

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.32942 OF 2017 (GM- RES)

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BETWEEN:

1. ANI TECHNOLOGIES PRIVATE LIMITED
HAVING ITS OFFICE AT:
MARUTHI INFOTECH CENTRE
"A" BLOCK, 5TH FLOOR
CHALLAGHATTA,
BENGALURU - 560 034
REPRESENTED BY
AUTHORIZED SIGNATORY
MR.A.M.IKTEAR UDDIN.
2. MR.BHAVISH AGGARWAL
CHIEF EXECUTIVE OFFICER
ANI TECHNOLOGIES PVT. LTD.,
OFFICE AT: MARUTHI INFOTECH CENTRE
"A" BLOCK, 5TH FLOOR
CHALLAGHATTA
BENGALURU - 560 034.
3. MR. ANKIT BHATI
CHIEF TECHNOLOGY OFFICER
ANI TECHNOLOGIES PVT. LTD.,
OFFICE AT:MARUTHI INFOTECH CENTRE
"A" BLOCK, 5TH FLOOR
CHALLAGHATTA
BENGALURU - 560 034.

... PETITIONERS

(BY SRI C.V.NAGESH, SR. ADVOCATE A/W
SRI MAHESH S., ADVOCATE (PHYSICAL HEARING))

AND:

1. STATE OF KARNATAKA
THROUGH STATION HOUSE OFFICER
JEEVAN BHIMA NAGAR POLICE STATION
BENGALURU - 560 075
REPRESENTED BY PROSECUTOR
HON'BLE HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

2. LAHARI RECORDING COMPANY
T.T.M.C, B.M.T.C BUILDING
4TH FLOOR, YESHWANTHPUR CIRCLE
BENGALURU - 650 022
REPRESENTED BY ITS
MANAGING PARTNER.

... RESPONDENTS

(BY SRI R.D.RENUKARADHYA, HCGP FOR R1 (PHYSICAL HEARING),
SRI M.S.SHYAM SUNDAR, ADVOCATE FOR R2 (PHYSICAL
HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF
CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE
REGISTRATION OF FIR VIDE ANNEXURE-A BY THE R-1
JEEVANBHIMANAGAR POLICE IN CR NO.191/2017 ITS
INVESTIGATION AND ALL ITS CONSEQUENTIAL PROCEEDINGS
VIDE ANNEXURE-H1 PENDING ON THE FILE OF THE HON'BLE IX
ACMM BANGALORE AGAINST THE PETITIONERS AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 16.12.2021, COMING ON FOR PRONOUNCEMENT
THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The 1st petitioner/ANI Technologies Private Limited and its Directors are before this Court calling in question registration of FIR in Crime No.191 of 2017 and all further proceedings taken thereto.

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:

The petitioners are also known as Ola or Ola Cabs. The 2nd respondent is Lahari Recording Company, one of the music companies in India. The petitioners who run Ola cabs launched a feature in their cabs/taxis where television/display sets are fixed to the headrest of the front seat where popular songs are played. This feature is known in the cabs circle as Ola play and such cabs are known as Ola Prime. Noticing that several of the contents of music videos and songs belonging to several of the films whose music copyrights the 2nd respondent owns were being displayed in Ola Prime cabs under the feature Ola

play and on the ground that Ola cabs are indulging in commercial exploitation of copyright of the music whose copyright is owned by the 2nd respondent without purchasing such copyright registered a complaint on 13-05-2017 alleging infringement of Copyright Act, 1957 ('the Act' for short). On registration of the said complaint before the Additional Commissioner of Police, investigation is directed to be conducted and an FIR came to be registered in Crime No.191 of 2017 alleging offences punishable under Sections 63 and 64 of the Act. At that juncture, the petitioners, the Company and the Directors of Ola Cabs have knocked the doors of this Court in the subject writ petition.

3. Heard learned Senior Counsel Sri C.V.Nagesh along with Mr. Mahesh S, learned counsel for the petitioners, Sri R.D.Renukaradhya, learned High Court Government Pleader representing the 1st respondent - State and learned counsel Sri M.S.Shyam Sundar representing the 2nd respondent/complainant.

4. The learned senior counsel would submit that Section 63 of the Act is a non-cognizable offence and once it is held to be a non-cognizable offence, Police had no jurisdiction to investigate into the matter and would further submit that the complaint itself does not make out any offence of infringement of copyright as the entire complaint narrates that the complainant believes that copyright is violated and in criminal jurisprudence there had to be evidence and documentation and not the belief of the complainant is his emphatic submission.

5. On the other hand, the learned counsel appearing for the complainant would contend that Section 63 cannot but be held to be a cognizable offence as the offence is punishable for a period up to 3 years and any offence punishable upto 3 years in terms of Schedule to the Code of Criminal Procedure, 1973, it becomes a cognizable offence and if it is a cognizable offence, no fault can be found in the investigation conducted.

Commercial exploitation of the copyright that is held by the complainant cannot be permitted as identical agreements are entered into between the petitioners and the other net-work whose copyright they have and would submit that the writ petition be dismissed and trial be continued against the petitioners.

6. I have given my anxious consideration to the submissions made by the learned senior counsel and the counsel for the 2nd respondent and have perused the material on record.

The Copyright Act, 1957:

7. Section 63 of the Act, when it was initially promulgated prescribed punishment for the offence of infringement of the copyright to be punishable with imprisonment, which extended to one year or fine or both. Therefore, the maximum punishment prescribed then was one year. The said provision of law underwent an amendment by

the Amending Act 65 of 1984, the maximum offence punishable was changed from one year to three years. It is germane to notice the objects and reasons for bringing out said amendment.

"Piracy has become a global problem due to the rapid advances in technology. It has assumed alarming proportions all over the world and all the countries are trying to meet the challenge by taking stringent legislative and enforcement measures. The problem of piracy and the necessity for taking sufficient anti-piracy measures were also voiced by Members of Parliament at the time of the consideration of the Bill to amend the Copyright Act, 1957, last year.

2. Mainly there are three types of piracy, namely, piracy of the printed word, piracy of sound recordings and piracy of cinematograph films. The object of the pirate in all such cases is to make quick money and avoid payment of legitimate taxes and royalties. In respect of books, it is estimated that four hundred to five hundred titles are pirated

*every year in India and on each of the pirated titles, the loss to the Government in the form of tax evasion amounts approximately to Rs 11,000. Apart from books, recorded music and video cassettes of films and TV programmes are reproduced, distributed and sold on a massive scale in many parts of the world without any remuneration to the authors, artistes, publishers and producers concerned. The emergence of new techniques of recordings, fixation and reproduction of audio programmes, combined with the advent of video technology have greatly helped the pirates. It is estimated that the losses to the film producers and other owners of copyright amount to several crores of rupees. The loss to Government in terms of tax evasion also amounts to crores of rupees. In addition, because of the recent video boom in the country, there are reports that uncertified video films are being exhibited on a large scale. A large number of video parlours have also sprung up all over the country and they exhibit such films recorded on video tapes by charging admission fees from their clients. **In view of these circumstances, it is proposed to amend the***

Copyright Act, 1957, suitably to combat effectively the piracy that is prevalent in the country."

(Emphasis supplied)

It is on the aforesaid objects and reasons, Section 63 of the Act was amended by way of substitution. The Section as it stands today reads as follows:

"63. Offence of infringement of copyright or other rights conferred by this Act.—Any person who knowingly infringes or abets the infringement of—

- (a) the copyright in a work, or*
- (b) any other right conferred by this Act except the right conferred by Section 53-A,*

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

Section 64 is also germane to be noticed, it reads as follows:

"64. Power of police to seize infringing copies.—*(1) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under Section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.*

(2) Any person having an interest in any copies of a work or plates seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application, as he may deem fit."

(emphasis supplied)

The embargo upon the Police for registering a FIR and conducting investigation into a non-cognizable offence is under Section 155 of the Cr.P.C. Section 155 of the Cr.P.C. reads as follows:

“155. Information as to non-cognizable cases and investigation of such cases.—(1)

When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case,

notwithstanding that the other offences are non-cognizable.”

(emphasis supplied)

In terms of Section 155(1) of the Cr.P.C., whenever an informant registers a complaint before the jurisdictional Police Officer in-charge of the police station, if it is a non-cognizable offence, the Police shall refer the informant to the Magistrate and once the Magistrate gives his nod for investigation, it is only then, the Police would get a right to investigate into the matter. The Police do not have sweeping powers even to register and investigate non-cognizable offence.

8. The offences narrated in penal provisions either under the Copyright Act or under any enactment, if read to be cognizable, there should be no ambiguity with regard to the jurisdiction of the Police to entertain the complaint and register a FIR or investigate into the matter. In cases where penal provisions do not clearly indicate whether the offences

are cognizable or non-cognizable, the *lis* will have to be resolved by referring to the Schedule appended to the Cr.P.C. Schedule-II to the Code reads as follows:

II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

| Offence | Cognizable or Non- cognizable | Bailable or non- bailable | By what Court triable |
|---|-------------------------------------|---------------------------------|---------------------------------------|
| If punishable with death, imprisonment for life, or imprisonment for more than 7 years. | Cognizable | Non-bailable | Court of Session. |
| If punishable with imprisonment for 3 years and upwards but not more than 7 years. | Ditto | Ditto | Magistrate of the first class. |
| If punishable with imprisonment for less than 3 years or with fine only. | Non-cognizable | Bailable | Any Magistrate. |

(emphasis supplied)

If an offence is punishable with death, imprisonment for life or imprisonment for more than 7 years, the offence is cognizable and non-bailable. If the offence is punishable for three years

and upwards but not more than 7 years, it is the same i.e., cognizable and non-bailable. If the offence punishable for imprisonment for less than 3 years or with fine only, it becomes non-cognizable and bailable. Section 63 of the Act directs that any violation of the Act as described in the section would become punishable with imprisonment varying from 6 months to 3 years. The issue now would be if it is three years and upwards there can be no doubt that it is cognizable offence. When the offence is punishable with imprisonment for 6 months to 3 years or with fine only, whether such an offence would become cognizable or non-cognizable, is the issue that requires consideration.

9. It is germane to notice the line of law laid down by various Constitutional Courts. The Bombay High Court in the case of ***PIYUSH SUBHASHBHAI RANIPA VS. STATE OF MAHARASHTRA***¹, while interpreting Section 63 of the Copyright Act and Section 103 of the Trade Marks Act, both of

¹ 2021 SCC Online Bom 350

which are identical, insofar as the maximum sentence that can be imposed is six months, which may extend upto three years.

The relevant paragraphs runs as follows:

*"19. Bare reading of this Part II of the Schedule-I of Cr.p.c. shows that, if the offences in the other laws are punishable with imprisonment for three years and upwards then the offences are cognizable and non bailable. **Wherever it is possible to impose the punishment extending to three years, this category would apply, because in such offences it is possible to impose sentence of exact three years. In such cases offences would be non-bailable.***

20. Therefore, first question raised before me is answered that the offences under section 63 of the Copyright Act and section 103 of Trade Marks Act are non-bailable in nature and, therefore, since these sections are applied here, the application for anticipatory bail is maintainable."

(Emphasis supplied)

The High court of Bombay in the afore-extracted judgment was considering whether the offence under Section 63 of the Act is bailable or non-bailable. The question is answered that the offence under Section 63 of the Act is non-bailable. The

reason rendered is that, whenever it is possible to impose the punishment extending to three years, the category that it is cognizable would apply as in such offences, as it is possible to impose a sentence of exact three years.

10. Long before the aforesaid judgment, the Bombay High Court in the case of **RAMRAO MAROTRAO BUDRUK VS. THE STATE OF MAHARASHTRA AND ANOTHER**², which was considering Section 2 of the Prevention of Insults to National Honour Act, 1971, has held as follows:

"3. Section 2 of the Prevention of Insults to National Honour Act, 1971 (hereinafter referred to as 'the Act' for the sake of brevity) runs thus:

*"Whoever in any public place or in any other place within public view burns, mutilates, or otherwise brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, **shall be punished with imprisonment for a term which***

² 1994 SCC Online Bom 407

may extend to three years, or with fine, or with both."

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8. Section 2 of the Act empowers the Court to sentence an accused upto 3 years and it is a maximum sentence but permissible. Therefore, it makes no difference by the fact that the imprisonment for such an offence can also be less than 3 years. To put in figures, for an offence under section 2 of the Act, the imprisonment for 2 years and 365 days can be inflicted or ever less than that. As such, it would be an offence punishable with imprisonment for 3 years which would make it as a non bailable one. ***If the punishment is upto 2 years and 364 days it would be an offence punishable with imprisonment for less than 3 years so as to make it a bailable on under category No. 3 of the said classification.*** If the offence therefore, falls within the ??? corners of category No. 2 of the said classification, an application under section 438, Cr. P.C. for a relief of anticipatory bail would be maintainable as the offence would be a non-bailable one. The learned 2nd Additional Sessions Judge, therefore, committed an error in treating the offence under section 2 of the Act as a bailable one."

(emphasis supplied)

The High Court of Bombay in a later judgment in the case of

MAHESH SHIVRAM PUTHRAN VS. THE COMMISSIONER

OF POLICE, THANE, DIST. THANE AND OTHERS³,

considering Sections 43 and 52 of the Maharashtra Regional and Town Planning Act, 1966, which also made offences punishable with imprisonment, which may be extended upto three years. The Division Bench of Bombay High Court holds as follows:

"14. Reverting back to the question whether the offences under Sections 43 and 52 of the Act are cognizable or non-cognizable, since the Act of 1966 does not make express provision in that behalf, by virtue of Section 4(2) of the Code, reference can be made to the scheme provided in the Code in that behalf. For that, we may refer to Part II of Schedule I of the Code, which provides for classification of offences against other laws. The same reads thus:-

"II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS Offence Cognizable or non-cognizable Bailable or nonbailable By what Court triable If punishable with death, imprisonment for life, or imprisonment for more than 7 years If punishable with imprisonment for 3 years, and upwards but not more than 7 years

³ 2011 SCC Online Bom 389

If punishable with imprisonment for less than 3 years or with fine only. Cognizable Ditto

Non-cognizable.

Non-bailable.

Ditto

Bailable.

Court of Session.

Magistrate of the first class.

Any Magistrate."

(emphasis supplied)

As the maximum punishment provided in terms of Section 52 of the Act, which has been applied to the case on hand, being up to three years, at best, the second category of cases specified in Part II of Schedule I would be attracted. It would necessarily follow that the offence under Section 52 of the Act is a cognizable and non-bailable offence."

The Bombay High Court in the afore-extracted judgment holds that the maximum punishment provided in terms of the Section 52 of the Maharashtra Regional and Town Planning Act, 1966, is up to three years and the second category of Schedule II of the Code of Criminal Procedure would get

attracted and what follows is that, the offences is cognizable and non-bailable.

11. The Division Bench of High Court of Gauhati in its judgment in the case of **HRIDAYANADA SHARMA VS. STATE OF ASSAM⁴**, has interpreted Section 68A of the Act. Section 68A of the Act reads as follows:

"68-A. Penalty for contravention of Section 52-A.— Any person who publishes a ²[sound recording] or a video film in contravention of the provisions of Section 52-A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine."

Section 68 (*supra*) is identical to Section 63 of the Act, insofar as it concerns the maximum sentence. The Division Bench holds as follows:

"2. Section 68A of the Copyright Act, 1957 provides that an offence U/S. 52A of the said Act is punishable with imprisonment which may extend to 3 years as well as fine also. Under Part-II contained in Schedule-I of the

⁴ (2004) 1 Gau LR 421

investigation relates to an offence punishable with death or imprisonment for life or imprisonment for a term of not less than 10 years, it is Clause (ii) which prescribes a period of 60 days that would apply in view of the fact that the punishment prescribed under Section 386 IPC is for a term which may extend to 10 years. As charge-sheet had not been filed and period of 60 days was over, the accused was held to be entitled to bail. The view taken by the learned Magistrate was disapproved by the revisional Court where after the matter was taken before the Delhi High Court and the Delhi High Court, on an elaborate consideration of the provisions of Section 167 Cr. P.C. and the earlier decisions rendered by the Court, upheld the order of the revisional, Court holding that for an offence under Section 386 IPC the maximum period of detention without submission of charge-sheet could be 90 days as contemplated by Clause (i) of Proviso a to Section 167(2) Cr. P.C. The reasoning of the High Court of Delhi for the conclusion reached as contained in paragraph 4 of the judgment may be usefully extracted herein below:

"The expression "imprisonment for a term of not less than ten years" used in clause (i) of proviso (a) to sub-section (2) of Section 167 includes imprisonment for a term of ten years as well as imprisonment for a term of more than ten years. In other words, clause (i) of proviso (a) to sub-section (2) of Section 167 will be applicable where the investigation relates to an

offence punishable with imprisonment for a term often years or more. The crucial test is whether the offence is one for which the punishment of imprisonment for a term of ten years or more can be awarded. It is immaterial that the Court may have also the discretion to award the punishment of imprisonment for a term of less than ten years. In the case of a particular offence, even though the Court may have discretion to award punishment of imprisonment for a term of less than 10 years, the above mentioned clause (i) will apply if the accused can be punished with imprisonment for a term of ten years.

Where the offence is punishable with imprisonment for a term which may extend to ten years the Court has the discretion to sentence the accused to undergo imprisonment for a term often years or for a term of less than ten years. Hence the abovementioned clause (i) will be applicable where the investigation relates to an offence punishable with imprisonment for a term which may extend to ten years". It should be borne in mind that the expression used by the Legislature in clause (i) of proviso (a) to Section 167(2) is not "imprisonment for a minimum term often years". If the Legislature intended to restrict the application of the said clause (i) to offences punishable with imprisonment for a minimum term of ten years, the

Legislature could have used the expression "offence punishable with death, imprisonment for life or imprisonment for a minimum term of ten years". Significantly the legislature did not use such an expression."

5. *The Apex Court, on being moved by the accused against the aforesaid judgment of the Delhi High Court, upheld the view taken by the High Court. A reading of the judgment of the Apex Court would clearly go to show that the view taken is that under Section 386 IPC the punishment provided is imprisonment for a term which may extend to 10 years, which means that imprisonment can be for a clear period of 10 years or even less. As the imprisonment prescribed can be up to a maximum period of 10 years, the Apex Court held that the punishment prescribed cannot be said to be not less than 10 years. The Apex Court having upheld the view of the Delhi High Court by dismissing the appeal filed by the accused there can be no two opinions that the view taken by the Apex Court is that the punishment under Section 386 IPC, i.e., for a term, which may extend to 10 years would be covered by the expression "imprisonment for a term not less than 10 years" as prescribed in Clause (i) of proviso (a) to Section 167(2) Cr. P.C. Following the ratio of the Apex Court judgment in Rajeeb Chaudhary's case (supra) **what would logically follow is that the punishment prescribed under Section 68A of the Copyright***

Act being for imprisonment which may extend to period of 3 years, the punishment prescribed cannot be said to be less than 3 years as required under Part II of Schedule I of the Code of Criminal Procedure to make the offence bailable. Consequently, we answer the question raised, holding that the offence under Section 68A of the Copyright Act is a non-bailable offence."

(emphasis supplied)

The Division Bench while answering the conflict of opinion between the two Single Judges, with regard to the offence punishable for a term which may extend upto three years is bailable or non-bailable, the question is answered as non-bailable by interpreting that the maximum sentence that can be imposed is exact three years.

12. The High Court of Kerala in the case of ***ABDUL SATHAR VS. NODAL OFFICER, ANTI-PIRACY CELL, KERALA CRIME BRANCH OFFICE & ANR.***⁵, has held as follows:

⁵ AIR 2007 Ker 212

"2. The penal provision appears in Section 63 of the Copyright Act. The offence is punishable with imprisonment for a term, 'which shall not be less than six months, but which may extend to three years and with fine". The Copyright Act as amended does not anywhere specifically refer to cognizability for the purpose of investigation. We therefore have got to fall back on the schedule to the Code of Criminal Procedure. The schedule to the Code of Criminal Procedure shows that if the offence under other laws is punishable "with imprisonment for three years and upwards, but not more than 7 years", the offence will be cognizable and non-bailable. If on the contrary, the offence is punishable with imprisonment for less than 3 years or with fine only, the offence will be non-cognizable and bailable and can be tried by any Magistrate. The short question is whether the offence under Section 63 will fall in the former category or the latter.

3. A plain reading of the stipulations in the Schedule shows that if the offence is punishable with imprisonment for 3 years and upwards, but not more than 7 years, it must be reckoned as cognizable. Section 63, according to me, is clearly punishable with imprisonment for 3 years and in these circumstances the offence has to be held to be cognizable. No binding precedent is brought to my notice. But it is stated that in *Jithendra Prasad Singh v. State of Assam* (2003 (26) PTC 486 (Gau)

and in Dr. A.K. Mukherjee v. State, (1994 (2) Arb LR 77 : 1994 Cri LJ 2469 (Delhi) the High Courts have taken the same view. These decisions are not placed before me.

4. I do not think it specifically necessary to go to any precedent. The language of provisions of Section 63 of the Copyright Act and the language of the relevant entries in the Schedule to the Code of Criminal Procedure make the position crystal clear. Part II of the Schedule to the Code classifies the offences as cognizable/non-cognizable and bailable/non-bailable and prescribes the forum for trial depending on the gravity of the punishment as ascertained from the nature of the sentence imposed for the offences under such other laws. Parliament has divided all offences under special laws into three categories. They are:

- 1. punishable with death, imprisonment for life, or imprisonment for more than 7 years.*
- 2. punishable with imprisonment for 3 years, and upwards but not more than 7 years.*
- 3. punishable with imprisonment for less than 3 years or with fine only.*

(Emphasis supplied)"

In simple language this means that there can be three categories of cases depending upon the maximum sentence which can be imposed. The first one deals with the offences which are punishable with imprisonment for more than 7 years. Those offences, for which punishment imposable is 7 years, do not come within this first clause. Only offences for which more than 7 years (not 7 years only) can be imposed do come within this first clause.

5. The second class is the class of offences in which punishment of imprisonment for 7 years and below are imposable. If punishment imposable is 7 years and below up to three years, the offences would fall within the second category. The Parliament which used the expression "for more than 7 years" to identify the first category had very cautiously used the words "3 years and upwards, but not more than 7 years" to identify the second category. The offences punishable with imprisonment for 3 years up to 7 years, both inclusive, will fall under this second category.

*6. The third category is that of the offences punishable with imprisonment for less than 3 years or fine. **Those punishable with imprisonment for three years do not come within this category evidently.***

7. The offence on hand, the one under Section 63 of the Copyright Act, is punishable with imprisonment for a period of 3 years. There can therefore be no doubt that this falls under category 2 referred above and is consequently cognizable. No contra principle or precedent has been pressed into service before me. The attempt to rely on the decision of the Supreme Court in *Rajeev Chaudhary v. State (NCT) of Delhi* (AIR 2001 SC 2369) cannot at any rate help the petitioners as the language used in the proviso to Section 167(2) is totally different from the language employed in the Schedule to the Code of Criminal Procedure.

8. In these circumstances I find no merit in the contention that the offence under Section 63 of the Copyright Act is not cognizable and that consequently the registration of the crime and the investigation undertaken in these cases are not justified and legal."

(emphasis supplied)

The High Court of Kerala interprets the very question whether Section 63 of the Act is cognizable and holds it to be cognizable considering the maximum punishment that can be imposed is exact three years.

13. On a coalesce of all the aforesaid interpretation of law, what would unmistakably emerge is, if the imprisonment which is capable of being imposed for a maximum period of exact three years, would be cognizable and non-bailable.

14. It is now germane, in the journey of the judgment, to consider the judgments relied on by the learned senior counsel representing the petitioner. The sheet anchor of the submissions of the learned senior counsel is based upon the judgment rendered by the High Court of Bombay in the case of **SUBHASH CHOUDHARY VS. DEEPAK JYALA AND OTHERS⁶**, which was rendered interpreting Section 135(1)(ii) of the Customs Act. The High Court of Bombay holds as follows:

"13. After considering the rival submissions, I have no hesitation in accepting the submission canvassed on behalf of the Petitioner-Applicant that the offence "under Section 135(1)(ii)" is a bailable offence. This is so, because firstly, the said offence has been made a non-cognizable offence by virtue

⁶ 2005 CRI L.J. 1034

of the non-obstante clause in Section 104(4) of the Act. Secondly, it is triable "summarily" by a Magistrate by virtue of Section 138 of the Act. Moreover, Section 135(1)(ii) provides for punishment as imprisonment for a term which may extend to three years, or with fine, or with both. Indeed, it is provided that imprisonment may extend to three years; but the same provision also provides for alternative punishment of fine (only) or imprisonment and fine both. The question is, merely because the punishment of imprisonment provided for is for a term which may extend to three years i.e. three years, does it mean that it will fall in Entry 2 of Part II of First Schedule of the Code and not in Entry 3 thereof. To appreciate this aspect, it may be necessary to advert to the scheme of the Code, which has application to the case on hand. On analyzing the Part I of the First Schedule of the Code, the Scheme of the Code is that, non-cognizable offences have been made bailable, except the non-cognizable offences such as under Sections 194, 195, 466, 467, 476, 477 and 493, which provide for punishment of more than three years of imprisonment. The only exception where punishment of imprisonment which may extend to three years and still has been made non-bailable, is Section 505 of the Penal Code, 1860. But that is an exception. We shall now specifically advert to the non-cognizable offences where punishment provided is imprisonment which may extend to three years, or fine, or both, as is the case in the present enactment; and in Part I of

the First Schedule to the Code, those offences have been made bailable. These offences are under Sections 181, 193 (first part), 201 (second part), 205, 214 (second part), 225A, 312 (1st Part), 404, 418, 484, 485, 487 and 488 of the Penal Code, 1860. In other words, all these offences under the Penal Code, 1860, the punishment provided is imprisonment, which may extend to three years, or with fine, or with both, even then have been made bailable. In that sense, the Scheme of the Code is indicative of the Legislative intention that non-cognizable offences punishable with imprisonment which may extend to three years, have been treated on par with offences where imprisonment is for "less than three years", so as to make them bailable. Applying the same analogy to the case on hand, Section 135(1)(ii) of the Act, which provides for punishment similar to several provisions in the Penal Code, 1860, as referred to above, I have no hesitation in holding that the subject offence is bailable; and moreover, when the offence in question is required to be tried summarily by the Magistrate by virtue of Section 138 of the Act."

The second sheet of anchor of the learned senior counsel is the judgment of the High Court of Andhra Pradesh in the case

of **AMARNATH VYAS v. STATE OF A.P.**⁷, wherein the Court holds as follows:

"8. The expression "punishment for a term which may extend to three years" is certainly not similar to the expression "punishment for three years and upwards".

9. In this connection, learned Public Prosecutor seeks to place reliance upon a judgment of a learned single Judge of High Court of Gauhati in Jitendra Prasad Singh v. State of Assam, 2003 (26) PTC 486 (Gau). Having regard to the provisions of Section 63 of the Copyright Act, 1957, a learned single Judge of that High Court was of the clear view that the offence punishable under Section 63 of the Act is a 'non-bailable' and therefore the provisions of Section 438 of the Code of Criminal Procedure would attract. Learned Judge was of the view that the punishment prescribed for a term which may extend to three years would include in itself, inter alia the term for less than three years. Obviously, the learned Judge proceeded on the assumption that because third category of classification has not clearly been attracted, second category would automatically attract.

10. The other decision, which is sought to be relied upon by the learned Public Prosecutor, is rendered by learned single Judge of Kerala High

⁷ 2007 Cri L.J. 2025

Court in C.K. Boban v. Union of India. 2005 Cri LJ 2801. That judgment came to be rendered under the provisions of Customs Act, 1962. The punishment prescribed under Section 135(1)(ii) of the Customs Act is imprisonment for a term, which may extend to three years or with fine or with both. Repelling the contention that the expression 'for a term which may extend to three years' would mean that the sentence of imprisonment that could be awarded for a period of less than three years, learned single Judge was of the view that the expression 'three years and upwards' would definitely include an offence punishable for a 'term upto three years' and the offence enjoined under Section 135(1)(ii) of the Customs Act would come within the second category of classification of Part-II of the Schedule."

Both the afore-quoted judgments, while interpreting Section 135(1)(ii) of the Customs Act, the afore-extracted judgment in the case of **AMARNATH VYAS** (*supra*) was following the judgment rendered in the case of **RAJEEV CHAUDHARY VS. STATE (N.C.T.) OF DELHI**⁸, rendered by the High Court of Delhi in the context of Section 167 of the Cr.P.C. The language in Section 167 of the Cr.P.C. has no

⁸ (2001) CrI.L.J 2941

manner of application on its juxtaposition with Section 63 of the Act. The provision is entirely different from Section 63 of the Act. Insofar as the judgment rendered in the case of **STATE (GOVT.OF NCT OF DELHI) v. NARESH KUMAR GARG**⁹, by the High Court of Delhi, which followed the judgment in the case of **AVINASH BHOSALE Vs. UNION OF INDIA AND ANOTHER**¹⁰, **AMARNATH VYAS** and **RAJEEV CHAUDARY** (*supra*), holds as follows:

"6. In Avinash Bhosale v. Union of India, (2007) 14 SCC 325 the Supreme Court held that an offence punishable under Section 135(1)(ii) of the Customs Act, 1962 (Act of 1962) would be bailable. A Review Petition being R.P.(Cri) No. 130/2008 in Criminal Appeal No. 1138/2007 filed against this judgment was dismissed by the Supreme Court vide order dated 07.05.2008.

7. Admittedly, the offence under Section 135(1)(ii) of the Act of 1962 is punishable with imprisonment for a term which may extend to three years or fine or with both whereas the offence punishable under Section 63 of the Act is punishable with imprisonment which may extend to

⁹ 2013 SCC Online Delhi 1142

¹⁰ (2009) 1 SCC (Cri) 882

three years and with fine which may extend to Rs. 2 lacs. Thus, for an offence under Section 135 of the Act of 1962, an imprisonment for a term of three years in addition to the fine can be imposed by the Court of the Magistrate trying the offence as is the case for an offence under Section 63 of the Act. Thus, interpretation sought to be placed by the learned standing counsel that there is distinction between the two offences (one under Copyright Act and other under the Customs Act) is really missing.

8. In Amarnath Vyas v. State of A.P. 2007 Crl.L.J. 2025 this question directly fell for consideration before the Andhra Pradesh High Court which took the view that the offence under Section 63 of the Act is bailable.

9. In Rajeev Chaudhary v. State (NCT) of Delhi (2001) 5 SCC 34, the Hon'ble Supreme Court had occasion to interpret the provision of Section 167(2) of the Code for the grant of statutory bail for an offence under Section 386 IPC which is punishable with imprisonment which could extend to ten years. The Supreme Court held that the case would fall under Section 167(2)(ii) of the Code as it was not punishable with death, imprisonment for life or imprisonment for a term not less than ten years. Thus, imprisonment which could extend to ten years was considered to be out of the purview of Section 167(2)(a)(i) of the Code. Para 6 of the report is extracted hereunder: -

"6. From the relevant part of the aforesaid sections, it is apparent that pending investigation

relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. Hence in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years."

10. Thus, the interpretation (of the Supreme Court in Avinash Bhosale) of the term imprisonment which may extend to three

years or with fine or with both which is for an offence under Section 135(1)(ii) of the Act of 1962 will fully apply in case under Section 63 of the Act.

11. *Learned standing Counsel for the Petitioner relies on a judgment of the Gauhati High Court in Jitendra Prasad Singh v. State of Assam 2003 (26) PTC 486 (Gau.) where the offence under Section 63 of the Act was held to be cognizable and non-bailable; and a judgment of the Kerala High Court in C.K. Boban v. Union of India, 2005 CrL. L.J. 2801 where the offence under Section 135(1)(ii) of the Customs Act, 1962 (the Act of 1962) was held to be non-bailable. The authorities relied upon by the learned Standing Counsel for the Petitioner are of no avail and are impliedly overruled by Avinash Bhosale v. Union of India, (2007) 14 SCC 325.*

12. *In fact in Mohan Lal Thapar v. Y.P. Dabara, Inspector, Customs, New Customs House New Delhi 2002 (1) JCC 460; and Inderjeet Nagpal v. Director of Revenue Intelligence (DRI), 2005 (1) JCC 433, two Coordinate Benches of this Court had taken the view that the offence under Section 135 (i)(ii) of the Act of 1962 is non bailable which no longer holds good in view of the report of the Supreme Court in Avinash Bhosale.*

13. *It would be fruitful to refer to the provision of Section 64 of the Act which empowers a police officer not below the rank of Sub-Inspector to seize the infringing copies of any work. If the offence had been cognizable and non-bailable,*

there was no necessity to specifically authorize the police officer with the power of seizure.”

(emphasis supplied)

The High Court of Rajasthan in **DESHRAJ v. STATE OF RAJASTHAN**¹¹, following all the aforesaid judgments has held as follows:

“13. Hence, as per the law laid down by Hon’ble Supreme Court in Rajeev Chaudhary’s case (supra) and by Andhra Pradesh High Court in Amarnath Vyas’s case (supra), the expression ‘imprisonment for a term, which may extent up to 3 years’ would not come within the expression ‘imprisonment for 3 years and upwards’. Therefore, the offence punishable under Sections 63, 63B and 65 of the Act of 1957 cannot be considered as cognizable offence.”

The High Court of Madras in the case of **SIVAJI HI-TEC FOODS PVT.LTD. v. STATE**¹², again follows the judgment in the case of **AMARNATH VYAS** of the Andhra Pradesh High Court (*supra*). The High Court of Madras holds as follows;:

¹¹ S.B. Criminal Miscellaneous (Petition) No.5224 of 2016 decided on 28-04-2017

¹² Crl.O.P.No.1379 of 2019 and connected cases decided on 25-03-2019

*"14. After analyzing all the above judgments, this Court is of the view that the offence punishable under Section 63(a) of the Copyright Act is non-cognizable offence by virtue of Part-II of Schedule-I of Cr.P.C., since it carries imprisonment which can be extended up to three years and therefore as per Section 155 of Cr.P.C. no police officer can investigate a non-cognizable offence without an order of a Magistrate. Hence, as per the law laid down by the Hon'ble Supreme Court of India in *Raeev Chaudhar v. State (NCT) of Delhi (supra)* and Andhra Pradesh Court reported in *Amarnath Vyas @ Vijay Prakash Vyas v. State of A.P. Rep. by its Public Prosecution (supra)*, the expression imprisonment for terms which may extend up to three years would not come within the expression of "imprisonment of three years onwards". Therefore, the offence under Section 63(a) of Copyright Act cannot be considered as cognizable offence and the police officer has no power to register a case."*

The High Court of Madras in a later judgment in the case of **RAJAGOPAL VS. THE INSPECTOR OF POLICE** reported in **2019-2-LW (CRL) 303** while distinguishing **RAJEEV CHAUDHARY** declines to follow the judgment in the case of **SIVAJI HI-TECH (supra)** and holds the offence which

contains an identical imprisonment pattern to be non-bailable and therefore, would become cognizable.

15. It is germane to notice the latest Division Bench judgment of the High Court of Rajasthan in the case of **NATHU RAM v. STATE OF RAJASTHAN**¹³, posed to itself a question, which reads as follows:

"What would be the nature of an offence (whether cognizable or non-cognizable) for which imprisonment "may extend to three years" is provided and no stipulation is made in the statute regarding it being cognizable/non-cognizable.

and answers it at paragraphs 12, 21 and 23 which read as follows:

"12. Apparently, the offence which is punishable with imprisonment to the extent of three years under the laws other than IPC, does not fall within classification I and III under Part-II of the First Schedule, which deals with the offences punishable with death, imprisonment for life, or imprisonment for more than seven years and the

¹³ DB.Crl.Ref.No.1/2020 decided on 19-02-2021

offences punishable with imprisonment for less than three years or with fine only, respectively. Thus, the question which requires consideration by this Court is whether the expression 'which may extend to three years' would squarely or necessarily fall within the expression 'imprisonment for three years and upwards' used in classification II of Part-II of First Schedule and thus, the offence under Section 91(6)(a) of the Act of 1956 has to be treated an offence Cognizable & Non-bailable, triable by Magistrate First Class.

... ..

21. In the background of law laid down by the Hon'ble Supreme Court as aforesaid, if we examine the classification of the offences under the laws other than IPC as prescribed under Part-II of First Schedule in context of the classification of the offences under IPC specified under Part-I of the First Schedule, it is noticed that for offences under the various sections of IPC, which are punishable with imprisonment to the extent of three years, seven years or ten years, as the case may, for the purpose of determination (12 of 14) [CRLRF-1/2020] as to whether the offence shall be cognizable or non-cognizable and bailable or non-bailable, the punishment provided as has been mentioned as 'for three

years', 'for seven years' and so on. To put in other words, the punishment of imprisonment for the period specified as mentioned in Column 3 of Part-I of First Schedule, includes the description of the imprisonment for a term which may extend to the period specified. For example, the offences under Sections 418, 419, 456 IPC are punishable with imprisonment for a term which may extend to three years, but while classifying the said offences as cognizable/non-cognizable and bailable/non-bailable in Column No.3 of Part-I of First Schedule, the description of the term of sentence is mentioned as 'for three years'. Similar is the position with regard to other offences under IPC, which are punishable by imprisonment of either description for a term which may extend to maximum period specified. **Thus, if the classification of the offences in Part-II of First Schedule is construed with reference to the context vis-à-vis the classification under Part-I of the First Schedule, the expression 'for three years' occurring in classification II under Part-II of First Schedule has to be construed to include the offences punishable with imprisonment for a term to the extent of three years. Thus, the classification made as aforesaid, for determination of nature of offence whether it is cognizable or non-cognizable, the maximum punishment**

that may be awarded for particular offence, is relevant and not the minimum sentence.

... ..

23. Coming to the decisions of Hon'ble Supreme Court in Rajeev Choudhary and Rakesh Kumar Paul's case (supra), it is noticed that in sub-section 2(a)(i) of Section 167 Cr.P.C., the expression used is 'an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years' and thus, obviously, unless the minimum sentence prescribed is less than ten years, the offence shall not fall within the said clause for the purpose of default bail. **As discussed above, the expression 'imprisonment for 3 years and upward' used in classification II of Part II is totally different, which has to be interpreted in context of similar expression used in Part I of First Schedule. In this view of the matter, in our considered opinion, the law laid down by the Hon'ble Supreme Court in Rajeev Choudhary's case and Rakesh Kumar Paul's case (supra) while interpreting the provisions of subsection 2(a)(i) of Section 167 Cr.P.C. in different context, is not attracted in the instant case."**

(Emphasis supplied)

The High Court of Rajasthan holds that it is not the minimum sentence that would determine whether the offence is cognizable or non-cognizable, it is the maximum punishment that can be awarded is what determines whether cognizable or non-cognizable interpreting Section 91(6) of the Rajasthan Land Revenue Act.

16. On a cumulative analysis of the Act and the judgments rendered by various constitutional Courts what would unmistakably emerge is, Section 63 of the Act as it existed earlier, the maximum punishment that could be imposed was imprisonment for a period of one year. It is the amendment in the year 1984, that enhanced the period of imprisonment to three years. The objects and reasons are very clear as to why such an enhancement is done. Even otherwise in the light of afore-quoted judgments of the constitutional Courts it cannot but be held that the offences punishable under Section 63 of the Act are cognizable.

17. If the offences punishable under Section 63 of the Act are cognizable, the registration of FIR by the Police on the complaint cannot be found fault with. Merely because a separate provision under Section 64 of the Act which depicts power of search and seizure by the Police is also found in the statute, it does not take away cognizability of the offence punishable under Section 63 of the Act. As observed hereinabove, what is to be seen is the maximum punishment. In a given case, the competent criminal Court can sentence an offender under Section 63 of the Act to three years imprisonment. Exact three years is a possibility in a given circumstance. Therefore, it would fall under Item No.2 of Schedule II of the Cr.P.C. Therefore, the argument of the learned senior counsel that it is a non-cognizable offence and the procedure adopted by the Police in registering the FIR of a non-cognizable offence without approval of the Magistrate is unacceptable.

18. The other submission made by the learned senior counsel is that, there cannot be vicarious liability in criminal law and the offence committed by the Company cannot be saddled upon its Directors as the complaint is against the Directors of the Company. This submission again is unacceptable in the light of a specific provision in terms of Section 69 of the Act. Section 69 of the Act deals with the offence by the Company and makes the Directors of the Company also liable for such offence. Section 69 of the Act reads as follows:

"69. Offences by companies.— (1) *Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this subsection shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he

exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

- (a) "company" means anybody corporate and includes a firm or other association of persons; and*
- (b) "director", in relation to a firm means a partner in the firm."*

In the light of Section 69, the stage for consideration of the submission of the learned senior counsel has not come about as the petitioners have knocked the doors of this Court on the registration of the FIR itself. The complaint is against the Company and the Directors. The allegation in the complaint is against one Maruthi Infotech Centre registered under the

Companies Act and two other accused are offenders and office bearers of ANI Technologies Private Limited and ANI Technologies Private Limited is also the petitioner before this Court. It is also germane to notice that the petitioners themselves have entered into agreements with other entities details of which are appended to the writ petition i.e., Radio Valla Network Private Limited wherein the petitioner Company clearly narrates that the memorandum of understanding with Radio Valla Private Limited requires playlists curated and uploaded are subject to license procured by them. Therefore, it is not a case where the Company is not aware of the ramification of Sections 63 and 64 of the Act. In the considered view of this Court, the stage of consideration of contents of the complaint is not yet arrived in exercise of jurisdiction under Section 482 of the Cr.P.C.

19. Therefore, finding no ground to interfere and reserving liberty to the petitioners to avail of such remedy as

is available in law at an appropriate stage, this Writ Petition stands dismissed.

Sd/-
JUDGE

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CT:MJ