

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 2043-45/2005 & CrI M A 11878/2005, 346/2006

Date of decision: January 30, 2009

JOLEN INTERNATIONAL LTD. & ORS Petitioners
Through Mr. Sanat Kumar with Mr. T.P.S. Kang,
Advocates

versus

STATE & ORS. Respondents
Through Mr. Rajat Katyal, Advocate for State with SI
Anil Kumar, DIU (NB)
Mr. Reetesh Kumar, Advocate for the complainant.

W.P.(CRL) 2092-95/2005 & CrI M A 12150/2005, 345/2006

A.K. WALI & ORS Petitioners
Through Mr. Sanat Kumar with Mr. T.P.S. Kang,
Advocates

versus

STATE & ORS. Respondents
Through Mr. Rajat Katyal, Advocate for State with SI
Anil Kumar, DIU (NB)
Mr. Reetesh Kumar, Advocate for the complainant.

and

W.P.(CRL) 2-4/2006 & CrI M A 347/2006

AMIT BHASIN & ORS Petitioners
Through Mr. Sanat Kumar with Mr. T.P.S. Kang,
Advocates

versus

STATE & ORS. Respondents

Through Mr. Rajat Katyal, Advocate for State with SI
Anil Kumar, DIU (NB)
Mr. Reetesh Kumar, Advocate for the complainant.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in
Digest? | No |

ORDER

30.01.2009

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1. These three petitions under Section 482 of the Criminal Procedure Code, 1973 ('CrPC') seek the same relief and are being disposed of by this common order. The relief sought is that FIR No. 1/2005 dated 16th November 2005 registered at Police Station IITF, Pragati Maidan under Sections 420/120-B IPC and all further proceedings consequent thereto be quashed.

2. The FIR in question, registered at the instance of a complainant, narrates that he visited the India International Trade Fair ('IITF'), Pragati Maidan, New Delhi on 16th November 2005 and in particular Stall No. 3. When he enquired about the products on sale, the concerned exhibitor handed over a visiting card of Jolen International Limited ('JIL') and two/three pamphlets/hand outs with a discount coupon mentioning the company's name as 'Jolen International Limited'. The complainant states that he was made to believe that JIL those were goods manufactured by 'Jolen' a reputed international brand. The complainant purchased one hand wash which bore an indication that it was marketed by JIL. He stated that soon thereafter he visited the adjoining Hall No.4 which turned out to be a

big stall of Jolen products. He was informed that the product which he had purchased was not a product of Jolen Inc. USA. He was also shown a copy of a 'caution alert' public notice published in the 'Times of India' announcing that the use of word 'Jolen' by anyone else had been restrained by the Supreme Court of India. Accordingly, the informant stated that he felt that he had been cheated by JIL "a company who induced him to buy their product by showing me word Jolen (a reputed name in the word cosmetics) on their product and mentioning that the product is being marketed by the same Jolen."

3. Learned counsel for the Petitioner submits the complaint read as a whole does not disclose even a prima facie case to proceed against JIL and the other petitioners (who are directors or employees of JIL) for the offences under Sections 420/120-B IPC. It is submitted that there is a long history of litigation in the form of civil suits pending between Jolen Inc. USA and JIL in Indian courts concerning the use of the trade mark 'Jolen'. It is submitted that by an order dated 12th January 2005 the Intellectual Property Appellate Board ('IPAB') rejected an appeal filed by Jolen Inc. against the order of the Assistant Registrar of Trade Marks dated 11th October 2000 disallowing its opposition to an application filed by JIL. In another suit filed by Jolen Inc. in the Madras High Court, it had obtained ex parte injunction restraining JIL from using the name 'Jolen International Limited.' The said ex parte injunction was later modified by the learned Single Judge. The appeal filed by Jolen Inc. against the said order came to be dismissed by the Division Bench of that High Court on 18th April 2005. Aggrieved by the said order Jolen Inc filed Special Leave Petition (Civil) No. 16823-25 of 2005 in the Supreme Court. By an order dated 22nd August 2005 while granting leave to appeal the

Supreme Court directed that “there will an interim order of stay restraining the Respondents from using the word ‘Jolen’ in any manner on any of their cartons and advertisement.”

4. One week after the aforementioned order by the Supreme Court, Jolen Inc. filed a complaint against the petitioners in the court of the learned Chief Metropolitan Magistrate (‘CMM’), Delhi under Sections 103 & 104 of the Trade Marks Act 1999 (‘TM Act’) and Sections 63 and 64 of the Copyright Act, 1957. The substance of the complaint was that despite the order of the Supreme Court, JIL had not given up the use of the trade mark ‘Jolen’ label as well as the word Jolen as part of the trade name and had accordingly made itself criminally liable. By a separate application under Sections 93 and 94 Cr PC Jolen sought the issuance of general warrants of search and seizure against JIL. On 31st August 2005 the learned CMM heard the complainant Jolen in part and directed it to file an affidavit clearly specifying whether it was undertaking any manufacturing activity at present.

5. It was sought to be contended the FIR which was got registered soon thereafter was an abuse of the process of law since it stemmed from the failure of Jolen Inc. to persuade the learned CMM to take cognizance and issue summons on the complaint filed by it. The above contention is premised on the contention that the substance of the complaint before the learned CMM as well as the FIR is more or less the same. Counsel for the petitioners referred to the judgments in *Syed Kaleem v. M/s. Mysore Lakshmi Beedi Works 1993 CrL LJ 232* and *Mustan Patel v. State of West Bengal 2002 (25) PTC 241 (Cal)* to contend that “where

there are specific provisions in the Trade and Merchandise Marks Act which is a self contained Act to punish the persons committing offences under the said Act, it would be improper to resort to Section 420 of IPC, altogether ignoring those provisions.” Relying upon the judgment of the Supreme Court in ***Suresh Nanda v. CBI AIR 2008 SC 1414***, it is submitted that a special enactment would exclude a general one and therefore what is punishable in terms of TM Act cannot be made a subject matter of an FIR for the IPC offences. Finally it is submitted that these are essentially civil disputes which are sought to be given colour of criminal proceedings only with a view to harassing the petitioners.

6. This Court does not find substance in the contention that subject matter of the FIR is no different than that of the complaint filed by Jolen Inc. before the CMM. The FIR is very specific to an occurrence which took place on 16th November 2005, nearly three months after the complaint was filed. It talks of a transaction of purchase by a customer of a product from the JIL stall which according to him he was deceived into thinking to be the product of Jolen Inc. Without commenting on the merits of the complaint or the FIR one way or the other this Court is of the view that the substance of both these separate proceedings cannot be said to be the same.

7. The judgment in ***Syed Kaleem*** turned on facts different from the present case. There a private complaint was filed before the CMM invoking not only the provisions of the Trade and Merchandise Marks Act 1958 (the precursor to the present TM Act) but the IPC offences as well. The learned CMM referred the complaint to the police for investigation. A charge sheet was filed against the

accused under Sections 420/120B IPC. An order was passed by the learned CMM thereafter framing charges against accused for those offences. That order was challenged by the accused on the ground that Sections 420 and 120-B IPC were wholly inapplicable. It was in the background of the facts that the learned Single Judge of the Karnataka High Court held that the offences that stood attracted were those under the Trade & Merchandise Marks Act and that it would be “improper to resort to Section 420 of IPC, altogether ignoring those provisions. “ On facts it was held that “it is not possible to make out from the impugned order how and on what material a charge was ordered to be framed against the accused for an offence under Section 420 of IPC.”

8. The differences in the facts of the facts of the instant case are obvious. In the instant case, the FIR registered three months after the complaint relates to an occurrence of 16th November 2005 which does not form the subject matter of the complaint filed earlier. In *Syed Kaleem* there was a single complaint invoking both sets of offences. The Court there was unable to discern from the order framing charges as to what material existed which could justify invoking the Section 420 IPC. It was in that context it was observed that it was “improper” to invoke Section 420 IPC. Therefore the judgment in *Syed Kaleem* does not assist the Petitioners. The judgment of the learned Single Judge of the Calcutta High Court in *Mustan Patel* more or less follows the judgment of *Syed Kaleem*. In any event that decision again turned on a different set of facts. Para 20 of the said judgment shows that on a perusal of the case diary the Court found that “there is not the nearest and faintest whisper about any of the aforesaid ingredients of Section 415” and therefore, the offence under Section 420 IPC was not made out.

9. In ***Suresh Nanda*** the question really was about the power to order impounding of a passport for which there was a specific provision under the Passports Act, 1967. Therefore it was held that the provisions of the Cr PC could not be invoked for the purpose. There cannot be any comparison of the said decision with the case on hand. While the offence under Section TM Act or Copyright Act may get attracted, it is not possible to agree with the submission that an IPC offence stands excluded in such a situation. It is perfectly possible that an offender who commits an offence as described under the TM Act may also have to face prosecution for an IPC offence as well. One does not exclude the other.

10. Given the scope of the proceedings under Section 482 CrPC this Court is of the considered view that it is premature to come to a conclusion on the merits of the case at this stage. It is not possible to agree with the submission of the petitioners that when the FIR is read as a whole not even a prima facie case for the offences under Sections 420 and 120-B IPC is made out against the Petitioners. The contention that pendency of civil litigation between the parties would exclude the maintainability of criminal proceedings arising out of the same set of facts is also without merit. It is well settled that arising out of the same set of facts it is possible to initiate proceedings both under the civil law as well as the criminal law.

11. For the aforementioned reasons this Court does not find any merit in any of these petitions and they are dismissed as such. The pending applications also stand dismissed.

12. It is made clear that the observations, if any, made in this order touching on the merits of the case are not intended to influence the opinion to be formed by any of the courts subordinate to this Court at any further stage of the pending criminal proceedings against the Petitioner.

S.MURALIDHAR, J

JANUARY 30, 2009
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