

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2016

Pronounced on : 21.04.2016

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

Crl.R.C.No.458 of 2016

and

Crl.M.P.No.3066 of 2016

Shyam Singh ... Petitioner

Vs.

State rep. By
The Assistant Commissioner of Police,
Central Crime Branch (Copyrights),
Egmore, Chennai-600 008. ... Respondent

Criminal Revision filed under Section 397 r/w. Section 401 Cr.P.C. praying to set aside the order passed by the Learned III Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.328 of 2016 in C.C.No.9125 of 2007 dated 04.03.2016.

For Petitioner : Mr.Akhil R.Bhansali
for M/s.BFS Legal

For Respondent : Mr.V.Arul
Government Advocate (Crl. Side)

O R D E R

The Revision Petitioner/A2 has preferred the instant Criminal Revision Petition as against the order dated 04.03.2016 in Crl.M.P.No.328 of 2016 in C.C.No.9125 of 2007 passed by the Learned III Metropolitan Magistrate, George Town, Chennai.

2.The Learned III Metropolitan Magistrate, George Town, Chennai, while passing the impugned order in Crl.M.P.No.328 of 2016 in C.C.No.9125 of 2007 on 04.03.2016 (filed by the Petitioner/A2 under Section 239 of Cr.P.C.,) at paragraphs 14 & 15 had observed the following:

"14.There is no dispute that the disputed materials and the standard materials were sent to the Forensic Department has been returned

by the Forensic Department, for the reason that standard materials received were entirely different from the disputed materials. In the return, it is stated that all the materials are returned in sealed parcel with a request to procure and forward to this department as found in the disputed material. On perusal of the return endorsement, it is based on the name difference and not scientific opinion is given on the colour, texture and design. In spite of the said return made by the Forensic Department, the respondent has laid the final report based on the other materials such as, the statement of witnesses, seizure of counterfeit materials, for the purpose of proving the charge as against the accused. Therefore, the return made by the Forensic Department cannot be a ground to reject the prosecution at the threshold without testing the other materials produced by the prosecution in support of the charge.

15. Therefore, on examining the materials on records, this Court is of considered view that there are sufficient and prima facie grounds to proceed against the Petitioner/A4 for alleged offence under Sections 51(B) r/w. 63 of Copy Right Act and Sections 420, 481, 483 and 486 of the Indian Penal Code. Hence, the contention of the Petitioner/A2 doesn't merit consideration."

and resultantly, dismissed the petition.

3. Challenging the validity, correctness and legality of the order passed by the Learned III Metropolitan Magistrate, George Town, Chennai in CrI.M.P.No.328 of 2016 in C.C.No.9125 of 2007 dated 04.03.2016, the Learned counsel for the Revision Petitioner/A2 submits that the Petitioner herein in C.C.No.9125 of 2007 on the file of the Learned III Metropolitan Magistrate, George Town, Chennai, has been arrayed as Second Accused in respect of perpetual offences under Sections 51(b) r/w. Section 63 of the Copyright Act, 1957 and Sections 103 & 104 of the Trade Mark Act, 1999 and under Sections 420, 481, 483 and 486 of the Indian Penal Code.

4. The Learned counsel for the Petitioner brings it to the notice of this Court that this Court in CrI.O.P.No.25535 of 2011 and CrI.O.P.No.25539 of 2011 on 03.07.2012 had quashed the offences under Section 103 & 104 of the Trade Marks Act alone and in respect of the offences under Section 51(b) r/w. Section 63 of the Copyright Act, 1957 and Sections 420, 481, 483 & 486

of IPC, directed the trial Court to proceed in accordance with Law.

5.The Learned counsel for the Petitioner contends that the trial Court had sought for an opinion of Forensic Department on the similarity of the disputed materials and a report was issued by the Assistant Director of Forensic Department in regard to the same.

6.It is further represented by the Learned counsel for the Petitioner that the Petitioner made an application dated 05.08.2015 addressed to the Public Information Officer of the Tamil Nadu Forensic Department, Chennai, under Right to Information Act, 2005, seeking a copy of the report (T.No.102/2006/Doc dated 05.01.2006) and the same was furnished by the Deputy Director of the said Department and a copy of the said report was submitted by the Assistant Director (Documents) of Forensic Science Department to the trial Court on 05.01.2006, wherein, it was categorically opined that the disputed materials were entirely different from the standard material and hence, it was returned.

7.Advancing his argument, the Learned counsel for the Petitioner emphatically contends that based on the report of the Forensic Science Department in the subject matter in issue, no offence can be made out against any of the 'Accused' and in short, the entire charge sheet is completely baseless. Moreover, it is the plea of the Petitioner that the said information was not available with him at the time of filing the earlier quash petition and as such, he was perforced to file CrI.M.P.No.328 of 2016 (Discharge Petition under Section 239 Cr.P.C.) before the trial Court.

8.According to the Learned counsel for the Petitioner, the statement of one N.D.Kasthuri, Assistant Registrar of Trade Marks, Chennai, under Section 161(3) of Cr.P.C., (which was filed before the trial Court) mentioned that there can be no offence made out in the facts and circumstances of the present case.

9.The core contention advanced on behalf of the Petitioner is that the Respondent/Complainant had filed the charge sheet ignoring material evidence and report of the Forensic Department. In this connection, the Learned counsel for the Petitioner submits that as per the ingredients of Section 293 Cr.P.C., a report under the hand of a Government Scientific Expert to whom any matter or thing duly submitted for examination or analysis of report in the course of any proceedings under Cr.P.C., may be used as evidence in any enquiry, trial or other proceedings. As such, the non consideration of the 'Report of the Forensic Science Department'

(being a material evidence) by the trial Court is an erroneous one.

10.The Learned counsel for the Petitioner strenuously contends that even the entire material on record is acceptable in toto, no offence is made out against the Petitioner and also that the plain reading of FIR and charge sheet would clearly reveal that the same is frivolous, vexatious and does not disclose commission of any offence by the Revision Petitioner. Indeed, the allegation against the Petitioner in respect of 'Copyright Infringement' is based only on surmises and conjectures.

11.Lastly, it is the submission of the Learned counsel for the Petitioner that the trial Court in the impugned order in CrI.M.P.No.328 of 2016 in C.C.No.9125 of 2007 dated 04.03.2016 observed 'that the report was made on name difference and no scientific opinion was given on colour, texture and design. Therefore, the said report cannot be a ground to reject the prosecution without testing the other material produced by the prosecution' and the same is not legal.

12.It is to be borne in mind that this Court in CrI.O.P.No.25535 of 2011 and CrI.O.P.No.25539 of 2011 on 03.07.2012 filed by the Second Accused (present Revision Petitioner) and A6, for want of positive opinion from the Registrar had quashed the petition in respect of offences under Sections 103 and 104 of the Trade Marks Act, 1999 and in respect of the offences under Sections 51(b) r/w. Section 63 of the Copyright Act, 1957 and Sections 420, 481, 483 & 486 of Indian Penal Code, the trial Court was directed to proceed in accordance with Law. Further, the present Revision Petitioner/A2 and another person by name Nitin Jain/A6 were given liberties to raise all the defences which are available for them before the trial Court in this regard.

13.The sheet anchor of the argument of the Learned counsel for the Revision Petitioner/A2 is that based on the return made by the Forensic Department through letter T.No.102/2006/Doc dated 05.01.2006, the Petitioner had filed CrI.M.P.No.328 of 2016 in C.C.No.9125 of 2007 (before the trial Court) seeking to Discharge him from the main case. Further, the clear cut stand of the Petitioner is that notwithstanding the fact that the Forensic Science Department had returned the material, the Respondent/Police had filed a final report by placing reliance on the statement of witnesses, purported seizure of counterfeit materials etc., for establishing the charge against the Accused.

14.At this stage, this Court has perused the letter of the Assistant Director (Documents) addressed to the Learned III Metropolitan Magistrate, George Town, Chennai in Letter

No.T.No.102/2006/Doc dated 05.01.2006 in Ref.No.D.No.648/05 28/2006 dated 05.01.2006 (X.Cr.No.720/2005 of C.C.B. Chennai City) and the contents of the said letter run as follows:

"On preliminary examination of the articles received along with your letter cited, I wish to state that the following:-

The disputed special Mehendi Cone, Cardboard boxes of

- 1.Raju Singh Dulhan-3 boxes
- 2.Singh's Dulhan-2 boxes
- 3.Ram Singh-1 box
- 4.Raju Singh Pure Henna-500 grams pocket
- 5.Raju Singh Pure Henna-25 grams pocket
- 6.Dulhan-1Kg Cloth Bag

were received along with your letter cited for examination and report of the printed matter on each of the above pockets and cones. However, specimen of following:-

- 1.Singh Dulhan-1
- 2.Singh Pure Henna-1Kg
- 3.Singh Pure Henna-500 grams
- 4.Singh Pure Henna-25 grams

were received as standard material for examination.

Since the standard material received were entirely different from the disputed material, all the material are returned in a sealed parcel with a request to procure and forwarded to this department as found in the disputed material."

15.It is not out of place for this Court to pertinently point out that Sub section 4 of Section 293 Cr.P.C., enumerates the 'Government Scientific Experts' whose reports fall within the ambit of the Section. In short, the ingredients of Section 293 Cr.P.C., contemplates that the Court is to accept the documents issued by any of the six officers mentioned therein as valid evidence without examining the author of the documents as per decision of the Hon'ble Supreme Court in State of Himachal Pradesh V. Mast Pram reported in 2004 (8) SCC at page 660.

16.It is to be remembered that Section 293(2) Cr.P.C., employs the word 'may' and not 'shall'. As such, it is for a Court of Law to exercise its discretion whether an 'Expert' has to be examined as per decision of the Hon'ble Supreme Court in State of Kerala V. Arun Valenchery reported in 2001 (2) Kerala Law Journal at page 809.

17.It comes to be known that in ORA/267/2008/TM/CH dated 23.09.2011 filed by the present Criminal Revision Petitioner as Applicant against Manohar Singh and another before the Intellectual Property Appellate Board, Chennai, at para 30, had inter-alia observed as under:

"... we are of the opinion that the impugned trade mark registered under No.1171825 in class 3 deserves to be removed from the Register. Accordingly, the application for rectification is allowed with a direction to the Registrar for necessary action."

19.It is to be relevantly pointed out that the object of Copyright Act, 1957 is to protect the author of the Copyright work from an unlawful reproduction or exploitation of his work by others.

20.At an early stage, if there is strong suspicion which leads a Court of Law to think by presuming that an Accused had committed an offence, then, it is not open to it to take a contra view that there is no sufficient ground for proceeding against an Accused. Also, the issue whether the charges will eventually stands established or not can be decided by a Court of Law only after recording of evidence in the main case.

21.This Court aptly points out the decision in Jayanthilal M. Munoth V. M.Durairajan reported in 2006 (2) MLJ (Crl.) at page 467 (Madras) wherein it is held that 'Registration of Copyright is not a condition precedent for invoking a Criminal Prosecution'.

22.At the time of framing of charge, the trial Court is required to consider the police Report under Section 173 Cr.P.C., and documents sent with it. Ofcourse, an Accused has a right to be heard and the Court can examine it where it finds necessary as per decision Minakshi Bala V. Sudhir Kumar reported in 1994 SCC (Crl.) at page 181. In short, the Learned Judicial Magistrate has a duty to consider the entire gamut of material before arriving at a decision either way as per decision Century Spinning & Manufacturing Co. Ltd., (in Cr.A.63 of 1970), Ram Prasad Poddar & others (in Cr.A.No.64 of 1970) V. The State of Maharashtra (in both the appeals) reported in AIR 1972 SC at page 545.

23.From the contents of the letter in T.No.102/2006/Doc dated 05.01.2006 of the Assistant director (Documents) addressed to the Learned III Metropolitan Magistrate, George Town, Chennai, it is evident that the Petitioner/A2 cannot lay a claim

for rejection of the prosecution case at the nascent stage without evaluating the other relevant materials relied on by the prosecution to bring home the charges against the Accused.

24.It is to be significantly pointed out by this Court that the relevant portion of the charge sheet dated 08.06.2007 runs as follows:

"... and by violating proprietary rights of the complainant in respect of the artistic work relating to the word 'Singh' and the packaging, colour scheme, get up, layout arrangement of artistic feature in which the product of the complainant is sold, the accused are also appeared to have committed offences under Section 51(1)(b) read with Section 63 of the Copyright Act, 1957.

As the accused had been cheating gullible public by passing their counterfeit goods as that of the complainant in the market to the wrongful loss of the complainant and wrongful gain to themselves they are appeared to have committed offences under Section 420, 481, 483, 486 of IPC."

In fact, Section 51 of the Copyright Act, 1957 prescribes speaks of 'Infringement of Copyright', Section 63A of the Copyright Act provides for an offence of infringement of Copyright or other rights conferred by the Act. It cannot be forgotten that the criminal proceedings are based on 'Public Policy'. At the risk of repetition, at this stage, this Court relevantly points out that in CrI.O.P.No.25539 of 2011 and CrI.O.P.No.25535 of 2011 dated 03.07.2011 had directed the trial Court to proceed further in respect of offence under Section 51(b) r/w.63 of the Copyright Act, 1957 and Sections 420, 481, 483 & 486 of IPC.

25.It is needless for this Court to point out that only during trial of the main case, the factual aspects relating to Copyright Infringement and other offences under Indian Penal Code can only be decided once for all. Before that one cannot come to an ipso facto conclusion that the charges levelled against the Petitioner/A2 are groundless. It is to be significantly pointed out that when there is an ex facie material to frame a charge against the Accused, the charge cannot be said to be a 'Groundless' one and an Accused cannot be discharged as per the decision J.Prem V. State reported in 2000 Criminal Law Journal at page 619 and pages 622 & 623 (Madras). Indeed, at the time of framing of charge, a Court of Law is to consider the police Report and Documents to determine whether the allegations against the Accused are 'Groundless' or whether there is ground for presuming that an Accused has committed an offence. No doubt, the said presumption is a rebuttal one, by an

Accused, for which, an opportunity to take part in the 'Trial' must be provided. The issue as to whether standard materials and the materials in dispute seized during investigation are deceptively likewise in character and whether it attracts the infringement of copyrights secured by the De-facto Complainant are all that fall within the ambit of the trial Court at the time of final hearing of the case and in this regard, letting in oral and documentary evidence through relevant/Competent witness and marking of necessary documents which are subjected to cross examination on behalf of the Accused side only will prove to establish the case of the prosecution. In short, it is for the trial Court to appreciate the material evidence of witnesses to be adduced and documents to be marked through appropriate witnesses as Exhibits. Before that it is not for this Court to conduct a 'Mock Trial' on the basis of available materials on record.

26. At the time of charge framing stage, a Court of Law is to consider the materials before it and examine whether on a prima facie view, a grave suspicion of commission of offence by the accused exists. Also Court is to take note of the most important materials namely, the disputed designs used by the Accused. In fact, it is open to the Petitioner/A2 to take up all possible defences which may ensure his acquittal on merits but they cannot at the time of charge framing stage be gone into by the Court, as opined by this Court. In this connection, this Court points out the decision of Jai Prakash V. State of Rajasthan reported in Laws (Raj)-2007-7-22 (decided on 25.07.2007) wherein among other things it is observed as follows:

"...Thus, at this stage it would not be proper for this Court to express any opinion on the merits of the accusation in the evidence which has come on record on account of which the petitioners have been summoned by non-bailable warrants finding their involvement in the case under Section 302, 201 IPC. Prima facie there is material to suggest the involvement in the case, which is punishable with life imprisonment. In view of the above, I am not inclined to accept this bail application under Section 438 Cr.P.C., of Jai Prakash and Parmeshwari petitioners. Consequently, this bail application is dismissed. Petition dismissed."

27. In the light of foregoing detailed discussions and this Court, on an overall assessment of the attendant facts and circumstances of the present case in an encircling fashion,

comes to a resultant conclusion that the return made by the Forensic Department cannot be a cementing platform for the Petitioner/Accused-2 to negative the prosecution story at the threshold without appreciating the other materials produced by the prosecution in support of the offences under Section 51(b) r/w.63 of the Copyright Act and Sections 420, 481, 483 & 486 of IPC. Viewed in that perspective, the Criminal Revision Petition fails.

28.In the result, the Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. It is abundantly made clear that the dismissal of the Criminal Revision will not preclude the Petitioner/Accused-2 to raise all legal and factual pleas before the trial Court in C.C.No.9125 of 2007 in the manner known to Law and in accordance with Law. In this regard, the trial Court is directed to provide enough opportunity to the Petitioner/A2 by adhering to the Principles of Natural Justice.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

- 1.The III Metropolitan Magistrate,
George Town, Chennai.
- 2.The Assistant Commissioner of Police,
Central Crime Branch (Copy rights)
Egmore, Chennai.
- 3.The Public Prosecutor,
High Court, Madras-104.

+1 cc to M/S.BFS Legal, Advocate sr.24642

CrI.R.C.No.458 of 2016
and
CrI.M.P.No.3066 of 2016

ala(CO)
srg(11/05/2016)