

**Dr. Deb Kumar Roy Vs. State of Bihar and ors.**

**Dr. Deb Kumar Roy Vs. State of Bihar and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/134164](http://sooperkanoon.com/134164)

**Court :** Patna

**Decided On :** Jun-27-2001

**Judge :** P.K. Deb, J.

**Acts :** [Copyright Act, 1957](#) - Sections 63, 68 and 68A; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197 and 245

**Appeal No. :** Crl. Revision No. 294 of 2001

**Appellant :** Dr. Deb Kumar Roy

**Respondent :** State of Bihar and ors.

**Disposition :** Application allowed

**Judgement :**

**P.K. Deb, J.**

1. This revision petition has been preferred by the above named petitioner against the order dated 24.3.2001 passed by Shri D.K. Singh, J.M. 1st Class, Patna, whereby the prayer made by the petitioner under Section 245 Cr.P.C. for his discharge has been rejected.

2. Although, before notices were sent at the admission stage, the O.P. No 2 who happens to be the complainant in Complaint Case No. 356(C)/2000 appeared and

argued through the counsel.

3. Admittedly, the novel 'Lohe Ke Pankh' was written by late Hirnanshu Srivastava who happened to be the father of the complainant OP No. 2. The said novel was published by Gyanpith Private Limited. According to the complainant, from a news item published in daily newspaper 'Aaj' on 13.11.1997 he could learn that Doordarshan Kendra, Patna, had approved the proposal of co-accused Girish Ranjan for producing the tele serial under 'Commissioned Category' of the said novel 'Lohe Ke Pankh'. The complainant being sole heir of Himanshu Srivastava, contacted co-accused Girish Ranjan who discloses him that during his life time Himanshu Srivastava had given written permission to him for producing the tele serial on his novel 'Lohe Ke Pankh'. On belief of statement of Girish Ranjan, the complainant alongwith Girish Ranjan enter into an agreement with the Doordarshan Kendra, Patna, on 11.2.1998 for tele cast of the Serial and the complainant took Rs. 4,200/-. Then from another news item published on 20.6.1999 in 'Times of India' the complainant came to know that the said Serial 'Lohe Ke Pankh' would be tele cast from Doordarshan Kendra, Patna from 21.6.1999 and that co-accused Girish Ranjan had extended the Serial in six episodes for which the also the complainant had been paid Rs. 20,800/-. But afterwards on 27.6.3999 the complainant came to know from Dr. Ramesh Chandra Pandey that Himanshu Srivastava had not given any permission to Girish Ranjan for producing the tele Serial. Rather, only permission was given to Girish Ranjan to direct the same when the same should be produced by Dr. Ramesh Chandra Pandey. Then the complainant started searching and found letters written by his father Himanshu Srivastava by which only permission was given to Girish Ranjan to direct the Serial and not to produce it. But the said co-accused Girish Ranjan

in connivance with the present petitioner who happened to be the Station Director of Doordarshan Kendra, Patna, at the relevant time had entered into such agreement to the detriment of the complainant and on false and frivolous alleged permission a huge amount of the Government have been embezzled by the co-accused persons including the petitioner.

4. In the whole episode it appears that while granting permission to 'Commissioned Category' of televising the Serial, the petitioner was the Chairman of the Committee which consisted of several other members. Regarding the Copyright Act practically the petitioner was not in any way connected with the matter. He was only connected in granting permission by the Committee of which he was the Chairman in televising the Serial. The agreement of which the Committee chaired by the petitioner granted permission under 'Commissioned Category' clearly shows that the co-accused R. Girish Ranjan had mentioned of permission from the novelist Himanshu Srivastava and on such revelation the Committee acted. If Girish Ranjan had violated any provision of the Copyright Act, the petitioner can not be said to be a party of it.

5. On the basis of the complaint and the statement made by the complainant under solemn affirmation cognizance was taken under the penal provision of Copyright Act against Girish Ranjan and also against the petitioner and others under Sections 63, 68 and 68A of the Act. The petitioner appeared and filed petition for being represented through his lawyer and then filed a petition under Section 245, Cr.P.C. for his discharge.

6. The learned Magistrate after hearing both the parties rejected the prayer of the petitioner and held that charges should be framed not only under the penal provision of Copyright Act but also under Section 129(B) IPC. Hence, this petition.

7. On the face of the records and as conceded by the learned counsel appearing for and on behalf of OP No. 2 there can not be any offence or connivance of the petitioner in commission of the offence under the penal provision of Copyright Act. Rather, it has been stated that in the complaint petition alongwith penal provision of Copyright Act, allegations were also made under Sections 420 and 467 and other penal provision read with Section 120(B), IPC. But while taking cognizance under the penal provision of Copyright Act and after the impugned order has been passed, a petition had been filed as has been stated in the bar that other section of the Indian Penal Code as complained of must be added while framing charge against the petitioners and other accused persons. These are not matters of consideration by this court. We are concerned with the order which have been

passed regarding the prayer of the discharge of the petitioner holding that charges should be framed under the said penal provision of Copyright Act read with Section 120(B), IPC.

8. The grounds of challenging the impugned orders are :

(i) the cognizance as taken against the petitioner is bad on the face of it as the petitioner is a Central Government employee he can not be prosecuted without prior sanction as required under Section 197, Cr.P.C.

(ii) that on the same allegation a Civil Suit has already been filed by the complainant wherein in the plaint itself it has been categorically stated that co-accused Girish Ranjan has duped the officials of the Doordarshan Kendra, Patna, in getting the permission under the Commissioned Category of televising the Serial in the name of style of 'Lohe Ke Pankh'.

(iii) the complainant barred by different provisions of Sections 17, 19 and 30 together with Section 63 of the Copyright Act and has got no authority or jurisdiction to lodge the complaint as he is neither the writer nor he has been authorised or licensed by the writer for the purpose of taking action under the Copyright Act. Only because he is the son of the Novelist he can not come within the jurisdiction to act under the Copyright Act.

9. As from the admitted position of the case and as conceded by the learned counsel appearing for and on behalf of OP No. 2, no offence can be there against the petitioner under the Copyright Act nor there can be any allegation or material to find him for connivance for criminal conspiracy regarding the penal provision of Copyright Act. As provided under Section 120(B) IPC there must be a criminal conspiracy for doing or committing a substantive offence either under Indian Penal Code or in the penal provision of any other Act, when it is conceded and could be found that the substantive offences are being the penal provision of Copyright Act alone, then there can not be any charge or allegation having conspiracy by the petitioner for such substantive offence. No other Penal Code or an other Act has been alleged while taking cognizance of or has been considered by the learned

Magistrate concerned while passing the order for framing the charge against the petitioner. In that way, Section 120(B), IPC can not bind the petitioner for doing the offence under the penal provision of Copyright Act. In that way, the learned court below has definitely committed error of law in asking the petitioner to be present on the next date for framing of the charge under the penal provision of Copyright Act read with Section 120 (B) IPC. Thus, the impugned order can not be sustainable in law against the petitioner.

10. Regarding the sanction under Section 197, Cr.P.C. there is much force in the contention of the learned counsel appearing for and on behalf of the petitioner. The petitioner happens to be a responsible Officer in the Doordarshan Kendra which is Central Government undertaking Organisation and his posting and appointment and termination is governed by the Central Government. In that way, definitely the petitioner comes within the definition of Public Servant and his prosecution needs prior sanction for taking cognizance. Reference may be made to the recent Judgment

of the Apex Court as reported in Gauri Shankar Prasad v. The State of Bihar, 2000 (5) SCC 15.

11. On the third point raised regarding the jurisdiction and authority of the complainant, I am not going to consider the matter as in the first two points the petitioner has got very good case to be immuned from the present case.

12. In that way, the impugned order is hereby set-aside holding that the petitioner is immuned from the prosecution and charge for taking him in trial in Complaint Case No. 356 (C)/2000 as the same is nothing but an abuse of the processes of the Court. This Revision application is, thus allowed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**