

Supreme Court of the Kingdom of Thailand

S.C. 9600/2011

Public Prosecutor v Master Sergeant First Class Vannarat Keecha-reon

Court : Supreme Court
Kind of Case : Criminal Case
Date of Judgment : 2011/11/11
Prosecutor : Public Prosecutor
Accused : Master Sergeant First Class Vannarat Keecha-reon
Area of Law : Copyright
Statute : Copyright Act B.E. 2537 (1994)
Panel of Justices :

Prinya Deepadung – Aram Senamontri - Dhajaphand Prabhudhanitisarn

Background

The prosecutor filed that the injured person was the copyright holder as an author of musical work. The accused infringed the copyright in musical work belonged to the injured person by using computer installed copyright work that belonged to the accused by adapting, copying and transferring copyrighted data into MP3 file and sound recording which belonged to the injured person without permission of the injured person. The public prosecutor requested the Court to made sentence against the accused according to the law.

The accused pleaded to deny.

Issue

Whether or not the accused committed an offence as in the file.

Procedural

The Central Intellectual Property and International Trade Court judged that the accused was guilty according to the Copyright Act B.E. 2537 (1994) Section 69 paragraph one appurtenant to Section 27 (1) and 28 (1). The acts of the accused are 2 offences shall be punished for each offence. As for copying the copyrighted musical work, sound recording and audiovisual work without permission, each offence fined 20,000 baht.

The accused appealed to the Supreme Court.

The Intellectual Property and International Trade Division of the Supreme Court reversed the judgment and dismissed the case.

Analysis

Even though the facts had been heard from the plaintiff's witness that the defendant recorded the copyrighted song belonged to the injured person into CD for 2 discs and into MP3 CD and VCD karaoke which is the copying of copyrighted musical work, sound recording and audiovisual of the injured person without permission. But such acts of the accused was a result of sub attorney – in – fact from the injured person hired the defendant to record the songs belonged to the injured person into CD and VCD karaoke which caused the accused to copy the copyrighted musical work, sound recording and audiovisual which was an offence according to the charge. In other words, if the sub attorney – in – fact did not hire the accused, the offence the plaintiff filed would not be occurred. The accused did not commit the offence of copying the copyrighted work belonged to the injured person before the hire and brought those infringing CD and VCD karaoke selling to sub attorney – in – fact, entrapped person, which could be considered as evidence finding in order to prove that the accused infringed the injured person's copyright according to the Copyright Act B.E. 2537 (1994) Section 31 (1). Because the sub attorney – in – fact was the person who caused the accused committed the injured person's copyright infringing according to the Copyright Act B.E. 2537 (1994) Section 69 paragraph one appurtenant to Section 27 (1) and 28 (1) in order to be caught by the police. Therefore, the sub attorney – in – fact was not legal injured person who had the right to petition in order to prosecute the accused for such offence according to the Act for the Establishment of and Procedure for Intellectual Property and International Trade Court B.E. 2539 (1996) Section 26 appurtenant to Criminal Procedural Code Section 2 (4) and Section 123. Both CD and VCD karaoke that the sub attorney – in – fact hired the accused to make them and VDO recorded the event the accused recorded the song into CD the sub attorney – in – fact had recorded for evidence was illegitimate and there were the evidence brought from the wrongful act. It was prohibited to accept as evidence for proving the guilty of the accused as the public prosecutor filed according to the Act for the Establishment of and Procedure for Intellectual Property and International Trade Court B.E. 2539 (1996) Section 26 appurtenant to Criminal Procedure Section 226 and Section 226/1. Therefore, the act of the sub attorney – in – fact hiring the accused recorded the copyrighted song of the injured person into CD and VCD karaoke did not legal searching for evidence in order to prove guilty of the accused as filling. The Court could not punish the accused for the offence of copying

the copyrighted musical work, sound recording and audiovisual belonged to the injured person according to the Copyright Act B.E. 2537 (1994) Section 69 paragraph one appurtenant to Section 27 (1) and Section 28 (1) as the sentence of the Central Intellectual Property and International Trade Court. There is no need to consider the accuser's evidence any more.

Keywords

Musical work, Sound recording and audiovisual, legal injured person

Summarized by

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