

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 3296 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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MAYUR KANAIYALAL SHAH
Versus
STATE OF GUJARAT & 2 other(s)

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Appearance:

MR SACHIN D VASAVADA(3342) for the Applicant(s) No. 1

MR SAMRAT N MEHTA(3949) for the Applicant(s) No. 1

PUBLIC PROSECUTOR for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MR. JUSTICE SANDEEP N. BHATT

**Date : 06/10/2023
ORAL JUDGMENT**

1. **Rule** returnable forthwith. Learned APP waives service of notice of Rule on behalf of respondent –

States. Heard Mr. Sachin D. Vasavada, learned counsel for the petitioner, and Mr. Chintan Dave, learned Additional Public Prosecutor for respondent Nos.1 – State Though served none appears for respondent Nos.2 & 3.

2. The present petition is filed for seeking following main prayers:-

“A. Your Lordships may be pleased to admit and allow the present Petition;

B. Your Lordships may be pleased to quash and set aside the FIR registered as Crime Register No. 25/2014 at Annexure C and the criminal case.

C. Pending admission and final hearing of the present petition, Your Lordships may be pleased to stay the pending criminal proceedings and further be pleased to stay the FIR registered as Crime Register No. 25/2014 dated 11/07/2014 and further proceedings on the basis of the said FIR

D. Your Lordships may be pleased to grant ad interim relief. as prayed for, in terms of para 29 (C) during the pendency and final disposal of the present application.

E. Your Lordships may be pleased to grant any other and further relief/s as may be deemed just and proper in the interest of justice and fitness of things.”

3. Learned counsel for the petitioner has taken this Court to the factual matrix arising out of the application and also taken this Court through the impugned FIR and contended that the allegations levelled in the impugned FIR are on basis of the fact that the complainant himself is an authorized person to carry out all procedure of infringement of any copyright. The allegations against the petitioner are that the petitioner is selling duplicate spare-parts of the computer. It is pointed out that even though respondent No.2-First Informant was neither having any authorization under the law nor any assignment in his favour, with the help of police without any warrant ransacked the shop of the petitioner.

4. Learned counsel for the petitioner further contended that on reading the impugned FIR as it is, no evidence as alleged has been made out. He further contended that the Copyright Act is not applicable in the present case

for sale of the spare-parts of the computers and the goods in which the petitioner deals with i.e. cartridge of printers and spare parts of computers, provisions of the Copyright Act are also not attracted at all.

5. Learned counsel for the petitioner further pointed out that respondent No.2-First Informant has not produced anything on record that to show that he is authorized person to file the complaint and therefore, he contended that the First Information Report is an abuse of process of Court and law, and therefore, the same is required to be quashed by exercising inherent jurisdiction under Section 482 of the Code. He further relied upon the judgment of this Court in the case of Binita Rahul Shah Vs. State of Gujarat reported in 2009(3) GLR 2688 and contended that the ratio laid down in the said case squarely applies to the facts of the present case. He further pointed out that in a similarly situated case of the facts as well as law, this Court has quashed the complaint as prayed for.

6. *Per contra*, Mr. Chintan Dave, learned Assistant Public Prosecutor for respondent No.1 has submitted that

the impugned FIR is for the alleged offences punishable under Sections 51 and 63 of the Copyrights Act, 1957 and under Sections 406 and 420 of the Indian Penal Code, 1860, however it may be noted that learned APP has not been able to point out that the allegations levelled in the First Information Report relate to any of the items, which are envisaged under the purview and ambit of the Copyright Act, 1957.

Though served, none appears for respondent No.2. No other and further submissions are made by learned counsel for the parties.

7. Considering the aforesaid submissions made by learned counsel for the parties and on perusal of the record, it may be noted that the First Information Report is lodged by respondent No.2 in his capacity as Investigating Officer of IPR Vigilance Indian Company. First Information Report does not disclose as to which capacity respondent No.2 has lodged the impugned FIR. Even provisions of Copyright Act, 1957 would not be applicable to facts of this Case. Relevant paragraphs of Section 2(c) and (d) of the Copyright Act, 1957 are as under:-

"2(c) "Artistic work" means, (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; (ii) a [work of architectural]; and (iii) any other work of artistic craftsmanship;

2(d) "author" means, (i) in relation to a literary or dramatic work, the author or the work; (ii) in relation to a musical work, the composer; (iii) in relation to an artistic work other than a photograph, the artist; (iv) in relation to a photograph, the person taking the photograph; (v) in relation to a cinematography film or sound recording, the procedure; and (vi) in relation to any literary, dramatic, musical or artistic work which is computer generated, the persons who causes the work to be created".

It is fruitful to refer the provisions of Sections 406 and 420 of the Indian Penal Code, 1860, as under:

"Section 406 in The Indian Penal Code:-

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term

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

Section 420 in The Indian Penal Code:-

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. Considering the allegations leveled in the FIR, the same relate to the spare-parts of the computer and it is nowhere stated about the owner or author and in what capacity respondent No.2 has lodged the FIR. Apart from that, even if, the FIR is taken at its face value, it refers to items, which do not fall within the artistic work as defined under Section 2(c) of the Copyright Act, 1957. It cannot be said that the spare-part is literal work or musical work. It is not disclosed that the spare part is an artistic work or any other such work that the provisions of Copyright Act, 1957 would apply. The

impugned FIR also does not disclose that if respondent No.2 has acquired any other right conferred under the provisions of the Copyright Act, 1957 and therefore, provisions of Sections 51 and 63 of the Copyright Act, 1957 would not be applicable on bare reading of the allegations leveled in the First Information Report at its face value. Therefore, this Court is of the opinion that prima facie no case is made out under Sections 51 and 63 of the Copyright Act, 1957 read with Sections 406 and 420 of the Indian Penal Code, 1860, even if it is taken at its face value.

9. The Court in the case of Binita Rahul Shah Vs. State of Gujarat reported in 2009(3) GLR 2688, has observed thus:-

"19. Section 63 of the Copyright Act states that any person who knowingly infringes or abets the infringement of the Copyright in a work shall be punishable with infringement etc. The definition of the term infringing copy as appearing in section 2(m) of the Copyright Act reads as under :

2(m) 'infringing copy' means, -

(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 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;

20. A plain reading makes it clear that the principal work has to be either a literary, dramatic, musical, or artistic work; or should be a cinematographic film; or a sound recording, or a programme or performance in which a broadcast reproduction right or a performer's right subsists under the provisions of Copyright Act. In the facts of the present case, admittedly the provisions cannot be attracted, much less any ingredient thereof is shown to have been satisfied even prima facie. The

Court is not concerned in these proceedings whether any violation has occurred under the Provisions of Designs Act, because that is not even the case of the complainant. The settled legal position cannot be understood to mean laying down a proposition of law that the Court in these proceedings is precluded from even a plain reading of the relevant provisions to prima facie see whether any offence can be said to have been committed or not."

The ratio laid down by this Court in the above referred case squarely applies in the present case.

10. The Court has also considered the judgment of the this Court in Criminal Misc. Application (FOR Quashing & Set Aside FIR/Order) No. 8903 of 2013 dated 02.12.2023 after considering the similar facts and circumstances of the case.

11. Considering the submissions made by learned counsel for the parties and on perusal of the impugned FIR, prima facie, no case is made out against the petitioner for the alleged offence under Sections 51 and 63 of the Copyright Act, 1957 read with Sections 406 and 420 of

the Indian Penal Code, 1860 and in view of the ratio laid down by this Court in the case of Binita Rahul Shah (supra), this Court is of the opinion that continuation of criminal proceedings against the petitioner would amount to an abuse of process of law and Court. Hence, to secure the ends of justice, the impugned FIR is required to be quashed and set aside in exercise of inherent power under Section 482 of the Code.

12. For the foregoing reasons, the present application is hereby **allowed**.

13. The impugned FIR culminated into Criminal Register No.25 of 2014 qua petitioner as well as all other consequential proceedings arising out of the said FIR are hereby quashed.

Rule is made absolute to the aforesaid extent.

DIWAKAR SHUKLA

(SANDEEP N. BHATT,J)