

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment delivered on: 30th May, 2019**

+ 1. **CRL.M.C. 3946/2014 & CRL.M.A.13516/2014**

1. COLGATE-PALMOLIVE (INDIA) LTD.
Colgate Research Centre, Main Street,
Hiranandani Gardens, Pawai, Mumbai - 40076.
2. MR. NIKET GHATE
C/o Colgate Palmolive (India) Limited
Colgate Research Centre, Main Street,
Hiranandani Gardens, Pawai, Mumbai - 40076.
3. R. A. SHAH
C/o Colgate Palmolive (India) Limited
Colgate Research Centre, Main Street,
Hiranandani Gardens, Pawai, Mumbai - 40076.
4. DINESH CASTELLINO
C/o Cummins India Ltd.,
Kochrud, Pune - 411038.
5. AMEYA JOSHI
C/o Johnson & Johnson, 30, Spencers Building,
Near Bhatia Hospital, Forieth Street,
Tardeo, Mumbai - 40036.
6. S. Y. PRABHU
C/o Colgate Palmolive (India) Limited
Colgate Research Centre, Main Street,
Hiranandani Gardens, Pawai, Mumbai - 40076. ...Petitioners

Through: Mr. Mukul Rohatgi, Siddharth Luthra
& Mr. Ramesh Gupta, Sr. Advocates
with Mr. Saif Khan, Mr. Achutam
Sreekumar, Mr. Akshay Agarwal, Mr.
Mahesh Agarwal, Mr. Rishi
Agrawala, Mr. Sabari, Mr. Anuj
Malhotra, Ms. Niyati Kohli, Mr.

Raghav Pandey & Ms. Anusha
Nagraj, Advocates.

versus

1. ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.
Office No 201, C Wing, Marathon Nextgen,
GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.
2. MR. SATISH NATWARLAL PARIKH
C/o Anchor Health and Beauty Care Pvt. Ltd.
Office No 201, C Wing, Marathon Nextgen,
GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.
3. STATE OF NCT, DELHI ...Respondents

Through: Mr. Amit Sibal & Mr. A.S. Chandiok
Sr. Advocate with Mr. Amarjit Singh,
Mr. Anurag Ahluwalia, Ms. Vernika
Tomar & Ms. Subhi Sharma,
Advocates for R-1.
Mr. Rishi Agrawala, Advocate with
Ms. Niyati Kohli, Mr. Anuj Malhotra
& Mr. Sri Sabari, Advocates for R-2.

+ 2. CRL.M.C. 3866/2014 & CRL.M.A.13249/2014

COLGATE-PALMOLIVE COMPANY (USA)
300, Park Avenue, New York 10022, U.S.A. ...Petitioner

Through: Mr. Mukul Rohatgi Sr. Advocate,
Mr. Ramesh Gupta, Sr. Advocate,
Sidharth Luthra Sr. Advocate with
Mr. Saif Khan, Mr. Achutam
Sreekumar, Mr. Akshay Agarwal, Mr.
Rishi Agrawala, Ms. Niyati Kohli,
Mr. Raghav Pandey & Ms. Anusha
Nagraj, Advocates.

versus

1. ANCHOR HEALTH & BEAUTY CARE PVT. LTD.

Office No 201, C Wing, Marathon Nextgen,
GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.

2. STATE OF NCT OF DELHI

...Respondents

Through: Mr. Amit Sibal & Mr. A.S. Chandiok
Sr. Advocate with Mr. Amarjeet
Singh, Mr. Anurag Ahluwalia, Mr.
Vernika Tomar & Ms. Subhi Sharma,
Advocates.

+ 3. CRL.M.C. 3459/2015

ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.

Office No 201, C Wing, Marathon Nextgen,
GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.

...Petitioner

Through: Mr. Amit Sibal & Mr. A.S. Chandiok
Sr. Advocate with Mr. Amarjit Singh,
Mr. Anurag Ahluwalia & Ms. Vernika
Tomar & Ms. Subhi Sharma,
Advocates.

versus

1. STATE

2. IAN COOK

C/o Colgate - Palmolive Company

300, Park Avenue, New York 10022, U.S.A.

...Respondents

Through: Mr. Mukul Rohatgi, Siddharth Luthra
& Mr. Ramesh Gupta, Sr. Advocates
with Mr. Saif Khan, Mr. Achutam
Sreekumar, Mr. Akshay Agarwal, Mr.
Mahesh Agarwal, Mr. Rishi

Agrawala, Mr. Sabari, Mr. Anuj
Malhotra, Ms. Niyati Kohli, Mr.
Raghav Pandey & Ms. Anusha
Nagraj, Advocates for R-2.

+ 4. CRL.M.C. 3461/2015

ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.
Office No 201, C Wing, Marathon Nextgen,
GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.

...Petitioner

Through: Mr. Amit Sibal, Sr. Advocate with Mr.
Amarjit Singh, Mr. Anurag Ahluwalia
& Ms. Vernika Tomar & Ms. Subhi
Sharma, Advocates.

versus

1. STATE
2. MICHAEL J. TANGNEY

C/o: Colgate-Palmolive Company,
300, Park Avenue, New York 10022, U.S.A. ...Respondents

Through: Mr. Mukul Rohatgi, Siddharth Luthra
& Mr. Ramesh Gupta, Sr. Advocates
with Mr. Saif Khan, Mr. Achutam
Sreekumar, Mr. Akshay Agarwal, Mr.
Mahesh Agarwal, Mr. Rishi
Agrawala, Mr. Sabari, Mr. Anuj
Malhotra, Ms. Niyati Kohli, Mr.
Raghav Pandey & Ms. Anusha
Nagraj, Advocates for R-2.

+ 5. CRL.M.C. 3462/2015

ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.
Office No 201, C Wing, Marathon Nextgen,

GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.

...Petitioner

Through: Mr. Amit Sibal, Sr. Advocate with
Mr. Amarjit Singh, Mr. Anurag
Ahluwalia & Ms. Vernika Tomar &
Ms. Subhi Sharma, Advocates.

versus

1. STATE
2. FRANK J. MOISON

C/o: Colgate-Palmolive Company,
300, Park Avenue, New York 10022, U.S.A. ...Respondents

Through: Mr. Mukul Rohatgi, Siddharth Luthra
& Mr. Ramesh Gupta, Sr. Advocates
with Mr. Saif Khan, Mr. Achutam
Sreekumar, Mr. Akshay Agarwal, Mr.
Mahesh Agarwal, Mr. Rishi
Agrawala, Mr. Sabari, Mr. Anuj
Malhotra, Ms. Niyati Kohli, Mr.
Raghav Pandey & Ms. Anusha
Nagraj, Advocates for R-2.

+ 6. CRL.M.C. 3464/2015

ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.

Office No 201, C Wing, Marathon Nextgen,
GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.

...Petitioner

Through: Mr. Amarjit Singh, Ms. Vernika
Tomar and Ms. Subhi Sharma,
Advocates.

Versus

1. STATE

2. G. P. ROY

Assistant Controller of Patents of Designs

The Patent Office, Boudhik Sampada Bhawan,

C.P.-II , Sector 5, Salt Lake, Kolkata - 700091. ...Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Soumava Karmakar & Mr. Prashant
Singh Advocates for UOI.

+ 7. CRL.M.C. 3463/2015

ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.

Office No 201, C Wing, Marathon Nextgen,

GK Marg, Opposite Peninsula Corporate Park,

Lower Parel, Mumbai - 40013.

...Petitioner

Through: Mr. Amit Sibal, Sr. Advocate with
Mr. Amarjit Singh, Mr. Anurag
Ahluwalia & Ms. Vernika Tomar &
Ms. Subhi Sharma, Advocates.

versus

1. STATE

2. K.V. VAIDYANATHAN

Flat No.601, Sabari Basera, Near Diamond Garden,

Chamber, Mumbai - 40071.

...Respondents

Through: Mr. Mukul Rohatgi, Siddharth Luthra
& Mr. Ramesh Gupta, Sr. Advocates
with Mr. Saif Khan, Mr. Achutam
Sreekumar, Mr. Akshay Agarwal, Mr.
Mahesh Agarwal, Mr. Rishi
Agrawala, Mr. Sabari, Mr. Anuj
Malhotra, Ms. Niyati Kohli, Mr.
Raghav Pandey & Ms. Anusha
Nagraj, Advocates for R-2.

+ 8. CRL.M.C. 3460/2015

ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.
Office No 201, C Wing, Marathon Nextgen,
GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.

...Petitioner

Through: Mr. Amit Sibal, Sr. Advocate with
Mr. Amarjit Singh, Mr. Anurag
Ahluwalia & Ms. Vernika Tomar &
Ms. Subhi Sharma, Advocates.

versus

1. STATE
2. STEPHEN C. PATRICK

C/o: Colgate-Palmolive Company,
300, Park Avenue, New York 10022, U.S.A.

...Respondents

Through: Mr. Mukul Rohatgi, Siddharth Luthra
& Mr. Ramesh Gupta, Sr. Advocates
with Mr. Saif Khan, Mr. Achutam
Sreekumar, Mr. Akshay Agarwal, Mr.
Mahesh Agarwal, Mr. Rishi
Agrawala, Mr. Sabari, Mr. Anuj
Malhotra, Ms. Niyati Kohli, Mr.
Raghav Pandey & Ms. Anusha
Nagraj, Advocates for R-2.

+ 9. CRL.M.C. 3770/2016

ANCHOR HEALTH AND BEAUTY CARE PVT. LTD.
Office No 201, C Wing, Marathon Nextgen,
GK Marg, Opposite Peninsula Corporate Park,
Lower Parel, Mumbai - 40013.

...Petitioner

Through: Mr. Amit Sibal, Sr. Advocate with
Mr. Amarjit Singh, Mr. Anurag

Ahluwalia & Ms. Vernika Tomar &
Ms. Subhi Sharma, Advocates.

versus

1. STATE OF NCT OF DELHI
2. COLGATE-PALMOLIVE COMPANY, U.S.A.
300, Park Avenue, New York 10022, U.S.A.
3. COLGATE-PALMOLIVE (INDIA) LTD.
Colgate Research Centre, Main Street,
Hiranandani Gardens, Pawai, Mumbai - 40076.
4. MR. NIKET GHATE
C/o Colgate Palmolive (India) Limited
Colgate Research Centre, Main Street,
Hiranandani Gardens, Pawai, Mumbai- 40076.
5. R. A. SHAH
C/o Colgate Palmolive (India) Limited
Colgate Research Centre, Main Street,
Hiranandani Gardens, Pawai, Mumbai - 40076.
6. DINESH CASTELLINO
C/o Cummins India Ltd.,
Kochrud, Pune-411038.
7. AMEYA JOSHI
C/o Johnson & Johnson, 30, Spencers Building,
Near Bhatia Hospital, Forieth Street,
Tardeo, Mumbai - 40036.
8. S. Y. PRABHU
C/o Colgate Palmolive (India) Limited
Colgate Research Centre, Main Street,
Hiranandani Gardens, Pawai, Mumbai - 40076. ...Respondents

Through: Mr. Mukul Rohatgi, Sr. Advocate
Mr. Ramesh Gupta, Sr. Advocate with
Mr. Saif Khan and Mr. Achutam
Sreekumar, Mr. Akshay Agarwal, Mr.
Mahesh Agrwal, Mr. Rishi Agrawala,
Mr. Sabari, Mr. Anuj Malhotra, Ms.
Niyati Kohli, Mr. Raghav Pandey
and Ms. Anusha Nagraj, Advocates.

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

I.S. MEHTA, J.

1. Instant petitions are arising out of a complaint filed by Anchor Health & Beauty Care Pvt. Ltd i.e. No. 12/1/13 before the Court of Ld. Metropolitan Magistrate ('MM') seeking cognizance of the offences punishable under Sections 166, 167, 463, 464, 465, 468, 469, 470 and 471 read with Section 34 and 120 B of the Indian Penal Code for taking action against all the 13 Accused persons and for summoning all the Accused persons to face trial for the commission of the aforesaid offences.
2. Brief facts stated are that Petitioner in CRL.M.C. 3866/2014 Colgate-Palmolive Company, 300 Park Avenue, New York - 10022 USA (*hereinafter referred to as Colgate USA*) alongwith Petitioner 1 in CRL.M.C. 3946/2014 Colgate-Palmolive India Ltd., Colgate Research Centre, Main Street, Hiranandani Gardens, Pawai, Mumbai (*hereinafter referred to as Colgate India*) filed a Civil Suit i.e. CS(OS) 304/2004 for permanent injunction, restraining infringement of design, passing off, damages and rendition of design against Anchor Health and Beauty Care Pvt. Ltd.
3. The said suit pertains to a series of toothbrush designs designed and developed by Colgate India and Colgate USA between period 1998 to 1999 which were marketed under the trademarks "Colgate Zig Zag Flexible" and

"Colgate Sensitive". The designs of all three toothbrushes were registered under the Indian Designs Act.

4. Colgate India and Colgate USA claimed in the said plaint that each of the aforesaid designs comprise of distinctive features jointly or severally in respect of shape, configuration and surface pattern. While Design No. 176343 makes a claim of novelty to the head, handle and neck portion of the toothbrush, Design Nos. 176345 and 180362 additionally include a claim for their respective distinctive bristle patterns. All these design registrations were renewed, valid, subsisting and in full legal force. As on the date of their registration, said designs were brand new, innovative and hitherto unpublished design.
5. Further, Colgate India and Colgate USA stated in the plaint on a side by side comparison of Colgate India and Colgate USA's "Colgate Zig Zag Flexible" and "Colgate Sensitive" toothbrushes with the Anchor's design of "Anchor Advance Grip" toothbrush demonstrated that there is no difference between the essential feature of shape and configuration of the head, handle and neck of the toothbrushes in Colgate India and Colgate USA's registered designs and that of the Anchor's design.
6. In the Complaint and documents supporting the Complaint and complainant's claims i.e. Certified Copies of Design Registration No. 176343 and 176345 dated 24.03.2004 and photocopy of Design Registration No. 180362 was filed by the accused persons. It is also seen that photocopy

of Registration of Design No. 180362 was filed by R.A. Shah (Director of Colgate India), Dinesh Castellino (Deputy Company Secretary of Colgate India), Colgate USA and Colgate India under instructions and knowledge of Ian Cook (Chairman, President and CEO of Colgate USA), Michael J. Tangney (COO of Colgate USA), Stephen C. Patrick (CFO of Colgate USA) and Franck J. Moison (COO of Colgate USA) having statement of the novelty attached. However, on last page of photocopy of Design Registration No. 180362, the stamp of registration number and date as appearing on the earlier pages attached to the certificate was not appearing. It is pointed out that all representation sheets attached to any Design Registration certificate are stamped with Design Registration number on the date of filing.

7. The certified copies of Design Registration Nos. 176343, 176345 on 10.03.2004 and Design Registration No. 180362 on 25.03.2004 were issued by Mr. D.K. Rahut, Assistant Controller of Patents and Designs, Kolkata in which allegedly no Statement of Novelty was attached. It is alleged that R.A. Shah, Dinesh Castellino, K.V. Vaidyanathan, Colgate USA, Colgate India, Ian Cook, Michael J. Tangney, Stephen C. Patrick and Franck J. Moison in furtherance to their common motive and purpose hatched conspiracy with each other by forging and fabricating photocopy of Statement of Novelty in Design Registration No. 180362 and filed the same on record to obtain undue advantage over Anchor. On perusal of the certified copy of the Design Registration No. 180362 as filed by R.A. Shah, Dinesh Castellino, Colgate USA and Colgate India it is clear that photocopy of the said design was filed on record under the superintendence control and knowledge of Ian Cook, Michael J. Tangney, Stephen C. Patrick and Franck J. Moison under the list

of documents filed on 24th March, 2004, same were fabricated prior to the institution of the suit and used in Judicial proceedings. Photocopy of the certificate of Registration of Design No. 180362 was manipulated with the addition of an additional sheet containing the Statement of Novelty, which did not form part and parcel of the original Design Registration Certificate. The act of forgery stand proved, on comparison of the certified copy filed by said accused persons on record under the list of documents dated 6th April 2004 with the photocopy of same Design Registration Certificate filed on 24.03.2004. The fabrication of photocopy of the said design registration certificate also stand proved, as it neither contain official stamp of the office of the Controller of Patent and Design, Kolkata nor design number and date on the page containing Statement of Novelty compared to the earlier pages attached to the said certificate. There are other visible elements of forgery as are explained in the present complaint.

8. Anchor took a step for cancellation of the Registration of Design No. 176343, 176345 and 180362 before office of Controller of Patent and Design, Kolkata which was dismissed. Anchor being aggrieved from the said order filed three appeals i.e. AID 7/2008, AID 8/2008 and AID 9/2008.

In the proceedings before Calcutta High Court, it was alleged that Accused persons obtained certified copies issued by G.P. Roy, Assistant Controller of Patent and Design, Kolkata. The Statement of Novelty was added in each of the certificates of Registration Design No. 17634, 17635 and 180362. The Statement of Novelty pertaining to Design Registration No. 180362, on the last sheet of the representation neither name of Colgate USA was typed nor space for Design Registration number and date is typed and

was left blank. Anchor further pointed out S.Y. Prabhu did not prove the Registration of Design No. 180362 despite filing the certificate of copy thereof in list of documents dated 06.04.2004. It is alleged that conduct of S.Y. Prabhu in not making any reference to Design No. 180362 in his examination-in-chief leads to show the case of forgery committed by the Accused persons.

The Calcutta High Court on 24.08.2011 dismissed the appeal Nos. AID 7/2008 and AID 8/2008 pertaining to registration of design No.176343 and 176345 respectively. But, appeal No. AID 9/2008 pertaining to registration of design No. 180362 was allowed. The Statement of Novelty was attached however, there was nothing new or original in that design.

9. Aggrieved from the said order, Anchor filed Special Leave Petitions i.e. SLP No. 25797/2011 and 25856/2011, while, Colgate filed SLP No. 17231/2011 before Hon'ble Supreme Court of India raising similar issues, same were later dismissed due to design registration being expired.
10. On 26.02.2013, Anchor through its constituted attorney Sh. Natwarlal Parikh filed Complaint Case No. 12/01/13 under Section 200 CrPC. for initiation of criminal proceedings against officials of Colgate and G. P. Roy, Assistant Controller of Patent and Design, Kolkata alleging forgery of all three Design certificates committed under Section 166, 167, 463, 464, 465, 468, 469, 470 and 471 read with Section 34 and 120 B of IPC. The said complaint was filed before ACMM Patiala House Court, New Delhi. The essence of complaint case was that Statement of Novelty was added to the last sheet in

order to obtain purported advantage against Anchor. Anchor prayed as follows:

- i. Cognizance of the offences as are punishable under Sections 166, 167, 463, 464, 465, 468, 469, 470 and 471 read with Section 34/120 B of the Indian Penal Code be taken against all accused persons.
- ii. It is further prayed that the accused persons be summoned to face trial for the commission of the offences as are punishable under Sections 166, 167, 463, 464, 465, 468, 469, 470 and 471 read with Section 34/120 B of the Indian Penal Code.
- iii. It is further prayed that the accused persons be tried for offences punishable under Sections 166, 167, 463, 464, 465, 468, 469, 470 and 471 read with Section 34/120 B of the Indian Penal Code and tried in accordance with law.

Such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also passed against the accused persons.

11. The Ld. MM thereafter, passed impugned summoning order on 30.06.2014, operative extract is reproduced as under:-

"In the present case, the allegations against accused no 1 to 8 and 10 to 13 are in respect of forging certified copy of design no 180362 by attaching statement of novelty to it and using the same before Hon'ble High Court in CS (OS) no. 304/2004 and in the Special Leave Petition before Hon'ble Supreme Court Perusal of the documents placed on record fortify the averments of

complainant with respect to alleged forgery of certified copy of design no. 180362 Since the alleged forgery has been committed prior to filing of the document before the Court, therefore, the bar of Section 195 (1) (b) (ii) Cr.P.C would not be applicable in terms of decision of Hon'ble Supreme Court in AIR 2005 SC 2119. The suit OS(OS) no. 304/2004 has been filed by accused no.7 and 8 through accused no.1 and 2 while accused no. 6 has filed his affidavit during the course of evidence. Accused no. 4 and 5 have filed their affidavits in SLPs filed before Hon'ble Supreme Court. Accused no.3 is stated to have filed his affidavit before Hon'ble High Court of Calcutta and thus, accused no.3 has not committed any act within the jurisdiction of this Court. Thus, from the record prima facie offences under Section 465/469/471/34 IPC are made out against accused no. 1, 2 and 4 to 8. So far as accused no. 10 to 13 are concerned, there is nothing on record except oral averments of the complainant to connect them with the alleged offences. There is no evidence to show their involvement in the forgery of design no. 180362 and filing the same before the Hon'ble Supreme Court or Hon'ble High Court. Thus, no case is made out against accused no. 10 to 13.

So far as accused no.9 is concerned, he is a public servant. The certified copies were issued by him in the course of his official duties. Hence, in view of decision of Division Bench of Hon'ble Supreme Court in Anil Kumar v. M.K. Aiyappa, 2013 (12) SCALE 283, the bar of Section 197 Cr.PC would be applicable. Admittedly no sanction has been obtained by complainant against accused no.9 for the alleged offences and hence, complaint against him is not maintainable.

*In view of the observations made above,
accused no. 1, 2 and 4 to 8 be summoned on filing
of PF/RC/Speed Post returnable for 08.09.2014"*

12. Aggrieved from the aforesaid summoning order, Colgate India, Niket Ghate, R.A. Shah, Dinesh Castellino, Ameya Joshi and S.Y. Prabhu filed CRL.M.C. 3946/2014 against Anchor Health & Beauty Care Pvt. Ltd. and its Constituted attorney Sh. Natwarlal Parikh seeking calling of the records of Criminal Case No.12/1/13 from the court of Ld. MM, quash the same and also set aside and quash the order dated 30.06.2014 passed by the Ld. MM in Criminal Complaint Case bearing No. 12/1/13 dated 30.06.2014 where summons have been issued against the aforesaid parties under Sections 465/469/471/34 IPC.

Colgate USA filed CRL.M.C. 3866/2014 against Anchor Health & Beauty Care Pvt. Ltd. seeking calling of the records of Criminal Case No. 12/01/13 from the Court of Ld. MM, quash the same and also set aside and quash the order dated 30.06.2014 passed by the Ld. MM in Criminal Complaint Case No. 12/01/13 pending before the Ld. MM, including summons issued there under against the Accused persons.

Anchor Health & Beauty Care Pvt. Ltd. filed CRL.M.C. 3459/2015, 3461/2015, 3462/2015, 3464/2015, 3463/2015 and 3460/2015 against Ian Cook, Michael J. Tangney, Frank J. Moison, G.P. Roy, K.V. Vaidyanathan and Stephen C. Patrick respectively for calling the records of Criminal Complaint No. 12/1/13 for examination of legality, correctness of order dated 30.06.2014 and 22.08.2014 whereby the Ld. MM refused to issue summons to aforesaid parties and rejected directions for issuance of process against them under Sections 465, 469, 471 and 34 IPC. These petitions also

seek setting aside or quashing of summoning order to a limited extent whereby Ld. MM dismissed the complaint under Section 203 Cr.P.C and also to testify the legality and propriety of the order dated 22.08.2014 passed by the Ld. ASJ.

Anchor Health & Beauty Care Pvt. Ltd. filed CRL.M.C. 3770/2016 against Colgate USA, Colgate India, Niket Ghate, R.A. Shah, Dinesh Castellino, Ameya Joshi and S.Y. Prabhu for calling of records in Criminal Complaint Case No. 12/1/13 and to modify the order dated 30.06.2014 and also for issuance of process or summons against the Accused persons for the offences under Sections 466 of IPC in addition to the offences for which they have already been summoned under Sections 465, 469, 471 and 34 IPC. The petitioner also seeks modification of order dated 30.06.2014 against accused persons for offences under Sections 166, 167, 463, 464, 465, 468, 469, 470 and 471 read with Section 34 and 120 B of Indian Penal Code in respect of Design Nos. 176343 and 176345.

13. Mr. Mukul Rohatgi and Mr. Ramesh Gupta, Senior Advocates for Colgate, India in CRL.M.C. 3946/2014 has submitted that in 1999-2000, Controller General of Patents, Designs and Trademarks, Kolkata issued three Certificates of Registration of Design to Colgate-USA in respect of "toothbrush" designs bearing Registration No. 176343, 176345 and 180362. The alleged 'forgery' pertains to Statement of Novelty in Registration of Design No. 180362, original Certificate of which was issued to Colgate by the Controller having the Statement of Novelty on the reverse of the last sheet, true copy of same is at Page Nos. 6 to 10 of Written Arguments. Therefore, summoning order is bad in law and is a misuse of the judicial

process and once the original comes from the issuing authority i.e. primary evidence and no other document can be substituted *qua* against the original documents. Since, original has been placed on record alongwith Statement of Novelty on the back of last sheet, same cannot be disputed, if at all the opposite side can say anything in that case the original document can be called from the controller who hails the original document in his office. The certified copy which has been filed in some other court cannot *ipso facto* take place of the original document, therefore, plea cannot be raised that the forgery has been committed.

Learned Senior Counsels further submitted that while filing the case before the Delhi High Court, due to inadvertence, novelty certificate was not attached, though the same was attested and was a mistake of the Registry to overlook and not incorporated novelty certificate on the last page which the present petitioner has filed on page No.125 of the paper book. He further submitted that non-filing of the original document and administrative error at the controller's office for novelty statement being missing in the certified copy *ipso facto* does not constitute the offence of forgery or any kind of offence because the document in existence is not in dispute as the same is registered with the Controller of Patent & Design, Kolkata. If at all there is any forgery committed or if there is any other document so alleged Anchor could have filed the same before the concerned Court. The impugned order dated 30.06.2014 is bad in law and same be set aside and quashed.

Mr. Siddharth Luthra, Senior Advocate for Colgate USA in CRL.M.C. 3866/2014 has submitted that he adopts arguments of Mr. Mukul Rohatgi and further submitted that complaint filed is under Section 200 Cr.P.C. and Ld. MM has not called records from office of Controller of Patent and

Design, Kolkata, had he called records prior to passing the summoning orders, matter would have resolved. He further argued, there is inordinate delay in filing present complaint by Anchor, the matter relates to the incident pertaining to year 2004 and the offences are not punishable with more than 3 years imprisonment. The punishment under Section 465 is two years, under Section 469 is three years and under Section 471 is two years, complaint filed is dated 26.02.2013, hence bar of limitation applies as per Section 468 and he relied on *Sarah Mathew v. Institute of Cardio Vascular*, (2014) 2 SCC 62.

14. Per contra, Mr. Amit Sibal, Senior Advocate for the complainant (Anchor Health and Beauty Care Pvt. Ltd.) in CRL.M.C. 3459/2015 to 3464/2015 has submitted that on 24.03.2004 Colgate USA and Colgate India filed CS(OS) No. 304/2004 against Anchor alleging infringement of Design Registration Nos. 176343, 176345 and 180362. He has further submitted that Colgate USA and Colgate India claimed that between period 1998 to 1999 they registered the designs of three toothbrushes and acquired aforesaid Registration certificates.

He has further submitted that at the time of registering the designs Colgate USA and Colgate India did not file the Statement of Novelty in all aforesaid design registrations. The designs of all three toothbrushes got registered by Controller of Patent and Design, Kolkata. Anchor filed for cancellation of all three designs by Colgate before Controller of Patent and Design, Kolkata. Anchor's plea for all the designs got rejected. Aggrieved from the said order, Anchor preferred appeal before Calcutta High Court vide AID 7/2008, AID 8/2008 and AID 9/2008 pertaining to Design Nos.

176343, 176345 and 180362 respectively. Calcutta High Court rejected Appeal No. AID 7/2008 and AID 8/2008 while allowing AID 9/2008. Aggrieved from the said judgments, Anchor in 2011 approached Supreme Court vide SLP. No. 25797/2011 and 25856/2011. Senior Counsel further submitted that on 26.02.2013, Anchor filed Complaint No. 12/01/13 where Ld. MM summoned Accused persons R.A. Shah, Dinesh Castellino, Niket Ghate, Ameya Joshi, S.Y. Prabhu, Colgate USA and Colgate India being *prima facie* evidence of Forgery was present against them.

He further submitted that Colgate in 2004 filed CS(OS) No. 304/2004 in Delhi High Court where Accused persons in furtherance to their common intention manipulated and forged the Statement of Novelty to get undue advantage against Anchor. Also, G.P. Roy, Controller of Patent and Design, Kolkata later in 2008 issued Registration of Certificate alongwith Statement of Novelty. All Accused persons thereby committing offences under Sections 166, 167, 463, 464, 465, 468, 469, 470 and 471 read with Section 34 and 120 B of IPC.

Ld. Senior Counsel further submitted that as per Designs Act, 2000 Novelty should be on each page of the Representative sheet and not on back. Also, as per Rule 36 of Patent and Design Rule, 1933 novelty has to be on each of the representation sheet and so endorsed on the application also. As per Rule 38, representation must be only on the one side of the paper book.

He further submitted that limitation cannot be a ground for quashing of the complaint as the complaint was filed within the period of limitation from the date of knowledge of the commission of offences as complainant did not have knowledge of commission of forgery prior to filing of the complaint. He relied on *Vijay Dhanuka v. Najima Mamtaj*, (2014) 14

SCC 638, *Mohd. Yusuf v. Afaq Jahan* (2006) 1 SCC 627, *Abhijt Pawar v. Hemant Madhukar Nimbalkar and Anr*, (2016) SCC OnLine SC 1533 and *Balbir Singh v. State* 2009 SCC OnLine Del 1513

Mr. A.S. Chandiok, Senior Advocate for Anchor submitted that impugned order is bad for non-summoning of Ian Cook as he himself admitted that he was Chairman, President and Chief Executive Officer of Colgate USA. He further submitted that Ian Cook admitted that he was in the management since 1996 onwards. He further submitted that once Ian Cook admits that he was in the management, he ought to have been summoned by the court below. Ld. Senior Counsel has further pointed out the contradictory statements made in Ian Cook's reply dated 07.08.2017 in para 12 and 14 wherein he has stated that he became president in 2005 whereas in reply to para 14(a) he said that he became president in year 2007. As a whole, if his statement is taken on record, it means he became president in 2005.

Ld. Senior Counsel further submitted that once Ian Cook admits in para 14(a) that forging has taken place in 2004 and 2006, then it is his own admission in para 12 that he became CEO in the year 2005, this *ipso facto* makes the stand clear that he was holding the position of the President and CEO. Therefore, he ought to have been summoned alongwith co-accused K.V. Vaidyanathan who was responsible for day-to-day conduct of the affairs of Colgate USA and Colgate India during the course of the proceedings, in furtherance of the common object offences under Sections 166, 167, 463, 464, 465, 466, 468, 469, 470 and 471 read with Section 34 and 120 B of IPC were committed by them. He relied upon judgment *Lee*

Kun Hee, President, Samsung Corporation, South Korea and Ors. v. State of U.P. and Ors. (2012) 3 SCC 132.

15. Ld. Counsel for Central Government Mr. Ajay Digpaul appeared for G. P. Roy, Assistant Controller of Patent and Design, Kolkata submitted that in para 11, 12, 14, 15 and 16 of complaint wherein Anchor alleges that G. P. Roy added extra sheet containing Statement of Novelty claims to the said Design certificate and thereafter issued certified copies, this allegation is baseless as he had performed his official duty only and relied upon judgments ***Anil Kumar v. M.K. Aiyappa*** (2013) 10 SCC 705 and ***State of U.P. v. Paras Nath Singh*** (2009) 6 SCC 372.
16. From the perusal of pleadings and record available, it indicates that the dispute pertains to the business rivalry in Oral Healthcare sector which came into existence with Colgate filing Civil Suit CS(OS) 304/2004 in this court on 16.03.2004 against Anchor, suit was filed for permanent injunction restraining infringement of design, passing off, damages and rendition of design with following prayer:
- i. For a decree of permanent injunction restraining the Defendant, its principal officers, servants, agents, representatives, dealers and all others acting for and on its behalf, from making, selling, offering for sale, advertising, directly or indirectly dealing in toothbrushes being an obvious and fraudulent imitation of the design of the Plaintiffs toothbrushes amounting to infringement of registered design Nos. 176343, 176345 and 180362.

- ii. For a decree for permanent injunction restraining the Defendant, its principal officers, servants, agents, representatives, dealers and all others acting for and on its behalf, from making, selling, offering for sale, advertising, directly or indirectly dealing in toothbrushes bearing the striking features of the plaintiffs "Colgate Zig Zag Flexible" and "Colgate Sensitive" toothbrushes under a mark containing the word "Grip" so as to represent the toothbrush as being of the same make, quality or source or suggest that there is a trade connection between the Defendant's product and the Plaintiffs or doing any other thing to cause confusion or deception amounting to passing off.
- iii. For an order for the delivery up on affidavit to the plaintiffs representative of all the Defendant's inventory of toothbrushes, plates, moulds, dies, blocks, films, negatives and printed matter such as packaging, cartons, stationery, etc. for the purposes of destruction.
- iv. An order of damages in the sum of Rs. 5,01,000/- in favour of the Plaintiffs and against the Defendant on account of the unauthorized application of the impugned designs and passing off and a decree for the said amount be passed in favour of the Plaintiffs.
- v. or an order for rendition of accounts to ascertain the actual profits earned by the Defendant by the sales of toothbrushes bearing the impugned design and a decree be passed for the amount found due in favour of the plaintiffs on such rendition of accounts.
- vi. For an order for the cost of the proceedings.

- vii. For such further orders to which the plaintiffs may be found entitled under the facts and circumstances of the present case.

The complainant Anchor knowing well of filing the Civil Suit CS(OS) 304/2004 by Colgate against them on 16.02.2004, Anchor after a gap of more than 8 years comes with a plea of forgery committed by accused persons of Design Registration No. 180362 and files the complaint under section 200 Cr.P.C. on 26.03.2013 before Ld. ACMM, Patiala House Court, New Delhi. Ld. ACMM took cognizance of the offences punishable under Sections 465, 469, 471 and 34 IPC and passed summoning order against Accused persons. Here, it is to be noted that Civil Suit filed by Colgate was on 16.02.2004 and written statement filed by Anchor is dated 07.05.2004. The commission of the offence of the Forgery as per Anchor could only be before 07.05.2004 when Anchor came to know about filing of the Civil Suit as well as they filed written statement. The punishment under Section 465 is 2 years, under Section 469 is 3 years and under Section 471 is 2 years. Consequently, the cognizance taken of the offences is beyond the period of 3 years, which is barred under Section 468 Cr.P.C. As such, cognizance taken is bad in law. Reliance is placed on *Sarah Mathew* (Supra).

17. The Summoning order dated 30.06.2014 pertains to the complaint filed under Section 200 Cr.P.C. by Anchor on 16.02.2013 against R.A. Shah (R/o Mumbai), Dinesh Castellino (R/o USA), Niket Ghate (R/o Mumbai), Ameya Joshi (R/o Mumbai), S.Y. Prabhu (R/o Mumbai), Colgate India (Head office in Mumbai) and Colgate USA (Head office in New York, USA). The Ld.

MM before taking cognizance did not feel proper either to inquire himself or direct an investigation on the material point under Section 202 Cr.P.C. of existence or non-existence of the Statement of Novelty in Design Registration No. 180362. Ld. MM also ignored the material point that the Accused persons were residing beyond its local jurisdiction and misread the evidence and reached to a wrong conclusion and passed summoning order which is bad in law. Reliance is placed on ***Abhijt Pawar v. Hemant Madhukar Nimbalkar and Another***, (2017) 3 SCC 528 and ***Vijay Dhanuka v. Najima Mamtaj***, (2014) 14 SCC 6398.

The word '**Forgery**' is defined as follows:

a. as per Shorter Oxford English dictionary Sixth Edition means:

"The making of a thing in fraudulent imitation of something else; esp. the forging of a document."

b. and, as per Black's Law Dictionary Ninth Edition means:

"The act of fraudulently making a false document or altering a real one to be used as if genuine."

c. and, as per Webster's Comprehensive Dictionary, International Edition.

"The act of falsely making or materially altering, with intent to defraud ; any writing which, if genuine, might be of legal efficacy or the foundation of a legal liability."

and, IPC defines forgery as under:

Section 463 IPC:

"Whoever makes any false documents or false electronic record or part of a document or

electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

Thus, elements of Forgery are:

- a. Making of a false document or part of it by the accused.
 - b. Such making of document should be with intent
 - to cause damage or injury to public, or any person;
 - or to support any claim or title;
 - or to cause any person to part with property;
 - or to cause any person to enter into express or implied contract;
 - or to commit fraud or that fraud may be committed.
18. The basis of the instant complaint is hatching of conspiracy by R.A. Shah, Dinesh Castellino, K.V. Vaidyanathan, Colgate USA, Colgate India, Ian Cook, Michael J. Tangney, Stephen C. Patrick and Franck J. Moison with help of G.P. Roy, Assistant Controller of Patent and Design, Kolkata with intent to harm the reputation and profits of Anchor in its business of manufacture and sale of dental care products.

The allegation is that aforesaid Accused persons forged and fabricated the copy of design registration No. 176343, 176345 and 180362 and filed the same in the court by adding an extra sheet containing Statement of Novelty which did not form part and parcel of the Original Design Registration

issued on 10.03.2004 by D. K. Rahut, Controller of Patent and Design, Kolkata.

Colgate alongwith the plaint filed two certified copies of Design Registration No.176343 and 176345 and one photocopy of Design Registration No.180362. Aforesaid designs are alleged to be registered with Controller of Patent and Design, Kolkata as shown below in Table 1:

<u>Design Number</u>	<u>Date</u>	<u>Feature of design (toothbrush)</u>
176343	04.05.98	Colgate Sensitive: Novelty claimed in shape and configuration of toothbrush, especially head, neck, handle and combination thereof.
176345	04.05.98	Colgate Zig Zag Flexible: Novelty claimed in shape and configuration of toothbrush, especially head, handle, neck, bristles and combination jointly and severally.
180362	16.09.99	Colgate Zig Zag: Novelty claimed in shape and configuration of toothbrush, especially head, neck, handle, bristles and their combination jointly and severally.

Table 1

It is a general practice at the time of registration of any design at the registrar's office, two copies of Design Registration documents are prepared, first being original copy, second being a true copy. First i.e. original is given to the holder of the design or its authorized representative, second i.e. true copy is kept on record to facilitate issuing certified copies thereof.

What was filed with the original plaint by Colgate India and Colgate USA in CS(OS) 304/2004 was certified copies of Design Registration No. 176343 and 176345 and a photocopy of Design Registration No.180362.

The aforesaid filed photocopy of the Design Registration No. 180362 is shown in first Column of Table 2.

Anchor did not prefer to verify the aforesaid Design Registrations having Statement of Novelty with the office of Controller of Patent and Design, Kolkata rather prefers to move for cancellation of aforesaid three designs before Controller of Patent and Design, Kolkata.

The Controller of Patent and Design, Kolkata declines the cancellation of aforesaid Design Registration vide order dated 29.07.2008.

The presumption is that aforesaid designs were validly executed alongwith Statement of Novelty.

Aggrieved from the aforesaid order dated 26.02.2013, Anchor preferred appeal before Calcutta High Court vide AID 7/2008, AID 8/2008 and AID 9/2008. Calcutta High Court on 19.05.2011 rejected the first two appeals pertaining to design Registration No. 176343 and 176345. However, Calcutta High Court allowed the appeal AID 9/2008 pertaining to Design Registration No. 180362.

Calcutta High Court did not reach to the conclusion that the Design Registration No. 180362 was not having Statement of Novelty attached at the time of Registration.

Once, the Design No. 176343 and 176345 were registered on 04.05.1998 and Design No. 180362 was registered on 16.09.1999 with the Controller of Patent and Design, Kolkata. The presumption of its valid execution is attached with the aforesaid Design numbers, unless contrary is proved.

In the instant case, Anchor failed to bring on record any document which is obtained from the office of Controller of Patent and Design, Kolkata to show that the alleged Statement of Novelty was not attached to the Original Document.

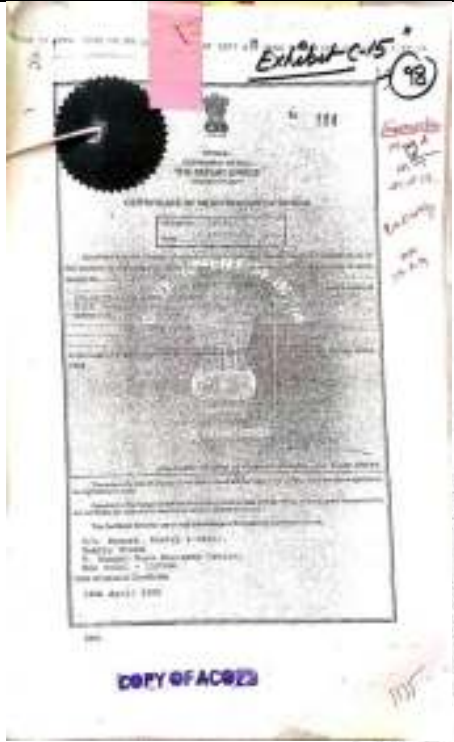
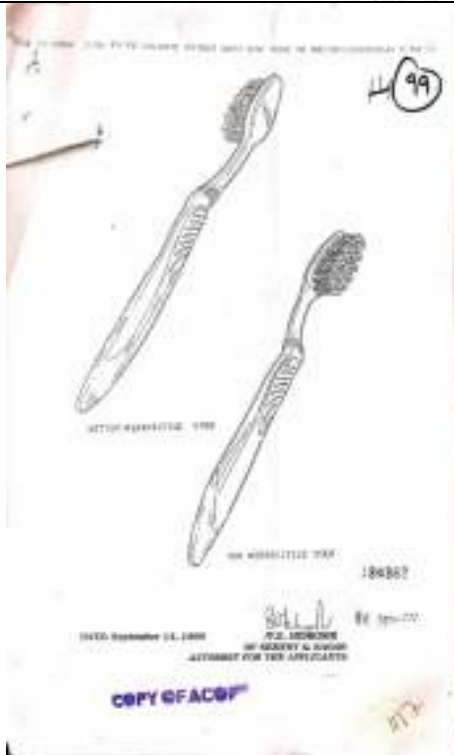
Further, there is no plea on behalf of Anchor that prior to the complaint they have issued notice to Colgate India or to Colgate USA that Statement of Novelty is not attached to the said Design Registration.

19. In the Civil Suit CS(OS) 304/2004, Anchor has filed the written statement, however, Anchor in the present complaint have not disclosed that they had filed a counter claim against Colgate India or Colgate USA in the said suit to determine the damages suffered by Anchor on this account.

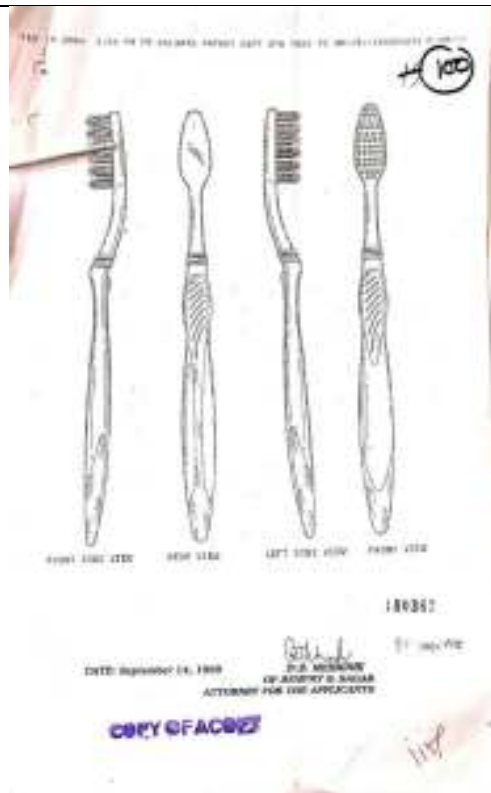
The side by side comparison of the photocopy of Design Registration No. 180362 which is a fax copy from Colgate Patent Department having Statement of Novelty filed in the Complaint Case No. 12/01/13 by Colgate with the True Copy of the Design Registration No. 180362 filed in written arguments on 10.05.2019.

This comparison reveals that both the aforesaid copies are similar to each other, negating the claim of Anchor.

The said comparison is shown as under (in Table 2):

Page No.	Design Certificate No. 180362 filed in CS(OS) 304/2004. Photocopy filed in Case No. 12/1/13.	Original Design Certificate provided by Counsel Mr. Mukul Rohatgi on Behalf of Colgate India and USA.
1. Front Page with design No. 180362.		
2. Sheet No.1 having Design No. 180362.		

3.
Sheet No.2
having
Design No.
180362.



4.
Sheet No.3
having
Design No.
180362.



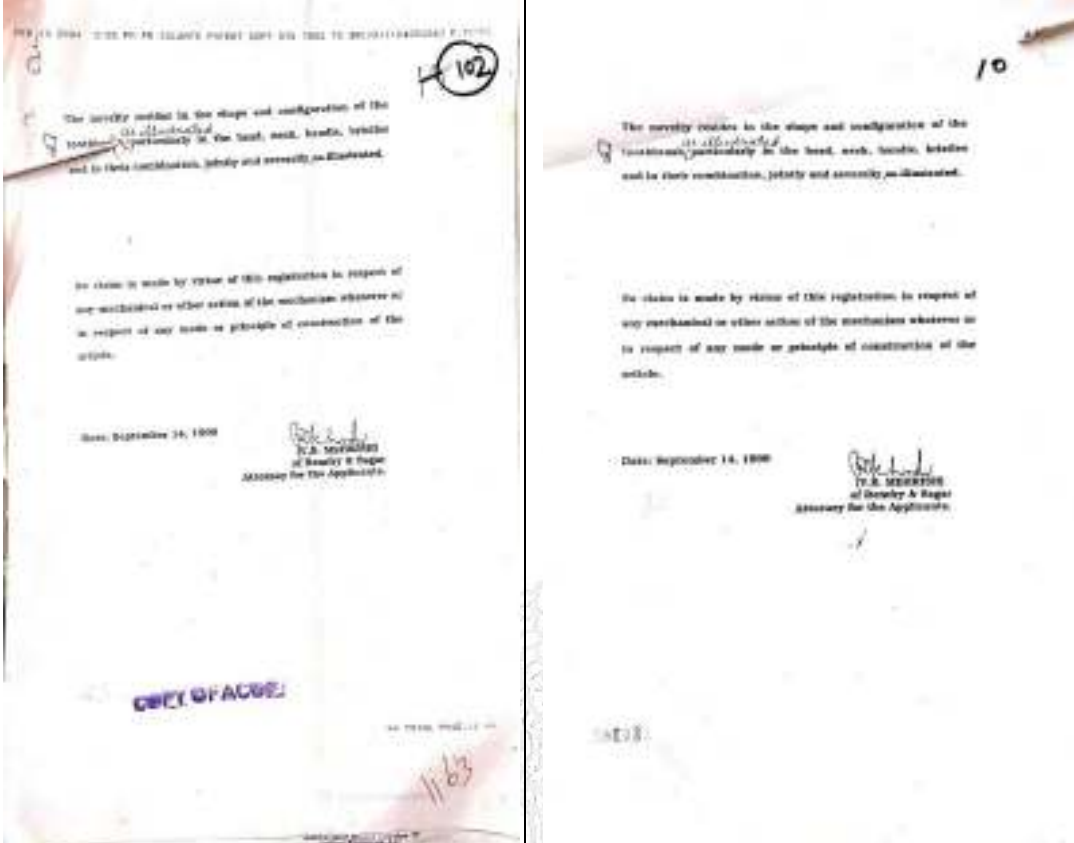
5. (Back side of Page No. 4) Statement of Novelty for Design No. 180362.	
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Table 2

It is emerging on the record that Colgate while filing CS(OS) 304/2004 filed photocopy of Design Registration No. 180362 which matches with the true copy of Design Registration No. 180362 which was filed by Colgate in written arguments. Anchor instead of verifying or applying the photocopy of aforesaid design number, preferred to apply for cancellation which was rejected by Controller of Patent and Design, Kolkata. Consequentially raises the presumption in favour of the Colgate for its valid registration. It is because of this reason Anchor's complaint in Para 4.46 does not disclose commission of offence committed. The said para is reproduced as under:

"In view of the fact that photocopy of design registration No. 180362, filed under the list of

documents of 24th March, 2004 was manipulated and fabricated, the accused persons did not prove the registration of design no. 180362 by the statement of accused no. 6, despite having filed certificate copy thereof on record under the list of documents dated 5th April, 2004. The conduct of the accused person is not making any reference to design no. 180362 in the examination in chief of accused no. 6 also lead to show the case of forgery committed by accused persons in respect of the said document."

20. On the basis of the aforesaid facts, Ld. MM without calling the Statement of Novelty from office of Controller of Patent and Design, Kolkata passed the summoning order in haste. Summoning of accused persons in criminal case is a serious matter, thus, Magistrate has to apply his mind carefully on the point of the application of the law and facts, and evidence available on record to show that there exist a *prima facie* evidence against the Accused persons while passing the summoning order. This should not be taken as a routine matter. Reliance is placed on ***Pepsi Foods Ltd. & Anr. v. Special Judicial of Magistrate***, (1998) 5 SCC 749 and relevant extract of the judgment is reproduced as under: -

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the

complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial."

21. The emerging facts clearly shows that the complaint filed by the Anchor under Sections 166, 167, 463, 464, 465, 468, 469, 470 and 471 read with Section 34 and 120 B of IPC is nothing but to counter the Civil Suit CS(OS) 304/2004 filed by the Accused persons.
22. Reliance placed by complainant Anchor on **Vijay Dhanuka** (*supra*), **Mohd. Yusuf** (*supra*), **Abhijt Pawar** (*supra*) and **Balbir Singh** (*supra*) is misplaced as complaint is barred by limitation.
23. The contention of the Ld. Senior Counsel for Anchor is without merit and same does not help the complainant. Complaint of Anchor leads nowhere

except to the abuse of the process of Law. Statement of Novelty being missing from back of last page in certified copies are an Administrative error and nothing else, consequently, Petition Nos. CRL.M.C. 3946/2014 (Petition No.1) & CRL.M.C. 3866/2014 (Petition No.2) under Section 482 Cr.P.C. are allowed. Complaint No. 12/01/13 is quashed. Reliance is placed on ***Rishipal Singh v. State of U.P.*** (2014) 7 SCC 215.

Summoning Order dated 30.06.2014 passed by the Ld. MM is bad in Law, same is set aside accordingly. Consequently, Summoning Order dated 22.08.2014 by Ld. ASJ is also set aside. Petition Nos. CRL.M.C. 3459/2015 (Petition No.3), CRL.M.C. 3461/2015 (Petition No.4), CRL.M.C. 3462/2015 (Petition No.5), CRL.M.C. 3464/2015 (Petition No.6), CRL.M.C. 3463/2015 (Petition No.7), CRL.M.C. 3460/2015 (Petition No.8) and CRL.M.C. 3770/2016 (Petition No.9) are rejected. All applications are henceforth disposed of.

24. LCR file be sent back forthwith along with a copy of this judgment. Let one copy of this judgment be placed in all the connected cases.
No order as to costs.

I.S.MEHTA, J

MAY 30, 2018