



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.10.2019

Pronounced on : 07.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)Nos.3970 & 5721 of 2015

and

MP(MD)Nos.1 & 1 of 2015 & Crl MP(MD)No.5457 of 2017

1.G.S.Rajasekaran

2.R.Suresh Pandian

3.Umarani

... Petitioners

in Crl OP(MD)No.3970 of 2015 /

Accused Nos.1 to 3

4.N.Dhanasekaran

... Petitioner in Crl OP(MD)No.5721 of 2015 /

Accused No.4

Vs.

1.State, rep.by the

Inspector of Police,

Sivakasi East Police Station,

Virudhunagar District.

...1st Respondent / Complainant

in both cases

2.G.S.Karthikeyan

...2nd Respondent / defacto complainant

in both cases

Prayer : These Criminal Original Petitions are filed under Section 482 of the Criminal Procedure Code, to call for the records in relating to the impugned FIR in Crime No.483 of 2014 on the file of the first respondent police and quash the same insofar as it is against the petitioners are concerned.

IN BOTH CASES :

For Petitioners : Mr.A.Sivaji

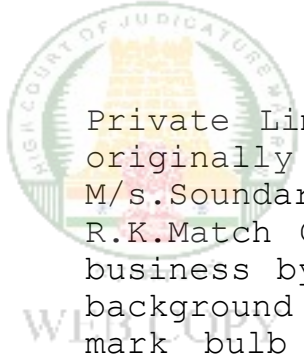
For R1 : Mr.A.Robinson,

Government Advocate (crl.side) for R1

For R2 : Mr.S.Ramasamy

COMMON ORDER

Both these criminal original petitions have been filed for quashing the FIR in Cr.No.483 of 2014 registered on the file of the Inspector of Police, Sivakasi East Police Station, Virudhunagar District for the offences under Sections 103, 104 of Trade Marks Act, 1999 and Sections 468, 471 and 420 of IPC. The defacto complainant is the second respondent herein. He is none other than the first petitioner herein. The case of the defacto complainant is that their family was carrying on business of manufacturing matches in the name and style of R.K. Match Company



Private Limited and M/s.Thendral Match Works Industry. They were originally carrying on business as a partnership firm in the name of M/s.Soundarapandian Match Works which was later taken over by R.K.Match Company Private Limited. They were carrying on their business by using the trade mark "Bulb". Bulb with violet colour background was registered as Trade Mark No.1383622. Another trade mark bulb with green colour was also registered as Trade Mark No.455169. When dispute arose between the two brothers, the matter was settled and two Memorandum of Understanding dated 30.03.2011 were also entered into between the parties. As per the understanding between the parties in respect of the trade mark No.1383622 in Class 34 was to be used by the petitioners 1 to 3 while the trade mark bulb with green colour was for the use of the second respondent.

2.The specific case of the second respondent herein is that the petitioners herein in Crl OP(MD)No.3970 of 2015 who were parties to the memorandum of understanding had specifically agreed to not to infringe the trade mark bulb with green colour. The second and third petitioners in Crl OP(MD)No.3970 of 2015 are none other than the son and wife of the first petitioner herein Thiru.G.S.Rajasekaran. The second respondent would allege that contrary to the said agreement, the petitioners herein have trading by using the trade mark bulb with green colour that was allotted to him. This led to the registration of Crime No.483 of 2014. To quash the same, this criminal original petitions have been filed.

3.The learned counsel appearing for the petitioners reiterated the contentions set out in the memorandum of grounds. His core argument is that the memorandum of understanding executed between the parties on 30.03.2011 has no legal consequence and it cannot be recognized in terms of the provisions of the Trade Marks Act, 1999. He would further contend that the claim of colour combination will have to be specifically registered. In this case, no such registration has been obtained and therefore, the second respondent cannot claim any right against the petitioners against the use of the colour combination. The petitioners' counsel would also argue that the investigation was being conducted by a police official in the rank of Inspector of Police and not by a rank of Deputy Superintendent of Police. He would also point out that these are contractual matters and therefore, invocation of criminal law is clearly an abuse of legal process. The learned counsel for the petitioners wanted this Court to quash the impugned FIR.

4.Per contra, the learned counsel appearing for the defacto complainant pointed out that the powers of this Court under Section 482 of Cr.PC are to be exercised sparingly and that the petitioners have not made out a case for quashing the impugned FIR.

5. I carefully considered the rival contentions. It is not in dispute that the petitioners were originally carrying on their business as a joint family enterprises. The trade marks in question had been registered when they were jointly carrying on



their business. Trade Mark No.455169 relates to "bulb with green colour" background. Trade Mark No. 1383622 is relates to "bulb with violet colour" background. The names of both the parties herein are reflected in the trade mark registration certificates issued by the Trade Mark Registry. After the brothers decided to go their separate and independent ways, they entered into an understanding. G.S.Rajasekaran and his family was to use the trade mark No.455169. It is true that the registration certificate mentions the class as Class No.34. In view of the allotment of the two trade marks to the respective brothers, the explicit understanding was that one would not infringe the use by the other. The memorandum of understanding was executed on 30.03.2011. Thereafter, the defacto complainant was using the trade mark No.455169 while the petitioners were using their trade mark No. 1383622. While so, when both the parties were exclusively using the respective trade marks allotted to them, it was clearly not open to the petitioners herein to infringe such user. The specific allegation of the defacto complainant is that by improper use of the mark ie., bulb with green colour background and affixing the label on poor quality goods, the petitioners herein were making the people believe that those inferior goods were manufactured by the defacto complainant. This was clearly leading to loss of business reputation and consequential economic loss.

6.I, therefore, find that there is prima facie case in the allegations made by the learned counsel appearing for the second respondent. The Hon'ble Supreme Court in the decision reported in **2019 Cri LJ 4513 (Chilakamarthi Venkateswarlu and Ors. vs. State of Andhra Pradesh)** and Ors) held as follows :

"13.The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or to otherwise secure the ends of justice.

14.For interference Under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.

15.In exercising jurisdiction Under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the Accused. For that limited purpose, the Court can evaluate materials and



documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the Accused.

16.The High Court should not, in exercise of jurisdiction Under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the judgment of this Court in Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharful Haque and Anr. (2005) 1 SCC 122.

17.The High Court may have an obligation to intervene Under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute offences. Reference may be made to S.W. Palanitikar and Ors. v. State of Bihar and Anr. : (2002) 1 SCC 241. However, it is important to remember that while exercising powers under this Section, the High Court does not function as a Court of appeal or revision.

18.The power Under Section 482 of Code of Criminal Procedure should not be exercised to stifle legitimate prosecution. At the same time, if the basic ingredients of the offence alleged are altogether absent, the criminal proceedings may be quashed Under Section 482 of Code of Criminal Procedure."

7.However, the case of the petitioner in CrI OP(MD)No.5721 of 2015 has to be viewed differently. He was after all only the proprietor of a printing press. An order was placed with him and he had only printed the labels as per the instruction given to him. The contest is essentially between the complainant on the one hand and G.S.Rajasekaran on the other. The printing press owner Thiru.N.Dhanasekaran appears to be an unfortunate victim in the cross fire. Therefore, he deserves to be deleted from the array of accused. Even if all the allegations made by the defacto complainant are prima facie taken to be true, no case is made out against Thiru.N.Dhanasekaran, the petitioner in CrI OP(MD)No.5721 of 2015.

8.In this view of the matter, CrI OP(MD)No.3970 of 2015 is dismissed. CrI OP(MD)No.5721 of 2015 is allowed. The impugned proceedings stand quashed as far as the petitioner in CrI OP(MD)No.5721 of 2015. I make it clear that the observations made in this order are only for the purpose of giving a disposal to these



criminal original petitions. They will not have any bearing on the respective rights of the parties. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Cr1 Side)

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/ /2020

Sub Assistant Registrar(CS)

Skm

To

- 1.The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Cr1 OP(MD)Nos.3970 & 5721 of 2015
and
MP(MD)Nos.1 & 1 of 2015 &
Cr1 MP(MD)No.5457 of 2017
07.05.2020

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