

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

328

FAO No.6386 of 2023
DATE OF DECISION : 22nd FEBRUARY, 2024

T-Series (also known as Super Cassettes Industries Private Limited),
New Delhi & another

.... Appellants

Versus

M/s. Dreamline Reality Movies, Mohali & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Amit Jhanji, Senior Advocate with
Mr. Abhinav Sood, Advocate; Mr. Amit Naik, Advocate;
Mr. Deepak Deshmukh, Advocate; Ms. Madhu Gadodia,
Advocate; Ms. Anmol Gupta, Advocate and Ms. Achintya
Soni, Advocate for the appellants.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Saksham Mahajn, Advocate and
Mr. Shrey Sachdeva, Advocate for respondent No.1.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present appeal has been filed by the defendants in the original suit challenging the order dated 23.11.2023 passed by the Additional District Judge, Ludhiana whereby the interim application filed by respondent No.1-plaintiff was allowed while restraining the appellants-defendants from producing, telecasting, selling or releasing the movie under the name of "Dear Jassi" or with any other name till final decision of the case.

2. The facts, as involved in the present case are that the appellants intended to produce a film namely, "Dear Jassi" on the story of one Jaswinder Kaur Sidhu @ Jassi. For the said purpose the

appellants came across a book written by Mr. Fabian Dawson of Canada. As per the case of the appellants they purchased the right to make a film on the book written by Mr. Fabian Dawson, by paying authorization fee of about 5000 C\$. Accordingly, the appellants have made a film named “Dear Jassi”, as based upon the book written by Mr. Fabian Dawson. When the appellants intended to release the said film, the respondent No.1-plaintiff, who claimed to have purchased the rights to make film from respondent No.5-Sukhwinder Singh @ Mithu, who is stated to be husband of the above Jaswinder Kaur, filed a suit for injunction praying for restraining the appellants from exhibiting the film made by them. The respondent No.1 relied upon an agreement entered into with above said Sukhwinder Singh, which is claimed to be prior in time than the production of the movie by the appellants. The essence of the case of the respondents is that since Sukhwinder Singh happens to be husband of the above said Jaswinder Kaur, therefore, his life story is also involved in the film, therefore, the appellants could not have made a movie on the events relating to even Jaswinder Kaur; without his permission. Since the said permission has been purchased by the respondent No.1; therefore, the respondent No.1 has got right to make the film and have got a copyright over the story of Sukhwinder Singh. Hence, the suit was filed.

3. At the time of filing of the said suit, the respondents also filed an application for interim injunction restraining the appellants-defendants from exhibiting the film. That application has been allowed by the trial Court. Aggrieved against the said order the present appeal has been preferred by the defendants.

4. Arguing the case learned senior counsel for the appellants has submitted that the appellants had acquired the bona fide rights to make the film from the person who had intellectual property rights over the work of the book written by him. Since the story of Jaswinder Kaur was widely published by media and even five movies had already been made on that subject, therefore, the information which has been used by the appellants in the film was already in public domain. Besides the appellants have purchased the rights, specifically from author of the book on the subject. Not only that the entire story has been part of the court record in the Canada in the extradition proceedings of the persons accused for the murder of Jaswinder Kaur, as well as, of the courts in India where the trial of the accused was conducted and, they were ultimately convicted. Moreover, the film made by the appellants is depicting the series of facts constituting common human behavior. Therefore, no right can be claimed by the respondents qua the series of facts constituting human behavior which is already in the public domain. The counsel has relied upon Section 13 of the Copyright Act, 1957 to support his argument and has submitted that the copyright exists only in case of accomplished intellectual work; in the form of cinematograph, books or music. In the present case, neither respondent No.5-Sukhwinder Singh claims to have created any intellectual property nor does the respondents-plaintiffs claim to have created any intellectual property, qua which they could claim any copyright, as such. Not only that the claim of the respondents is demolished even by the accompanying delay during which the appellants had already incurred huge financial investments and made the film in question. The appellants

had already completed the film on 16th March, 2023. Despite the fact that the appellants had already got their title of the film registered with the Indian Motion Pictures Association resulting into a public knowledge that the appellants were making the movie on the topic, no objection was raised by the respondents at that time. The counsel for the appellants have also relied upon the judgment rendered by the Supreme Court in the case of *R. G. Anand Vs. M/s. Delux Films & others, (1978) 4 SCC 118* to contend that an idea, principle, theme or subject matter or historical or legendary facts being common aspects cannot be the subject matter of copyright.

5. The counsel have further relied upon the judgment rendered in the case of *Krishna Kishore Singh Vs. Sarla A. Saraogi and others, 2021 SCC online Del 3146* to buttress their arguments that the facts which are historic, news reports, articles, write-ups, features, videos etc. cannot have a copyright as they are part of public domain available to every person and involve no originality and creation which lies at heart of copyright protection. The counsel has also relied upon some more judgments to submit that since the appellants have made a film on the love story of Jaswinder Kaur @ Jassi and she is already dead; therefore, no copyright can be claimed qua the love story of Jaswinder Kaur any more. Even the prayer made by the respondents in the suit is to restrain the appellants from making film on the life story of deceased Jaswinder Kaur @ Jassi, and not relating to Sukhwinder Singh. Therefore, the suit is hit by the principle enunciated in the judgment rendered in the case of *Krishna Kishore Singh (supra)*. To reiterate his arguments that once the information regarding the love story of a person is already in public

domain, even if the person is alive he cannot claim copyright over the same, the appellant has relied upon the judgment rendered by the Supreme Court in the case of *Ramgopal Verma Vs. Perumalla Amrutha, 2020 SCC OnLine TS 3018*, wherein it has been held as under:

“50. When the events which occurred in the life of the respondent are already in public domain, she cannot plead any violation of right of privacy by the appellants in making a movie based on such events. The Trial court did not consider this aspect of the matter i.e. information already being in public domain while passing the impugned order. So it's order cannot be sustained.”

6. In the end, the counsel for the appellants has submitted that the relief granted to the respondents-plaintiffs as interim relief and the final relief claimed by the respondents in the suit are exactly the same. Therefore, by passing the interim order the trial court has granted them a relief which could have been the subject matter of final adjudication of the suit only. Hence the order passed by the trial court deserves to be set aside.

7. Replying the arguments raised by learned senior counsel for the appellants, the learned senior counsel for respondent No.1 has submitted that the film made by the appellants is life story of Jaswinder Kaur @ Jassi, who happened to be the wife of respondent No.5-Sukhwinder Singh @ Mithu, therefore, the said film necessarily, involves part of the his life story as well. Therefore, the film could not have been made except with the due permission from respondent No.5-Sukhwinder Singh @ Mithu. Since the respondent No.1-Company has purchased the

permission from Sukhwinder Singh @ Mithu, vide contract dated 15.12.2018, which is prior in time than the production of the movie by the appellant, therefore, it is only the respondent No.1, which had the right to make the movie. Hence, the trial court has rightly restrained the appellants from exhibiting the movie made by them. The counsel has further submitted that although some part of the life story of Jaswinder Kaur and Sukhwinder Singh is in the public domain, however, the details of developing of relations and the love story between the couple, which is the theme of the movie made by the appellants, was not in the public domain, though it was cause of murder. The central theme of the story is the love affair between Jaswinder Kaur and Sukhwinder Singh and that could not be permitted to be part of/or the subject matter of the movie made by someone else, without any right having been purchased from Sukhwinder Singh. The counsel for the respondent No.1 has also submitted that the facts which are in public domain are relating; and are pertaining; to the period only after the murder of Jaswinder Kaur had happened and not the event before that. Therefore, plea of the appellants that life story of Jaswinder Kaur is in the public domain is not factually correct. Some part of the story is known to only Sukhwinder Singh and therefore without his permission the movie could not have been made. Since the respondent No.1 has purchased the life story from Sukhwinder Singh, therefore, only the respondent No.1-Company has a copyright over the live story involved in the movie "Dear Jassi" made by the appellants.

8. To buttress his above said argument the learned senior counsel for respondent No.1 has taken the arguments towards the right to

privacy as expounded by the Supreme Court in the case of *K. S. Puttaswamy Vs. Union of India, (2017) 10 SCC 1*. The relevant para of the judgment which is relied upon by the counsel is reproduced hereunder:

“625. Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent.”

The counsel for the respondent has further relied upon the para 26 of the judgment rendered by the Supreme Court in the case of *R. Rajagopal alias R. R. Gopal and another Vs. State of T. N. & others, (1994) 6 SCC 632*, the relevant portion of which is reproduced as hereunder:

“26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.

Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) Xxx... Xxx... Xxx...”

The counsel for respondent No.1 has further extended his argument by relying upon the judgment rendered by the Delhi High Court in the case of *D. M. Entertainment Pvt. Ltd. Vs. Baby Gift House & others; 2010 SCC OnLine Del 4790*. The relevant para of which is reproduced hereunder:

“16. The right of publicity can, in a jurisprudential sense, be located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality. However, a word of caution has to be expressed here. In a free and democratic society, where every individual's right to free speech is assured, the over emphasis on a famous person's publicity rights can tend to chill the exercise of such invaluable democratic right. Thus, for instance, caricature, lampooning,

parodies and the like, which may tend to highlight some aspects of the individual's personality traits, may not constitute infringement of such individual's right to publicity. If it were held otherwise, an entire genre of expression would be unavailable to the general public.”

9. The counsel for the respondent No.1 has contended that Section 2(d)(v) of the Copyrights Act defines ‘author’ in relation to a cinematograph film to be the producer of the film. Section 2(y)(ii) defines a cinematograph, to be a person who takes initiative and responsibility of making of a work. Section 2(f) defines a cinematograph as to be construed as include any work produced by process of analogous to cinematography including film. Therefore, in order to construe whether the work in which copyright subsists as a cinematography has been initiated or produced, the preparation of the cinematographic film, that is, making of screenplay or script after conducting interviews by the plaintiff-Sukhwinder Singh @ Mithu also have to be included. In the present case the respondent-plaintiff had, after entering into agreement and in order to prepare the screenplay conducted the interviews and made all other necessary arrangements and had spent a considerable amount. Thus all these preparations; including writing of the screenplay constitutes steps initiated by a producer, that is, the respondent No.1 in this case. Therefore, the respondent No.1 had created a work which was still unpublished but in the process of making of a movie. This effort of the respondent No.1 is backed by Section 16 of the Act.

10. On the aspect of the argument raised by counsel for the appellants qua delay in raising the claim, the learned counsel for the respondent No.1 has submitted that the appellants had announced the

making of the movie only on 31st January, 2023 and the suit has been filed on 16th March, 2023. Therefore, there is absolutely no delay in filing the suit by the respondent. Answering the argument raised by counsel for the appellant that copyright extinguishes with the death of the person; and since Jaswinder Kaur @ Jassi had already expired, therefore, there is no infringement of the copyright, the learned counsel for respondent No.1 has submitted that respondent No.5-Sukhwinder Singh, from whom the respondent No.1-Company had purchased the rights is still alive and it is his life story, as well, therefore, the respondent No.1-plaintiff has got copyright to make the movie on that story. Hence, it is submitted that the stay granted by the court below is rightly granted and the appeal filed by the present appellants deserve to be dismissed.

11. Heard learned counsel for the parties and perused the record and considered the material on record. However, before proceeding further it would be appropriate to have reference to the statutory provisions relating to the Copyright Act, 1957, which are reproduced hereunder:

“2. Interpretation.— In this Act, unless the context otherwise requires,—

(a) Xxx... Xxx... Xxx...

(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 architecture; and

(iii) any other work of artistic craftsmanship;

(d) "author" means,—

(i) in relation to a literary or dramatic work, the author of 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 cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;

(dd) Xxx.... Xxx...

(f) "cinematograph film" means any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;

Xxx..... Xxx..... Xxx.....

(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 a 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;*

Xxx..... Xxx..... Xxx.....

(uu) *"producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;*

Xxx..... Xxx..... Xxx.....

(y) *"work" means any of the following works, namely:—*

- (i) *a literary, dramatic, musical or artistic work;*
- (ii) *a cinematograph film;*
- (iii) *a sound recording;*

Xxx..... Xxx..... Xxx.....

13. *Works in which copyright subsists.— (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—*

- (a) *original literary, dramatic, musical and artistic works;*
- (b) *cinematograph films; and*
- (c) *sound recording.*

(2) *Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,—*

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than work of architecture, the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of work of architecture, the work is located in India.

Explanation.—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) *Copyright shall not subsist—*

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any 'sound recording made in respect of a literary, dramatic or musical work, if in making the 'sound recording, copyright in such work has been infringed.

(4) *The copyright in a cinematograph film or a 'sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the 'sound recording is made.*

(5) *In the case of work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.*

14. Meaning of copyright.— *For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—*

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

(i) to do any of the acts specified in clause (a);

(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) in the case of an artistic work,

(i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

Xxx..... Xxx..... Xxx.....

16. No copyright except as provided in this Act.—No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.”

12. A perusal of the above said provisions makes it clear that to claim copyright over something, that something has to be an existing work. The language of the provisions regarding subsistence of copyright and infringement thereof are couched in past participle. Therefore, it is obvious that the person claiming copyright can assert the same only if he/she has already accomplished a work, be it book or literary work, cinematographic or photographic work, music work or any other intellectual work, by incorporating his intelligence and creativity. Mere existence of certain facts constituting a human conduct or chain of events signifying a human behavior, as such, cannot be made a subject matter over which claim of copyright can be asserted by any person. Mere existence of an idea or existence of fact or set of facts, *per se*, and without involvement of talent, intelligence or effort by a person in converting the same into a work, by any means, cannot be stated to be a ‘work’, as required under the Copyright Act, qua which a person can assert his copyright. The definition of infringement of copyright itself shows that it encompasses only reproduction or making copies of or giving performance on a ‘work’. Unless a work exists, there cannot be any question of copyright or reproducing it. Hence no infringement can be

claimed unless there is a pre-existing work created by person claiming copyright by investing his creativity, intelligence or effort. In the present case, the respondent No.1-company claimed to have purchased rights to make film on alleged life story of Sukhwinder Singh. However, the life story of Sukhwinder Singh, as such, cannot be subject matter of copyright, though it may entitle him to some other protections under some other law and for some different purposes. It is not even in dispute that Sukhwinder Singh had not created any work of authorship or creation by incorporating his life story. Therefore, he did not have any right even to assign the copyright to respondent No.1. On the other hand, the appellants have asserted that they have purchased the right to make film on an existing book from the author of the book, namely, Mr. Fabian Dawson. The said book contains the story of Jaswinder Kaur. Therefore, the story of Jaswinder Kaur, and incidentally part of life of Sukhwinder Singh, were already part of the literary work created by Mr. Fabian Dawson and as such the appellants have got a legal right to make a film on the said book.

13. Moreover, it is not even in dispute that the life story of Jaswinder Kaur included her murder as the alleged 'honour killing' because the family of Jaswinder Kaur had not accepted her love story and the consequent marriage with Sukhwinder Singh. Therefore, the entire aspect of life story of Jaswinder Kaur has been part of the court records in Canada in the extradition proceedings, as well as, is part of the court record in Indian courts where the trial of the family members of Jaswinder Kaur was conducted on account of the 'honour killing' having

been committed by them. Moreover, the aspect of honour killing of Jaswinder Kaur has, undisputedly, been subject matter of publications in media and social media, and five other films on the subject, therefore, the subject matter involved in the present case had already been in public domain. For this reason as well, Sukhwinder Singh or, for that matter, the respondent No.1, cannot legitimately claim any copyright over the said love story and the consequent murder. This court finds reliance of the counsel for respondent No.1 on the case of *Krishna Kishore Singh (supra)* and *Ramgopal Verma (supra)* to be well placed. Even the statutory provisions contained in the Copyright Act exclude the material in public domain from the restrictions of Copyright Act. Hence, the respondent No.1 does not have any *prima facie* case in its favour. Another aspect which deserves to be noted here, and which goes against the respondent No.1, is that the prayer made by the respondent No.1 in its plaint itself is for restraining the appellants from making or exhibiting a film on the life story of Jaswinder Kaur and not on the life story of Sukhwinder Singh. The said Jaswinder Kaur is already dead and she has not left any published or unpublished literary work behind her qua which any one of the legal heirs could have claimed any copyright, as such. Moreover, this court also finds substance in the argument raised by learned counsel for the appellants that the trial court has granted as an interim relief what was claimed by respondent No.1 to be only the final relief, which could have been granted only after completion of the trial of the case. Therefore, for this reason as well, the order passed by the trial court does not stand the test of legal scrutiny.

14. Although the learned counsel for the respondent No.1 has put heavy reliance upon right of privacy vested in Sukhwinder Singh and his right to commercial exploitation of the same and has relied upon para No.625 of the judgment rendered by the Supreme Court in the case of *K. S. Puttaswamy (supra)* and para No.26 of the judgment rendered by the Supreme Court in the case of *R. Rajagopal alias R. R. Gopal and another (supra)*, as well as, on judgment rendered in the case of *D. M. Entertainment Pvt. Ltd.(supra)*, however, even this argument is of no assistance to the case of respondent No.1. No doubt the Hon'ble Supreme Court has held in the case of *K. S. Puttaswamy (supra)* that right to privacy is a fundamental right which is intrinsic to the very existence of the individual and has found the location of guarantee of that right in Article 21 of the Constitution of India, however, even in the said judgment the Hon'ble Supreme Court has amply clarified that right to privacy is not an absolute right. The majority judgment to this effect as reflected from para 325 of the said judgment clarify this aspect more than enough and sets out the contours and scope of the right to privacy. The said paragraph is as reproduced herein below:

“325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of

life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.”

15. Moreover, that judgment has not laid down any law regarding the copyright, nor has it declared the provisions of the Copyright Act as *ultra vires* being in breach of right to privacy. Otherwise also in a system governed by rule of law, there is nothing absolute either in terms of substantive rights or in terms of remedy available to a person. Every aspect of the human life is permissible to be governed by the law occupying the field in the concerned area, which in the present case is the Copyright Act. The only requirement in that regard would be that if the law is to cast a shadow on right to life and liberty of a person, whether substantively or procedurally, then the same has to be fair and reasonable constituting ‘due process of law’. Therefore, merely on the basis of right to privacy of Sukhwinder Singh, as such, the respondent No.1 cannot stake its claim to anything under the Copyright Act. Whatever claim qua copyright is to be staked by the respondent No.1 it has to be claimed within the four-walls of the statutory provisions contained in the said Act.

16. Since, the respondent No.1 only claims an assignment of rights by Sukhwinder Singh, therefore, the respondent No.1 has to satisfy the conditions relating to assignment of copyright as required under the Copyright Act as well. In this regard, it is apposite to have reference to Section 18 of the Copyright Act, which deals with assignment of copyrights, which is reproduced hereinbelow:

“18. Assignment of copyright.— (1)The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence:

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee

as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

17. A bare perusal of the above said provision shows that only the existing copyright in an existing work can be assigned by the original owner of the copyright. Even the future assignment of a copyright can take effect only in case the work, qua which the copyright is assigned, had come into existence. Therefore, even the agreement of assignment entered into between Sukhwinder Singh and respondent No.1-company would not have any legal effect qua the provisions of the Copyright Act unless there was a work in existence as created by Sukhwinder Singh by employing his creativity, intelligence, or effort, may be even on his own life story. Needless to say that there was no work, over which Sukhwinder Singh had any copyright, therefore, there is no question of assigning any copyright to the respondent No.1 by the respondent No.5-Sukhwinder Singh.

18. Although, the learned counsel for respondent No.1 has also relied upon some provisions contained in the definition clause of Copyright Act and also on Section 13, 14 and 18 to buttress his argument that copyright would be extended to unpublished work, as well, to any initiative taken by a producer of a film, however, even for that purpose there has to be existence of a work as defined under the Copyright Act,

which necessarily involves investment of intelligence, creativity and effort of a person producing as a consequence the literary, dramatic, musical or artistic work or cinematographic film or a sound recording. However, even as per the case of the respondent No.1 neither Sukhwinder Singh had created any work which was still unpublished, nor did the respondent No.1 create any such work, as such. The only argument of the counsel for the respondent No.1 in that regard is that respondent No.1 had initiated the effort in the direction of production of the film, however, mere initiation of the effort or taking some step in creation of a work is not the same thing as existence of a work qua which property right can be taken to be subsisting. Therefore, this court does not find any substance even in this argument of counsel for the respondent No.1.

19. Another argument raised by the counsel for the respondent No.1 is that since Sukhwinder Singh had a right to privacy; and thus had a right to commercially exploit his privacy, and he had sold the rights to commercially exploit that privacy to the respondent No.1-company, therefore, the respondent No.1 had every right to commercially exploit the same to the exclusion of anybody else. However, this argument of respondent No.1 is altogether in a different plane. This argument of the counsel for respondent No.1 takes away the case of respondent No.1 beyond the purview of the Copyright Act, whereas, the entire submissions of the learned counsel for respondent No.1 and the order passed by the trial court is based upon the assumption that the right of the respondent No.1 as was available to it under Copyrights Act was infringed. Moreover, even if the case of the respondent No.1 is taken

outside the purview of the Copyright Act, still, for claiming a right to commercially exploit the same, Sukhwinder Singh could have had certain rights to claim some damages and may be even authorized to sell his privacy to someone else for commercial exploitation, however, even for that there are defined limits for such a legal action. For that purpose right can be claimed only as ‘celebrity right’ or ‘publicity right’ by a person who claims to have acquired the status of celebrity and a distinct identity having ‘commercial goodwill’ which can be used by him/her as saleable commodity. However, in the present case neither Sukhwinder Singh claims any celebrity status nor is the assertion by respondent No.1 that Sukhwinder Singh had a celebrity identity having any value as a saleable commodity. If these tests are not satisfied then even if Sukhwinder Singh is having some right under criminal law or under the law of torts to prevent the distortion of the fact relating to him in any depiction of his right yet he cannot claim to have a commercially exploitable celebrity status having any publicity rights, as such. Although much reliance has been placed by the learned Senior counsel for the respondent No.1 upon para No.625 of the judgment in the case of *K. S. Puttaswamy (supra)*, however, this paragraph contains the views of only one of the Hon’ble Judge constituting the Constitutional Bench and thus is only advisory in nature and not the law laid down by the Hon’ble Supreme Court. The very nature of language used in this para is inflectional and colloquial expressing only the desirability of unconditional commercial exploitability of one’s privacy, of whatever aspect of his individuality he may so desire to commercially exploit. However, there is a huge gap between what the law desirably “should be” and what the law actually

“is”. Neither every aspect of one’s personality is permissible to be commercially exploitable nor is every aspect of one’s individuality a part of his right to privacy. The very fact that right to privacy can be regulated and controlled by law would make it clear that while some aspect of one’s individuality may be part of his right to privacy, the rest of it may not be. The right to privacy would involve only those parts of one’s individuality and personality which are intrinsic and attached to his very existence as a human being, and also his orientations and choices which are unique to him and has no relativity to any other human being. These are the aspects which concern only that person and operate in his own sphere of existence. But moment such person comes out of his unique personal sphere and indulges in social sphere and social intercourse, then such part of his individuality which pertains to interpersonal relations or social choices or social consequences would not be encompassed unconditionally in his right to privacy. Therefore, such part of his individuality or personality; would not be amenable to commercial exploitation as per his own choice. The commercial exploitation of such part of one’s individuality would be governed by law, may be by the Copyright Act or the law relating to defamation; and the like. However, even the social or interpersonal aspect of one’s individuality may be amendable to commercial exploitation as an identity of a person as per his choice if by his talent, work or the specific attributes he has raised his individuality to a unique identity having capacity to influence or create financial consequences qua other persons, goods, services or the events, and thus having a saleable value as a commercial commodity. Hence the ‘judge-made’ law has recognized the

‘celebrity rights’ or the ‘publicity rights’ as commercially exploitable even though such rights are not available under Copyright Act. In the present case there was no celebrity status acquired by Sukhwinder Singh. Therefore, this attempt of the counsel for the respondent must also fail.

20. In view of the above, this court finds that the respondent No.1 does not have any *prima facie* case in its favour. Moreover, since exhibition of a film is for commercial purpose and any outcome of exhibition of the film made by the appellants, as such, would result only in generation finance, therefore, it cannot be said, by any means, that the respondent No.1 would suffer any irreparable loss, which cannot be compensated in terms of money, if the appellants are not restrained from exhibiting the film by way of an interim order during the pendency of the suit.

21. Hence, finding the order passed by the trial court to be not sustainable as per the law, the appeal is allowed and the order dated 23.11.2023 passed by the Additional District Judge, Ludhiana, is set aside.

22nd February, 2024
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes