

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2048/2001 & CrI M A 2488/2001

Reserved on: January 16, 2008

Date of decision: February 14, 2008

P.K. BAGLA

..... Petitioner

Through Mr. Manmohan Singh with Mr. Tejinder Singh,
Mr. Sushant Singh and Mr. Chandra Shekhar, Advocates

versus

STATE & ORS.

..... Respondents

Through None.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

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| 1. Whether Reporters of restricted papers may be allowed to see the order? | Yes |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the order should be reported in the Digest? | Yes |

Dr. S. Muralidhar, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') filed by the petitioner seeking quashing of search warrant dated 18th October, 2000 issued by the learned Metropolitan Magistrate, New Delhi ('MM') in Criminal Complaint No. 753/1 of 2000.

2. The Petitioner claims to be carrying on business in the name and style of M/s. Bagla Beauty Products at B-1-2 DSIDC Works Centre, Kabir Basti, Malka Ganj, Delhi 110 007. It is stated that the Petitioner has obtained Drug licence No. 1309 dated 12th November 1999 issued by the Drug Controller to manufacture cosmetics

for sale pertaining to nail polish under the brand names Saina, Seven 100 and Regina.

3. It is stated that after obtaining the Drug licence the Petitioner has been using the trademark of 'Saina.' On 7th July 2000 the Respondent Nos. 2 and 3, who are stated to be related to the Petitioner, issued a letter to the Petitioner stating that they have got registered a trademark DIANA LONDON for nail polish. Accordingly they asked the Petitioner not to use the trademark SAINA LONDON.

4. It is stated that although the Respondents were aware that there were civil disputes with the Petitioner in regard to the aforementioned use of trademark, the Respondent Nos. 2 and 3 filed a criminal complaint on 9th August, 2000 in the court of the learned MM against "unknown persons/firms/companies" under Sections 77, 78 and 79 of the Trade and Merchandise Marks Act, 1958 ('TM Act') and Sections 63 and 64 of the Copyright Act, 1957 read with Section 420 IPC.

5. It is pointed out that despite the Respondent Nos. 2 and 3, the complainants in the aforementioned complaint case, knowing it is the Petitioner who has been issued Drug licence No. 1309 of 1999 they mentioned "unknown persons/firms/companies" as the accused. This is apparent from the reading of the entire complaint which refers to use of the trademark "SAINA LONDON" which according to the complainant is deceptively similar to "DIANA LONDON." A reference is made to the paragraphs 16 and 17 of the complaint which reads as under:

"16. That such illegal and unlawful trade activities of the unknown persons/firms/companies have not only causing great damage and loss to the goodwill and reputation of the complainant firm to a great extent, but they are

simultaneously cheating the unwary class of purchasers by passing off their inferior and sub-standard quality of products as for the superior and sub-standard quality of goods of the complainant firm under the trade mark “DIANA LONDON” along with an artistic logo consisting of device of star with the word “BC”.

17. Not only this, accused persons/pirators have also adopted identical and/or deceptively similar packing, having colour scheme, get-up, lay-out, writing style and arrangement of words as of the complainant’s packing and this act of duplicators amounts to infringements of complainant’s vested and legal rights. The packing of duplicate goods is nothing but a slavish copy of the packing of the complainant. A mere look at the two packing will conclude that the duplicate packing could not have been done unless the packing of the complainant was placed before the duplicators. The accused unknown persons have no right or justification to adopt or use the impugned trade mark “SAINA LONDON” along with artistic logo consisting of device of star with the word “BBP” which are identical and/or deceptively similar to the trade marks of the complainant. The act of duplicators is a clear and flagrant violation of the complainant’s rights in the trade mark & Copyright. The complainant for the last more than six decades are running business in respect of its products of nail polish and other cosmetics under the law.”

6. It is, therefore, submitted that the filing of criminal complaint on the basis that the Respondents (in the complaint) are unknown and obtaining search warrant on that basis was malafide.

7. The statement of the complainant was recorded by the learned MM on 18th October 2000 in which it was stated:

“That I have also applied for registration of trade mark DIANA LONDON and the logo BC with device of Star under the Copyright Act also. That few unknown people/companies are using our trade mark DIANA LONDON as SAINA LONDON in the same packing/carton. **One of the accused is known to me and he is my uncle Shri J.K. Bagla who is selling the spurious goods under the trade mark SAINA LONDON in the same carton and trading as Bagla Beauty Products.** That due to above said activities of

the said people/company our reputation is being damaged and our company is suffering huge losses which cannot be compensated in terms of money. It is therefore, prayed that a General search warrant may be issued to search all those premises in the country and Union Territory of Delhi.” (emphasis supplied)

8. It is therefore pointed out since even in the above statement the complainant claimed to know that one of the accused was his uncle J.K.Bagla, the search warrant in question could not have been issued to unknown persons. It is submitted that the warrant was issued without application of mind and the complaint itself was an abuse of the process of law.

9. At the first hearing of this case on 29th May 2001 notice was directed to issue to the Respondents. The Respondents have been served but some reason when the case was heard finally on 16th January 2008 nobody appeared despite one pass over. This Court then passed the following order:

“None appears for the Respondents despite one pass over.

The Respondents are permitted to file written note of arguments within one week from today.

Arguments heard. Order reserved.”

10. Despite the above opportunity, the Respondents have not filed written submissions.

11. The practice of filing the criminal complaint against “unknown offenders” in the context of Section 93 CrPC has been frowned upon by this Court. In *Shri Churiaram Aggarwal v. M/s. Aggarwal Sweet Corner 1990 PTC 175* in similar circumstances this Court observed as under:

“11. Coming to the next point urged in this matter

whether the complaint could be filed against unknown persons or not, the learned counsel for the respondent has brought to my notice a judgment of the single Bench of this Court given in Criminal Misc. (M) 734 of 1980 and Cri. M (M) 735 of 1980 and Cri. Misc. (M) 76 of 1981 decided on March 27, 1981 in ***Laxminarayan Mehta v. M/s. Polydoor Company of India & Anr.*** wherein it has been held that a complaint for the offences under the aforesaid Act was maintainable against unknown person. It is no doubt true that Magistrate takes cognizance of an offence and not of the offenders but where the offenders are known, the complaint must be filed against known offenders. In the case of ***Laxminarayan*** (supra) the musical records being prepared by M/s. P. D. Company were being pirated clandestinely by large number of unknown persons. They were making tapes and cassettes from the popular records of the said company and thus a complaint was brought and general search warrant was issued under Section 93 of the Code of Criminal Procedure and it was held by this Court that under Section 93 of the Code where the Court considers that the purpose of enquiry trial or other proceedings under the Code would be served by a general search or inspection, it may issue a search warrant and that issuance of a search warrant is a serious matter and being in the discretion of the court, it would be reasonable to expect the Court to give reasons which swayed its discretion in favour of granting there request. Keeping in view the peculiar facts of the said case the Court held that investigation in offences like those under Sections 78 and 79 of the Trade and Merchandise Marks Act could not be effectively carried out without the assistance of the police force and Magistrate has got to take into account the nature and character of the offences alleged to have been committed and to see as to whether without police assistance he can enquire into such offences and enable the complainant to bring the offenders to book. The Court also observed that the cases of wide range infringement of copyrights, trade marks and cheating are continuing acts and repeated searches are called for and indeed they may even prove some sort of a deterrent. It was held that no doubt some genuine dealers may suffer on account of an unnecessary search of their premises but such a contingency cannot be avoided by them altogether if they deal in such articles and if the State has to prevent breach of copyrights and widespread cheating. I do not think that anything said in this judgment can be taken advantage of by the complainant in the present case. It was not a case of any clandestine trade being carried out by the petitioner that a search warrant was required to be issued. The petitioner is selling his wares openly and in case the petitioner is infringing any trade mark of the

complainant, the complainant can collect the necessary evidence without obtaining any search warrant. As already held in the aforesaid judgment that issuance of a search warrant is a very serious matter and should not be dealt with in a light manner in order to give advantage to particular complainant for harassing the rival in trade.”

12. Likewise in *Pramod Kumar Bhandari v. State 1996 PTC (16)* the general search warrant against the unknown persons was quashed by this Court. In *Venus Industries v. State 2002 (24) PTC 422 (Del)* a similar general search warrant was quashed.

13. Looking into the facts and circumstances of the case, it is obvious that despite knowing fully well who the offenders according to the complainant were, the complaint was filed against “unknown persons” and a search warrant was got issued in the name of the Petitioner here. In view of the settled law in the aforementioned judgments it is plain that the search warrant is unsustainable in law and is hereby quashed.

14. As far as the criminal complaint itself is concerned, it will be open to the Petitioner here to place his defence in the trial court and that will be decided in accordance with law by the trial court.

15. The petition is, accordingly, disposed of. The pending application is also disposed of. In the circumstances of the case there will be no order as to costs.

S. MURALIDHAR, J.

FEBRUARY 14, 2008
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