

(2011) 07 P&H CK 0186

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 7772 of 2011 (O and M)

Phonographic Performance
Limited

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: July 27, 2011

Acts Referred:

- Copyright Act, 1957 - Section 2, 30, 33, 33(3), 34
- Copyright Rules, 1958 - Rule 14G
- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2012) 1 ILR (P&H) 602 : (2011) 164 PLR 519 : (2011) 4 RCR(Criminal) 776

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.

I. Cause of action for the petition

1. The Petitioner seeks for the relief of issue of writ of certiorari to quash the order/letter dated 13.04.2011 issued by the Additional Director General of Police, who is arrayed as the 3rd Respondent in the writ petition. By the impugned order dated 13.04.2011 (Annexure P-8), 3rd Respondent has given certain directions to all the District Police chiefs (Police Commissioners, all Senior Superintendents of Police) of Punjab, in response to a complaint from Mr. Dalip Bhanot claiming to be a President of Light Sound & DJ Association, Amritsar (Punjab). The complaint is purported to have been made against the employees of the Petitioner-Company pleading for suitable action on the ground that the members of the complainant's association are being harassed by the Petitioner for making false complaints as though their (D Js") public performances constitute violation of some copyrights claimed by the Petitioner-Company. The impugned order records the complaint of

the DJ Association that in several cases, criminal actions are being pursued at the instance of the Petitioner without appropriate verification whether there had been any violation of copyrights and the 3rd Respondent has, therefore, observed as under:

...all Police Chiefs (Police Commissioner of Punjab & Senior SS Ps of Punjab) will check all such cases on basis of real facts and only then they will lodge FI Rs and not under any pressure from PPL. Also all court cases against DJ associations should be reviewed.

The impugned order contains a second part which is also reproduced hereunder:

The compulsion of procuring licenses for DJ by PPL Company is not correct according to rules, as this is the work of Government and till Punjab Government like other states issues any information in this regard the DJ associations cannot be pressurized for any such licenses. Thus PPL is advised to present their side of the case in front of the Government and must wait for any further directions/notifications from the Government. Till then the working of DJ associations should not be interfered with by PPL.

The portion of the impugned order that requires judicial review

2. I may state even at the outset that in so far as the letter states that the police will lodge FI Rs only after verifying all facts and not under any pressure by the Petitioner-Company, there cannot be a cause for any grievance. The whole case must be only examined from the perspective of whether the members of DJ Association would require any licence, for, the letter states that the Petitioner should present the case before the Government and must wait for directions, as if to suggest that even if the Petitioner lodges a complaint for copyright violation, no action could be initiated till the government signals approbation.

III. A brief survey of the provisions under the Copyrights Act that the petition traverses

3. The petition details the powers which the Petitioner enjoys under the Copyright Act by express references to the definitions contained u/s 2 (xx) defining "sound recordings", Section 2 (ff) defining "communication to the public", Section 2(y) defining "work", Section 34 defining "the power to administer the right of owners of the work", Section 51 defining the circumstances when copyright could be said to be infringed, Section 63 that refers to offences of infringement of copyright or other rights conferred by this Act, and Section 64 that empowers the police to seize infringing copies and the exclusive privilege registered to the registered society to grant any right to sound recordings by license by virtue of Sections 30, 33 and 34 and the compliance that the impugned letter cast of new requirement of having to satisfy the Government and explained the stand in order that the police takes appropriate action even in cases where violation of copyright assured.

IV. The statement in defence and the apprehensions of misuse

4. The State has itself not filed the reply but the case is contested only at the instance of the DJ Association at whose instance the impugned order had been issued. The grievance of the DJ Association is, it is still confusing as to the respective rights of the Petitioner-Company and IPRS that holds the right to administer the copyrights for musical works and without a clear delineation of the respective rights, the Respondents' public performances cannot be complained of as constituting any copyright violations. The counsel for the DJ Association would contend that there is no transparent functioning of the Petitioner and several persons descend at party venues and collect their ransom by falsely giving that the violations are made and that those persons represented the Petitioner-Company. There is no authentication for any of the persons or proper identity of persons as representing the Petitioner-Company and the police merely acts to the dictates and whims to register the complaints and harass the members of the DJ Association. It is further contended by the learned Counsel appearing on behalf of the Respondent Association that there could be no prohibition against any of the public performances at marriage parties, since it is not covered under the definition of "public houses" or "events" coming under any of the categories which the Government of India notification reserves. The further grievance is that the Petitioner's list of members contains several defunct Companies. It is not possible to verify whether the Petitioner represents the owners of copyrights in any one particular sound recording and the Petitioner is not prepared to divulge details any more than giving a list of members of the Petitioner's Society.

V. The content of right for "sound recording", as protected under the Copyrights Act

5. The Petitioner's claim is that it is a registered society u/s 33(3) of the Copyright Act of 1957, by virtue of which the Petitioner has a right to carry on copyright business in "sound recordings". Referring to the provision of the Copyright Act, the Petitioner claims that it has the exclusive authorization to administer the rights of its members in sound recordings. Section 34(1) of the Copyright Act read with Rule 14G of the Copyright Rules of 1958, authorizes the Petitioner to protect, administer and manage the same by granting/issuing the licenses in respect thereof. The Petitioner has annexed a list of members (Annexure P-2) of the Petitioner-Association, whose rights the Petitioner company espouses. It is further averred that Super Cassettes Industries Private Limited has since become an associated member of the Petitioner-Society and it has granted exclusive authorization to it to administer its communication, public rights in their sound recordings and has authorized the Petitioner to issue licence for public performances in the territory of India in respect of its musical catalogue and its new releases effective till 30.05.2013. As evidence of proof that the Petitioner is the only copyright's society, the Petitioner has filed copy of the letter approved by the Ministry of Human Rights Development to the Department of Education, Government of India, addressed to the Director

(Operations) of the Petitioner-Company (PPL) authorizing the Petitioner to do copyright business in sound recordings. The same letter also refers to the permission to do copyright business to Indian Performing Right Society Limited (IPRS). The letter records the fact that since public performance of music involves both mechanical rights in sound recordings as well as rights of composers, performers etc. who have contributed towards the making of the music, licenses from both the societies governing these rights are required to be taken for playing recorded music whose copyright administration vest in these respective societies.

6. The counsel appearing on behalf of the Respondent argued that there is a confusion between the respective rights enjoyed by the owner of sound records and the owner of the musical works. According to him, they operate in the same field and a DJ playing music in a public place cannot be said to infringe any of the Petitioner's right. To him, a music played by a DJ must be understood as only the user of musical works and no right of sound recordings is ever infringed. I reject this objection as untenable, for, such a contention fails to recognize how "musical works" and "sound recordings" are defined under the Act. Section 2(p) reads as follows:

"musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music

The expression is defined to mean any composition that could be represented by any graphical notation but it does not include the lyrics intended for singing or reciting or performing with music. The use of graphic notation itself is not a pre-requisite as the definition of composer in Section 2(ffa) states that "composer", in relation to a musical work, means the person, who composes the music regardless of whether he records it in any form of graphical notation. By way of illustration, a traditional rendering of Indian music is comprised of rhythm set through talas and composed to a musical lilt through swaras. The lyrics are yet another component which are the words that go into music. They are the literary component of music. When a performer sings the lyrics with music, he expounds an artistic work. In other words, if lyrics composed is set to music and a vocal rendition is made, it is literally a combination of three "works". The lyric is the "literary work", the musical notation is the "musical work" and the actual performance by the singer is the "artistic work", as admirably summed up by a decision in *Sankar Biswas v. Salil Chatterjee* (1992) 96 CWN 540. The fourth dimension could be added now to understand what a sound recording is. The term "sound recording" is defined u/s 2(xx), as follows:

Section 2(xx)-"sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

It means a recording of sounds in any medium which when played reproduces that sound. Under the definition, it could be any medium on which such recording is made. It could also be by any method by which the sound is produced. Recording could be made of the voice or from an instrument or any form that is discerned by senses. As examples, it could be in a CD, in a cassette, in a gramophone record, or in the device which not merely records it but also is capable of reproducing it. A record itself is meaningful only when it can be reproduced. It can be a music which is recorded; it could be a speech, which is recorded; or it could be any sound which is recorded. Every one of such recording that is capable of reproduction in any form goes for sound recording. Where do these rights reside? They reside in author or authors of each one of the above. Section 2(d) that defines an "author" means, (ii) in relation to a musical work, the composer; ... (v) in relation to a cinematograph film or sound-recording, the producer. When is the author's right infringed? An "infringing copy" is defined Section 2 (m) that includes 3 components viz., (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.

7. The Petitioner-Company represents a right to manage the rights of persons who are owners/authors of such copyrights and seeks for action against such infringing copy through performance or reproduction by persons without licence. This right is independent of rights of persons, who may have scripted the words; sung the songs or composed the rhythm or melody that is music. This distinction is brought even through Government notification and it recognizes IPRS and PPL as license holders for respectively the musical works and the sound records. What IPRS could claim in respect of the music that is composed is independently of the Petitioner's rights which are recorded and reproduced. A DJ that plays a CD or mixes sounds in his consoles reproduces from the already existing devices which have captured that music or sound or talk. That is enough to say that he reproduces a sound recording and to that extent to be said to have infringed the right, if he does not hold a licence.

VI. Performance in marriage parties, whether included in the notification and controlled by tariff regime

8. To advert to the objection by the learned Counsel appearing on behalf of 4th Respondent that the categories specified in the Government gazette does not include a DJ performance in a marriage hall, it misses the wide expression made through as "event" which is "birthday and other functions in commercial premises". "Other functions" would mean just as well a pre-marriage, marriage or post marriage function. The learned Counsel for the 4th Respondent seeks to contend that a marriage function is a religious ceremony and cannot be understood as falling within other functions referred to as an event. We are not discussing the

issue of a Prohit or a Moulvi or a Priest performing marriages or infringement of any of their religious functions or trenching upon their activities. We are discussing a situation where a reproduction of sound recording takes place and communicated to the public in the manner defined in Section 2(ff):

"communication to the public" means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.- For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.

It would make no difference, even if it were to take place in a religious ceremony. A sound reproduction by a DJ performing at such an event is surely a function that is connected to marriage. It is not as if a DJ's performance amounts to conducting the marriage. Marriage is definitely different from the functions connected to the marriage and the tariff regime applies to performances at such functions even if it has a religious overtone.

VII. Examination of evidence produced by the Petitioner for enforcement of rights and the apprehensions as expressed by the Respondent Association

9. The vesting of the right of the Petitioner-Company as duly authorized to administer the public performance rights in their sound recordings as the sole designated body to issue public performance licences in the country cannot be denied at all, in view of the gazette notification of India published on August 15-21, 2009. This purports to be a partial modification of the earlier notice dated 11th September, 2010/September 16th, 2005. The notification sets out the tariff scheme and gives also the categories of various activities which could be administered through such licenses. In part A of the notification, several categories like, background music, music quizzes, jute boxes etc. are given and in part B, events and special features entertainment are also set out. Since the Petitioner categorizes the activities of DJs as event managers and entertainers in various public functions, the Petitioner points out the tariffs that are laid down in Entry 33-A that includes promotions, fashion shows, road shows and events described in Entry 33-D as "birthdays and other functions in commercial places" where DJs' performances are displayed. "Part C sets out temporary embodiment/storage/transfer/hire for DJ/sound equipment service and the differential tariffs, depending on the number of tracks used and the actual fees thereof. The counsel for the Petitioner points out that there is no requirement of having to go groping about the tariffs payable, or to complain that there are ad hoc demands. According to the counsel, the gazette

gives a clear delineation of categories and fairly a quick reckoner of the regime that sets out varying tariffs depending on the size of halls, the number of tracks used, the duty of having to pay the licence fees etc. The Petitioner also states that there are authorized representatives of the Petitioner-Company, who can issue licences and collect the tariffs payable. The Petitioner also gives a list of all the members, who are operating in various places in India and refers to the fact that even the 4th Respondent (President) has registered himself as the licensee with the Petitioner through their authorized representative for the period from 01.01.2007 to 01.01.2008 in his personal capacity. The Petitioner has also filed before this Court a special power of attorney showing one Mr. Sanjeev Wadhwa as the lawfully constituted agent to do all acts on their behalf in the State of Punjab, Chandigarh region and northern regions of India. The Petitioner has also produced various copyright agreements which the Petitioner-Company has entered into with several sound recording Companies of various popular Companies in India to show that the Petitioner-Company is authorized as owner of copyrights in sound recording to administer such rights in accordance with law. In the light of express provisions provided under the Copyright Act and the evidence produced as regards details of membership, gazette notification, authorized representatives who could act on their behalf, it will be futile to argue that the Respondents do not know the authenticity of the Petitioner as a registered society to file complaints or their duty to pay licence fee for their performances. The counsel for the Petitioner states that the Petitioner has the force to approach the High Court every time to register a complaint by the non-cooperative stand of the police and the self imposed fetters through the impugned order compelling the Petitioner to approach the Government and negotiate for how they shall carry on with their activities.

10. To further allay the fears that the Respondents could be harassed by any person claiming to be a representative of the Petitioner, it can surely be expected that the person that makes a demand for production of a licence or a DJ performing at a public event, has a right to demand the manner of authority under which he purports to act on behalf of the Petitioner. The same way the police to whom a complaint has been given is entitled to secure adequate proof of the authorization of the person, who lodges the complaint and who seeks to represent the Petitioner-Company. If the question again relates to whether the Petitioner could claim to be authorized to represent the author/ owner of the copyright to administer complaint on violation on his behalf, the Petitioner could be compelled to show the agreement with the owner of the copyright of the particular sound recording in respect of which violation is complained of. In these days where lakhs of musical works are recorded, it could be difficult to carry the agreement at all times that the Petitioner-Company has it with all its members. However, at a time when a complaint is registered and when investigation is undertaken or civil action is led for damages, it is needless to state that the Petitioner-Company ought to show the factual foundation that it is authorized to represent and administer the

copyright of sound recording of the particular work from the owner of such copyright. The Petitioner can disseminate the information to anyone demanding information by hosting a website that will contain details of all members of the Company, who are the authors/ owners of the respective copyrights of the sound recording and the list of items with identifiable code numbers or names of recordings so that for all parties concerned, namely, the person that complains of violation of copyright, the person that is required to have a licence and the enforcer of law to know whether a copyright exists of the subject matter.

VIII. Duty of Police to take action for copyrights violation

11. The police machinery is relevant in so far as the violation of copyrights which Section 51 delineates and penalty that the Act imposes for such violations. The violations give rise to civil law remedies under Chapter XII of the Copyright Act through Section 53 to Section 62 and remedies through Criminal Courts by constituting the violations as offences under Chapter XIII through the provisions commencing from Section 63 to Section 70. Section 64 of the Copyright Act empowers the police to seize infringing copies and Section 66 empowers the Court to try any offence under the Act to direct that all copies of the work or of plays in the possession of the offenders to be delivered up to the owner of the copyright. Section 70 gives the power to a Judicial Magistrate 1st Class to try the offence under the Act. In the face of such express provisions, there can be no doubt that the Petitioner-Company shall be entitled to enforce the rights secured under the Act, both through civil law as well as by setting criminal law in motion.

12. The Petitioner claims that there are just four complaints registered in the State of Punjab, out of which, two at Ludhiyana, one at Amritsar and one at Moga. It is further stated that three of the complaints were registered only after the intervention of this Court in exercise of its powers u/s 482 CrPC. While circumspection and sure proof of what the complaint states are certainly desirable, a suspicion at every turn against the complainant borne out of ignorance of the law enforcing machinery, the police, would certainly lead to a situation of brazen violation of copyrights, which the law assiduously protects. It should be more to require proof of what the Petitioner complains as constituting a violation of copyright than an ostrich like approach, digging its face fathoms deep under surface of earth. Such an attitude cannot help the rule of law; indeed, it will amount to giving an undeserving shot in the arm to a violator of law. The police machinery is bound to enforce the law, without requiring the Petitioner to approach the government for further directions, for every copyright violation when public performer in any event (that would include a marriage ceremony) reproduces a sound recording without licence from the copyrights society.

IX. Disposition

13. Under the circumstances, the impugned letter in so far as it directs the Petitioner-Company to represent to the Government and wait for further direction or notification from the Government is quashed. No fresh notification from Government is necessary nor can the Petitioner be compelled to make any representation to the Government in the manner spelt out in the impugned letter. The police is bound to act on legitimate complaints of copyright violations in the manner explained above.

14. The writ petition is allowed on the above terms.