

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-15297 of 2013 (O&M)
Date of Decision: November 28, 2015

Vikas Guleria and others

...Petitioners

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Grewal, Advocate
for the petitioners.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Sunil Chadha, Senior Advocate with
Mr.Kirpal Singh, Advocate
for respondents No.2 and 3.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint No.16 dated 01.07.2012 and the summoning order dated 06.07.2012 passed by learned Judicial Magistrate Ist Class, Ludhiana.

It is mainly stated in the petition that petitioners No.1 and 2 are employed by Gujarat Cooperative Milk Marketing Federation Limited and petitioner No.3 is employed by Mehsana District Cooperative Milk Producer's Union Limited, which are cooperative societies registered under the Gujarat Cooperative Societies Act. It is further stated that the Society is one of the 17 member of Gujarat Cooperative Milk Marketing Federation and the Federation markets its products under popular brands like 'Amul' and 'Sagar'. It is also

stated in the petition that the Trademark 'Sagar' has been duly adopted by the Society w.e.f 01.12.1969 and has been using the said trademark continuously and the same has been got registered also and has also the copyright. The Society was shocked to learn that respondent-Company and its management had started using a highly deceptively similar/identical trademark 'Gold Sagar' and highly deceptively similar/identical packaging, trade dress, get up, writing style etc. so as to cause confusion and make illegal gains and to cheat the customers. Mehsana District Cooperative Milk Producer's Union Limited served a legal notice through counsel asking to restrain themselves from using the trademark 'Gold Sagar'. Respondents No.2 and 3 filed a civil suit for declaration to the effect that infringement threats as given by the petitioners are unjustified. As the company did not desist from infringement upon the trademark, the petitioners No.1 and 2 wrote to the Commissioner of Police asking for the matter to be looked into and for taking action. The Copy of the complaint dated 14.06.2011 marked to the Commissioner of Police, Ludhiana asking for registration of criminal complainant/for registration of an FIR under Sections 103, 104 and 114 of the Trade Marks Act, 1999 etc. is Annexure P-3. It is further stated that no action was taken as per the opinion of the Deputy District Attorney in view of the pendency of the suit. As no action was taken, then the petitioners filed criminal complaint No.14/2 dated 26.07.2011 under Sections 103, 104 and 114 of the Trade Marks Act and Section 63, 65 and 69 of the Copyright Act. Learned Judicial Magistrate Ist Class,

Ludhiana vide order dated 26.11.2011 passed the summoning order. It is also stated that as a counter blast to the complaint, respondent No.3, who is an influential person within the District of Ludhiana, initiated a complaint against the petitioners stating therein that false complaints had been filed against him and the action should be taken under Section 182 IPC. After the receipt of the complaint, an enquiry was conducted by SHO, who recorded the statements of both the parties and after obtaining legal opinion of District Attorney, Calendra dated 01.07.2012 was filed in the Court and learned JMIC, Ludhiana summoned the petitioners vide impugned order dated 06.07.2012 (Annexure P-10).

Notice of motion was issued and learned State counsel as well as learned counsel for private respondents appeared, filed reply and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the record shows that as per Annexure P-1, notice was issued to Managing Director, M/s Pure Milk Products Pvt. Ltd., who is respondent, on 16.05.2011. Annexure P-2 is the copy of the suit filed by M/s Pure Milk Products Pvt. Ltd. against M/s Mehsana District Cooperative Milk Producer's Union Limited and Gujarat Cooperative Milk Marketing Federation. Annexure P-3 is the complaint made by the present petitioners to the Commissioner of Police, Ludhiana. Annexure P-4 is the legal opinion given by Deputy District Attorney. Annexure P-5 is the summoning order in the complaint filed

by Mehsana District Cooperative Milk Producer's Union Limited. Annexure P-6 is the representation made by private respondents to the Commissioner of Police. Annexure P-7 is the letter written by Assistant Commissioner of Police to the Commissioner of Police. Annexure P-8 is the legal opinion dated 26.06.2012 given by Deputy District Attorney. Annexure P-8(A) is the letter written by the Commissioner of Police, Ludhiana to SHO, Police Station Dehlon, Ludhiana to initiate proceedings under Section 66 of the Police Act, 2007 instead of Section 182 IPC. Annexure P-9 is Calendra under Section 66 of the Police Act. Annexure P-10 is the impugned order dated 06.07.2012 passed by learned JMIC (Duty), Ludhiana for issuance of notices to the accused persons in that Calendra.

The perusal of the record shows that the complaint was filed by the present petitioners to the Commissioner of Police but he has not taken any action. Then a criminal complaint was filed by the present petitioners against private respondents and they have been summoned vide order dated 26.11.2011 (Annexure P-5) by learned JMIC, Ludhiana. The filing of complaint later on against the present petitioners to the Commissioner of Police and filing of Calendra under Section 66 of the Police Act is misuse and abuse of process of the law. Secondly, when learned JMIC has already taken the cognizance and summoned the private respondents in the criminal complaint, then the Calendra by the police on the basis of complaint made by the private respondents for taking action, cannot be filed.

Learned counsel for the petitioners cited judgment passed

by this Court in ***Banta Singh vs. State of Haryana, 1995(3) RCR (Criminal) 133***, in which it is held that police sending Calender against petitioner under Section 182 IPC for making false statement to ASI Police in respect of a criminal offence; petitioner filing a complaint under Sections 323 and 506 IPC before Magistrate regarding the same incident; Magistrate summoning the accused persons; Complaint under Section 182 IPC against petitioner could not proceed in the circumstances and quashed. On the similar point, learned counsel for the petitioners cited judgments passed by this Court in ***Tarlochan Singh vs. State of Punjab, 2007(3) RCR (Criminal) 791***, ***Dharam Pal vs. State of Punjab, 2014(5) Law Herald 4496***, ***Kehar Singh vs. State of Punjab, 2012(1) RCR (Criminal) 458*** and ***Ramesh Chand vs. State of Haryana, 2006(4) RCR (Criminal) 718***. I have gone through all the above-cited judgments and same fully apply to the facts of the case.

In view of the above discussion, I find that filing of Calendra by the police in the facts as discussed above, is nothing but abuse of process of the law. Therefore, finding merit in the present petition, the same is allowed. The criminal complaint No.16 dated 01.07.2012 and the summoning order dated 06.07.2012 passed by learned Judicial Magistrate Ist Class (Duty), Ludhiana and all other subsequent proceedings arising therefrom are hereby quashed.

November 28, 2015
Vgulati

(INDERJIT SINGH)
JUDGE