

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.5114 of 2017

ORDER :

The petitioners are A.1 Harish Gupta, A.2 Sachin Gupta, A.3.D.M.Sudhakar and A.4 U.V.Suresh Kumar of Cr.No.220 of 2017 of Kodad town Police Station, Suryapet District, registered for the offences punishable u/ sec.420,435, and 504 IPC which is outcome of the report of the 2nd respondent, Vulipy Rajeshwar-the authorized signatory of M/ s. Bajaj Bakewell Udyog Pvt.Limited(for short, 'the BBUPL').

On perusal of the contents of the FIR from the report of the defacto-complainant supra show the BBUPL of Haryana running business in manufacturing, distributing and marketing bakery and confessional items including biscuits and namkeen products under the brand name of 'Kids Fun' since 1997, having been registered for the brand 'Kids Fun' with Registration No.1490655 in class 30, that the company recently in June, 2016 licensed their brand 'Kids Fun' to M/ s Rajini Foods, Ganganhad, Katedhan, Hyderabad, for manufacturing of eatable products under brand name and to exploit the marks commercially, that it came to know that M/ s SPK Food Products Private Limited (for short, 'SPKFPPL') headed by its Managing Director Mr. Harish Gupta(A.1) counterfeiting the products manufactured by them and spuriously selling the same in the market and thus filed a complaint with Adibatla Police Station, Ibrahimpatnam, Ranga Reddy District, Telangana, and the same culminated into FIR No.245 of 2016 and subsequently a final report

also filed vide C.C.No.125 of 2017 in March,2017. While said case is pending before the IV Addl.Metropolitan Magistrate, Cyberabad, Ibrahimpatnam, Ranga Reddy District, the said SRKFPPL, with intent to divert the dealer Narasimha Rao M/s LG Kirana and General Stores, Bodrai Bazar, Kodad, sent the representatives of M/s SRKFPPL Mr. Sachin Gupta(A.2) and D.M.Sudhakar(A.3) along with one U.V.Suresh Kumar(A.4) Advocate, who approached their dealer's i.e. Mr.Narsimha Rao's shop and without any authority collected material that were supplied to the dealer by the defacto-complainant for retail sales and have done an illegal act of burning them and shot the entire incident on cell phone and having not stopped illegal activity and also sent the said video to various other dealers throughout the country with an intention to cheat them and committing them to sell their products. The said video being circulated in the social media with intent to defame the complainant's company and its products to deter other dealers from taking out the products, hence to take necessary action.

The contentions in the quash petition to quash said FIR in nutshell are that the 1st petitioner-Harish Gupta, is the Managing Director of M/s. SRKFPPL having trademark certificate issued by the Registrar of Trademarks bearing No.1332895 for the brand 'Kids fun' and the 2nd petitioner is Sales and Marketing in-charge of the SRKFPPL engaged in selling the products of the 1st petitioner's company and the petitioner No.3 is authorized signatory and also Manager of the SRKFPPL since 24.12.2015 and the petitioner No.4 is the Legal Advisor of it. The report given to the police on

13.06.2017 not even mentioned date and time of alleged incident taken place for registering crime therefrom. The 3rd petitioner is a student of Law Degree appeared for LAW CET examination held on 27.05.2017 at Tarnaka centre, secured rank and is falsely implicated in this case and also in earlier crime of Adibatla police that was registered besides against the petitioner No.3 and also wife of the 1st petitioner. The present crime is nothing but abuse of process. It is also contended that the 2nd respondent earlier filed O.S.No.580 of 2015 on the file of the X Addl.Chief Judge, of the City Civil Court, Hyderabad, for the perpetual injunction restraining the 1st petitioner-Company from manufacturing their products and obtained ex parte ad interim injunction in I.A.No.1118 of 2016 in O.S.No.580 of 2016 and the same was dismissed on 31.01.2017. The 2nd respondent-company is a business competitor to the 1st petitioner's company and therefrom filing false cases to gain hold over in that business circles. In fact, Narsimha Rao said L.G.Kirana and General Stores, did not lodge any complaint to police if at all any truth in the alleged incident and thereby sought for quashing of the proceedings for not giving time and date of the alleged offence, and also from the 2nd respondent went unsuccessful in obtaining injunction restraining the manufacture of products the brand name of the petitioner No.1-company and from suppression of the facts in giving the report and in implicating the law student-the petitioner No.3 also with no basis. The learned counsel for the petitioners reiterated the same. It is also in the course of hearing submitted by the learned counsel for the

petitioner with memo USR No.4949 of 2017 by obtaining the certified copies from the civil suit O.S.No.580 of 2016 exhibited in the interim application I.A.No.1118 of 2016, certificate of Registration of Trademark issued by the Trademarks Registry, of renewal for 10 years from 18.01.2015 which shows the cadre name of the entity, made the application for the trademark No.1332895 is Pratiba Devi, Trading as quality Sweets and Namkeen, as Manufacturers and Merchants with address at Krishnanagar, Champapet, Hyderabad, as Proprietor and the Trademark typed is 'KIDS FUN' (LABEL), user date 03.12.2004 and the extract from the register of copy rights with registered No. A 89874/ 2011, dt.25.01.2011 also shows said Prathabadevi as proprietor as Quality sweets and Namkeens being owner of the quality Sweets referring to name and address Harish Gupta-1st petitioner at the address Kamala Nagar, Champapet.

No doubt, from the above, it is the proprietary concern of Prathiba devi and not any company as partnership firm and even the civil suit refers to SRKFPPL, the 1st defendant represented by its Director Prathiba devi W/o Harish Gupta. Said Harish Gupta in the FIR referred as Director of SRKFPPL. In fact, from the trademark registration, when it is a proprietary concern and not a partnership firm even any contention without impleading entity-the company, there cannot be any vicarious liability against the Managing Director or others has no locus to stand apart from the complaint contains specific allegations particularly against the alleged act of A.2 to A.4 at the instance of A.1 no other than the

husband of the proprietary concern of Prathibadevi by name SPKFPPL name and stile of the proprietary entity.

No doubt, in the civil Court in the suit filed by the BBUPL represented by V.Rajesh, the defacto-complainant herein temporary injunction application in I.A.No.1118 of 2016 was dismissed and the vacate petition in I.A.No.1156 of 2016 of the interim order was allowed on 31.01.2017 i.e. in O.S.No.580 of 2016. In dismissing the same it is observed that both the petitioner/plaintiff and the 2nd respondent/defendant are the registered proprietors of respective trademarks and once such is the case, for nothing to held responsible even selling products as if those products are manufactured by the petitioner to held thereby of no prima facie case much less balance of convenience or suffering of irreparable injury.

This Court, when the petition came for hearing on 03.07.2017 granted interim stay of all further proceedings of the Cr.No.220 of 2017 until further orders in view of the orders dt.31.01.2017 in I.A.No.1118 in I.A.No.1156 of 2016 in O.S.No.580 of 2016.

In fact, that civil suit is in relation to intellectual property rights in relation to trademark/copyright if any filed, the respective legislations here coming to the very report registered as FIR, the allegations regarding A.2 to A.3 at the instance of A.1 that the products of the complainant by collected from its dealer Narasimha Rao, the proprietor of LG Kirana and General Stores of

Bodraipalem is concerned, whether said Narsimha Rao given any report to police or not but for to consider the locus of the defacto-complainant, the representative of the entity M/s. BBUPL. Coming to the first contention of the locus of the defacto-complainant concerned, the law is fairly settled from the Constitution Bench expression of the Apex Court in A.R. Antulay Vs. R.S. Nayak¹ where the locus standi of a person to lodge a complaint for initiating the criminal proceedings was positively considered. It is thus only academic for such contention to impugn the prosecution is unsustainable including from the earlier expression of the Apex Court of Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot Vs. O.P.Poddar² where it is held that the complaint for the offence of cheating lodged by dealer and attorney of registered Trademarks owner also competent and the impugning against taking cognizance on the ground of so called incompetency of dealer to file the complaint accepted by the learned Magistrate is held unsustainable.

Having regard to the above and in view of the above expression, there is nothing to question the locus of the complainant in maintaining the report of him to the police in registering crime for any cognizable offence but for to consider how far the penal provisions are applicable against the petitioners/ Accused.

¹ 1984 SC 718

² AIR 1984 SC 5

No doubt, the FIR no way mentions date and time of the alleged occurrence. It is even as per the very report the defacto-complainant is not an eye witness but for giving report on the information of said Narsimha Rao. It is for the police to investigate and to ascertain said Narsimha Rao, whether there is any such occurrence if so at what date and time and with what truth or otherwise. So far as the offence u/ sec.504 IPC concerned, it speaks whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It has no application to the facts for nothing even from the report to say the alleged acts of the accused persons provoked Narsimha Rao and committed breach of peace and it was a bare intention to provoke breach of peace ultimately from any intentional insult, the offence u/ sec.435 IPC is concerned, it is mischief by fire or explosive substance to cause damage to the amount of 100 or in case of agricultural produce of Rs.10/- . How many sachets or packets and of what value that were burnt having been collected from Narsimha Rao is also silent in the report. No doubt, when such is the case, if not Section 435 IPC either Section 427 if the value is above Rs.50/- and otherwise Section 426 if it is below that or no value capable in terms of money to estimate that apply for the Act sheerly comes within the purview of mischief. So far as the offence of cheating concerned, there is practically

nothing within the meaning of Section 415 IPC of deceiving said Narsimha Rao fraudulently and dishonestly inducing him to deliver said sachets to any of the accused persons or to consent that they can retain the property or intentionally induce said Narsimha Rao so to deliver to it or to do anything which she did not do or omit if he were not so deceived and which acts are omitted acts are legally to be damaged or harm how that person got mind, reputation or property.

No doubt, it is premature to go further as to had it been narrated to Narsimha Rao the collecting of the packets, boxes purchased is to destroy he could not. Once that is missing even from the very FIR, the Court cannot proceed on assumptions but for if at all during investigation any offence to make out the very registration of the offence u/ sec.435 IPC not sustainable if not made out for a lesser offence therefrom other section 427 and 426 IPC as the case may be for the police to investigation.

Having regard to the above and in the result, the petition is allowed in part by quashing the FIR insofar as the offences punishable u/ sec.420 and 504 IPC. So far as the offence or lesser offence to the one punishable u/ sec.435IPC concerned covered by the FIR, there is nothing to interdict the investigation. The interim stay, dt.03.07.2017 is vacated by directing the police pending investigation not to arrest any of the petitioners however that will no way prevent the police from securing any of the petitioners for

the purpose of investigation. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date:04.10.2017
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Dr. B.SIVA SANKARA RAO J,

