

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.No.11212 of 2009
and M.P.No.1 of 2009

N.Abdul Azeez

.. Petitioner

vs.

1.The State by Inspector of Police,
Gudalur Police Station,
Crime No.267 of 2008,
The Nilgiris District.

2.D.Christy

.. Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records pertaining to FIR in Crime No.267 of 2008 on the file of the first respondent police and quash the same.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.M.Maharaja

Additional Public Prosecutor for R1

O R D E R

This petition is filed under Section 482 CrPC, seeking to quash the F.I.R in Crime No.267 of 2008 on the file of the first respondent.

सत्यमेव जयते

2. Mr.N.Manokaran, learned counsel for the petitioner submitted that in the F.I.R., there was no reference to the incident alleged to have taken place on 20.12.2006 and also the allegation of cheating in respect of registration of the trademark of the petitioner stating that the petitioner has issued notice that he was the registered proprietor of the trademark "Jeevan's Super Dust Tea" and it was found that there was no registration of the trademark "Jeevan's Super Dust Tea" on 18.05.2006 and on that basis, a complaint was filed and that was taken cognizance by the respondent and registered as Crime No.267 of 2008 against the petitioner for the offences under Sections 367, 342, 468 and 506(ii) IPC and Section 107 of the Trade Marks Registration Act. It is further submitted that no explanation has

been given for the delay in filing the complaint in respect of the incident that took place on 20.12.2006. It is also submitted that there was no false information given by the petitioner in his notice and he applied for registration of the trademark during December 2006 and vide Trade Mark No.976111 he was granted registration in respect of "Jeevan's Super Dust Tea" by order dated 13.08.2007 and in that order also, it has been stated that Trade Mark number is 976111 and the application is dated 11.12.2000 and even though the registration certificate was issued later on, he is entitled to claim registration from the date of his application and therefore, no offence punishable under Section 107 of the Trade Marks Registration Act was committed by the petitioner. The learned counsel for the petitioner placed reliance upon the judgement of the Hon'ble Supreme Court in Thermax Limited and Others v. K.M.Johny and Others reported in (2011) 13 SCC 412, more particularly paras 23 and 34 of the said judgement.

3. I am unable to accept the contention of the learned counsel for the petitioner. In the complaint, the second respondent has stated the reasons for not giving the complaint in respect of the incident that took place on 20.12.2006 and it is for the investigating agency to consider the same. Further in the notice, the petitioner claimed that he was the registered proprietor of the trademark "Jeevan's Super Dust Tea" as per the registration certificate issued on 13.08.2007 and on the date of issuance of the notice, he was not the registered owner of the trademark. Nevertheless he issued a notice threatening the complainant that he was the registered proprietor of the trademark "Jeevan's Super Dust Tea" and threatened to take action against the complainant. Therefore, on the basis of the materials furnished in the complaint, the case was registered and it is for the respondent police to conduct investigation and file final report. At this stage, I do not find any material to quash the F.I.R.

4. In the judgement reported in (2011) 13 SCC 412 (cited supra), having regard to the facts of that case, the Hon'ble Supreme Court of India in para 23 held that in view of the inordinate delay and laches on the part of the complainant and of the fact that the complaint does not disclose any ingredients of Sections 420 IPC and also of the fact that at the most it is the dispute of civil nature, quash the complaint. Similarly in para 34 held that if there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding and if there is huge delay and in order to avoid the period of limitation, it cannot be resorted to as a criminal proceeding. According to me, having regard to the offences for which the case was registered and the statements made in the complaint, it is not a fit case to quash the F.I.R. at this stage. Hence, the judgement relied on by the learned counsel for the petitioner is not applicable to the present case.

5. In the result, this Criminal Original Petition is dismissed. The first respondent is directed to conduct enquiry, complete the investigation and file final report within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1. Inspector of Police,
Gudalur Police Station,
The Nilgiris District.

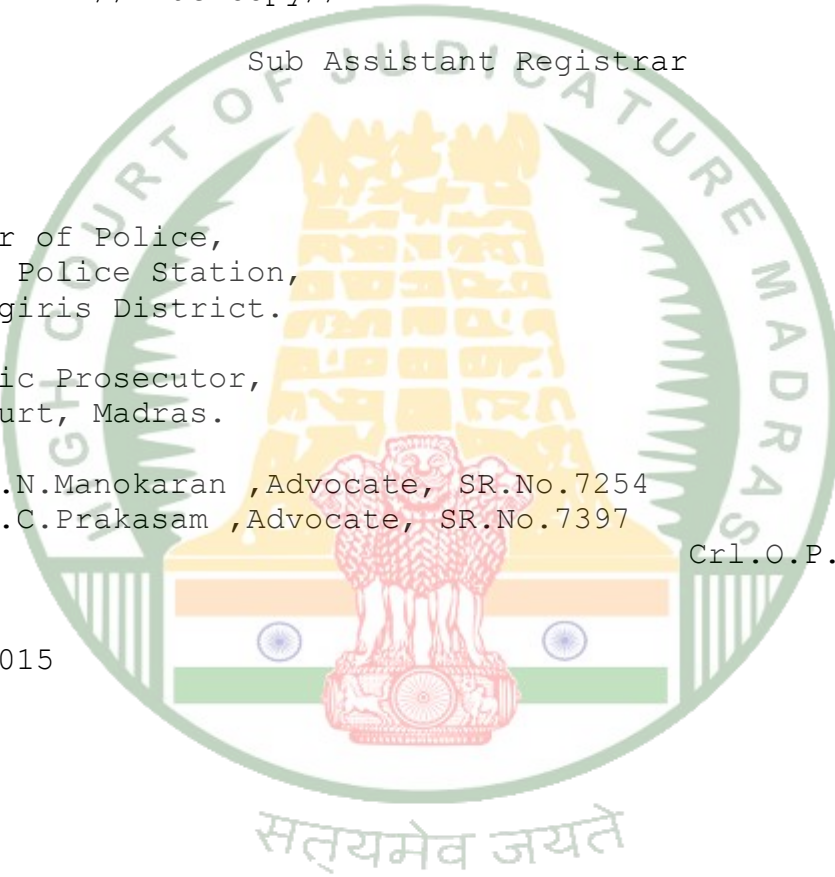
2. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.N.Manokaran ,Advocate, SR.No.7254

1 cc to Mr.C.Prakasam ,Advocate, SR.No.7397

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