

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 02.06.2010

% **Judgment delivered on: 18.02.2011**

+ **CRL. REV.P. No. 688/2003 & CrI.M.A.1221/2003**

RAJESH GARG Petitioner
Through: Mr. Rakesh Kumar, Advocate.

versus

TATA TEA LTD. & ANOTHER Respondent
Through: Mr. Gurvinder Singh and Suwarm
Rayan, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

J U D G M E N T

VIPIN SANGHI, J.

1. The present revision petition has been filed to seek the quashing of the order dated 09.06.2003 passed by the Ld. ASJ Delhi in CrI. Revision No. 251/2003 arising out of FIR No. 204/2000 registered

at P.S. Sabzi Mandi. By the impugned order, the court has allowed the revision petition under Section 397 CrPC, preferred by the respondent Tata Tea Ltd. against the discharge of the petitioner in the above mentioned criminal case by the Ld. ACMM vide his order dated 22.12.2000.

2. According to the case of the respondent/complainant, they are the registered trade mark holder in respect of Tata Tea since 1988, and they are the users of the said trade mark since then. They also claim to be the owners of the copyright in the artistic features displayed on the polypacks. They lodged a complaint before ACP (Crime Branch) IPR Section, Delhi under Sections 78-79 of the Trade Mark Act (TMA) and Section 63 of the Copyright Act (CRA) read with Section 420 Cr.P.C. against some unknown persons on 24.05.2000. Pursuant to that complaint, the Police conducted a raid at the petitioner's residence viz H. No. 1634, Sohan Ganj Sabzi Mandi Delhi on 24.05.2000. It is alleged that the petitioner was found filling and packing fake Tata Tea pouches of 250 gms. It is alleged that the police recovered a total of 130 filled pouches of tea containing falsified trademark of the complainant (the respondent herein) alongwith 1750 gms. of loose tea in an iron tub, weighing machine with container and weights of 200 gms. and 50 gms., 10 empty pouches of 50 gms. and a pouch sealing machine. It is further alleged that 400 filled infringing polypacks of Tata were also recovered from the ground floor room of the said premises. As per the allegations of the complainant, the tea

was spurious and the petitioner was using false trademark of the respondent to market his tea. An FIR (as mentioned above) was registered under Section 63/65 of the CRA and Sections 78/79 of the TMA against the petitioner. After the police concluded its investigation, charge sheet was filed against the petitioner under Section 63/65 of the CRA as well as Section 78-79 of the TMA.

3. The Ld. ACMM, however, in his order dated 22.12.2000 observed that the investigation in this case was done by the police without obtaining any permission of the court as was required under Section 155 Cr.P.C. Consequently, he held that the whole proceedings emanating therefrom stood vitiated. Therefore, the petitioner was discharged of all the allegations in the said FIR vide the order dated 22.12.2000.

4. The respondent herein then filed a criminal revision petition to challenge the order dated 22.12.2000 passed by the Ld. ACMM. The Ld. Additional Sessions Judge allowed the said petition, set aside the order of the learned ACMM, and directed the parties to appear before the trial court.

5. The basis of the aforesaid decision of the Ld. ASJ is that the offences relating to trade mark infringement, when committed qua food products, are cognizable offences. Hence, the same can be initiated by the police by filing a challan/chargesheet under Section 179 Cr.P.C. after registering an FIR. The Ld. ASJ relied on the definition

of “food” as contained in the Prevention of Food Adulteration Act, 1954 to conclude that tea is a food article.

6. The Ld. ASJ also examined the provision contained in Section 63 of the CRA, and concluded that the Ld. ACMM had misdirected himself by holding that no copyright of the complainant was infringed by putting false trademark. He observed that on the allegations and the documentary evidence placed on record, prima facie offence under Section 63 of the CRA is made out, which too is a cognizable offence. The Ld. ASJ has also prima facie held that the offence under Section 420 I.P.C. is also made out, which too is a cognizable offence. Hence, the permission of the court concerned was not mandatory as provided under Section 155 Cr.P.C. Therefore, the proceedings were legal and valid.

7. The petitioner seeks quashing of the aforesaid order on numerous grounds. To begin with, he submits that the said revision petition challenging the order of his discharge had not been filed within the limitation period. According to him, the revision petition was moved 3 months after the date of decision of the learned ACMM as against the stipulated limitation period of 30 days as per Article 115(b)(ii) of the Schedule to the Limitation Act, 1963.

8. Petitioner further submits that Tata Tea Limited being a private complainant had no locus standi to move the said criminal revision. Reliance is placed on ***Kishan Swaroop v. Govt. of NCT of Delhi***, AIR

1998 SC 990; **Amichand Ahir v. Krishna Kumar**, 1997 Cri.LJ 1416 (Raj HC); **Nain Singh v. Nain Singh**, 1992 Cri.LJ 2004 (J&K HC); **Bhupendra Kumar v. State of Rajasthan**, 1996 Cri.LJ 3180 (Raj HC); and **Gurbax Singh v. State of Punjab**, 1974 Cri.LJ 426 (P&H HC).

9. Petitioner further contends that the principle of natural justice i.e. *audi alteram partem* was violated by the ASJ while passing the impugned order dated 09.06.2003 since the petitioner, even though arrayed as respondent therein, was never served with any notice in the case, nor was he given an opportunity of being heard. He was the only party in the said petition who was adversely affected, and yet denied audience, thereby also impinging on his fundamental rights under Articles 14 and 21 of the Indian Constitution. It is argued that the decision of Ld. ASJ is void for want of compliance with the mandatory provisions of Sections 398 and 399 of the Cr.P.C. Reliance is placed on **R.P Sablok, Manager, Syndicate Bank v. Kaushalya Devi** 21 (1982) DLT 364 and **Uma Nath Pandey v. State of U.P** (2009) 4 Scale 347.

10. Learned counsel for the petitioner further submitted that no infringement of the CRA is made out because it is not the allegation against the petitioner that he made the infringing packaging with TATA trade mark printed on it. He submits that the mere alleged user of infringing packaging material is not an offence under the CRA.

11. Lastly, it is argued that 'Tea' is not "food" within the meaning of Sections 78 & 79 of the TMA. Reliance is placed on the decision in **S. Samuel, M.D., Harrisons Malayalam & Another Vs. UOI & Others**, (2004) 13 ILC 290 (SC), 2003(9) SCALE 442.

12. The respondent opposes the pleas of the petitioner. He submits that there was no delay in filing the revision petition as the respondent came to know of the impugned order dated 22.12.2000 only when one of its authorized representatives inquired about the case from the police officer of the Crime Branch, Delhi on 19.03.2001. On further enquiry, it was revealed that the learned ACMM, Delhi had passed the impugned order dated 22.12.2000 and the file had been consigned to the court record room. The respondent immediately got the court record inspected on 20.03.2001 and thereafter filed the said revision petition on 22/23.03.2001.

13. Counsel for the respondent submits that the respondent had the locus standi to file the revision. Reliance is placed on **M/s. J.K. International vs. State, Govt of NCT of Delhi and Ors.** AIR 2001 SC 1142; **Bhagwant Singh v. Commissioner of Police** AIR 1985 SC 1285; **Gopal Chandra Sahu v Choudhury Behera**, 1989 CrI.L.J 1616; **R. Jagadish Murty v. Balaram Mohanty** 1992 CrI.L.J 996 and **Smt. Rama Sharma v. Pinki Sharma** 1989 CrI.L.J.

14. He points out that petitioner had no right to be heard at the stage of the revision proceedings, as no process had been issued to

the petitioner. To substantiate this submission, reliance is placed on **Chandra Deo Singh v. Prokash Chandra Bose** AIR 1963 SC 1430; **Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi** AIR 1976 SC1947; **S. Thiyagarajan, S v. Ayyamperumal** 1983 L.W.(Crl.) 212; **Tata Motors Ltd v. State** Crl. Rev.P 16/2008 (DHC) 12.2.2009 and **Parkash Devi v. State of Delhi** Crl.M.C. 2626/2010 (DHC) 5.2.2010.

15. It is submitted that Tea is an article of food within the meaning of Sections 78 & 79 of the TMA, because it is treated to be “food” within the meaning of the Prevention of Food Adulteration Act (PFA). He places reliance on Item A 14 of Appendix ‘B’ of the Prevention of Food Adulteration Rules; the decision of the Supreme Court in **Rajendra V. State of Madhya Pradesh**, AIR 1991 SC 1757, and the decision of this court in **M/s Nilgiri Tea Emporium & Others V. Delhi Administration**, 1985 (8) DRJ.

16. Having heard learned counsels and considered the impugned order, as also the order passed by the learned ACMM in the light of the numerous precedents cited by the learned counsels, I am of the view that there is no merit in this petition and the same is liable to be dismissed. So far as the plea that the revision of the respondent was barred by limitation is concerned, the petitioner has not placed any material on record to suggest that the respondent had notice or knowledge of the order passed by the learned ACMM. The respondent was not put to notice, or heard before passing of the order dated

22.12.2000. Even after its passing, the same was not communicated to the respondent. The period of limitation of filing of the revision petition would begin to run only from the date of knowledge of the order against which the said revision was preferred. As the respondent learnt of the order dated 22.12.2000 passed by the learned ACMM only on 19.03.2001, or 20.03.2001, the revision petition, which was preferred on 22/23.03.2001 cannot be said to be barred by limitation.

17. The other issues raised by the petitioner are covered by the decisions of either of the Supreme Court or this Court. Therefore, I do not consider it necessary to refer to the decision of other High Courts, as the decisions of the Supreme Court and coordinate benches of this court would bind me, even if a contrary view has been taken by the other High Courts. Having gone through the decisions of coordinate benches of this court, I am not inclined to take a contrary view, and I fully agree with them. I, therefore, need not refer to the decisions of other High Courts relied upon by the parties. I shall refer to the decisions of the Supreme Court or Delhi High Court, while dealing with the remaining issues.

18. Section 397 and Section 399 of Cr.P.C. do not specify the party at whose behest the revisional jurisdiction can be invoked. It is pertinent to mention that Section 397 (3) and Section 399(3) refer to an application by "*any person*". At this stage it would be worthwhile to note that Supreme Court has time and again laid down that when

revision is preferred by private parties, it should be allowed in exceptional and appropriate cases where the interest of public justice requires interference. In ***Sheetala Prasad and Ors. V. Sri Kant and Anr.*** (2010)2SCC190, the court held that revisional jurisdiction “.....when invoked by private complainant against an order cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice.....”.

19. The Supreme Court further held:

“.....revisional jurisdiction can be exercised by the High Court at the instance of private complainant

(1) where the trial court has wrongly shut out evidence which the prosecution wished to produce,

(2) where the admissible evidence is wrongly brushed aside as inadmissible,

(3) where the trial court has no jurisdiction to try the case and has still acquitted the accused,

(4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and

(5) where the acquittal is based on the compounding of the offence which is invalid under the law.

By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice.....”

20. Therefore, the locus standi of the respondent to prefer the revision before the learned ASJ cannot be disputed. It remains to be examined whether, or not, the present is an exceptional case where the interest of public justice required the interference with the order dated 22.12.2000 passed by the learned ACMM. I shall deal with this aspect a little later.

21. Now I proceed to consider the petitioners submission that the impugned order is bad on the ground of violation of the principles of natural justice, i.e. audi alteram partem.

22. Proviso to Section 398 Cr.P.C. envisages that notice should be given to the person, inter alia, '*who has been discharged*', before making any further enquiry or issuing any direction for that purpose. This court in **J.K. International v. State**, 96 (2002) DLT 795, held that person who has not been "*discharged*" in the case, would not be entitled to notice. The Court further held that the persons against whom no process has been issued under Section 204, Cr.P.C, cannot be said to have been "*discharged*".

23. Section 401(2) is similar to Section 398 proviso and Section 399(2) of Cr.P.C. Therefore, the ratio of catena of judgments dealing with Section 401(2) would also apply to Sections 398 and 399 Cr.P.C. This court in **Tata Motors** (supra) has crystalised the legal position, after considering various precedents. The same would guide the

present case as well. I may quote the relevant extract from **Tata Motors** (supra) below:

"20. The legal position that emerges from the above decisions of the Supreme Court and this Court is as under:

(1) There is a distinction to be drawn between the criminal complaint cases which are at the pre-cognizance stage and those at the post-cognizance stage. There is a further distinction to be drawn between the cases at the post-cognizance but pre- summoning stage and those at the post-summoning stage.

(2) It is only at the post-summoning stage that the respondents in a criminal complaint would answer the description of an 'accused.' Till then they are like any other member of the public. Therefore at the pre-summoning stage the question of their right to be heard in a revision petition by the complainant in their capacity as "accused" in terms of Section 401(2) CrPC does not arise.

(3) At the post-cognizance but pre-summoning stage, a person against whom the complaint is filed might have a right to be heard under the rubric of 'other person' under Section 401(2) CrPC. If the learned MM has not taken the cognizance of the offence then no right whatsoever accrues to such "other person" to be heard in a revision petition.

(4) Further, it is not that in every revision petition filed by the complainant under Section 401(2) CrPC, a right of hearing has to be given to such "other person" or the accused against whom the criminal complaint has been filed. The right accrues only if the order to be passed in the revision petition is prejudicial to such person or the accused. A order giving a specific direction to the learned MM to either proceed with the case either at the post-cognizance or post-summoning stage or a direction to register an FIR with a direction to the learned MM to proceed thereafter might be orders prejudicial to the respondents in a criminal complaint which would therefore require them to be heard prior to the passing of such order." (emphasis supplied)

24. **R.P. Sablok** (supra) is a decision which does not consider the earlier decisions, including that of the Supreme Court in **Chandra Dea Singh** (supra). This court, in **Tata Motors** (supra) has considered **R.P. Sablok** (supra) and most other decisions relied upon by the parties.

25. In the facts of the present case, the discharge of the petitioner took place at the pre summoning/pre cognizance stage. The learned ACMM discharged the accused after concluding that the offences in the charge sheet are non cognizable offences, and since no permission was taken before investigation as required under section 155 Cr.P.C, the whole proceeding stands vitiated.

26. All that the Ld. ASJ has done is to remit the case back to the trial court to proceed according to law after concluding that offences were cognizable in nature, and proceedings were in accordance with the procedure laid down in Cr.P.C. Therefore para (2), and not para (4) of the aforesaid extract from **Tata Motors** (supra) would apply.

27. As already discussed above, the character of the petitioner was still not that of a “*discharged person*”, as process under section 204 Cr.P.C. was not issued against the petitioner. Therefore at that stage, the petitioner had no right to be heard before the revisional court.

28. There is no force in the petitioner’s submissions that Tea is not food within the meaning of Sections 78 & 79 of the TMA. It has been considered to be a food item for purposes of the PFA Act. Pertinently,

this aspect was not even gone into by the learned ACMM while passing the order dated 22.12.2000. It is not on this ground that he held that the offences made out in the charge sheet were not cognizable offences. He has not applied his mind to this aspect at all. As Tea has been considered to be a food item for purposes of the PFA Act, merely because it has not been considered to be so for the purpose of the Essential Commodities Act in **S. Samuel** (supra), is no ground to conclude that it would not qualify as a food article for purpose of Sections 78 & 79 of the TMA.

29. The submission that no offence under Section 63 of the CRA is made out, is not necessary to be considered at this stage in these proceedings, as, in my view, the offence under Sections 78 & 79 of the TMA vis-à-vis food articles is a cognizable offence. This aspect could be urged before the learned ACMM at the appropriate stage.

30. I now revert to consider whether, in the facts of this case, the revision court was justified in interfering with the order dated 22.12.2000 passed by the learned ACMM. It is evident that in the present case, the Ld. ACMM discharged the accused on the wrong premise that the offences in the charge sheet were non cognizable and, therefore, investigation without permission under Section 155 Cr.P.C. stood vitiated. I agree with the reasoning of the learned ASJ, and, therefore, reproduce the same below:

“In my considered opinion, on bare perusal of the above-said section, it is crystal clear that the offence relating to trade mark when committed for Food Products are cognizable offences. Hence, the same can be initiated by police by way of filing a challan/chargesheet u/s. 179 of Cr.P.C. by lodging an FIR.

In my respectful opinion, when the allegations spells out a case for falsification of the mark in respect of the Food Products, it would be appropriate to mention the definition of FOOD provided under The Prevention of Food Adulteration Act, 1954 as laid down in section 2(v) of the said Act, which reads as under:-

““Food” means any article used as food or drink for human consumption other than drugs and water and includes-
(a). any article which ordinarily enters into, or is used in the composition or preparation of human food.
(b). any flavouring matter of condiments, and
(c).....”

Apparently from the perusal of the definition provided under the said Act “TEA” is a food product within the meaning of the said Act. In my considered opinion, the allegations contained in the charge-sheet prima facie makes out a case of falsification of the Trademark which is punishable u/s. 78 and 79 of the T.M.M.Act and the same is clearly disclosed in the facts and circumstances of the matter. The said offences relates to cases pertaining to ‘Food Products’ are cognizable offences & provided under Sch.II Cr.P.C.....

.....The Ld. A.C.M.M. has misdirected himself by holding that no copy Right of complainant are infringed by putting false trademarks. In my considered opinion, violation under the Copy Right Act is clearly different from the violation contained in the Trade Mark and the two cannot be clubbed together for the purposes of two separate offences. In my considered opinion, the two have to be seen from two different angles and perspectives.

In my considered opinion, as per the allegations contained and the documentary evidence which was placed on record, the offence u/s. 63 of Copyright Act is also made out. As I have already mentioned that the offence under the TMM Act and Copyright Act, in the facts and circumstances of the present case, are that of cognizable offence. Hence, the permission of the court

concerned is not mandatory as provided u/s. 155 Cr.P.C. and the proceedings conducted in the matter are accordingly legal and valid.

With regard to the offence u/s. 420, I seek reliance from the judgment passed by the Hon. High Court, Delhi titled as Sunil Kumar Gupta & Anr Vs. State reported in 1998 PTC (18) wherein it was held by the Hon. High Court that “the intention of the petitioner apparently is to derive economic benefit to himself and at the same time he is making a false representation about the source or origin of the product and thereby is deceiving the public at large who may buy his product by using the infringing design of the copyright of the complainant. This necessarily will result in wrongful gain to him and wrongful loss to the complainant and amounts to cheating.”

In my considered opinion, prima-facie, in the lights of facts and circumstances of the present case, the offence u/s. 420 IPC is also made out, which is also a cognizable offence.”

31. In light of the aforesaid discussion as to cognizability of the offences in chargesheet, the order of the Ld. ACMM was manifestly erroneous and needed to be interfered to prevent miscarriage of justice.

32. This case relates to the alleged packing of counterfeit tea, which is consumed by human beings. The poor quality of this product may have adverse effect on the human body. Infringement of TMA in respect of a food article is intended to be dealt with more severely by the Parliament, as the maximum punishment in such cases is 3 years imprisonment. Therefore, in my view, this was a fit case calling for interference with the order of the learned ACMM as the interest of public justice so required.

33. In light of above discussion, I do not find any merit in the present petition and the same is hereby dismissed, leaving the parties to bear their respective costs. Considering that the FIR was registered in the year 2000, the proceedings before the learned trial court are expedited.

(VIPIN SANGHI)
JUDGE

FEBRUARY 18, 2011
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