

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5978 OF 2015

1. Allarakhabhai Ykubbhai
Age : 55 years, Occ : Business,
R/o. village Tikad, Taluka Halvad
District Surendrangar (Gujrat)
2. Atmaram Chaudhari,
Age : 26 years, Occ : Business,
R/o. Near Railway Station,
Nava Nagor. (Rajasthan)
3. Rajeshkumar Jain
Age : 45 years, Occ. Business,
R/o. Mahavir Namak Udyog
Near Railway Station,
Nava Nagor. (Rajasthan)
4. Kishna Ram Chaudhari
Age : 45 years, Occ.: Business,
R/o. Near Railway Station,
Nava Nagor (Rajasthan)

...APPLICANTS

VERSUS

1. The State of Maharashtra
2. The Police Station Inchare,
Gandhi Chowk Police Station,
District Latur.

3. Nareshkumar Balkishan Karva
Age : 43 years, Occ.: Business,
R/o. No.9, Masilamanipuram,
4th Street, Tuticorin 628008,
(Tamilnadu)

...RESPONDENTS

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Mr. A.N. Kakade, Advocate for Applicants.
Mr. P.G. Borade, .A.P.P. for R/No.1 & 2 - State.
Mr. A.S. Barlota, Advocate for Respondent No.3.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE : 03rd MAY, 2017

JUDGMENT:

This application is filed with the
following prayer :-

"B) That, the offence which is
registered in Gandhi Chowk Police
Station, Latur as Crime No.51 of 2015
dated 03.03.2015 for the offences
punishable under sections 419, 420 of
the Indian Penal Code and under Section
152 of the Copy Right Act, 1957 may
kindly be quashed and set aside."

2. The brief facts leading to file the present application are as under :-

It is the case of the informant that, he is doing the business in the name of "Maheshwari Salt Trading Company", which is registered in the year 1999 and is manufacturing salt and the same is being sold all over India. It is further the case of the informant that they went to Ganjgolai, Latur, and on visiting one of the store namely Pankaj Traders situated at Shivaji Road, Latur, he came to know that 25 bags containing 25 Kg salt in each bag of Sagar Shudh Salt brand was being sold at a price of Rs.150/- per bag. It is the case of the informant that the salt which is being sold was being marketed in the trade name of the informant company. Therefore, the complaint came to be lodged. Hence this Application is filed with a prayer to quash the said complaint.

3. Learned counsel appearing for the applicants submits that, the complaint is totally lacking bonafide and the real and correct facts are not stated by the complainant, and the applicants herein are genuine businessmen doing business with honesty and fairness, and the present complaint is nothing but an abuse and misuse of process of law.

Learned counsel submits that, the compromise has been arrived at between the parties by way of executing a deed of undertaking on 14th July, 2015, whereby it has been agreed by the applicants that they will stop using the name "Sagar" for their product of salt, being supplied to the purchasers and the informant has been paid a compensation of Rs. 1 Lac by the applicants. Therefore, learned counsel appearing for the applicants submits that, there exists no dispute between the informant and applicants.

4. Learned counsel appearing for the applicants submits that, even if the allegations in the first information report are taken as it is, no ingredients of offence punishable under sections 420 and 491 of the Indian Penal Code are attracted as against the applicants as no business transactions whatsoever had taken place between the informant and the applicants. Learned counsel submits that, the applicants have applied for registration of trade mark and thereafter they started their business of transporting the goods to various purchasers. Learned counsel further submits that, if the informant is having any grievance about using the name "Sagar" by the applicants, he has to approach the Registrar of Trade Marks under the provisions of the Trade Marks Act, and the alleged acts of the applicants cannot be said to be criminal in nature, and therefore, the present complaint is not sustainable and maintainable. Learned counsel appearing for the applicants therefore, relying

upon the pleadings in the application, grounds taken therein and the annextures thereto, submits that, the present application deserves to be allowed.

5. Learned counsel appearing for respondent no.3 submits that, the applicants are illegally marketing the salt in the trade name of the informant company. The applicants have admitted their guilt and accordingly they have assured that, henceforth they will not use the word 'SAGAR' and/or 'SAGAR SHUDH SAGAR PLUS' or any other type or form of intellectual property, trademarks and copyrights of the informant in any manner. So also the applicants have given undertaking and agreed to pay Rs.1 Lac to the informant towards damages for violation of the intellectual property rights of the informant, however, till this date, the applicants have not paid the said amount and they have not acted upon the terms and conditions of the said deed of

undertaking. As on today, the present applicants indulged in the same illegal activities by using the trade mark of the informant. In spite of deed of undertaking given by the applicants, the applicants in violation of the same, have continued with their malafide practices and trying to register their trade mark by providing false information. Therefore, respondent no.3 has moved an application to the Registrar of Trade Marks on 8th December, 2016 for removal of the Trade Mark SAGAR SHUDH. Learned counsel appearing for respondent no.3, therefore, submits that, there is direct evidence against the applicants so as to connect them with the offence in question, initially by using the trade mark of the informant, the applicants have cheated respondent no.3 and subsequently committing the breach of written undertaking and by not paying the amount of damages, the applicants have for the second time cheated the informant. Therefore it is submitted that, the application may be rejected.

6. The learned A.P.P. appearing for respondent/State submits that, the Investigating Officer has investigated into the matter and found that, the allegations are true. It is submitted that, the applicants have admitted the allegations in the first information report and even agreed to pay Rs. 1 Lac towards compensation to the informant and also have given an undertaking that, they will henceforth not indulge in the alleged activities of selling the salt.

7. We have given careful consideration to the submissions of learned counsel appearing for the applicants, learned A.P.P. appearing for the respondent/State and learned counsel appearing for respondent no.3 at length. With their able assistance, we have perused the grounds taken in the application, reply filed by respondent no.3 and the allegations in the first information report. We find considerable force in the argument

of learned A.P.P. appearing for the respondent/State and learned counsel appearing for respondent no.2 that, the applicants have accepted the allegations in the first information report and assured and promised the informant in writing by way of deed of undertaking that, henceforth they will not use the word 'SAGAR' and/or 'SAGAR SHUDH SAGAR PLUS' or any other type or form of intellectual property, trademarks and copyrights of the informant in any manner, name of the company/trading style/trade name, logo, colour, combination, style, trade description, artistic work or any other intellectual property of informant in respect of and in relation of Salt and or for any other goods services of allied and cognate nature. Not only this, but the petitioners have also agreed to pay total Rs.1 Lac to the informant towards damages for violation of the intellectual property rights of the complainant.

8. Be that as it may, on careful perusal of

the allegations in the first information report, we are of the prima facie opinion that, the alleged offences have been disclosed and those needs further investigation. It is a matter of serious concern that the applicants have not placed anything on record to show that, even their establishment is registered. While issuing notices to the respondents on 18th November, 2015, the statement was made by learned counsel appearing for the applicants that, the applicants are also granted copy right. After noticing that the respondent also possesses the copy right of similar nature, the applicants have given undertaking and also paid compensation of Rs.1 Lac to respondent no.3. As a matter of fact nothing is placed on record to show that, the applicants were granted copy right as on 18th November, 2015. On pointed query to learned counsel appearing for the applicants, that, whether there is any documents showing that, the applicants are granted copy right or any documents

showing the registration of their establishment, learned counsel appearing for the applicants has not brought any document to the notice of this Court to that effect. In that view of the matter, the application stands rejected. Needless to observe that, ad-interim relief granted on 18th November, 2015, stands vacated.

[K.K. SONAWANE, J.]

[S.S. SHINDE, J.]