seized during the course of investigation. He further argued that P.W.1 was the authorized person, who deposed on behalf of the Indian Music Industry having got right. P.W.2 was the mediator, in whose presence the seizure was affected. Other witnesses also corroborated the prosecution case as well as the evidence of P.W.1. He further argued that the seized material along with the original cassettes of the Industry has been properly investigated by the police during investigation and all the documents are placed on record. There is no illegality in the Order passed by the learned Trial Court. Learned Additional Public Prosecutor further argued that the Order of the learned Appellate Court is also scanned the evidence on record and Order of conviction was justifiably confirmed, though the same was reduced at the discretion of the learned Appellate Court.

5. Having heard the learned Counsel for both parties, considering the entire material, it appears that the conviction was recorded against the Petitioner

under Sections 63, 65 and 68A of the Copyright Act. Section 63A is an offence for infringement of Copyright under Copyright Act. Section 65 is illegal possession of plates for the purpose of making infringed copies. Section 68A is the penalty for contravention of Section 52A of the Copyright Act.

6. To analyze the gist of the offence as alleged against the present Petitioner, it appears that the prosecution has demonstrated that the Petitioner was selling fake cassettes, for which he had no license from the original Copyright Holder. It is argued before this Court that no Copyright Holder was examined by the learned Trial court. P.W.1 deposed as an Investigator of Indian Music Industry. During examination before the learned Trial Court, P.W.1 deposed that Indian Music Industry was previously called as Indian Phonographic Industry and registered under West Bengal Societies Registration Act. The Indian Music Industry was formed with 50 leading Companies like Gramophone Company of India Limited, Adithya Musics and others to protect their audio rights from piracy. During the course of his evidence P.W.1 has placed a notarized copy of authorization given by Indian Music Industry. He has deposed that during survey, he detected the infringement of audio Copyrights and lodged complaint to the police. It appears thus, P.W.1 being authorized person of Indian Music Industry, placed by the prosecution to justify for making complaint against the infringement. Though it has been argued heavily that no evidence was placed before trial Court from any Copyright Holder, but as P.W.1 has placed on record

the documents for his authorization from Copyright Holders and as there are no contradictory document placed by the defence against the evidence of P.W.1 regarding his authority to depose on behalf of the Copyright Holders, I find no justification to entertain the same argument before this court. Thus, in my view, P.W.1 is justified person to lodge a complaint for infringement of Copyright.

7. Let me understand whether the Petitioner has actually violated the provisions of Law as enumerated under Section 63A of the Copyright Act. Section 63-A of the Act deals with infringement of the Copyright. Admittedly, the Petitioner was having possession of fake cassettes with some machinery for making fake cassettes from the original cassettes. The Petitioner had no explanation before the learned Trial Court regarding his possession of such huge quantity of fake cassettes and the machinery for preparing fake cassettes. Thus, the infringement under Section 63-A of the Act has been sufficiently lodged against the present Petitioner.

8. To justify the allegation under Section 63 as well as Section 65, it has been argued that the seizure made at the shop of the Petitioner was not witnessed by any mediator. P.W.2 has deposed as a mediator – seizure witness. Though there are no other witnesses who are residing in the vicinity of the place of occurrence, the evidence of P.W.2 is sufficiently justified the seizure made by the investigating authority. On that score, it appears that the seizure affected at

the shop of the Petitioner has been sufficiently proved by the investigating authority.

9. In considering the offence punishable under Section 68-A of the Act, the prosecution has to prove that there is violation of Provisions under Sections 52, 52-A of the Copyright Act. Section 52-A(1) of the Copyright Act reads as follows:-

“52A. Particulars to be included in [sound recording] and video films.— (1) No person shall publish a 3[sound recording] in respect of any work unless the following particulars are displayed on the 3[sound recording] and on any container thereof, namely:—

- (a) the name and address of the person who has made the sound recording;
- (b) the name and address of the owner of the copyright in such work; and
- (c) the year of its first publication”.

10. During evidence before the learned Trial Court by P.W.1 as well as the case of the prosecution has properly laid and proved that the name and address of the person who made sound recording as well as the name and address of the copyright holder and the year of first publication of such sound recording is not appearing in the cassettes under the possession of the Petitioner. Thus, the prosecution has rightfully proved the offence punishable under Section 68A of the Copyright Act.

11. Under the above observation, the findings of the learned Trial Court as well as the learned Appellant Court appears to be justifiable.

12. In considering the argument made on behalf of the learned Counsel for the Petitioner regarding the decision of the Hon'ble Apex Court in **Chellammal and Another ... Appellants; V. State Represented by the Inspector of Police ... Respondent, in Criminal Appeal No.2065 of 2025 (Arising out of SLP (CRL.) No.368 of 2020], decided on 22.04.2025** reported in **2025 SCC OnLine SC 870**, it appears to me that the learned Trial Court as well as the learned Appellate Court has not considered applicability of the provisions under Section 360 of Cr.P.C., regarding release of the Petitioner on Probation of Offenders Act. But, in my view, the said provision under Section 360 of Cr.P.C., is not applicable in this case. The Petitioner is alleged to have been engaged in the business of selling piracy cassettes. Petitioner is not within the age of 25 years at the time of offence. Thus, considering the entire aspect, in my view, the present Petitioner does not entitle to get benefit of Section 360 of Cr.P.C.,. Thus, the Order of conviction as recorded by the learned Appellate Court appears to be justified.

13. Under the above observation, I find no justification to entertain the Criminal Revision Case, the same is dismissed as devoid of merits.

The Order of suspension of sentence, if any, passed by this court during the pendency of this Criminal Revision Case is hereby vacated.

The Petitioner is directed to appear before learned trial court within 3 (three) weeks from the date of order, to serve out the remaining portion of the

sentence as was reduced by the Appellate Court, failing which, the learned Trial Court shall take appropriate steps to comply the order.

Accordingly, pending miscellaneous applications, if any, shall stand closed.

JUSTICE SUBHENDU SAMANTA

Dated 03.12.2025

Note: Issue CC by tomorrow,

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THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

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DATED:03.12.2025.

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