

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.793 OF 2014

Jayesh Premji Savla & Ors. .. Applicants
V/s.
MATTEL, INC., U.S.A. And Anr. .. Respondents

Mr.Mujib Mushir Khan for the Applicants.
Ms.Tanuja Liman for the Respondent No.1.
Dr.F.R. Shaikh, APP for Respondent No.2-State.

**CORAM : A.S.OKA &
A.A.SAYED,JJ.**

DATED : 13th JUNE 2016.

P.C.

1. Rule.

2. Learned APP waives service for the 2nd Respondent.
Learned counsel for the 1st respondent waives service.
Forthwith taken up for final hearing.

3. On the basis of a complaint filed by the first respondent before the Additional Chief Metropolitan Magistrate 37th Court at Esplanade Court, Mumbai an order sub section 3 of Section 156 of the Code of Criminal Procedure was passed

by the learned Magistrate on 07th June 2004. On the basis of the said order, FIR was registered by the Worli Police Station for the offences punishable under Sections 63 and 65 of the Copyright Act, 1957, Sections 103 and 104 of the Trade Marks Act, 1999 and Sections 420, 487 and 488 read with 120B of the Indian Penal Code. The case made out in the complaint, on the basis of which FIR was registered, was that the First Respondent is the registered proprietor of Trade Mark of “BARBIE” in respect of dolls clothing, doll accessories etc. It is alleged that Trade Mark “BARBIE” has been continuously and extensively used for several years. It is contended that the applicants are in possession of samples/copies of the goods bearing original artistic work of the BARBIE logo of the 1st Respondent. It is alleged that the applicants have committed offences punishable under section 63 of the Copyright Act, 1957 and Sections 103 and 104 of the Trade Marks Act 1999. The allegations are also made of commission of various offences punishable under Indian Penal Code including under section 420.

4. Mr. Manoj Kumar has filed an affidavit in reply on behalf of the 1st Respondent. A copy of the special Power of Attorney issued in his name by the 1st respondent is annexed to the Affidavit. A deed of undertaking executed by the applicants in favour of the 1st respondent is annexed to the said affidavit. Shri. Manoj Kumar has stated that in view of the undertakings, there is an amicable settlement between the parties and therefore, the 1st respondent has no objection for quashing the FIR. The 1st respondent has stated that goods seized from the applicants be ordered be returned to the 1st respondent for the purpose of destruction.

5. After having perused the complaint on the basis of which impugned FIR was registered, we find that the dispute has overwhelming and predominately civil flavor and arises out of the commercial and mercantile dispute.

6. In view of over all settlement between the applicants and 1st respondent, no purposes will be served by continuing the prosecution. Therefore, this is a fit case to

exercise the powers under section 482 of the Code of Criminal Procedure, 1908 in the light of decision of *Gian Singh V/s. State Bank of Punjab*¹.

7. Accordingly, the application shall succeed. Hence, following orders.

ORDER

(i) Rule is made absolute in terms of prayer clause (b) which reads thus:-

“ This Hon'ble Court may be pleased to quash and set aside the FIR bearing C.R.No.08/2004 registered with the Worli Police Station, Mumbai and on the file/record of the Ld.Magistrate of 37th Court at Esplanade Court, Mumbai under No.379/SW/04, on such terms and conditions as this Hon'ble Court may deem fit and proper only in favour of the Petitioners herein.”

(ii) If any goods have been seized during the investigation of offence from the applicants, the same shall be returned to the 1st respondent after following usual procedure;

(iii) Application is disposed of on the above terms.

¹{(2012) 10 SCC 303}.

(iv) All concerned to act on an authenticated copy of this order.

(A.A. SAYED, J)

(A.S.OKA, J.)