

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 258 OF 2013

KRISHIKA LULLA & ORS.

.... APPELLANTS

VERSUS

SHYAM VITHALRAO DEVKATTA & ANR.

.... RESPONDENTS

WITH

CRIMINAL APPEAL No. 259 OF 2013

JUDGMENT

S. A. BOBDE, J.

These two Criminal Appeals are preferred by the accused against the judgment and order dated 22.3.2012 in Criminal Misc. Application No. 1295 of 2011 and 1296 of 2011 passed by the learned Single Judge of the Bombay High Court refusing to quash the complaint and the process issued under Section 63 of the Copyright Act, 1957 (hereinafter referred as "the Copyright Act") read with Sections 406 and 420 of the Indian Penal Code, 1860 (hereinafter referred as "IPC").

2. The respondent No. 1-Shyam Vithalrao Devkatta, filed a complaint being Criminal Case No. SW/332 of 2011 under Section 63 of the Copyright Act, later amended to add additional charges under Sections 406 and 420 read with Section 34 of the IPC, against five persons. Upon due verification process was issued by the learned Metropolitan Magistrate against all except the fifth accused. Of these accused, four approached the Bombay High Court by way of filing two criminal misc. applications, under Section

482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C") for quashing the complaint. The High Court having refused to quash the complaint, the appellants have approached this Court.

3. The complainant/Respondent No.1 claims copyright in a synopsis of a story written by him with the title "Desi Boys". According to him, he had written a story with the title "Desi Boys" and had got the synopsis of the story registered with the Film Writers Association on 25.11.2008, when a friend, one Ramesh Bhatnagar, told him that a comedy film story is required by the son of a film Director, David Dhawan, he mailed the concept of the story in the form of a synopsis as an attachment to an email addressed to Ramesh Bhatnagar on 14.10.2009 with the words "Dear Friend, just see the attachment." Ramesh Bhatnagar forwarded the story, calling it "just an idea" by email to one Ahsan Sagar on 15.10.2009. What was forwarded was apparently the same short synopsis of the concept with the title "Desi Boys". A copy on the record makes it clear that it was by no means the entire story with all the dialogues and the screen play. Having done so, his friend Ramesh Bhatnagar did not receive any reply but, suddenly the complainant saw the promos of a film bearing the title "Desi Boys", actually spelt as "Desi Boyz". According to him, the adoption of the title "Desi Boyz" is a clear infringement of the copyright in the film title "Desi Boys". Admittedly, he has not seen the film and he states in his complaint, he cannot say whether a part of the story of the film written by him has also been infringed.

4. In the meanwhile, the appellants released their film with the title "Desi Boyz" throughout the world including India on 25.11.2011. According

to them, the film is based on a story written by one Milap Zaveri, who wrote the story under an agreement dated 02.09.2009, for which they have paid the author by cheque. The shooting of the film commenced on 07.11.2010 and the respondent No. 1 came to know about the film sometime on 12.10.2011. The details of the defence are not dealt with here since the matter must be decided on the basis of the tenability of the complaint.

5. The Court of Learned Metropolitan Magistrate having taken cognizance, as stated above the appellants approached the Bombay High Court under Section 482 of the Cr.P.C for quashing the complaint and process issued under Section 63 of the Copyright Act read with Sections 406 and 420 of IPC. The learned Single Judge who heard the matter as a part of a batch of matters in which parties had challenged the order issuing process against them in several different cases, dismissed the applications. In paragraph 97 of the judgment, the High Court considered the appellants case and merely pointed out that according to the appellants, the story which they had converted into a film was written by an author to whom they had paid a certain amount under an agreement even before the complaint of the respondent No. 1- Devkatta. Thereupon, the High Court merely observed that the facts alleged by the respondent No. 1 can only be determined at the trial and on the face of the record there was neither any abuse of court nor failure of justice and the applications were simply dismissed. There is no decision on the various issues raised by the appellants, hence these appeals.

6. Mr. Raju Ramchandran, the learned counsel for the appellants submitted that the respondent No.1-Devkatta has claimed infringement of

copyright in the title of the synopsis of a story "Desi Boys". Mr. Ramchandran, maintains that there is no copyright in the title of a story or for that matter a film and therefore, no complaint is tenable under Section 63 of the Copyright Act which makes a deliberate infringement or the abatement of the copyright in a work punishable as an offence. According to the learned counsel, the appellants got the story written by an author who was paid for it and by now the story had been converted into a film bearing the title "Desi Boyz" starring Akshay Kumar, John Abraham, Deepika Padukone, Anupam Kher, etc. The film had been released all over the world including India on 25.11.2011, after theatrical trailers were released on two occasions. It was submitted that the story of the film released by the appellants bears no similarity whatsoever with the story of which Devkatta has written a synopsis, the characters and the scenes and the settings being entirely different.

7. The main issue that arises for determination is whether the respondent No.1-Devkatta has copyright in the title "Desi Boys" which he has given to the synopsis of a story. Further, if at all a complaint under section 63 of the Copyright Act is tenable against all the appellants for giving the title "Desi Boyz" to the film released by them.

8. Section 13 of the Copyright Act, lays down works in which copyright subsists. Section 13(1) reads as follows:-

"13(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, this is to say,-

- (a) original literary, dramatic, musical and artistic works;*
- (b) cinematograph films; and*
- (c) [sound recording]*

9. It is obvious that what is claimed by Respondent No.1-Devkatta is only copyright in the title "Desi Boys". It is, therefore, not necessary to examine if a mere synopsis or a note of a story amounts to a literary work. Admittedly, Devkatta has not made any film by the name "Desi Boys" and his only grievance is about the infringement of copyright in the title which according to him is the soul of his story and copying it takes away everything from his story.

10. The question that arises is whether copyright exists in the title "Desi Boys". A title of a work has been considered to be not fit to be the subject of copyright law as will be apparent from the cases considered later. A title by itself is in the nature of a name of a work and is not complete by itself, without the work. No instance of a title having been held to be the subject of copyright has been pointed out to us.

11. It must be noted that in India copyright is a statutory right recognized and protected by The Copyright Act, 1957. It must therefore be first seen if the title "Desi Boys" can be the subject of copyright. On a plain reading of Section 13, copyright subsists in inter-alia an original literary work. In the first place a title does not qualify for being described as "work". It is incomplete in itself and refers to the work that follows. Secondly, the combination of the two words "Desi" and "Boys" cannot be said to have anything original in it. They are extremely common place words in India. It is obvious, therefore, that the title "Desi Boys", assuming it to be a work, has nothing original in it in the sense that its origin cannot be attributed to the respondent No.1. In fact these words do not even qualify for being described as 'literary work'. The Oxford English Dictionary

gives the meaning of the word 'literary' as "concerning the writing, study, or content of literature, especially of the kind valued for quality of form". The mere use of common words, such as those used here, cannot qualify for being described as 'literary'. In the present case, the title of a mere synopsis of a story is said to have been used for the title of a film. The title in question cannot therefore be considered to be a 'literary work' and, hence, no copyright can be said to subsist in it, vide Section 13; nor can a criminal complaint for infringement be said to be tenable on such basis.

12. The decisions cited on behalf of the appellants show that it is well settled that copyright does not subsist in a title of work. In *Hogg v. Maxwell* reported in (1866-67) L.R.2 Ch. App. 307, the question was whether the defendant had infringed the copyright of the plaintiff in the title of a monthly magazine called "Belgravia". Referring to the title "Belgravia" the Court observed:

"It is quite absurd to suppose that the Legislature, in providing for the registration of that which was to be the indicium of something outside the registry, in the shape of a volume or part of a volume, meant that, by the registration of one word, copyright in that one word could be obtained, even although that one word should be registered as what was to be the title of a book or of a magazine..... I apprehend, indeed, that if it were necessary to decide the point, it must be held that there cannot be what is termed copyright in a single word, although the word should be used as a fitting title for a book. The copyright contemplated by the Act must be not in a single word, but in some words in the shape of a volume, or part of a volume, which is communicated to the public, by which the public are benefited, and in return for which a certain protection is given to

the author of the work. All arguments, therefore, for the purpose of maintaining this bill on the ground of copyright appear to me to fall to the ground."

13. In *Francis Day & Hunter Ltd. v. Twentieth Century Fox Corporation Ltd. and Ors.* reported in *AIR 1940 Privy Council 55*, the Privy Council considered the infringement of copyright in the title of a song by its adoption for the title of a film. The Privy Council observed:-

*"In the present case the title was originally applied to a musical composition, whereas it has been applied by the respondents to a motion picture or a film. The argument of the appellant company would be the same, it seems, if the application of the title complained of had been to a picture or a statue. On this reasoning it would be said that the title "Adam" applied to a work of statuary would be infringed if that title were used as that of a novel. These and other anomalous consequences justify the broad principle that in general a title is not by itself a proper subject-matter of copyright. As a rule a title does not involve literary composition, and is not sufficiently substantial to justify a claim to protection. That statement does not mean that in particular cases a title may not be on so extensive a scale, and of so important a character, as to be a proper subject of protection against being copied. As Jessel M.R. said in *Dicks v. Yates* (which, as Lindley L.J. said in *Licensed Victuallers' Newspaper Co. v. Bingham*, virtually overruled on this point *Weldon v. Dicks*) there might be copyright in a title "as, for instance, in a whole page of title or something of that kind requiring invention." But this could not be said of the facts in the present case. There may have been a certain amount, though not a high degree, of originality in thinking of the theme of the song, and even in choosing the title, though it is of the most obvious.*

To "break the bank" is a hackneyed expression, and Monte Carlo is, or was, the most obvious place at which that achievement or accident might take place. The theme of the film is different from that of the song, and their Lordships see no ground in copyright law to justify the appellants' claim to prevent the use by the respondents of these few obvious words, which are too unsubstantial to constitute an infringement, especially when used in so different a connection."

14. That case is apposite in the sense that the title of a song was adopted as the title of a film like in the present case the title of the synopsis of a story has been adopted as a title of a film and not another story. Moreover the title comprised of common words as in the present case and they were held that they were too unsubstantial to constitute an infringement.

15. In *E.M. Forster and Anr. v. A.N. Parasuram* reported in AIR 1964 Madras 331 the author of "A passage to India" E.M. Forster filed a suit against the defendants for alleged infringement of copyright in the title of the book for adopting as a title the name of the defendants guide written for students, as "E M Forster, A Passage to India, Everyman's guide". The Court reviewed the law on the subject¹, and observed that there was no copyright in respect of title vide page 231 of the report. Eventually the Court held :-

"As we have earlier affirmed, there is no copyright in the title and purchasers, whether of the original work or of the guide, are most unlikely to be illiterate, or unacquainted with English. It will be perfectly clear to them, from the words

¹ (i) Macmillan v. Suresh Chander Deb, ILR 17 Cat 951, (ii) Longman v. Winchester, (1809) 16 Ves 269, (iii) Dicks v. Yates, (1881) 18 Ch D 79

enclosed in brackets as a sub-title, that they were acquiring, not the original work, but a "guide for University students....."

16. The same question arose in *Kanungo Media (P) Ltd. v RGV Film Factory & Ors.* reported in (2007) ILR 1 Delhi 1122 where the Court declined injunction against the defendant for using the brand name and title "Nishabd" alleging similar to the film of the plaintiff therein. The learned Judge A.K. Sikri, J. (as His Lordship then was) referred to decisions of the American Courts and observed that the position is the same as under the copyright law in India:-

"12..... What, therefore, follows is that if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone."

The Court then considered the question of protection of title as a trademark with which we are not concerned in this case.

17. Subsequently, in *R. Radha Krishnan v. Mr. A.R. Murugadoss & Ors.* reported in 2013-5-L.W. 429, the Madras High Court followed the decision of the Delhi High Court in the *Kanungo Media* Case and rejected an injunction for restraining the defendant from using the title of the plaintiff's film 'Raja Rani'. The Madras High Court considered various other decisions and held that the words 'Raja Rani' are words of common parlance which denote the king or the queen and cannot be protected under the law of copyright. The two judgments of the Madras High Court cited above and the judgment of the Delhi High Court in our view, lay down the correct law.

18. The learned counsel for the appellants relied on passages from Copinger and Skone James on Copyright Sixteenth Edition by Kevin Garnett, M.A, Gillian Davies, D.L., Ph.D. and Gwilym Harbottle, B.A. (Oxon) at page 70:-

"Names and titles as literary works. *In the same vein is the reluctance of English courts to confer copyright protection on titles of newspapers, magazines, books and the like. In relation to books in particular, the title normally forms part of a copyright work consisting of the book as a whole and the issue here may be whether the copying of the title amounts to the taking of a substantial part of the whole work. General statements can nevertheless be found in non-copyright cases to the effect that there is no property in a name or title standing alone unless it is the subject of goodwill or a registered trade mark."*

The learned authors observed:-

"The courts, have, however, been careful not to rule out the possibility of such protection in appropriate circumstances, although in practice no case has ever gone this far. The only concrete example which has been given judicially is the now archaic practice of the title-page of a book consisting of an extended passage of text."

In relation to copyright in characters and titles the learned authors observed:-

"It is very difficult to protect titles of films by an action for infringement of copyright due to the requirements of originality and that a substantial part of a work be copied. If a well-known title of a film is used without authority, the owner's remedy is likely to lie in passing off. Protection by

registration as a trade mark may be available provided the title is sufficiently distinctive.”

19. We are thus, of the view, that no copyright subsists in the title of a literary work and a plaintiff or a complainant is not entitled to relief on such basis except in an action for passing off or in respect of a registered trademark comprising such titles. This does not mean that in no case can a title be a proper subject of protection against being copied as held in *Dicks v Yates* where Jessel M.R said “there might be copyright in a title as for instance a whole page of title or something of that kind requiring invention” or as observed by Copinger (*supra*).

20. In the present case we find that there is no copyright in the title “Desi Boys” and thus no question of its infringement arises. The prosecution based on allegations of infringement of copyright in such a title is untenable.

21. The learned counsel for the respondents indeed contended that the applications under Section 482 were rightly dismissed since these facts alleged by the appellants depend on evidence at the trial. It is not possible to agree since it has throughout been the case of the respondent No. 1-Devkatta that he is claiming copyright only in the title of the synopsis of his story “Desi Boys” and he has not even seen the film of the appellants nor does he know the story. The learned counsel for the respondent was however right in his submissions that it is not necessary to furnish all the ingredients of the complaint and failing which the complaint is liable to be dismissed on that ground. It is not necessary to consider the decisions

cited by the respondents on this point.

22. In the result, both the Criminal Appeals are allowed. The Criminal Case No. SW/332 of 2011 pending before the Learned Metropolitan Magistrate, Mumbai is hereby quashed.

.....J.
[MADAN B. LOKUR]

.....J.
[S.A. BOBDE]

NEW DELHI,
October 15, 2015



JUDGMENT