

Crl.R.P.No.866 of 2012

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“C.R.”

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 4TH DAY OF OCTOBER 2024 / 12TH ASWINA, 1946

CRL.REV.PET NO. 866 OF 2012

**AGAINST THE ORDER/JUDGMENT DATED 24.01.2012 IN CRA
NO.15 OF 2005 OF SESSIONS COURT, THALASSERY ARISING OUT
OF THE ORDER/JUDGMENT DATED 30.12.2004 IN CC NO.288 OF
2002 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, KANNUR**

REVISION PETITIONER/S:

**O.P.ASHRAF
S/O MUHAMMEDKUNHI, MUNDERI, P.O., EACHOOR,
KANNUR DISTRICT.**

**BY ADVS.
SRI.K.K.BALAKRISHNAN KODIYURA
PRAJIT RATNAKARAN
E.MOHAMMED SHAFI(K/1057/1993)
KRISHNAPRIYA R.(K/001169/2023)**



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RESPONDENT/S:

- 1 THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
- 2 THE SHO
KANNUR TOWN STATION, KANNUR-670 001.
- 3 ADDL R3 THE PASSPORT OFFICER
REGIONAL PASSPORT OFFICE, ERANHIPALAM, KOZHIKODE
- 4 ADDL R4 THE CONSULATE GENERAL OF INDIA
JEDDAH, THROUGH MINISTRY OF EXTERNAL AFFAIRS
DEPARTMENT, A-WING, JAWAHARLAL NEHRU BHAWAN, 23-
D, JANPATH, REPRESENTED BY ITS SECRETARY, NEW
DELHI - 110 011

OTHER PRESENT:

SRI.G.SUDHEER, P.P.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 04.10.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



“C.R.”

K.BABU, J.

Crl.R.P.No.866 of 2012

Dated this the 4th day of October, 2024

ORDER

The challenge in this Crl. Revision Petition is to the judgment dated 30.12.2004 in C.C.No.288 of 2002 convicting the revision petitioner/accused under Sections 51(a) and 52A r/w 63 of the Copyright Act, 1957 ('the Act' for short) passed by the Judicial First Class Magistrate Court-I, Kannur and confirmed by the Sessions Court, Thalassery, in the judgment dated 24.01.2012 in Crl.Appeal No.15 of 2005.

2. The prosecution case is that the accused was found engaged in the sale of fake audio cassettes on



10.10.2001 at 16.00hrs on the footpath in front of building bearing No.KM 35/1203 at the northern side of the road leading to Muneeswaran kovil in Kannur.

3. The offences were detected by the Sub Inspector of Police, Kannur Town Police Station. The Additional Sub Inspector of Police, Kannur Town Police Station, conducted a part of the investigation. The Sub Inspector of Police, Kannur Town Police Station, completed the investigation and submitted the Final Report.

4. The trial Court and the Sessions Court concurrently found that the accused committed the offences alleged.

5. The learned counsel for the revision petitioner submitted that the prosecution failed to establish the



essential ingredients of the offences under Sections 51(a) and 52A of the Act.

6. Section 51(a) reads thus:-

“51. When copyright infringed.— Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or“

7. Section 14 of the Act, defines ‘copyright’.

Section 14 reads thus:-



14.Meaning of copyright.-- For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely;-

(a)in the case of a literary, dramatic or musical work, not being a computer programme,--

“(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);.....”

8. Section 2(m) of the Act defines the term ‘infringing copy’. Section 2(m) reads thus:-

“2 (m) “infringing copy” means—



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- (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;
- (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;
- (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;
- (iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,
if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;“

9. In the present case, the prosecution allegation is that fake audio cassettes were sold by the accused. The prosecution alleges that the accused sold cassettes containing audios recorded without the licence or



authority granted by the owner of the copyright with whom the exclusive right to so is vested.

10 To attract the offence under Section 51, the prosecution has to establish that the cassettes contained audio records relating to any of the subjects mentioned in 2(m) of the Act.

Evidence before the Court

11. PW1 is a Head Constable attached to the Kannur Town Police Station on the relevant date. On 10.10.2001, he had accompanied the Inspector of Police, Town Police Station. At 04.00 pm, at the place of occurrence, he found that the accused exhibited audio cassettes for sale. His version is that those cassettes were fake.



12. PW2 is an independent witness. He denied having sold any fake cassettes to anybody, including the revision petitioner.

13. PW3 is the Inspector of Police, Town Police Station, Kannur. He is the detecting Officer. His evidence is that on the relevant day, he found that the accused exhibited audio cassettes on a plastic sheet on the footpath. He arrested the accused and seized 38 audio cassettes. He has not seen anybody purchasing the audio cassettes from the accused. He has not compared MO1 cassettes with the originals.

14. PW4 is an attester to Ext.P3 Scene Mahazar.

15. PW5, the then ASI of Town Police Station, Kannur, conducted the investigation. He has not seen the originals of the cassettes as claimed by the prosecution. He has no idea about the owner of the copyright.



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16. The evidence tendered by the prosecution shows that the Police seized 38 cassettes. The prosecution did not know the contents of the same. The prosecution is unaware of the copyright holder. They did not ascertain who the copyright holder was or whether the copyright holder had retained any exclusive right or whether licence had been granted as mentioned in Section 51 of the Act.

17. Therefore, the prosecution failed to establish any of the ingredients to attract the offence under Section 51(a) r/w Section 63 of the Act.

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.

In the result,

1. The Crl.R.P. is allowed.



2. The judgment dated 30.12.2004 in C.C.No.288 of 2002 passed by the Judicial First Class Magistrate Court-I, Kannur and confirmed by the Sessions Court, Thalassery, in the judgment dated 24.01.2012 in Crl.Appeal No.15 of 2005 stands set aside.

3. The accused is found not guilty of the offences alleged. He is acquitted of the offences.

Sd/-

**K.BABU,
JUDGE**



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APPENDIX OF CRL.REV.PET 866/2012

PETITIONER ANNEXURES

**Annexure A1 A TRUE COPY OF THE RELEVANT PAGES OF
PASSPORT NO. W 4346466**

**Annexure A2 . A TRUE COPY OF THE RELEVANT
COMMUNICATION ISSUED BY THE 4TH
RESPONDENT**