



**Gramophone Company of India Ltd. – Appellants vs. Birendra Bahadur Pandey
and Ors. – Respondent, AIR 1984 SC 667.**

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Judgment delivered by E.S. Venkataramiah, O. Chinnappa Reddy and R.B. Misra.

CASE FACTS:

Gramophone Company of India Limited is the owner of copyright in the recordings of performing artists to whom it pays royalties. The company learnt of the arrival of a consignment of pirated copies of these recordings at Calcutta. The same were being transported from Singapore to Nepal through India. Action was initiated against the consignee for violation of Gramophone India's copyright.

CASE HISTORY:

Gramophone India sought action from the Registrar of Copyrights to curb the circulation/import of the pirated recordings. When the Registrar failed to take necessary action, the company filed a writ petition, seeking a writ to compel the Registrar to pass an appropriate order to prevent the release of the pirated works from the custody of the Custom authorities. The petition was heard by a single-judge bench at the Calcutta High Court which issued an order in favor of Gramophone India and gave the Registrar eight weeks to act.

An appeal was preferred by the consignee against the decision of the single judge bench on the ground that the consignment was not an importation as it had not been mixed with local goods. A division bench of the Calcutta High Court heard the appeal and ruled in favor of the consignee, dismissing the petition of Gramophone India. Gramophone India filed a special leave petition in the Supreme Court under Article 136 of the Constitution.

ISSUE

Whether the mere presence of goods in transit on Indian Territory amounts to their importation?

Whether such goods in transit, which if made in India would infringe copyright, can be allowed on Indian Territory?

RULE OF LAW

Goods in transit, once on Indian Territory, are considered to have been imported, irrespective of whether they have been sold, and if such imported goods are found to be in violation of Indian copyright laws, they can not be allowed to be imported/circulated on Indian Territory.

ANALYSIS:

The contention of the consignee that the word 'import' implies the incorporation and mixing of the goods imported with the mass of the property in the local area and the mere presence of the pirated consignment in Indian Territory does not amount to import and that such goods would not be subject to the provisions of the Copyright Act and Customs Act was held invalid by the Supreme court, which held that 'import' includes importation for transit across the country. Consequently, the infringing goods were deemed to have been imported and in violation of provisions of the Copyright Act and their circulation/import were banned under the relevant provisions of the Customs Act.

An important question raised in this case is to what extent countries parties to international conventions are bound by such provisions. Nepal, the destination of the pirated consignment, and India are parties to several international conventions for IP protection and have also signed bi-lateral treaties to facilitate trade. Subject to certain exceptions, either country can refuse to allow transit of goods in order to protect industrial, literary and artistic works. This implies that the State of transit may enforce a copyright or trade-mark if the goods in transit are in violation of the same. India, in this case, would be entitled to seize the pirated consignment heading towards Nepal and seek remedy for infringement of copyright. It has been settled that such provisions shall be binding only as long as they are not in conflict with municipal laws.

It is made clear that, while dealing with the issue of enforcement of copyright of works, even when the infringing goods are neither of Indian origin nor intended for the Indian market, they are subject to Indian laws and are in violation of copyright.

