

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6608 of 2015

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioners/A1 to A3 in CC.N.326 of 2014 on the file of XI Chief Metropolitan Magistrate at Secunderabad, which is the outcome of the report of the 1st respondent/defacto complainant, who is the Investigating Officer in EIPR Enforces Intellectual Property Rights, seeking quashing of proceedings in the above CC which is the outcome of Crime No.263 of 2015 of Mahankali Police Station, Secunderabad registered for the offences punishable under Section 420 IPC.

2. The substance of accusation in the averments of the police final report is that the accused persons 1 to 3 surpa were indulged in sale of spurious products of welding electrodes of another brand Mangalam by dubiously altering the name as Maangalam instead of Mangalam.

3. In fact the basis for registration of crime No.263 of 2013 dt.29.11.2013 for the offence under Section 420 IPC by the Mahankali Police through 1st respondent against the accused persons 1 to 3 is the information of one K.Rakesh, who is the Investigating Officer of EIPR Enforces Intellectual Property Rights by written complaint of even date stating during his investigation against duplicate products of Malu Electrodes Pvt. Ltd and selling these products to needy customers of Ranigunj area and on verification by 1st respondent of said duplicate products selling at the shops styled as Sri Sai Steel Traders belongs to Santhosh Kumar(A1), Sri Balaji Rameshwarlal belongs to Rameshwar Lal(A2) and Sri Maruthi Steel Traders of Krishna Chandra(A-3), the 1st respondent recognized the duplicate products of Maangalam which the accused persons are selling by imitating the original brand Mangalam and causing loss to the complainant's company by cheating and there form the S.I. of Police, Mahankali Police Station registered the crime and taken up the investigation and obtained authorization from Assistant Commissioner of Police, Mahankali Division for

search of the premises of A1 to A3 and seizure of duplicate products of electrodes and with the assistance of mediators raided the shops and seized duplicate electrodes with name Maangalam and the same were seized under respective confession and seizure panchanama of A1 to A3 and there from filing the final report for the said offence under Section 420 IPC against the petitioners/A1 to A3.

4. It is the contention of the counsel for the quash petitioners impugning the police final report taken cognizance by the Magistrate as C.C.No.326 of 2014 that the learned magistrate did not apply his mind in taking cognizance on the police final report under Section 173 Cr.P.C. as per Section 190 Cr.P.C. for the alleged offence under Section 420 IPC in allotting calendar case number as 326 of 2014 and issuing summons and the proceedings are thereby liable to be quashed.

5. This Court on 19.08.2015 while ordering notice before admission, granted interim stay of trial of C.C.No.326 of 2014 on the file of XI Chief Metropolitan Magistrate, Secunderabad including personal appearance of the accused persons for five weeks giving liberty to file application for discharge within one week from the date of order before the trial magistrate under Section 239 Cr.P.C. and if there are no grounds to frame charge under Section 240 Cr.P.C. for the learned magistrate to discharge as per the guide lines in ***State of Orissa v. Debendranath Padhi***^[1] from the prosecution material and also by giving liberty to the petitioners that in the event of hearing and framing of charge, with any additional material to impugn the same.

6. Notice were sent to the 1st respondent/defacto complainant and the same is served and proof of service filed of India Post track record from the web page showing the article was delivered on 09.09.2015 and the matter even posted to 26.10.2015 there was no appearance in between, much less through advocate by filing any Vakalat for appearance and to oppose, it was there from on hearing of the matter on 26.10.2015, reserved for orders on

came up for consideration.

7. From the hearing of the learned Public Prosecutor and quash petitioners/A1 to A3 there is nothing to show a petition for discharge filed and any order passed there under as directed supra.

8. Having regard to the above, there is nothing to give life to the matter but for to left open in the event of filing application for discharge by the petitioners before the magistrate and for passing any order by the magistrate as per the guidelines in ***Debendranath Padhi***'s case(1 supra) to impugn afresh if aggrieved.

9. Subject to the above, the Criminal Petition is closed without expressing any opinion as to whether there is any offence of cheating or not.

10. Consequently, miscellaneous petitions pending if any shall stand closed.

Dr. B.SIVA SANKARA RAO, J

22nd December, 2015.

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[\[1\]](#) 2005(1) SCC 568