

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21927 of 2013(O&M)
Date of Decision: 11.07.2018

Pankaj Kumar

....Petitioner

Versus

State of Punjab & anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. PS Ahluwalia, Advocate, for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

None for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

No reply has been filed by respondent No.2 in compliance of order dated 20.12.2017. Even he has not put in appearance.

Prayer in the instant petition under Section 482 Cr.P.C. has been made for quashing FIR No.24 dated 20.02.2011 (Annexure P-1) registered under Sections 63 of the Copy Right Act and 103/104 of the Trade Mark Act, at Police Station Bassi Pathana, District Fatehgarh Sahib.

In nutshell, respondent No.2, claiming himself to be agent of some self styled private Vigilance agency and authorized by multinational companies like P&G, Emami, Adidas, Reebok etc., complained the police that the petitioner was involved in selling duplicate product of aforesaid brands, causing financial loss to the aforesaid multinational companies and the State exchequer as well, by evading tax.

On receipt of a complaint, FIR was lodged, and raid was conducted on the shop of the petitioner. Some goods were recovered and taken into possession by the police, which were purported to be

fake/duplicate. Thereafter, the police submitted a final report against the petitioner under Section 173 Cr.P.C before the trial Magistrate and was chargesheeted as such.

Learned counsel for the petitioner places reliance on Anil Kumar Vs. State of Punjab & anr., 2011 (18) RCR (Criminal) 304, Gurmukh Singh and another Vs. State of Punjab, 2011(18) RCR (Criminal) 308), M/s Bikaner Steel Mills Vs. State of Punjab, 2007(1) RCR (Criminal) 773, Satpal & anr. vs. State of Punjab & ors., 2011(1) RCR (Criminal) 281, Kasim Ali S/o Akbar Ali & anr. Vs. State of Madhya Pradesh & anr., 2016 (2) JBLJ 415, to contend that Section 13 of the Copy Right Act (for short 'the Act') is only applicable to original literary, dramatic, musical and artistic works, cinematography films and sound recording etc. and not to the shoes and sleepers. Section 115 of the Trade Mark Act, 1999 (hereinafter referred to as 'the 1999 Act') bars any police officer not below the rank of Deputy Superintendent of Police or equivalent, to conduct search and seizure. No police officer can raid, search and seize goods regarding offence under Sections 103 to 108 of the Act without obtaining the opinion of the Registrar relating to the offence of the trade mark. Therefore, raid conducted on the shop of the petitioner, without obtaining consent of the Registrar or any order from the Area Magistrate, by police party on the complaint of respondent No.2, was patently illegal. The trial Court did not appreciate the above two facts at the time of chargesheeting the petitioner and therefore, has wrongly and illegally summoned him.

On the other hand, learned State counsel vehemently opposed the submissions made by learned counsel for the petitioner.

Having given thoughtful consideration to the submissions made

the reasons to follow:-

Dealing with the issue that the petitioner was engaged in the business of selling some duplicate brands of multinational companies, such as, Emami, Adidas, Reebok etc., this court is of the view that while manufacturing shoes or sleepers by any company engaged with this business, a slight change is required to give a similar or different shape by adding something or moulding few normal or decorative features therein. No extra knowledge of intellect is required to manufacture shoes distinctive in colour and mode of its manufacturing from other. Similar view has been expressed in Anil Kumar's case (supra), where FIR was quashed in a case of alleged recovery of duplicate shoes and sleepers, holding that the shoe or sleeper is not such a distinctive article, in which the shape is always similar except some changes by adding something or few normal features. Therefore, in the given facts and circumstances of the case in hand, this court finds force in the contention of the learned counsel for the petitioner that Section 13 of the Copy Right Act, 1957, is not applicable to the facts of the case in hand.

Having gone through the other citations referred to above, this court finds that the FIRs in question and proceedings emanating therefrom were quashed following the relevant provisions contained in the Act as also law laid down on the basis thereof.

On a perusal of the FIR, it reveals that the same was lodged by Sanjiv Kumar-complainant (respondent no.2 herein), a field Manager, Raid, IPR Vigilance Services 1003, Adarsh Nagar, New Link Road, Mumbai, alleging that the petitioner was involved in selling duplicate brand of some multinational companies, viz., P&G, Emami, Adidas, Reobok etc.

the Trade Mark Act, 1999 according to which, before the raid was conducted, the approval or consent of the Registrar was required to be obtained. But, surprisingly, in the instant case, no such approval or consent was ever obtained before the shop of the petitioner was raided on the complaint of respondent no.2. In the case in hand, search and seizure was, admittedly, done by the Sub Inspector without seeking approval of the Registrar pertaining to the offence under sections 103 to 108 of the Act and thus, continuation of proceedings emanating from FIR, to my mind, would be an exercise in futility. The approach of the trial court in summoning the petitioner by framing charges against the petitioner under the relevant offences of the Indian Penal Code is erroneous and contrary to the settled propositions of law.

Respondent no.2-complainant is a self styled agent of private companies and not from any government agency. He has not filed any affidavit nor opted to appear in the court, as is apparent from order dated 20.12.2017 passed by a co-ordinate Bench. In such circumstances, it can easily be inferred that the allegations made by the complainant-respondent No.2 against the petitioner remained unsubstantiated.

In view of the discussion made above, FIR No.24 dated 20.02.2011 (Annexure P-1) registered under Sections 63 of the Copy Right Act and 103/104 of the Trade Mark Act, at Police Station Bassi Pathana, District Fatehgarh Sahib, is hereby quashed as also proceedings emanating therefrom.

Petition is disposed of accordingly.

(RAMENDRA JAIN)
JUDGE

July 11, 2018
monika

Monika Verma
2018.07.23 14:07
I attest to the accuracy and
integrity of this document

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No