

Dispute Resolution Hotline

June 14, 2022

OFFENCES UNDER THE COPYRIGHT ACT ARE COGNIZABLE AND NON-BAILABLE: SUPREME COURT CONFIRMS!

INTRODUCTION

The categorization of offences under a statute as cognizable/non-cognizable and bailable/non-bailable as per the Code of Criminal Procedure 1973 ("CrPC") gains significance in ascertaining the procedure for arrest, bail, trial etc. In case of bailable offences - 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.¹ In cases of cognizable offences, a police officer can arrest an accused without a warrant.²

Part II of Schedule I of the CrPC classifies offences under laws other than the Indian Penal Code 1100% such as the Copyright Act 1957 ("Copyright 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 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.³ The issue for consideration before the Supreme Court ("SC") was whether the clause "may extend to three years" as used in the Copyright Act would have the same effect as "three years and upwards" used in the CrPC.

After a series of differing views of the High Courts on the nature of offences under the Copyright Act,⁴ the SC has finally decided on this issue which was long left unsettled in *M/s Knit Pro International* ("Appellant") v. *The State of NCT of Delhi & Anr* ("Respondent")⁵. The SC set aside the Delhi High Court's ("Del HC") judgment and order and held that offences under Section 63 of the Copyright Act are cognizable and non-bailable.

FACTUAL BACKGROUND

The Appellant was a manufacturer of knitting needles, particularly 'Lykke Knitting Needles'. One of the Respondents, Anurag Sandhi ("AS"), allegedly infringed the Appellant's copyright in the Lykke Knitting Needles. An *ex parte* injunction was granted against AS and a local commissioner was appointed to search and seize the goods that were allegedly infringing Knit Pro's copyright.

Pursuant to an alleged violation of the injunctions granted against AS, the Appellant moved an application under Section 156(3) of the CrPC seeking registration of a First Information Report ("FIR") against AS under Sections 51, 63 and 64 of the Copyright Act read with Section 420 of the Indian Penal Code ("IPC"). While the FIR was directed to be registered, AS challenged such orders before the Del HC on the ground that the offence under Section 63 of the Copyright Act is not a cognizable and a non-bailable offence.

THE DECISION OF THE DEL HC

AS made *inter alia* the following submissions before the Del HC:

- There is no specific provision of the Copyright Act that stipulates that the said offence is a cognizable offence;
- The punishment stipulated does not fall within the scope of cognizable offences as set out in Part II of the First Schedule of the CrPC;
- Reliance was placed on *State of NCT of Delhi v. Naresh Kumar Garg*⁶ ("Naresh Kumar Garg") and *Avinash Bhosale v. Union of India*⁷ ("Avinash Bhosale") wherein the Del HC and the SC respectively held in AS' favour.

The following submissions were made in response to the above:

- Offences under Section 63 of the Copyright Act fall squarely within Part II of the First Schedule of the CrPC;
- Reliance was placed on the Kerala High Court's decision in *Abdul Sathar v. Nodal Officer*⁸ ("Abdul Sathar") and various other decisions wherein offences under Section 63 of the Copyright Act were held to be cognizable and non-bailable offences.

The Del HC⁹ observed that there is no hiatus between the three categories given under Part II of the First Schedule of the CrPC, and hence, every offence would be covered under these categories. For ease of reference, the three

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categories are mentioned below:

If punishable with death, imprisonment for life, or imprisonment for more than 7 years. Cognizable and non-bailable

If punishable with imprisonment for 3 years and upwards but not more than 7 years. Cognizable and non-bailable

If punishable with imprisonment for less than 3 years or with fine only. Non-cognizable and bailable

The Del HC examined Andhra Pradesh High Court's decision in *Amamath Vyas v. State of A.P.*¹⁰, and Kerala High Court's decision in *Abdul Sathar*. It appears that the Del HC first concluded that "*when it comes to classification of an offence on the basis of the punishment that can be imposed, it would have to be reckoned with the maximum punishment that is stipulated for such an offence.*" As a corollary, the Del HC observed as follows:

"...There can be no doubt that the offence under Section 63 of Copyright Act would be a cognizable offence since such offence is punishable with the term of imprisonment that may extend to three years and a fine. If a punishment of three years can be imposed, the same would be classified as an offence punishable with imprisonment for "3 years and upwards but not more than 7 years."

However, the Del HC ultimately took a U-turn and ruled in favour of AS on account of the SC's decision in *Avinash Bhosale*, which was followed in *Naresh Kumar Garg* as well. Briefly, the SC in *Avinash Bhosale* held that an offence under Section 135(1)(ii) of the Customs Act would be bailable. However, the Supreme Court had refrained from providing a detailed reasoning for the decision. The Del HC in *Naresh Kumar Garg* extended the SC's decision in *Avinash Bhosale* to cases under Section 63 of the Copyright Act as well, since Sections 135(1)(ii) of the Customs Act and Section 63 of the Copyright Act are congruous in terms of the phraseology with respect to punishment.

DECISION OF THE SC

While setting aside the Del HC's judgment, the SC observed that the punishment for an offence under Section 63 of the Copyright Act is "*imprisonment for a term which shall not be less than six months but which may extend to three years and with fine*". Thus, the maximum punishment which can be imposed would be three years. Therefore, the Magistrate may sentence the accused for a period of three years also.

Under Part II of the First Schedule of the CrPC – an offence is cognizable if the offence is punishable with imprisonment for three years and onwards but not more than seven years. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable."

Notably, the SC's rationale for holding that offences under Section 63 of the Copyright Act would be cognizable and non-bailable is aligned with the Del HC's rationale behind its initial observations, as discussed above.

CONCLUSION

The SC's decision clears the air with respect to the categorization of offences under Section 63 of the Copyright Act, an issue long left in the grey due to disparate reasonings given by various High Courts. It also aligns the procedural law with respect to the Copyright Act vis-a-vis the procedural law with respect to other substantive laws that contain similar provisions.

As stated above, the impugned judgment of the Del HC was also on the right track, until the point it discusses the SC's decision in *Avinash Bhosale* and claims to be bound by the judgment of the apex court. However, while the present decision of the SC clarifies the law with respect to the categorisation of offences under Section 63 of the Copyright Act, the position of law with respect to Section 135(1)(ii) of the Customs Act is not the same.

Moreover, a similar concern may arise when it comes to offences under Section 103 of the Trade Marks Act 1999 ("**TM Act**") which refers to a similar language for punishment for offences thereunder. In this regard, High Courts have previously adopted a similar approach for interpreting the categorisation of offences under the Copyright Act and TM Act.

Until the SC decides on the categorization of such offences under Part II of the First Schedule of the CrPC, confusion will likely subsist in the form of divergent High Court judgments coupled with unclear legal provisions.

(Also refer to our analysis available at <https://www.natlawreview.com/article/bombay-high-court-offenses-under-trade-marks-act-and-copyright-act-are-non-bailable>)

— Arth Nagpal & Shweta Sahu

You can direct your queries or comments to the authors

¹ The Code of Criminal Procedure 1974, ss 436, 437.

² The Code of Criminal Procedure, 1974, s 2(c).

³ 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"

⁴ Please see our analysis available at <https://www.natlawreview.com/article/bombay-high-court-offenses-under-trade-marks-act-and->

⁵ Criminal Appeal No. 807 of 2022 (judgment dated 20 May 2022).

⁶ 2013 SCC OnLine Del 1142.

⁷ (2007) 14 SCC 325.

⁸ AIR 2007 Ker 212.

⁹ *Anurag Sanghi v. State & Ors.* (W.P. (CRL) 3422/2018) (judgment of the Delhi High Court dated 25 November 2019).

¹⁰ 2007 Cri. LJ 2025.

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