

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM:

THE HON'BLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P.Nos.2591 and 2673 of 2009

And

M.P.Nos.1 and 1 of 2009

Mrs.J.V.Vasanth Laxmi ... Petitioner in Crl.O.P.No.2591/2009

1.Muthukumar

2.Mrs.Padmavathi

3.M/s.Alama International ... Petitioners in Crl.O.P.No.2673/2009

No. 16 West Marredpally

Secunderabad

office at New No.11 Bharathi street

Dhandeswaram Nagar,

Velacherry

Chennai-42

Vs.

M/s.ALOHA India (A Division of K.K.Academy (P) Ltd),
A Company incorporated under the Companies Act 1956,
represented herein by Authoriszed Signatory
Ms.Girija

... Respondent in both Crl.O.Ps.

Common Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for records relating to the criminal proceedings in C.C.No.11959 of 2008 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai 600 015 and quash the same in so far as it relates to the petitioner / Accused No.1 and petitioners / Accused Nos.2 to 4.

For Petitioners : Mrs.P.V.Rajeswari

For Respondent : No Appearance

COMMON ORDER

These petitions are filed seeking to quash the complaint in C.C.No.11959 of 2008 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai initiated by the respondent herein against the petitioners and others.

2.It is submitted by the learned counsel appearing for the petitioners who are accused A1 to A4 in the above private complaint that the learned Magistrate has taken cognizance of the complaint for offence under Sections 102, 103 and 104 of the Trade Marks Act 1999, Sections 120B, 405, 482, 483, 485 and 486 of IPC and Sections 63 and 65 of Copy Right Act 1957 and a reading of the complaint reveals that the petitioners infringed the provisions of Copy Rights Act and therefore committed the offence punishable under Section 63 of the Copy Right Act.

3.The learned counsel for the petitioners submitted that no material was filed by the respondent to justify the action taken under Section 63 of the Copy Right Act or for the offence under Sections 120B, 405, 482, 483, 485 and 486 of IPC. The learned counsel submitted that it is only stated in the complaint that the petitioners herein entered into an agreement of Master Franchisee with the respondent herein and contrary to the Master Franchisee Agreement, the petitioners parted with the cognizable information and knowledge of the complainant and also started a new competent business in the name and style of 'ALAMA International' thereby diverting the clients of the company and no proof has been shown to substantiate such allegation except the allegation made in the complaint.

4.The learned counsel for the petitioners further submitted that C.S.No.1121 of 2008 was filed by the respondent against the petitioners and others under Section 62(2) of the Copy Right Act and in that suit injunction was sought for restraining the petitioner from infringing the respondent's copy right over the trademark 'ALOHA' and no interim order was passed in the said suit. The learned counsel also submitted that the respondent has not proved that they registered the trademark under Trademark Act. It is therefore, the learned counsel for the petitioners submitted that in the absence of materials furnished by the respondent, the learned Judge ought not to have taken cognizance of the offence under Section 63 of the Copy Rights Act and therefore, the case has to be quashed.

5. These petitions are pending from the 2009 and despite service of notice, there was no appearance from the respondent. Earlier the petitioners were directed to serve notice on the counsel appearing for the respondent in C.S.No.1121 of 2008 and notice was served according to the learned counsel for the petitioners and there was no appearance by the respondent. Thereafter, by order dated 07.01.2015, I have directed the petitioners to serve notice on the counsel appearing for the respondent in C.C.No.11959 of 2008 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai and that notice was also served and the names of the counsel who appeared for the respondent before the learned XI Metropolitan Magistrate, Saidapet, Chennai in C.C.No.11959 of 2008 was also printed in the cause list and there is no appearance for the respondent.

6. As rightly submitted by the learned counsel for the petitioners, the respondent proceeded on the basis that the petitioners and other accused infringed their copy right and therefore they have committed offence under Section 63 of the Copy Right Act and also under Sections 120B, 405, 482, 483, 485 and 486 of IPC.

7. A perusal of the complaint filed by the respondent does not disclose any allegation and there is no material regarding the infringement of the Copy Right of the respondent and there is no whisper in the complaint whether the respondent has registered the trademark with the Registrar of Trademarks. No details regarding the infringement of Copy Right was stated in the complaint and it was only stated that the petitioner entered into Master Franchisee Agreement and thereafter copied the materials of the respondent by starting another business in the name and style of 'ALAMA International'.

8. Except stating that the petitioners have started 'ALAMA International', no material has been provided by the respondent to arrive at a prima facie conclusion that the petitioners have infringed the copy right of the respondent. Therefore, the learned Magistrate ought not to have taken the complaint on file for offence under Section 63 of the Copy Right Act and also various provisions of IPC. Hence these petitions are allowed.

9. These Criminal Original Petitions are allowed and the criminal proceedings in C.C.No.11959 of 2008 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai as against the petitioners are quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The XI Metropolitan Magistrate,
Saidapet, Chennai.

2. do thro the Chief Judicial Magistrate
Egmore, Chennai

1 cc to Mr.S. Palaninathan, Advocate, sr. 5948

1 cc to M/s. P.V. Rajeswari, Advocate, sr. 5947

Crl.O.P.Nos.2591 and
2673 of 2009

And

M.P.Nos.1 and 1 of 2009

JP (CO)
kk 25/2

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