

# Dispute Resolution Hotline

April 02, 2021

## BOMBAY HIGH COURT: OFFENCES UNDER THE TRADE MARKS ACT AND COPYRIGHT ACT ARE NON-BAILABLE!

- Offences under Section 63 of the Copyright Act and Section 103 of the Trade Marks Act are cognizable and non-bailable offences.
- The maximum sentence that can be awarded under the law is required to be seen to construe whether an offence is non-bailable and cognizable.

### INTRODUCTION

The Code of Criminal Procedure, 1974 ("**CrPC**") categorizes offences into bailable and non-bailable offences.<sup>1</sup> In case of the former, bail can be claimed as a matter of right while in case of non-bailable offences which are considered graver and more heinous in nature, the discretion to grant bail rests with the courts.<sup>2</sup> The CrPC also categorises certain offences as cognizable offences, where a police officer can arrest an accused without a warrant.<sup>3</sup>

In the recent case of *Piyush Ranipa* ("**Applicant**") v. *State of Maharashtra* ("**Respondent**"),<sup>4</sup> the Bombay High Court was faced with a question of law on whether offences under the Copyright Act, 1957 ("**Copyright Act**") and the Trade Marks Act, 1999 ("**Trade Marks Act**") are non-bailable offences.

Part II of Schedule I of the CrPC classifies offences under laws other than the Indian Penal Code 1100%<sup>5</sup> such as the Copyright Act and the Trade Marks Act. Under Part II of Schedule I of the CrPC - offences punishable with "*imprisonment for three years and upwards but not more than seven years*", are non-bailable and cognizable. However, offences punishable with imprisonment for less than three years or with fine only, are bailable and non-cognizable.

Section 63 of the Copyright Act and Section 103 of the Trade Marks Act prescribes for a punishment "*with imprisonment for a term which shall not be less than six months but which may extend to three years*" for certain offences committed thereunder.<sup>6</sup> The moot discussion on this issue has been on the terminology used by these provisions and whether "*may extend to three years*" as used in the Copyright Act and the Trade Marks Act has the same effect as "*three years and upwards*" used in the CrPC.

### FACTUAL BACKGROUND

Certain complaints were received by Jain Irrigation System ("**Complainant Company**") of substandard goods (pipes) being sold in the market in its name. Thereafter, its zonal manager ("**Complainant**") received information about a truck carrying goods in the name of the Complainant's company which were not genuine goods. Pursuant to a scrutiny of the goods in the truck, certain goods were found bearing mark 'Jain HDPE' bearing stamp of Certificate of Manufacturing Licence 7018761 ("**CML**"), which was forged. Based on the allegations against the Applicant that he was manufacturing all the goods and at his instance, such counterfeited goods were being transported and sold with the registration number of the trade mark of the Complainant Company, the Complainant lodged a first information report ("**FR**") under Sections 418, 465, 482, 483, 485, 486, 488 read with Section 34 of the Indian Penal Code 1100% ("**IPC**"), Section 63 of the Copyright Act and Section 103 of the Trade Marks Act. Thereafter, the Applicant applied for an anticipatory bail.

### THE BOMBAY HIGH COURT'S RULING

Amidst other issues, the Bombay High Court placed reliance on the following judgments to determine whether "*the offence under section 63 of the Copyright Act and section 103 of the Trade Marks Act were bailable or non-bailable*":

- Ramrao Marotrao Budruk v. The State of Maharashtra and another*<sup>7</sup> where the Court was deciding whether the offences under Section 2 of the Prevention of Insults to National Honour Act, 1971 ("**National Honour Act**") were bailable or non bailable. Section 2 of the National Honour Act used the term "*with imprisonment for a term which may extend to three years*". The Bombay High Court observed that the Court was empowered to sentence an accused up to a maximum sentence of three years making it a non-bailable offence. Therefore, the contention that there may be instances where the accused persons are imprisoned for a time less than three years, did not affect the categorization of the offence as non-bailable.
- State of Maharashtra v. Shri. Suresh Ganpatrao Kenjale*<sup>8</sup> wherein similar views were expressed by the Bombay High Court in the context of offences under the Prevention of Corruption Act, 1988. It held that while construing whether an offence is bailable or non-bailable, the maximum sentence which can be awarded under the law, and not the minimum, must be considered.

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The Bombay High Court also examined several other precedents<sup>9</sup> that held that offences under which punishment can extend up to three years would fall under the category of non-bailable offences. The Court stated that wherever there was a possibility for the punishment to extend to three years, the offences would be cognizable and non-bailable. Therefore, since it was possible to impose an exact sentence for imprisonment of three years for offences under Section 63 of the Copyright Act and Section 103 of the Trade Marks Act, those would qualify as non-bailable and cognizable.

#### ANALYSIS AND CONCLUDING REMARKS

While the Bombay High Court has drawn references to the penalty provisions in statutes such as the National Honour Act, Prevention of Corruption Act, it has not considered the judgments of various High Courts particularly in the context of Copyright Act and Trade Marks Act. This issue had in fact come up for consideration by various High Courts which have expressed differing views. While the issue is yet to be settled by the apex court, an overview of the findings of other High Courts may be of relevance.

In *Jitendra Prasad v. State of Assam*<sup>10</sup> (“*Jitendra Prasad*”), while examining offences punishable under Section 63 of the Copyright Act, the Guwahati High Court explored the nature of offences “punishable with imprisonment for term which may extend to three years” and those “punishable with imprisonment for less than three years”. The Court held that the implication of both these categories of offences were markedly different - as for the former, a punishment for three years could be prescribed whereas for the latter the punishment necessarily had to be less than three years. Accordingly, it was held that offences under Section 63 of the Copyright Act were non-bailable. The same view was taken by the Kerala High Court in *Abdul Sathar v. Nodal Officer, Anti-Piracy Cell, Crime Branch office*.<sup>11</sup>

However, the Andhra Pradesh High Court, in *Amarnath Vyas v. State of A.P.*,<sup>12</sup> (“*Amarnath Vyas*”) was of the view that the offences punishable with a term which “may extend to three years” were not in the same or similar category as offences punishable for “three years and upwards”. The Court held that the former falls under the category of bailable offences since it may include cases where the punishment given is below three years. The Court observed that there may be certain classes of offences which may fall in both, the second and third category of Part II of Schedule I of the CrPC, such as in case of Section 63 of the Copyright Act wherein the punishment may be less than three years (qualifying under the third category of Part II of Schedule I of the CrPC) or may be exact three years (qualifying under the second category of Part II of Schedule I of the CrPC). But merely because such offences are not coming squarely within the domain of offences punishable with “imprisonment for less than 3 years or with fine only” as a punishment of exact three years can still be imposed, they cannot automatically be treated as offences punishable with “imprisonment for 3 years and upwards but not more than 7 years”. Accordingly, the Andhra Pradesh High Court held that offences under Section 63 of the Copyright Act are bailable offences.

Similarly, the Delhi High Court in *State Govt. of NCT of Delhi v. Naresh Kumar Garg*<sup>13</sup> had taken a view in line with the *Amarnath Vyas* decision and held that offences under Section 63 of the Copyright Act are bailable. The Delhi High Court had also observed that the ratio laid down by the Supreme Court in *Avinash Bhosale v. Union of India*<sup>14</sup> (“*Avinash Bhosale*”) would apply to the Copyright Act wherein the Supreme Court had held that offences under Section 135 (1) (ii) of the Customs Act, 1962<sup>15</sup> (uses the same expression- “imprisonment for a term which may extend to three years”) are bailable offences. However, it is pertinent to note that the Supreme Court in *Avinash Bhosale* had refrained from providing a detailed reasoning for the decision and therefore, may again be called upon to clarify this issue.

While the views of the Supreme Court are awaited on the exact nature of offences under the Copyright Act and Trade Marks Act, in view of the consequences that follow categorisation of offences into non-bailable and cognisable, it is important that offences under the Copyright Act and Trade Marks Act are categorized appropriately.

While concerns of misuse may also arise by categorizing offences under the Copyright Act and the Trade Marks Act as non-bailable and cognizable, the officer-in-charge of the police station has the power to grant bail when there are no reasonable grounds for believing that the accused has committed a non-bailable offence.<sup>16</sup> Further, the Copyright Act also provides a remedy in the case of groundless threat of legal proceedings whereby any person who is aggrieved by a threat to have legal proceedings initiated against them, can institute a declaratory suit ascertaining that the alleged infringement to which the threats were related, were not an infringement of any legal rights of the person making such threats.<sup>17</sup>

Meanwhile, it may also be argued that such categorisation of offences under Copyright Act and Trade Marks Act as non-bailable and cognisable will ensure stricter criminal action against the accused. This may also be construed as a reflection of the fact that the intellectual property rights regime in India is moving towards furthering its credibility.

— Aparimita Pratap, Shweta Sahu & Moazzam Khan  
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<sup>1</sup> Code of Criminal Procedure 1974, s 2(a).

<sup>2</sup> Code of Criminal Procedure 1974, ss 436, 437.

<sup>3</sup> Code of Criminal Procedure, 1974, s 2(c).

<sup>4</sup> *Piyush Ranipa v. State of Maharashtra* Anticipatory Bail Application No. 336 of 2021, decided on February 26, 2021.

<sup>5</sup> Code of Criminal Procedure, 1974, Schedule I, Part 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      | Cognizable                   | Non-bailable             | Magistrate of the first class. |
| If punishable with imprisonment for less than 3 years or with fine only.               | Non-cognizable               | Bailable                 | Any Magistrate                 |

<sup>6</sup> Copyright Act, 1957, s 63:

"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 53A, 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"

Trade Marks Act, 1999, s 130:

"103. Penalty for applying false trade marks, trade descriptions, etc.—Any person who—

(a) falsifies any trade mark; or

(b) falsely applies to goods or services any trade mark; or

(c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or

(d) applies any false trade description to goods or services; or

(e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or

(f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or

(g) causes any of the things above mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud, 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 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."

<sup>7</sup> 1994 SCC OnLine Bom 407.

<sup>8</sup> 1995 CriLJ 2478.

<sup>9</sup> *Mahesh Shivram Puthran v. The Commissioner of Police, Thane, Dist. Thane and others* 2011 SCC OnLine Bom 389; *Nathu Ram S/o Puma Ram v. The State of Rajasthan* S.B. Criminal Miscellaneous (Petition) No. 5128 of 2019, order dated April 7, 2020.

<sup>10</sup> *Jitendra Prasad v. State of Assam* (2004) 2 Gauhati Law Reports 271 (no record of appeal found).

<sup>11</sup> *Abdul Sathar v. Nodal Officer, Anti-Piracy Cell, Crime Branch office* 2007 SCC OnLine Ker 49 (no record of appeal found).

<sup>12</sup> *Arumath Vyas v. State of A.P.* 2006 SCC OnLine AP 1194 (the order was appealed before the Supreme Court but was dismissed on the ground of delay).

<sup>13</sup> *State Govt. of NCT of Delhi v. Naresh Kumar Garg* 2013 SCC OnLine 1142 (no record of appeal found).

<sup>14</sup> *Avinash Bhosale v. Union of India* 2007 14 SCC 325.

<sup>15</sup> Customs Act, 1962, s 135 (1) (ii).

<sup>16</sup> Code of Criminal Procedure, 1974, s 437.

<sup>17</sup> Copyright Act, 1957, s 60.

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