

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 18 of 2022 with
Crl. Petn. No. 19 of 2022

Date of Decision: 23.02.2023

Shri. John Vashum	Vs.	State of Meghalaya & 2 Ors.
Shri. Hegin Haokip	Vs.	State of Meghalaya & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Mr. T. Dkhar, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG, with
Ms. Z.E. Nongkynrih, GA. (R.1-3)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

COMMON JUDGMENT

1. Two applications under Section 482 Cr.P.C were filed before this Court by two respective petitioners pertaining to a case arising out of a single FIR, investigation thereto which was also launched in the same proceedings and finally a common charge sheet being filed.
2. As submitted by the parties, the two applications being almost

similar and identical in nature involving the same issues, this Court deems it proper to address the issues collectively and individually and to pass a common order.

3. An FIR dated 14.10.2015 filed before the Superintendent of Police, East Khasi Hills, Shillong, by Shri. Haseeb Khan (respondent No.4) who is said to be the Manager (Operations), C3i Consultant India Pvt. Ltd. for Hewlett-Packard Development Company, L/P and M/s Canon Inc. has set the criminal proceedings in motion with the registration of Laitumkhrah P.S. Case No. 199(10)2015, under Section 420/486/488 IPC, r/w Section 63 of the Copyright Act, 1957.

4. In response to this, Sub-Inspector R.S. Nahar of Laitumkhrah Police Station along with the said informant conducted a search of the shop named and styled as M/s Silicon Computer Shop, located at Anderson Arcade, Laitumkhrah Main Road on 14th October, 2015 at about 6:20 pm and from the said shop, 4 (four) pieces of Canon Toner Cartridge Model No. 303 (two pieces) and Model No. 912 (two pieces) were seized from the possession of Shri. John Vashum.

5. Another seizure was made by the Investigating Officer (I/O) wherein 1(one) Laser Toner Cartridge Model No. 12 A and 4(four) Laser Toner Cartridge Model No. CC 388 AC were seized from Techno Source

Computer Shop, Laitumkhrah, run by Shri. Hegin Haokip.

6. The matter was then investigated into and after the investigation is completed, the I/O filed the Final Report Form under Section 173 Cr.P.C which included the charge sheet stating the prosecution's story of the case and in conclusion thereof, a *prima facie* case has been found well established, amongst others against the petitioners herein who were implicated as accused being the proprietor of the said M/s Silicon Computer Shop and Techno Source Computer Shop respectively.

7. Accordingly, a formal case was registered as GR Case No. 121(S) 2016, under Section 420/486/488 IPC, r/w Section 63 of the Copyright Act, 1957 in the court of the learned Judicial Magistrate First Class, Shillong and the petitioners were directed to stand trial before the said court.

8. In due course, the matter was fixed for filing of written argument before charge and the petitioners filed their respective written arguments on 28.06.2017 disputing the charges made by the prosecution and has prayed for discharge from the case. However, after a lapse of almost four years, the impugned order dated 12.03.2021 was passed, rejecting the prayer of the respective petitioners and further directing that charges be framed in the case.

9. Maintaining that the petitioners have committed no offence as

alleged, this petition under Section 482 Cr.P.C is accordingly preferred before this Court with a prayer to set aside and quash the proceedings in GR case pending before the said Judicial Magistrate First Class, Shillong.

10. Mr. H.L. Shangreiso, learned Sr. counsel appearing for the petitioners has submitted that the seizure list dated 14.10.2015 would show that from the shop of the petitioner, Shri John Vashum, four numbers of cartridges of Canon made were seized on the complaint lodged by the complainant Shri. Haseeb Khan.

11. From the certificate issued by the C3i Consultants India Pvt Ltd., it is seen that the company was authorized by M/s Hewlett-Packard Development Company, L.P. to assist/file complaints before any court towards protecting the companies Intellectual Property such as Trade Mark, Copyrights and Patent. The company then authorized Shri. Haseeb Khan, who has been trained by M/s Hewlett-Packard Development Company, L.P. to identify counterfeit Hewlett-Packard products.

12. The learned Sr. counsel has also submitted that the complainant in his statement before the police had maintained that he is the Manager (Operations) of C3i Consultants India Pvt. Ltd. and is authorized by M/s Hewlett-Packard Development Company, L.P and M/s Canon Inc, 30-2 Shimomaruku 3-Chrome, Ohta-ku, Tokyo 146-8501, Japan for checking

and detecting spurious and counterfeit Hewlett-Packard and Canon Computer materials. However, the complainant although has produced documents to show that he is authorized by Hewlett-Packard as far as their products are concerned, has never produced any authorization letter to show that he is an official representative of Canon Company. The Investigating Officer has also failed to produce any proof to confirm that the complainant is or was authorized to represent Canon Company.

13. Again, it was submitted that the I/O while filing the charge sheet, has also indicated the witnesses who will prove the prosecution's case and accordingly, a list of 11 witnesses was drawn up. Of the first three witnesses, the first is the complainant Shri. Haseeb Khan, Manager (Operations) of C3i Consultants India Pvt. Ltd. The second and third witnesses are Investigators of C3i Consultants India Pvt. Ltd., the rest are Salespersons and an Engineer working in the shop of the petitioner and other shops. The last witness is the I/O.

14. The learned Sr. counsel has submitted that as pointed out, the C3i Consultants Company is a company under Hewlett-Packard Company which is not connected with Canon Company and in the absence of any technical expert as a witness of the Canon Company, it would be difficult to prove the case of the prosecution in this respect. It is also on record that

the petitioner had purchased the seized items from one shop named and styled as “Datamation Services” G.S. Road, Ulubari, Guwahati which is the authorized dealer of Canon products, however, the proprietor of this shop was never made a witness or summoned to prove the allegation made in the complaint.

15. Coming to the case of the petitioner in Crl. Petn. Case No. 19 of 2022, the learned Sr. counsel has submitted that the case relates to the same FIR dated 14.10.2015 filed by the complainant Shri. Haseeb Khan and the I/O has carried out a combined investigation along with the case of petitioner, John Vashum and a common charge sheet was filed indicating that there is *prima facie* evidence to proceed against this petitioner, Hegin Haokip.

16. However, there is a slight difference as far as the facts involving the two petitioners/accused persons are concerned inasmuch as in the case of Hegin Haokip, the seized materials include one Laser Toner Cartridge Model No. 12 A and four pieces of Laser Jet Toner Cartridges Model No. CC 388 AC.

17. In the charge sheet filed by the I/O, reference was made to a letter received from Lt. Col. Pratap Rawat for C3i Consultants India Pvt. Ltd. informing him that the shop run by the petitioner, Hegin Haokip is not

authorised to deal in products of Hewlett-Packard. Reference was also made to the order passed by the learned Magistrate in this regard wherein vide order 12.03.2021 the learned Magistrate has noted that the prosecution has admitted that during the course of investigation the HP products, particularly 4 out of 5 cartridges seized from the shop of the petitioner were found to be genuine except one cartridge which is said to be of spurious quality.

18. This, according to the learned Sr. counsel is not a violation of Section 63 of the Copyright Act as the petitioner had procured the product from an allegedly genuine source and has not knowingly infringes any provision of the said Copyright Act and therefore, the offence and penalty imposed under Section 63 is not applicable to him.

19. In support of his contention, the learned Sr. counsel has cited the following case laws.

- i) Dr. Sharda Prasad Sinha v. State of Bihar: (1977) 1 SCC 505, para 2, 3 and 4;
- ii) State of Karnataka v. L. Muniswamy & Ors.: (1977) 2 SCC 699, para 7 and 10;
- iii) Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojiroa Angre & Ors: (1988) 1 SCC 692, para 7;

- iv) M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.: AIR (1988) SC 128, para 4, 16, 17, 28 and 29;
- v) Paramjeet Batra v. State of Uttarakhand & Ors.: (2013) 11 SCC 673, para 12.

20. It is, therefore, prayed that the petitions referred to herein may be allowed and the proceedings in GR Case No. 121(S) 2016 under Section 420/486/488 IPC read with Section 63 of the Copyright Act, 1957 be set aside and quashed.

21. Per contra, Mr. B. Bhattacharjee, learned AAG, speaking for the State respondent has submitted that this is an application under section 482 of the Code of Criminal Procedure and as such, this Court cannot appreciate the merits and demerits of the evidence in the case as that is outside the scope and purview of the provision of Section 482 Cr.P.C.

22. On the submission made by the learned Sr. counsel for the petitioner, the learned AAG has submitted that the petitioner has firstly questioned the locus standi of the complainant, secondly, the credibility of the witnesses was questioned inasmuch as they are but employees of the petitioner's establishment, thirdly, that the FIR does not say which way the product is spurious and fourthly, that no expert has been examined to prove that the product is genuine or spurious.

23. On the reliance of the petitioner on the statement of the witnesses recorded under section 161 Cr.P.C, the learned AAG has submitted that such statement is not admissible in law but can only be used by the defence for contradiction at the trial when evidence is led. These statements cannot be used in an application under Section 482 Cr.P.C.

24. Submitting further on this point, the learned AAG contends that the credentials of the witnesses cannot be disproved by the court. Even an employee of a shop can be able to distinguish the genuine product from the spurious and an expert opinion is not required to prove the prosecution's case. The court may believe or disbelieve the evidence adduced by the witnesses or even the expert witness. In this regard, the court under the provision of Section 311 Cr.P.C. can summon any person as witness and as such, in course of trial, if so required, the court can resort to such provision to summon an expert.

25. On the FIR, the learned AAG has submitted that what is recorded therein is that information was received that the petitioner along with others have been using spurious products instead of genuine products of the company. It is well settled that an FIR is not the final piece of evidence but based on such information stated therein, investigation will reveal the evidence collected which will be proved at the time of the trial.

26. It is also submitted that from the seizure list, what is seen that some materials have been seized and investigation has proved that these items are spurious for which the charge sheet has been filed in this regard. Therefore, it cannot be said that there is no case for the prosecution to proceed for trial.

27. On the issue of locus standi, the learned AAG has submitted that the concept of locus standi is foreign in criminal law because when a crime is committed, it is deemed to have been committed against society at large and as such, any person can file an FIR while reporting an offence having been committed. Section 156 Cr.P.C. does not speak of locus standi. In this respect, the case of A. R. Antulay v. Ramdas Srinivas Nayak & Anr. (1984) 2 SCC 500, para 6 was referred.

28. The learned AAG has also cited the following cases in support of his contentions:

- i) State of Haryana & Ors. v. Bhajan Lal & Ors.: 1992 Supp (1) SCC 335, para 102 and 103;
- ii) Kaptan Singh v. State of Uttar Pradesh & Ors.: (2021) 9 SCC 35, para 9.1 and 9.2.

29. This Court has given due consideration to the case of the parties and have also perused the petitions. An application under Section 482 Cr.P.C. is to seek the exercise of the inherent power of the High Court, which

inherent power although exhaustive, is normally confined under three main parameters, that is, to give effect to any order under the code of criminal procedure, to prevent abuse of the process of any Court and lastly, to secure the ends of justice.

30. On an analysis of the facts and circumstances cited by the petitioners, the exercise of the inherent powers of this Court can be tested on the anvil of the well settled proposition of the principles thereto and the guidelines laid down in what is now considered as one of the landmark judgment of the Supreme Court found in the Bhajan Lal case.

31. In the case of Bhajan Lal (supra), relied upon by the State respondent at para 103, the Hon'ble Supreme Court has cautioned the courts that the exercise of this power to quash a criminal proceeding is to be done sparingly and with circumspection and that too in the rarest of rare case. However, at para 102 of the same judgment, the Supreme Court has laid down some illustrative guidelines in about seven categories which will enable the High Court to weigh and balance the strength and weaknesses of a prayer for quashing an FIR or the criminal proceedings incidental to the filing of an FIR.

32. Before proceeding further with the discussion on the above vis-à-vis the case of the petitioners herein, it would be profitable to refer to one

of the cases cited by the petitioner, that is, the case of Dr. Sharda Prasad Sinha (supra) at para 2 wherein the Hon'ble Supreme Court has held that:

“2. It is now settled law that where the allegations set out in the complaint or the chargesheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the magistrate taking cognizance of the offence...”

33. While examining the case of the petitioner, John Vashum, the allegations made in the FIR is that the complainant being an authorized representative of the HP Company and Canon Company has, during a search and seizure operation along with the police, seized four cartridges of Canon made, from the said petitioner. However, investigation would reveal that the said complainant has not been able to produce any authorization from Canon Company authorizing him to carry out such search and seizure. The I/O has also failed to rope in any reliable witnesses from the Canon Company to corroborate the allegations made in the said FIR that the Canon products seized are spurious or counterfeited ones. The statement of the witnesses which will be produced by the prosecution to prove its case are also experts or authorized personnel who can identify only HP products and nothing is said about their competency to identify or check if the said seized Canon products are genuine or not.

34. In view of the above observation on the factual aspect of the matter,

it can be safely said that since the said Canon cartridges have not pass the test of forensic examination, as noted earlier, no expert from the Canon Company being called upon to conduct such test, the benefit of doubt should ultimately go to the accused/petitioner. As was held in the case of Madhavrao Jiwajirao Scindia (supra) at para 7 of the same, wherein it was held that:

“7....where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

35. In the case of Paramjeet Batra (supra), the Hon’ble Supreme Court has held that whether essential ingredients of criminal offence are present or not, has to be judged by the High Court.

36. Coming back to the Bhajan Lal case, para 102(3), the Hon’ble Supreme Court has held that power under Section 482 can be exercised, inter alia, where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

37. In the case of Kaptan Singh (supra) cited by the State respondent, the Hon’ble Supreme Court at para 9.1 while discussing the matter in hand

has observed that:

“9.1... From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial...

...in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on....”

38. This Court is well aware of the restrictions and confinement vested in the High Court in exercise of its inherent jurisdiction which should be exercised sparingly, carefully and with caution. However, on the factual aspects of the case of John Vashum and the materials available on record, it is very apparent that the prosecution will not be able to establish its case against the said accused/petitioner as regard the seizure of the said 4

cartridges of Canon made in absence of any direct and relevant complaint in this regard made by any authorised representative of Canon Company, the complainant having failed to prove that he is, firstly an authorised representative of the said Canon Company and, secondly that he has been trained to identify counterfeit or spurious products of Canon Company.

39. In the absence of any *prima facie* evidence, the observations made in the case of Madhavrao Jiwajirao Scindia (supra) at para 7, noted above would be relevant to the case in hand.

40. Accordingly, it is the considered opinion of this Court that no case can be made out against the petitioner, John Vashum and the proceedings against him in GR Case No. 121(S) 2016 is hereby quashed.

41. As to the case of the petitioner, Hegin Haokip, the contention of the learned Sr. counsel that since 4 of the 5 cartridges of HP product are found to be genuine but since the said petitioner is not the authorised dealer of the said company, therefore the contention that no case as charged by the prosecution, including the case under the Copyright Act can be made out against the petitioner, cannot be accepted by this Court, since there is still the issue of one alleged fake or spurious product of HP Company which was seized from the possession of the petitioner and *prima facie*, the antecedent of the complainant as regard his authorization and expertise in

HP products is concerned has not been controverted in any manner in course of investigation or in the proceedings and as such, the prosecution is to be allowed to prove the charges against the said petitioner.

42. Therefore, in the case of Hegin Haokip this Court is not inclined to allow the prayer made and the petitioner is to prove otherwise as regard the charges filed against him which is a subject matter of the criminal proceedings in GR Case No. 121(S) 2016 pending before the court of the learned Judicial Magistrate First Class, Shillong.

43. In view of the above, these two petitions are decided accordingly. Matter disposed of. No costs.

Meghalaya
23.02.2023
"Tiprilynti-PS"



Judge