

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 27<sup>th</sup> October, 2009*  
*Judgment Delivered on: 11<sup>th</sup> November, 2009*

+ CRL.R.P.225/2002 & CRL.M.A. Nos.424/2002,479/2002

M/S CALCUTTA WIRE NETTING INDUSTRIES

..... Petitioner  
Through: Mr. Ajay Amitabh Suman,  
Advocate.

Versus

RAMESHWAR DAYAL GUPTA & ORS.

..... Respondents  
Through: Mr. Manoj Ohri, APP for the  
State.

CORAM:  
HON'BLE MS. JUSTICEINDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**INDERMEET KAUR, J.**

1. On 27.1.1998 M/s Calcutta Wire Netting Industries through its sole proprietor Madan Lal Arora had filed a complaint under

Sections 78 & 79 of the Trade & Merchandise Act 1958 as also under Section 63 & 64 of the Indian Copy Right Act 1957 and under Section 420 of the IPC. This complaint was filed against certain unknown persons. The allegations in the complaint were that the complainant firm had adopted the trade mark "TIGER BRAND" label with device of TIGER in respect of wires and wire netting in the year 1964 and had been continuously using the same since up to the date of the filing of the complaint. Business carried on by the complainant firm was extensive and goods bearing its trade mark were in high demand in the market on account of its quality and precision. Complainant firm vide application No.537068 had applied for registration of this trade mark "TIGER BRAND" on 1.9.1997. Complainant firm is the owner of the artistic work in the aforementioned trade mark titled "TIGER BRAND" label with the device of TIGER as the same being original in character.

2. On 29.3.1998 a search and seizure order was passed by the concerned Court before whom the complaint had been filed. Pursuant to the search warrants articles bearing falsified mark "TIGER" were recovered from the possession of the accused Rameshwar Dayal Gupta from premises of M/s Gupta Industrial

Corporation No.2, Gali no.9, Anand Prabhat, New Delhi. Recoveries were also effected from the possession of Satish Gupta on 30.3.1998 from premises no.1101,1102, Rucka Hajrasmal Mohalla Sita Ram Bazar, Delhi. Further recoveries were also made from the possession of accused Bharat Bhushan Gupta from premises no. K-429/135, G.T. Karnal Road, Adarsh Nagar Extension. This recovery was effected on 3.9.1998.

3. On 3.12.1997 a notice of opposition had been filed by Rameshwar Dayal against the aforestated application of the complainant seeking registration of his trade mark. As per the complainant the communication of this notice of opposition had been made to the petitioner on 11.6.1999 only and this is evident from the endorsement on page no.137 of the documents filed along with this petition. It is submitted that this notice of opposition having been filed by Rameshwar Dayal was not within the knowledge of the petitioner till 11.6.1999 and that is why it did not find mention in the complaint filed by him on 27.1.1998.

4. It is further submitted that the registration of a trade mark is not a condition precedent for initiation of an action under Section 78 & 79 of the Trade Mark & Merchandise Act 1958; for this proposition reliance has been placed upon State of U.P. vs.

Ram Nath AIR 1972 SC 232 as also the proposition as laid down in the judgment, Century Traders vs. Roshan Lal Duggar Co. AIR 1978 Delhi 250.

5. Order impugned before this court is the order dated 27.3.2002 vide which the respondents i.e. Rameshwar Dayal, Satish Gupta and Bharat Bhushan Gupta had been discharged. Finding of the court below was primarily on two counts:-

- i. Complainant was not a registered owner of the trade mark.
- ii. Concealment of material facts.

6. Perusal of the record and submissions made by the petitioner substantiate his stand; in 'State of U.P.' supra, it has been inter alia held :-

*" The definition of 'trade mark' in S.2(1)(v) that for the purpose of Chapter 'X' of the Act which deals with the criminal offences, a trade mark includes a registered as well as unregistered trade mark. An offence under Ss. 78 or 79 therefore relates to a trade whether it is registered or unregistered."*

7. It is thus clear that the registration of a trade mark is not a condition precedent for the initiation of a complaint under Sections 79 & 79 of the Trade Mark & Merchandise Act

8. Second finding of the Trial Judge is also an erroneous finding as the documents filed on record prima facie show that the notice of opposition purportedly filed by Rameshwar Dayal

on 3.12.1997 had been communicated to the petitioner only on 11.6.1999; that is why it did not find mention in the complaint which was filed on 27.1.1998. This is no suppression of material facts.

9. The petitioner along with his complaint has filed various documents in support of his submission that he has been using this trade mark since February 1967. These includes an application for interim injunction filed in Suit No.234/96 by the petitioner against M/s Soni Udhyog. The High Court while granting the ad interim injunction in favour of the plaintiff had held that the plaintiff has placed on record prima facie sufficient material sufficient to show that it had been marketing its product under the trade mark "TIGER BRAND" from the year 1967; the sale figures disclosed also show that it had acquired a reputation/goodwill with the use of the trade mark "TIGER BRAND" brand in respect of wire netting.

10 Section 78 of the Trade Mark and Merchandise Act relates to the making of false marks and Section 79 relates to the sale, exposure or possession of the offending marks. Both the offences are statutory offences; mens rea and dishonest intention is not a necessary ingredient. In Mohamod Khalil Vs.

State of Maharashtra & Anr. 1982 PTC 411 while dealing with the provisions of Section 78 & 79 of the aforesaid Statute it had been held that for an offence under the statutory Act the principle of mens rea cannot be applied with the same rigor; statutory offences have to be determined in the circumstances and the conditions prescribed by the statute.

11. In the instant case, it has prima facie been established that the petitioner had a prior user, goodwill, reputation and proprietary right in the said trade mark i.e. "TIGER BRAND".

12. At the stage of framing of charge the details of all the material which the prosecution will produce or rely on during the stage of trial are not expected to be produced or referred to before the learned judge at the time of opening of the case for the prosecution. Under Section 227 and 228 of the Criminal Procedure Code the court has to satisfy itself that the accusation made against the accused person is not frivolous and there is some material for proceedings against him; the stage prior to the framing of a charge is not expected to be a dress rehearsal of a trial.

13. The impugned order clearly calls for interference. Prima facie, the ingredients of the offences as mentioned in the

complaint are made out against the accused persons. Impugned order being illegal and based on erroneous finding; it is liable to be set aside; revision petition is allowed.

14. Parties to appear before Chief Metropolitan Magistrate on 26.11.2009 who will proceed with the complaint in accordance with law.

15. Record of the Trial court be returned.

(INDERMEET KAUR)  
JUDGE

11<sup>th</sup> November, 2009  
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