

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 5128/2019

1. Nathu Ram S/o Purna Ram, Aged About 38 Years, R/o Village Jayal, Teh. Jayal, Dist. Nagaur.
2. Purna Ram S/o Narsi Ram, Aged About 64 Years, R/o Village Jayal, Teh. Jayal, Dist. Nagaur.
3. Ram Gopal S/o Purna Ram, Aged About 32 Years, R/o Village Jayal, Teh. Jayal, Dist. Nagaur.

-----Petitioners

Versus

1. State Of Rajasthan, Through PP
2. Tehsildar (Revenue), Jayal, Dist. Nagaur.

-----Respondents

For Petitioner(s) : Mr.Ravindra Acharya.
For Respondent(s) : Mr.Farzand Ali, AAG-cum-GA
Ms.Rajlaxmi, P.P.

HON'BLE MR. JUSTICE SANDEEP MEHTA

ORDER

Reserved on : 05/03/2020

Pronounced on : 07/04/2020

BY THE COURT:

The instant misc. petition has been preferred by the petitioners seeking quashing of the F.I.R. No.12/2016 lodged at the Police Station Jayal, District Nagaur for the offence under Section 91(6) of the Rajasthan Land Revenue Act.

Shri Ravindra Acharya learned counsel representing the petitioners vehemently and fervently urged that the Police had no jurisdiction or power to register the impugned F.I.R. because the offence alleged is a non-cognizable one. In support of his contention, Shri Acharya relied upon a Single Bench Judgment of this Court in the case of ***Pintu Dey Vs. State of Rajasthan & Anr.*** reported in ***2015(3) Cr.L.R. (Raj.) 1291*** and urged that it has been conclusively laid down in the said decision that the offences under Sections 63 and 68A of the Copyright Act are non-cognizable offences. He thus urged that the offence under Section 91(6) of the Land Revenue Act carries the same punishment as the above offence under the Copyright Act and thus, considered in light of Part-II of Schedule-I of Cr.P.C., the same would be a non-cognizable offence and hence, registration of an F.I.R. for such offence, amounts to a gross abuse of the process of law and hence, the impugned F.I.R. should be quashed.

Learned Additional Advocate General Shri Farzand Ali opposed the submissions advanced by the petitioners' counsel and urged that the law laid down by this Court in the case of *Pintu Dey (supra)* is incorrect, inasmuch as, the ratio of the Hon'ble Supreme Court decision in the case of ***Rajeev***

Choudhary Vs. State (N.C.T.) of Delhi reported in **AIR 2001 SC 2369** was wrongly applied by this Court while holding that the offences under Sections 63 and 68A of the Copyright Act are non-cognizable in nature. He contended that the controversy should be referred to a Larger Bench so as to resolve anomaly existing in the interpretation of the important legal issue.

I have given my thoughtful consideration to the arguments advanced at the Bar and have gone through the impugned F.I.R. and have carefully perused the judgment rendered by this Court in the case of Pintu Dey (supra) wherein, it was held that the offences under Sections 63 and 68A of the Copyright Act are non-cognizable and hence, registration of an F.I.R. is impermissible for such offences.

A perusal of the said judgment reveals that the learned Single Bench of this Court applied the rationale of the Hon'ble Supreme Court decision in the case of Rajeev Choudhary (supra) and Hon'ble Andhra Pradesh High Court decision in the case of **Amarnath Vyas Vs. State of Andhra Pradesh** reported in **2007 Cr.L.J. 2025**, and held that sentence "may extend upto three years" as provided for the offences under Sections 63 and 68A of the Copyright Act, would not be covered

by the phrase "imprisonment for three years and upwards" as provided in Schedule II of Cr.P.C. and accordingly, the offences under Sections 63 and 68A of the Copyright Act were treated to be non-cognizable ones.

For considering the prayer of learned A.A.G. to refer the controversy to a Larger Bench, the relevant statutory provisions need to be adverted to.

Sections 63 and 68A of the Copyright Act read as below:

"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.”

“68A. Penalty for contravention of section 52A.-

Any person who publishes a sound recording or a video film in contravention of the provisions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.”

Relevant extracts of Section 91(6) of the Land Revenue Act read as under:

“91(6) Notwithstanding anything contained in sub-section (2) -

(a) whoever occupies any land without lawful authority or, having occupied such land before coming into force of the Rajasthan Land Revenue (Amendment) Act, 1992, fails to remove such occupation within fifteen days from the date of service of a notice in writing calling upon him to do so by the Tehsildar “shall, on conviction, be punished with simple imprisonment which shall not be less than one month but which may extend to three years and with fine which may extend to twenty thousand rupees”; and

[Emphasis supplied]

Provided that, in the case of an offence under clause (a), the court may for any adequate or special reason to be mentioned in the judgment impose a sentence of imprisonment for a term of less than one month :

Provided also that no investigation of an offence under clause (a) of this sub section shall be made by an

officer below the rank of a Deputy Superintendent of Police :

Provided further that no court shall take cognizance of an offence under clause (b) except with the previous sanction of the Collector.”

A plain reading of provision indicates that the offence under Section 91(6)(2)(a) of the Land Revenue Act stipulates punishment which may extend “upto three years”. Thus, awarding actual imprisonment of “three years” is permissible for this offence.

The Hon'ble Supreme Court interpreted various terms of imprisonment referred to in Section 167(2) Cr.P.C. in the case of Rajeev Choudhary (supra).

Section 167(2) of Cr.P.C. reads as below:

“167(2). The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i). ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment "for a term of not less than ten years";

(ii). sixty days, where the investigation relates to "any other offence", and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter."

[Emphasis supplied]

Clause (i) to which custody period of 90 days is applicable caters to such offences for which imprisonment of "ten years" and above is provided. Clause (ii) to which the custody period of 60 days applies, caters to such offences for which imprisonment which may extend to 10 years is provided. Thus, the offences for which imprisonment of "ten years and more" is provided, would not be covered by the Clause (II) of Section 167(2) Cr.P.C. and for such offences, the outer limit of filing

charge-sheet would be 90 days. The classification of offences for the purposes of making them cognizable/non-cognizable is provided in Second Part of the Schedule-I of the Cr.P.C. which reads as below:

II. Classification of offences against other laws

<i>Offence</i>	<i>Cognizable or non-cognizable</i>	<i>Bailable or non-bailable</i>	<i>By what Court triable</i>
1	2	3	4
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

The third category of offences which are made non-cognizable in this Section of the Schedule are those which are punishable "with imprisonment for less than three years or with fine only".

Therefore, on a plain reading of this clause, awarding "actual imprisonment of three years" for an offence which is made non-cognizable by this clause, is not a permissible option.

Section 91(6) of the Land Revenue Act referred to supra provides that the offender can be punished with imprisonment **which may extend to three years**. Thus, the provision does lay that punishment would be continued within three years. Awarding an actual sentence of three years is permissible for the offence. A further indication of the legislative intent that the offence was engrafted so as to make it a cognizable one is given in Section 91 itself. The second proviso to Section 91 mentions that investigation of an offence under clause (a) of sub-section (6) shall not be made by an officer below the rank of a Dy.S.P. Manifestly, investigation can only be made into cognizable offences as no such course of action is permissible for a non-cognizable offence in relation where to, only an inquiry is permissible as no F.I.R. can be registered for non-cognizable offence. The power to investigate has consciously been provided to the Police, restricting the same to clause (a) whereas clause (b) which provides for imprisonment for a term which may extend to one month, no such power is given. Thus, the offence under Section 91(6)(b) of the Act would definitely be a non-cognizable one.

In this background, I am of the view that the contention of the learned AAG that the matter requires to be placed before a

Larger Bench for resolving the important question as to whether the offence under Section 91(6)(a) of the Land Revenue Act and those Sections 63 and 68A of the Copyright Act should be treated as 'cognizable or non-cognizable'. I am of the prima-facie opinion that the view taken by the learned Single Bench in the case of Pintu Dey (supra) does not appear to be laying down the correct proposition of law and I am inclined to differ with the same. Therefore, the following question of law is framed and shall be placed before Hon'ble the Chief Justice for resolution thereof by the Larger Bench:

"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?"

(SANDEEP MEHTA),J

/tarun goyal/

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