

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16674 of 2018
and
Crl.MP.Nos.8606 & 8607 of 2018

1.Rajkumar Sabu

2.Shivnarayan Sabu ... Petitioners

Vs

M/s.Sabu Trade Pvt. Ltd.,
Rep. by its Managing Director
Mr.Gopal Sabu ... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the case in C.C.No.82 of 2018 on the file of the Judicial Magistrate No.IV, Salem and to quash the same.

For Petitioners : Mr.A.Natarajan
Senior Counsel
for Mr.C.P.Palanichamy

O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.No.82 of 2018 on the file of the Judicial Magistrate Court No.IV, Salem and quash the same.

2. On the private complaint lodged by the respondent, the Judicial Magistrate No.IV, Salem, has taken cognizance of the offences under Sections 420 IPC and 103 of the Trade Marks Act, 1999 in C.C.No.82 of 2018 and has issued process to the petitioners/accused, challenging which, the petitioners are before this Court.

3. Heard the learned Senior Counsel appearing for the petitioners, who submitted that no cognizance under Section 103 of the Trade Marks Act, 1999, can be taken in view of the bar under Section 110 of the Trade Marks Act, 1999. He further contended that the complainant is none other than the brother of the accused and the dispute is essentially with regard to the usage of Sago products (Sachamoti).

4. On a careful perusal of the records, it is seen that the Judicial Magistrate No.IV, Salem, has refused to entertain a petition under Section 156(3) Cr.P.C., that was filed by the complainant, by a well considered order. He has chosen to record the sworn statement of the witness produced by the complainant and also conducted Section 202 Cr.P.C enquiry. Since this is a trial by Chapter XIX B, the complainant should examine his witnesses first under Section 244 Cr.P.C., and only thereafter, if there is a prima facie case, charges can be framed against the accused.

5. In view of the above, this petition is closed with the following directions:

(a) The petitioners/accused shall appear before the trial Court, within a period of two weeks from the date of receipt of a copy of this order and execute a bond for Rs.10,000/- each with two sureties under Section 88 Cr.P.C.

(b) The petitioners shall engage an advocate on special vakalat undertaking that their advocate should cross-examine the witnesses, even in their absence and they will not dispute their identity. Thereafter, the presence before the trial Court is dispensed with.

(c) If the presence of the petitioners is required by the trial Court, notice can be issued to the advocate on record, pursuant to which, the accused shall appear before the trial Court.

(d) The trial Court shall complete the proceedings under Section 244 Cr.P.C. as expeditiously as possible.

Connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mk

To

The Judicial Magistrate No.IV, Salem.

+ 1 cc to Mr.C.P.Palanichamy, Advocate Sr.41933

CRL.O.P.No.16674 of 2018

(CS-IX)

EU (10/07/2018)

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