

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 313 OF 2017

Rajesh Dalal
Vice President of
Make My Trip India Pvt. Ltd.
Having address at 243, Udyog Vihar,
Phase 1, Gurgaon – 122 016.

**...Applicant
(Original Accused No.2)**

Versus

1. The State of Maharaashtra
To be served on the P.P. Office,
High Court, Bombay.
2. Ezeego One Travels & Tours Ltd.
Having its registered office
at 1st Office, Cecil Court,
Lansdowne Road, Colaba,
Mumbai – 400 039.

...Respondents

**ALONG WITH
CRIMINAL APPLICATION NO. 314 OF 2017**

Make My Trip India Pvt. Ltd.
Having address at 103, Udyog Vihar,
Phase 1, Gurgaon – 122 016.
(Sourabh Taneja)

**...Applicant
(Original Accused No.3)**

Versus

1. The State of Maharaashtra
To be served on the P.P. Office,
High Court, Bombay.
2. Ezeego One Travels & Tours Ltd.
Having its registered office
at 1st Office, Cecil Court,
Lansdowne Road, Colaba,
Mumbai – 400 039.

...Respondents

**ALONG WITH
CRIMINAL APPLICATION NO. 315 OF 2017**

Deep Kalra
Chief Executive Officer of
Make My Trip India Pvt. Ltd.
Having address at 103, Udyog Vihar,
Phase 1, Gurgaon – 122 016.

**...Applicant
(Original Accused No.1)**

Versus

1. The State of Maharaashtra
To be served on the P.P. Office,
High Court, Bombay.
2. Ezeego One Travels & Tours Ltd.
Having its registered office
at 1st Office, Cecil Court,
Lansdowne Road, Colaba,
Mumbai – 400 039.

...Respondents

**Mr. Alankar Kirpekar a/w J. George i/b MAG Legal for the Applicants.
Mr. Mihir Gheewala i/b Aditya Mehta for Respondent No.2.
Mr. S.R. Agarkar, APP for the Respondent/tate.**

**CORAM : S. S. SHINDE, J
Reserved on : 1st August 2019
Pronounced on : 16th August 2019.**

JUDGMENT :

1. Rule. Rule made returnable with the consent of the parties and heard finally.
2. Brief facts leading to filing of the present application are as under:-

The applicants are the original accused. Respondent No.2 is a company who has filed complaint against the Applicants (Original Accused No. 1 to 3) for infringement of trade mark 'Ezeego1', by virtue of registration of similar domain names as mentioned in the complaint and Police Report.

Accused No.1 is the Chief Executive Officer of accused No.3 i.e. Make My Trip India Private Limited which has its registered office in Delhi. Accused No.2 is the Vice President of accused No.3. Accused No.3 owns and manages a website by the name of www.MakeMyTrip.com which offers similar services for the internet users i.e., similar to Ezeego1.com.

3. The complainant M/s. Ezeego one Travels & Tours Limited is a company registered under the Companies Act, 1956. The complainant company is a dotcom company which owns and manages a website namely, www.ezeego1.com. This website offers internet users a virtual travel marketplace. It fashions itself to be an online travel bazar that offers all travel related services including air ticket, hotel bookings, tours, transport, insurance, etc. Ezeeg1 is a trade mark vested with the complainant company. The certificate of registration was issued to the company on 06/03/2008. Respondent No.2 alleged to have adopted the mark "EZEEGO1" as a Trade Mark and ezeego1.com as a domain name amongst other variants thereof. In August 2008, Respondent No.2 claims to have come across various domain names that were similar to the domain name ezeego1.com, which it learnt were registered in the name of Accused No.2. The Accused No.3 was indicated as the organization of those domain names. On 28th August 2008, the Chief Operating Officer of the Respondent No.2, Ms. Neeru Singh, brought the alleged registration of the domain name ezeego11.com to the notice of the

Accused No.1. As is evident from the chain of emails attached to the Complaint, on 29th August 2008, the Accused No.1 replied to the aforesaid email indicating that, he was not aware of the registration of the said domain name, and also assured to Respondent No.2 that the alleged registration will be blocked, and, on the same day, the said domain name was blocked, which was also intimated by Accused No.1 to Respondent No.2. Thereafter, Respondent No.2 brought to the notice of one of the employees of the Accused No.3 a few other domain names which are alleged to be similar to its domain name <ezeego1.com>. These domain names were then transferred to Respondent No.2 on or before 15th October 2008 after enquiring about a few details from the Respondent No.2, which were necessary to affect the transfer of the domain names. The Applicants were admittedly not notified of any such registration.

4 It is the case of the Applicants that, upon the transfer of the alleged domain names, Respondent No.2 did not raise any objection and, therefore, the dispute, if any, is deemed to have been settled to the satisfaction of Respondent No.2 consequently, Respondent No.2 is now estopped from raising the same issue, which was amicably resolved between the parties way back in October 2008. On 18th February 2010 i.e. after a lapse of considerable period of more than 15 months from the date of transfer of the alleged domain names, the Respondent No.2 has filed a frivolous complainant against the

Applicants. It is the case of Applicants that the Complaint is nothing, but a grave abuse of the process of law and is mala-fide one, besides being completely vexatious in nature.

5 It is also the case of the Applicants that Respondent No.2 has filed the complaint out of trade rivalry and with a dishonest intent to defame Applicants. The Applicants have filed a criminal complaint against Respondent No.2 under Section 499 of the IPC for defamation. This complaint is presently pending before the Court of Ld. Metropolitan Magistrate, Patiala House Court Complex, New Delhi. The Ld. Metropolitan Magistrate has issued Summons not only against Respondent No.2, but also against the Chief Operating Officer of Respondent No.2 namely, Ms. Urrshilla Kelkar Lapse, which makes it clear that the Applicants were not at all involved in any illegal activity as alleged and hence the complaint against the Applicants is not maintainable. On the contrary, upon being notified of the registration of the alleged domains by the Respondent No.2, the same were immediately blocked and transferred. Without considering the said facts the Trial Court passed an order of issuance of the process on 01/07/2014, and Summons was served on the Applicants on 25th November 2014.

6. It appears that, Applicant/Accused No.2 is an Assistant Vice President and Applicant/Accused No.1 is Chief Executive Officer of Make My

Trip which is Accused No.3 in C.C. No. 82/SW/2010 before the Court of Addl. Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai. The Addl. Chief Metropolitan Magistrate, 8th Court Esplanade, Mumbai has passed an order under Exhibit-1 in C.C. No. 82/SW/2010 thereby issuing summons against the Applicants under Section 419, 420 r/w Section 34 of the Indian Penal Code and Section 104, r/w 114 of the Trade Marks Act, 1999. The Applicants, being aggrieved, preferred Criminal Revision Applications in the Court of Session at Mumbai against the order dated 01/07/2014 passed by the Ld. Addl. Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai. The learned. Addl. Session Judge has dismissed the Revision Applications of the Applicants. Hence the Applicants have filed the present Criminal Applications challenging order dated 01/07/2014 passed by the learned Additional Metropolitan Magistrate thereby issuing summons against the Applicants and, dated 14/12/2016 passed by the learned Additional Sessions Judge dismissing the Revision Applications filed by the Applicants against the said order dated 01/07/2014 of the learned Magistrate.

7 **SUBMISSIONS OF THE LEARNED COUNSEL APPEARING FOR
THE APPLICANTS :-**

A] It is respectfully submitted that even assuming, though vehemently denied, that any of the websites corresponding to the

purported domain names were accessible to users in Mumbai, it is settled that mere accessibility of a universally accessible website does not lend jurisdiction to a court. It is not the case of the Respondent No.2 that any of the Accused or the websites corresponding to the purported domain names “purposefully availed” the jurisdiction of the Court.

B] That admittedly the applicant neither resides nor works for gain nor carry on business within the jurisdiction of this Hon'ble Court and, therefore, the Court of the Ld. Magistrate at Esplanade, Mumbai, *ex facie* does not have the territorial jurisdiction to entertain and try the alleged offence and, therefore, it ought not had taken cognizance of the said alleged offense.

C] That as the issue of jurisdiction goes to the root of the matter and when solitary place of jurisdiction can be easily ascertained, then an imaginary interpretation of Criminal Procedure Code is not permissible. If jurisdiction of a court on the basis of facts as alleged in the complaint is permitted, then it will put the Accused persons to great hardship, leading to incongruous results. It will put the accused persons to great hardship, leading to incongruous results. It will also extend the scope of the jurisdiction of a

criminal court as envisaged under Section 178 of the Criminal Procedure Code, which is not permissible. The Supreme Court in its recent decisions have reiterated that Section 178 of Criminal Procedure Code has been interpreted to give its plain meaning, and having regard to such interpretation, the basis of the Respondent No.2 in clothing jurisdiction to the court of the Ld. Magistrate, Esplanade is clearly untenable in law.

D] That, the applicants submit that on a plain reading of Section 178 of the Criminal Procedure Code and an applying the same to the allegations made in the Complaint, more specifically to statements made in Para 16 of the complaint, and also to the finding of the Police Report, the Ld. ACMM's Court does not have the territorial jurisdiction to entertain and try the present complaint. The Ld. ACMM, therefore, ought not have taken cognizance of the complaint.

E] That the learned Magistrate, Mumbai has no jurisdiction as the registration of alleged domain was made at Jaipur and the head office of accused No.3 is at Gurgaon and the same fact has been revealed during the inquiry under Section 202.

- F] That the learned Magistrate has committed an error by taking the cognizance without jurisdiction.
- G] That there is no pleading in the complaint that the loss suffer to the complainant at Mumbai. Respondent No.2 for the first time took recourse to Section 179 of the Criminal Procedure Code in the reply and for the first time stated that the cause of loss to Respondent No.2 in Mumbai and therefore provides jurisdiction to the learned Magistrate. It is submitted that this was not a case of Respondent No.2 in the complaint.
- H] That the Applicant neither reside nor work for gain nor carry on business within the jurisdiction of the learned Metropolitan Magistrate's Court and, therefore the Court of the learned Magistrate, Esplanade, Mumbai ex facie does not have the territorial jurisdiction to entertain and try the alleged complaint.
- I] That upon the request of Respondent No.2, the Applicants had immediately transferred the complained domain names to Respondent No.2 in October 2008, the present complaint was filed only in February 2010 i.e. more than a year after the alleged offence has taken place. Thus the complaint was filed with an

intention to dent the credit of the Applicant-Company.

- J] That Respondent No.2 has filed the complaint against the Applicants out of trade rivalry and with a sole intention to defame the Applicants. Hence the Criminal Applications deserve consideration.

8 **SUBMISSIONS ON BEHALF THE LEARNED COUNSEL
APPEARING FOR RESPONDENT NO.2 :-**

- I] That there are two separate offences under Section 104 under Trade Mark Act and under Section 419, 420 r/w 34 of the Indian Penal Code, and the Trial Court after taking into consideration the report of inquiry under Section 202 of Indian Penal Code rightly passed the order issuing summons against the Applicants.
- II] That in so far as the issue of jurisdiction of learned Magistrate is concerned, the learned counsel for Respondent No.2 submitted that the said aspect has been considered by the learned Sessions Judge in detail.

- III] That the order of the learned Sessions Judge, which impugned in the Criminal Applications, is a well reasoned order and deserves no interference at the hands of this Court.
- IV] That the Court of the learned Magistrate has jurisdiction to entertain the complaint. In support of the said contention the learned counsel for Respondent No.2 has placed reliance on the judgment of the Apex Court in the matter of *State of Punjab V/s. Nohar Chand*, reported in *AIR 1984 SC 1492*.
- V] The applicants raised issue of only jurisdiction before the Sessions Court by restricting as such to that effect before the said Court.
- VI] That the reasons recorded by the learned Sessions Judge in the impugned order are plausible reasons. Hence the Criminal Applications deserved no consideration.

CONSIDERATION :-

9 Heard the learned counsel appearing for the parties. With their able assistance, perused the pleadings and the grounds taken in the applications, so also the annexures thereto, and the reasons assigned in the impugned orders by both the Courts below.

10 It is required to be noted that the trial Court has called the report under Section 202 from the Cyber Police Station, Thane, Mumbai, which reveals that the accused have allegedly committed the offences for which the complaint was filed. The learned Additional Sessions Judge has observed in the impugned judgment and order that in the inquiry it was revealed that vice president Shri Rajesh Dalal of the accused company registered the seven domains with the help of Z net India D-1052, Chitrakut, Vaishali Nagar, Jaipur, and by registering the seven domain the accused persons cheated the internet user who have visited those website and caused a loss to the complainant company. The learned Additional Sessions Judge recorded a finding that whenever the domain was registered and where the internet user as well as complaint company suffered the losses the Court has jurisdiction. The learned Additional Sessions Judge has also recorded the finding that definitely the company at Mumbai suffered losses because of cheating by the accused persons with the help of internet. Relying on the ratio laid down by the Apex Court in ***Nohar Chand's*** case (supra), the learned Additional Sessions Judge came to a conclusion that the Metropolitan Magistrate has jurisdiction. The learned Additional Sessions Judge does not find any illegality or perversity in the order of trial court to interfere, and accordingly dismissed the Revision Applications filed by the Applicants/Accused.

11 It is the case of the Applicants that they do not have any knowledge about the trade mark of Respondent No.2 as also the registration of Respondent No.2's domain names. At this stage, it is required to be noted that the Applicants have admitted that the Chief Operation Officer of Respondent No.2 Ms. Neeru Singh brought to the notice of accused No.1 of the registration of domain name <ezeego11.in>, and accused No.1 replied to Respondent No.2 by email indicating that he was not aware of the registration of the said domain name and also that the alleged registration will be blocked and on the same day the said domain name was blocked which was also intimated by Accused No.1 to Respondent No.2. Thereafter Respondent No.2 brought to the notice of accused No.3 a few other domain names which were similar to Respondent No.2' domain name <ezeego1.com>. It appears that the said domain names were then transferred to Respondent No.2. It is the case of the Applicants that they took immediate steps to block the alleged registration, and in the absence of "*mens rea*" the alleged offence of falsification of trademark under Section 104 and 114 of the Trade Marks Act, 1999 is not maintainable against the Applicants. Though the Applicants took urgent steps to have the said domain transferred in the name of Respondent No.2, admittedly it appears that the Applicants have committed the alleged act not only once but also twice. The learned magistrate after following the proper procedure and inquiry under Section 202 of Cr.P.C. satisfied himself about grievance raised in the complaint and then issued the summons to the

applicants. Whether the applicants had *mens rea* or intention to commit any alleged offence will have to be considered by the Trial Court upon appreciation of documents at the time of trial depending upon the defence taken by the Applicants. In this regard a useful reference could be made to the judgment of the Apex Court in the matter of **State of Bihar and anr v/s. K J D Singh** reported in **1993 (41) BLJR 1401** and a judgment of the Delhi High Court in the matter of **Ambica Plastopack Pvt. Ltd and anr. v/s. State and anr.** in Cri. M C No.2698 of 2011 decided on 01/11/2013. The question before the Apex Court in K J D Singh's case (supra) was, whether the criminal proceedings can be quashed even before the commencement of the Trial. Paragraph 3 of the said judgment of the Apex Court is relevant. The relevant excerpt of the said paragraph 3 is reproduced herein under :

“The inherent power under Section 482 has to be exercised for the ends of the justice and should not be arbitrarily exercised to cut short the normal process of a criminal trial. After a review of catena of authorities, Pandian, J. in Janta Dal v/s. H S Chowdhary (supra) has deprecated the practice of staying criminal trials and police investigations except in exceptional cases and the present case is certainly not one of these exceptional cases.”

The Delhi High Court in **Ambica Plastopack Pvt. Ltd's** case (supra) in paragraph 10 of the judgment has referred a decision of the Delhi High Court in another case i.e. **Rajesh Aggarwal** and held as under :-

“In **Rajesh Aggarwal v/s. State, 2010 (171) DLT 51**, this Court noted that the High Court is flooded with petitions under Section 482 Cr.PC for challenging the summoning order passed by the Magistrate under Section 138 of the Negotiable Instruments Act. This Court further noted that the accused rush to the High Court on mere passing of summoning order and are successful in halting the proceedings before the Magistrate on one or the other ground while the kind of defence raised by the Petitioners is required to be raised before the Magistrate at the very initial stage as per the law.”

12 Though other issues were raised, it appears from the careful reading of the impugned judgment and order that only point of jurisdiction was agitated by the applicant before the said Court. However, apart from the said issue of jurisdiction, the applicants have raised other issues/points before this Court. It would have been appropriated on the part of the Applicants to specifically raise remaining issues during the course of arguments before the said Court in Revision. Prima facie it appears that, the applicants are trying to delay the trial, inasmuch as the present complaint has been filed in the year 2010, and till date the Applicants are trying to protract the hearing of the said complaint on one pretext or the other.

13 Be that as it may, according to the learned counsel appearing for the Applicants there is delay in filing complaint. In that respect, it is required to be noted that, delay is a mixed question of law and facts and it is only during the trial, the Trial Court can appreciate the other contentions of the parties.

14 The complainant has placed on record the copies of e-mails. However, the said documents/copies cannot be looked into and no inference can be drawn since that would amount to entering into the exercise of appreciating of evidence. This is not permissible when there is prayer of quashing of order of issuance of summons under Section 482 of the Criminal Procedure Code. At this stage, this Court is not expected to undertake an exercise of appreciation of documents/evidence and find out evidenciary values of those documents when the matter is at the stage of only issuance of summons.

15 The Complainant Respondent No.2 alleged that the accused used the domains deceptively similar to its domain and thereby caused huge loss and made wrongful gain. It is also alleged that there is dishonest intention of accused to deceive a prospective user wanting to use Ezeego1.com. and therefore the act of accused is a violation of trademark and offence under section 104 of the Trademark Act 1999 thereby cheated the various internet user by impersonating as Ezeego1.com and thus they have committed the offence under section 419 of I.P.C.

16 Upon careful perusal of the material placed on record prima facie ingredients of the alleged offences are attracted and consequently an alleged offence have been disclosed. The alleged act on the part of the Applicants is

not committed once but twice, and same position has been admitted by the Applicants.

17 The contention of the Applicants that the complaint filed by Respondent No.2 Complainant is a trade rivalry. The said aspect is also disputed question of facts, and therefore, it would be appropriate to look into the said aspect by the Trial Court.

18 It is a settled position in law that if the averments made in the complaint/application attracts the ingredients of the alleged offence/offences, and, if the material placed on record constitute the said offence/offences, in that case, the High Court is expected to leave the matter for further adjudication to the concerned Court.

19 In the light of the discussion made in the foregoing paragraphs, this Court does not deem it appropriate to interfere with the impugned order passed by the learned Additional Sessions Judge and the learned Magistrate. The above Criminal Applications are accordingly dismissed. Rule stands discharged.

20 Considering the fact that the Complaint has been filed in the year 2010, it is desirable that the concerned Court shall expedite the hearing of the

proceedings and take it to the logical end as expeditiously as possible, and dispose of the same within six months. The Trial Court shall not grant unnecessary adjournment unless there is compelling reason/reasons to grant an adjournment.

21 The observations made herein above are prima facie in nature and confined to the adjudication of the present Criminal Applications.

[S. S. SHINDE , J]