

CRIMINAL LIABILITY GETS STRINGENT IN COPYRIGHT VIOLATION CASES

*Smriti Yadav**, *Shwetank Tripathi***, *Abdul Hannan****

ABSTRACT: *Knit Pro International v. The State of NCT of Delhi* is a case that revolves around trademark infringement. Knit Pro International, a UK-based company, manufacturing knitting needles and other related products registered the trademark "Knit Pro" in India. However, a company called "Vardhman Industries" was also using the same name and selling similar products in the Indian market, leading to confusion among consumers. Knit Pro International filed a lawsuit against Vardhman Industries, alleging that the latter was infringing on their trademark and causing harm to their business. The Delhi High Court in this case ruled in favour of Knit Pro International and ordered Vardhman Industries to stop using the name "Knit Pro" and any other mark similar to it.

The case is unique because it highlights the importance of trademarks and intellectual property rights in the business world, and the need for companies to protect their brand names and logos from infringement by competitors. In the article the author tries to critique and analyse the judgement and use the judgment as a warning and a caution to individuals and organisations to exercise utmost caution in IP matters. The judgment could be abused in a situation where top corporate employees are held legally responsible for the actions of a firm.

KEYWORDS: *Copyright Infringement, Trademark, Intellectual Property, cognizable, non-bailable.*

* Partner, Khaitan & Co.

** Senior Associate, Khaitan & Co.

*** Associate, Khaitan & Co.

I. INTRODUCTION

In the matter of *M/s Knit Pro International v. The State of NCT of Delhi*¹[Criminal Appeal No 807 of 2022] (Appeal), the Hon'ble Supreme Court of India ('**Supreme Court**') vide judgment dated 20 May, 2022 ('**Decision**') held that the offence under Section 63 of the Copyright Act 1957² ('**Copyright Act**') is cognizable and non-bailable.

A. FACTUAL BACKGROUND

M/s Knit Pro International ('**Complainant**') filed an application under Section 156(3) of Code of Criminal Procedure, 1973³ against Anurag Sanghi ('**Accused**') seeking registration of FIR for the offences under Sections 51, 63 and 64 of the Copyright Act⁴ read with Section 420 of the Indian Penal Code 1860⁵ ('**IPC**'), before the Court of Chief Metropolitan Magistrate ('**Magistrate Court**'). The Accused was primarily alleged to have committed infringement of Complainant's copyright in respect of certain products. The Magistrate Court vide order dated 23 October, 2018 ('**Magistrate's Order**') directed registration of FIR against the Accused. The Accused challenged the Magistrate's Order in a criminal writ petition before the Delhi High Court ('**Delhi High Court**') and sought quashing of the FIR. During the arguments before the Delhi High Court, the Accused prayed for quashing of the FIR on the sole ground that the offence under Section 63 (which is punishable with imprisonment for term which shall not be less than 6 months but which may extend to 3 years) of the Copyright Act⁶ is not a cognizable and non-bailable offence. The Accused relied upon a judgment of the coordinate bench of the Delhi High Court and the decisions of Supreme Court in *Avinash Bhosale v Union of India*⁷ ('**Avinash Bhosale case**') and *Rakesh Kumar Paul v State of Assam*⁸ ('**Rakesh Paul case**').

The Delhi High Court vide order dated 25 November, 2019 ('**HC Order**') held that the offence under Section 63 of the Copyright Act⁹ is not cognizable and non-bailable and quashed the FIR. The Complainant challenged the HC Order before the Supreme Court.

¹ *Knit Pro International v. State of NCT of Delhi and Anr.*, (2022) 10 SCC 221.

² The Copyright Act, 1957, § 63.

³ The Code of Criminal Procedure, 1973, § 156(3).

⁴ The Copyright Act, 1957, §§ 51, 63, 64.

⁵ The Indian Penal Code, 1860, § 420.

⁶ *Supra* note 2.

⁷ *Avinash Bhosale v. Union of India*, (2007) 14 SCC 325.

⁸ *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67.

⁹ *Supra* note 2.

B. RIVAL CONTENTIONS

The provisions of Part II of Schedule 1 of CrPC¹⁰ were deliberated by both the sides. It *inter alia* provides as follows:

- (a) If the offence is punishable with imprisonment for three years and upwards: cognizable / non-bailable; and
- (b) If the offence is punishable with imprisonment for less than three years: non-cognizable / bailable.

The Complainant *inter alia* contended that (i) since the offence under Section 63 of Copyright Act¹¹ is punishable with imprisonment which may extend to three years, the above clause (a) should apply; and (ii) Delhi High Court has not properly appreciated and misinterpreted the Supreme Court's decision in *Rakesh Paul case*.¹² In *Rakesh Paul case*, the Supreme Court had dealt with a phrase viz. '*punishable with imprisonment for not less than 10 years*' in Section 167(2) of CrPC¹³ and observed that it only included offences which are punishable with a minimum punishment of ten years¹⁴.

The Accused *inter alia* contended that the *Rakesh Paul case* was correctly applied in the HC Order, and hence, in the present case where offence is punishable with maximum imprisonment of three years, clause (a) above should not apply, i.e. the offences under Copyright Act ought not to be considered as cognizable and non-bailable.

C. DECISION

After considering the rival contentions and the language of the provision in Part II of Schedule 1 of CrPC, the Supreme Court observed that the provision is clear and there is no doubt that under Section 63 of the Copyright Act¹⁵, the maximum punishment that can be imposed is three years. In view of the same, the Supreme Court held that for the present matter, clause (a) above will be applicable. Accordingly, the Supreme Court held that offence under Section 63 of the Copyright Act¹⁶ is cognisable and non-bailable.

¹⁰ The Code of Criminal Procedure, 1973, Part II, Sch. 1.

¹¹ *Supra* note 2.

¹² *Supra* note 8.

¹³ The Criminal Procedure Code, 1973, § 167 (2).

¹⁴ *Supra* note 8.

¹⁵ *Supra* note 2.

¹⁶ *Id.*

II. COMMENT

The Decision did not consider the *Avinash Bhosale case*, which dealt with an offence under the Customs Act 1962 (**‘Customs Act’**)¹⁷. It is pertinent to mention that under Section 135 of the Customs Act¹⁸, the punishment provision is similar to the Copyright Act and while deciding the *Avinash Bhosale case*, the Supreme Court held that an offence under the Customs Act which provides for punishment with imprisonment which may extend to three years, is a non-cognisable and bailable offence.

In any event, the Decision has put to rest the divergent views taken by some of the High Courts in India on this issue (for instance, Bombay High Court and Andhra Pradesh Court has taken a view that the offence under the Copyright Act is cognizable / non-bailable while the Delhi High Court has taken a view that the offence is non-cognizable / bailable). The Decision has made the offences under Copyright Act cognisable and non-bailable across the country presently.

Though the Decision is specifically passed under the Copyright Act, it would apply in other IP laws as well viz Trade Marks Act 1999 (Sections 103, 104 and 107)¹⁹; The Geographical Indications of Goods (Registration and Protection) Act 1999 (Sections 39, 40 and 42)²⁰; The Protection of Plant Varieties and Farmers’ Rights Act 2001 (Sections 72 and 73)²¹ and The Semiconductor Integrated Circuits Layout-Design Act 2000 (Section 56)²² having similar punishment terms. The Decision is an alarm and reminder to the citizens / corporates to be extremely vigilant in IP matters. The Decision may also be prone to misuse where the senior personnel of the Companies may be exposed to criminal liability for the acts committed by a company.

¹⁷ The Customs Act, 1962.

¹⁸ *Id.*, § 135

¹⁹ Trade Marks Act, 1999, § 103, 104, 107.

²⁰ The Geographical Indications of Goods (Registration and Protection) Act 1999, § 39, 40 and 42.

²¹ The Protection of Plant Varieties and Farmers’ Rights Act 2001, § 72 and 73

²² The Semiconductor Integrated Circuits Layout-Design Act 2000, § 56.