

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.22493 & 23891 of 2015
and

M.P.Nos.1 and 2 of 2015 in
Crl.O.P.No.22493 of 2015

Krishna Gopal Agarwal,
S/o. Shri.Fakir Chand Agarwal (late) ... Petitioner/A1 in
Crl.O.P.No.22493/2015

M/s.APL Apollo Tubes Limited,
Rep. By its Chairman and Managing Director
Mr.Sanjay Gupta,
Alur Village, Perandapali,
Hosur, Krishnagiri District. ... Petitioner/A5 in
Crl.O.P.No.23891/2015

Vs.

1.The State Represented by
The Sub-Inspector of Police,
Thimmapettai Police Station,
Vaniyambadi Town Circle,
Vellore District. ... 1st Respondent/Complainant
both Crl.O.Ps

2.K.Boopathi,
S/o.G.K.Kesavalu Naidu @ Kesavan ... 2nd Respondent/ de facto
complainant in both Crl.O.Ps

Prayer in Crl.O.P.No.22493/ 2015: Criminal Original Petition
filed under Section 482 Cr.P.C., to call for the records and to
quash the First Information Report in Crime No.33 of 2015 dated
08.04.2015, on the file of the Sub-Inspector of police,
Thimmapettai Police Station, Vaniyambadi Town Circle, Vellore
District registered for the offence under Sections 468, 471,
418, 420 IPC and 51, 63, 65(A) of the Copyright Act, 1957 and
subsequent search and seizure made.

Prayer in Crl.O.P.No.23891/ 2015: Criminal Original Petition
filed under Section 482 Cr.P.C., to call for the records
relating to the complaint in Crime No.33 of 2015, on the file of
the 1st respondent and quash the same.

For Petitioner in
Crl.O.P.No.22493/2015 : Mr.A.Ramesh, Senior Counsel
for Mr.C.Arun Kumar

For Petitioner in
Crl.O.P.No.23891/2015 : Mr.C.Manishankar,
Senior Counsel
for Mr.A.Velmurugan

For R1 in Both Crl.O.Ps: Mr.C.Iyyappa Raj,
Additional Public Prosecutor

For R2 in Both Crl.O.Ps: Mr.ARL.Sundaresan, Senior Counsel
for Mrs.AL.Gandhimathi

C O M M O N O R D E R

The Petitioners who are Accused No.1 and Accused No.5 in Crime No.33 of 2015, dated 08.04.2015, on the file of the 1st respondent and they have filed these Criminal Original Petitions seeking to quash the proceedings.

2.The brief facts of the case as per the defacto complainant viz., K.Boopathi, the 2nd respondent in these cases, is that his father viz., G.Kesavalu Naidu @ Kesavan, was engaged in the business of digging bore wells and he passed away on 15.10.2014 and after his demise, the de facto complainant is taking care of his business and also the cases which were run by him. The de facto complainant's father in the course of his business of digging bore wells had invented a different process and he had applied for registration of Copyright before the Copyrights Office at Chennai. The Copyright was published in the Government Gazette vide No.441/ MAS/ 1999, 836/ MAS/ 2000 and 097/ MAS/ 2001.

3.In order to give the effect to the invention, his father had approached manufacturers and owners of pipe manufacturing companies and he entered into an agreement that one Binjarajaka Steel Tubes Limited at Secundarabad. He had also applied for getting his Trademark of "G.K.T" registered at the Office of the Registrar of Trademarks and he had also obtained a certificate for the same. While so, he came to understand that one Sri Lakshmi Mettal Udyog Limited and some other companies in violation of the Provisions of the Copyright Act, had manufactured duplicate pipes and sold them at Bangalore, Coimbatore, Hosur and Vaniyampadi and thereby, his father had preferred complaints against the violators based on which, cases in Crime Nos.139 of 2005 and 140 of 2005 were registered by the 1st respondent police against the petitioners.

4.The offenders/violators in Crime Nos.139 of 2005 and 140 of 2005 had individually approached this Court and filed petitions in Crl.O.P.Nos.17500/2008 and 17503/2008 and obtained stay orders and thereby, the proper investigation could not be done. On 28.10.2014, this Court had dismissed the petitions and had directed the 1st respondent police to complete the full-fledged enquiry and had also directed to submit the report of the investigation before this Court on or before 31.03.2015. While that was so, two other companies viz., "Apollo Tubes Limited, Hosur" and Calcutta Tubes India (P) Limited, Bangalore" and its Chairman and Directors have misused the invention of the de facto complainant and had in order to cause wrongful loss to the de facto complainant had manufactured and sold duplicate pipes, by appointing authorised dealers and one such dealer Naaz Enterprises had sold the pipes to one Mahesh, a rig owner by Bill No.082, dated 16.10.2014. The de facto complainant personally enquired and found it to be true and he had preferred the complaint against them for violating Sections 51& 63 of the Copyrights Act. Based on the complaint, a case was registered by the 1st respondent in Crime No.33 of 2015, for the offence under Sections 468, 471, 480, 420 IPC and Sections 51, 63, 65(A) of the Copyright Act, 1957, against the companies and its officials. The present petitions have been filed by the A1 and A5 to quash the FIR in Crime No.33 of 2015.

5.Heard Mr.A.Ramesh, Senior Counsel appearing for the petitioner/A1 and Mr.Mani Shankar, Senior Counsel appearing for the petitioner/A5.

6.Mr.A.Ramesh, the learned Senior Counsel appearing for the 1st petitioner /A1 would submit that at the outset, the entire proceedings is nothing but an abuse of process of law. The de facto complainant, on the date of complaint was not having any rights either Copyright or the patent right in respect of the tubes as claimed by him. The de facto complainant had suppressed the same and the FIR itself has to be quashed on the ground of suppression of material facts. The learned senior counsel would submit that the fact remains that the father of the defacto complainant had earlier preferred a complaint which was registered in Crime No.141 of 2005, by the very same 1st respondent. Against the registration of the FIR, the petitioner had approached this Court and filed Crl.O.P.No.20386 of 2005, and this Court by an order dated 03.11.2009, finding that the copyright granted to the de facto complainant's father relates only to the drawing submitted by him and that it does not relate to the steel pipes manufactured by using the drawings had held that the offence under Section 63 of the Copyrights Act is not made out and had quashed the earlier complaint. This Court had also quashed the complaint in respect of the other offences also.

7. Against the quashing of the FIR, the de facto complainant's father viz., G.K. Kesavalu Naidu @ Kesavan had approached the Hon'ble Supreme Court, by filing Special Leave to Appeal (Crl.) No(s).10081 of 2009 and the special leave petition was dismissed at the admission stage itself on 26.02.2010 and thereby, confirming the order passed by this Court. Thereafter, the de facto complainant's father had filed Review Petition (Crl.) No(s).236 of 2010 in Special Leave Petition (Crl.) No.10081 of 2009 and the same was also dismissed by this Court on 28.04.2010. Suppressing the same, the present complaint has been filed.

8. Meanwhile, the de facto complainant's father in violation of the Statutory Provision under Proviso to Sub Section (1) of Section 45 of the Copyright Act got the copyright entered in the Register, dated 09.12.2003.

9. Against the registration of the copyright granted to the de facto complainant's father, the Federation of Industries of India (in which, the petitioner is a member) through its Secretary General, had filed Case No.2 of 2006, before the Copyright Board at Delhi, for the expunction of two entries wrongly remaining in the Copyright Register and the Copyright Board, Delhi after hearing the parties, by an order dated 04.07.2008, expunged the entries relating to registration granted to the de facto complainant's father. Against the order of expunging the entries, the father of the de facto complainant had preferred C.M.A.No.2859 of 2008, before the Division Bench of this Court and thereafter, he did not pursue further and thereby, the C.M.A.No.2859 of 2008 came to be dismissed. Further, the Federation of Industries of India and another have filed a Civil Suit before the High Court of Delhi in CS (OS) No.596 of 2007, seeking to declare that the Copyright does not subsist in the drawings entered in the Registrar of Copyrights under entry Nos.A-65629/2003 and A-65630/2003, or in any another similar drawings that may be in the possession of the de facto complainant's father and the suit came to be allowed in favour of the Federation of Industries in India, by an order dated 18.11.2011, declaring that the Copyright does not subsist in favour of the de facto complainant's father. Further, the de facto complainant's father was also directed to pay punitive damages to the tune of Rs.2 Lakhs to the Federation of Industries in India for making a wrong claim. The relevant paragraphs of the decree / order is extracted hereunder:

"29. The suit of the plaintiffs is decreed in terms of Para 30(i) to (iii) of the plaint. The same read as under:

(i) A declaration that copyright does not subsist in the drawings entered in the Registrar

of Copyrights under entry numbers A-65629/2003 and 65630/2003, or in any other similar drawings that may be in the possession of the defendants;

(ii) An order restraining the defendants, together with their employees, agents, servants and all others acting on their behalf, from threatening the plaintiffs including the members of plaintiff No.1 and from interfering with the manufacture of steel tubes by them on the basis of the drawings registered as "artistic works" under Nos.A-65629/2003 and Nos.A-65630/2003 or any other similar drawings in the possession of the defendants or that they may make in future;

(iii) An order restraining the defendants, together with their employees, agents, servants and all others acting on their behalf, from defaming the plaintiffs including the members of plaintiff No.1, by alleging that their activity of manufacturing steel tubes amounts to any kind of copyright infringement.

30. As far as other reliefs are concerned, the plaintiffs are entitled for punitive damages to the tune of Rs.2 lac against the relief of damages claimed by the plaintiffs who are also entitled for costs. The decree be drawn accordingly. All pending applications stand disposed of. "

10. Learned Senior Counsel would submit that in view of the above orders, no right either Copyright or Patent Right subsists in favour of the de facto complainant or his father, while so, in order to blackmail the genuine manufactures and to obtain illegal gains, the de facto complainant in collusion with the 1st respondent had preferred a false complaint, based on which, he had been continuing to harass the manufactures of pipes like that of the petitioners.

11. The learned Senior Counsel would further submit that the entire proceedings is nothing but mere abuse of process of law by which, the de facto complainant had obtained unjust enrichment under the threat of arrest and seizure of the pipes from the factories belonging to genuine manufacturers. He would reiterate that the entire registration of FIR and further proceedings is nothing but an abuse of process of law and would seek to quash the FIR. The learned senior counsel would further submit that based on the false complaint and the registration of the case, the petitioner had been subjected to harassment and

loss. After registration of the FIR, the 1st respondent police approached the learned Judicial Magistrate, Vaniyambadi and obtained search warrant on 20.06.2015 and also approached the Principal Civil Judge and JMFC at Nelmangala and obtained permission to execute the search warrant. Pursuant to which, the factory premises of the petitioner was searched on 01.09.2015. Though, search warrant had been issued only to search the premises situated at M/s.Calcutta Tubes India Private Limited at RRMR Extension at Bengaluru, the premises of the petitioner at Budhihal Village, Nelmangala Taluk, Bengaluru Rural District was searched and 985 pipes were seized. The value of the seized pipes is worth about Rs.17,73,000/- on the date of seizure and later, they were transported and they are now in the custody of the respondent. Due to stay granted by this Court, the petitioner in Crl.O.P.No.22493 of 2015 was unable to take return of the pipes and thereby, M.P.No.2 of 2015 in Crl.O.P.No.22493 of 2015 had been filed seeking for a direction to the 1st respondent police, to produce the seized 985 pipes before the learned Principal District Munsif cum Judicial Magistrate, Vaniyambadi and to return the pipes to the petitioner.

12.Mr.Manishankar, learned Senior Counsel appearing for the 5th petitioner/A5 in Crl.O.P.No.23891/2015/A5, would submit that the petitioner is a genuine manufacturer of pipes. Based on the false complaint made with suppressions of vital facts, the case has been registered and the petitioner has been subjected to continuous harassment. He would submit that the fact remains that as on date, the Copyright which was wrongly given to the de facto complainant has been expunged by the order of the Copyright Board, Delhi, dated 04.07.2008 in Case No.2 of 2006. Further, the complaint is not clear as to whether the de facto complainant claims to have got Copyright or a patent right. Admittedly, as on date, the defacto complainant does not have copyright as claimed by him. The copyright granted to his father had been expunged. Once the Copyright granted to the de facto complainant's father has been expunged, he has no right to maintain a complaint. He would submit that when the de facto complainant does not have any copyright, the complaint filed invoking the provisions of the Copyright Act, is liable to be quashed.

13.In support of his contention he would rely upon on the Judgment of the Hon'ble Apex Court in Krishika Lulla v. Shyam Vithalrao Devkatta reported in (2016) 2 SCC 521. Wherein, the Apex Court has held that when there is no copyright, the question of infringement will not arise.

14.Mr.C.Iyyappa Raj, learned Additional Public Prosecutor would vehemently oppose stating that there is no bar in entertaining the second complaint when a case is made out. He

would submit that the case has been registered only on the directions of this Court and that the case is only at the initial stage of investigation and the complaint cannot be quashed at the threshold, without any enquiry or investigation being conducted. He would further submit that because of stay, there is no progress in this case and the investigation could not be conducted.

15.Mr.ARL.Sundaresan, learned Senior Counsel appearing for the 2nd respondent/de facto complainant would submit that in respect of a similar complaint, some other accused similar to that of the petitioners have approached this Court by filing Criminal Original Petitions in Crl.O.P.Nos.17500, 17503 of 2008 and this Court by an order dated 28.10.2014, had dismissed the quash petitions stating that the ingredients on the offences are satisfied and he would oppose for quashing the Criminal Original Petitions. However, he would fairly submit that the copyright granted to the father of the defacto complainant has been expunged.

16.At this juncture, Mr.C.Manishankar, learned senior counsel would submit that this Court, while dismissing the Crl.O.P.Nos.17500 and 17503/2008, had decided on the wrong premises that the Trademark of the de facto complainant was infringed, whereas, it is the admitted case of the complainant that the Trademark was not infringed. He would submit that much water has flown down the bridge after the earlier dismissal and as on date the de facto complainant has no Copyright as allegedly claimed by him and thereby, the complaint itself cannot be maintained and thereby further proceedings is nothing but an abuse of process of law. He would further submit that as on date, the copyright granted in favour of the defacto complainant's father has been expunged by the Copyright Board, Delhi in Case No.2 of 2006, dated 04.07.2008 and the appeal preferred by the father of the defacto complainant has also been dismissed and as on date, the defacto complainant does not have any copyright.

17.Heard the counsels and perused the materials placed on record.

18.In this case, the defacto complainant has preferred the complaint based on the Copyright alleged to be granted to his father. The Federation of Industries of India through its General Secretary had filed Case No.2 of 2006, before the Copyright Board at Delhi for expunging the entries in the Copyright Register and the Copyright Board, Delhi by an order dated 04.07.2008 had expunged the entries relating to registration granted to the defacto complainant's father. Against that order, the father of the defacto complainant had

preferred C.M.A.No.2859 of 2008 which came to be dismissed later. Further, the Federation of Industries of India and another have also filed a Civil Suit before the High Court of Delhi in CS (OS) No.596 of 2007, seeking to declare that copyright does not subsist in the drawings entered in the Register of Copyrights under entry Nos.A-65629/2003 and A-65630/2003 or in any other similar drawings that may be in the possession of defacto complainants father and the suit came to be allowed in favour of the Federation of Industries of India by order dated 18.11.2011, declaring that the copyright does not subsist in favour of the defacto complainants father and further the defacto complainant's father was also directed to pay punitive damages to the tune of Rs.2 Lakhs to the Federation of Industries of India for making a false claim. The fact remains that, as on date, no copyright subsists either in favour of the father of the defacto complainant or the defacto complainant who claims through his father. When such being so, when there is no copyright, the question of infringement will not arise as held by the Hon'ble Apex Court in Krishika Lulla v. Shyam Vithalrao Devkatta stated supra and thereby, the complaint cannot be maintained. However, the pendency of the FIR is nothing but an abuse of process of law.

19.In view of the above, this Court is inclined to allow the Criminal Original Petition filed by the petitioners and quash the FIR in Crime No.33 of 2015, in respect of the petitioner.

20.Accordingly, these Criminal Original Petitions stand allowed. and the proceedings in Crime No.33 of 2015 dated 08.04.2015, on the file of the Sub-Inspector of police, Thimmapettai Police Station, Vaniyambadi Town Circle, Vellore District, shall stand quashed. Consequently, connected Miscellaneous Petitions are also disposed.

21.In view of quashing of FIR, M.P.No.2 of 2015 filed by the petitioner in Crl.O.P.No.22493 of 2015, stands allowed. A direction is issued to the learned Principal District Munsif cum Judicial Magistrate, Vaniyambadi, Vellore District, to return the 985 pipes seized by the 1st respondent in connection with Crime No.33 of 2015 to the petitioner. If the pipes are not produced before the Court the 1st respondent is directed to return the pipes seized in Crime No.33 of 2015 to the petitioner in Crl.O.P.No.22493 of 2015 forthwith.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ssi

To

1)The Principal District Munsif cum Judicial Magistrate,
vaniyambadi, Vellore District.

2)The Sub-Inspector of Police,
Thimmapettai Police Station,
Vaniyambadi Town Circle,
Vellore District.

+2 CC to Mrs.AL.Gandhimathi,Advocate SR Nos.9724 & 9725

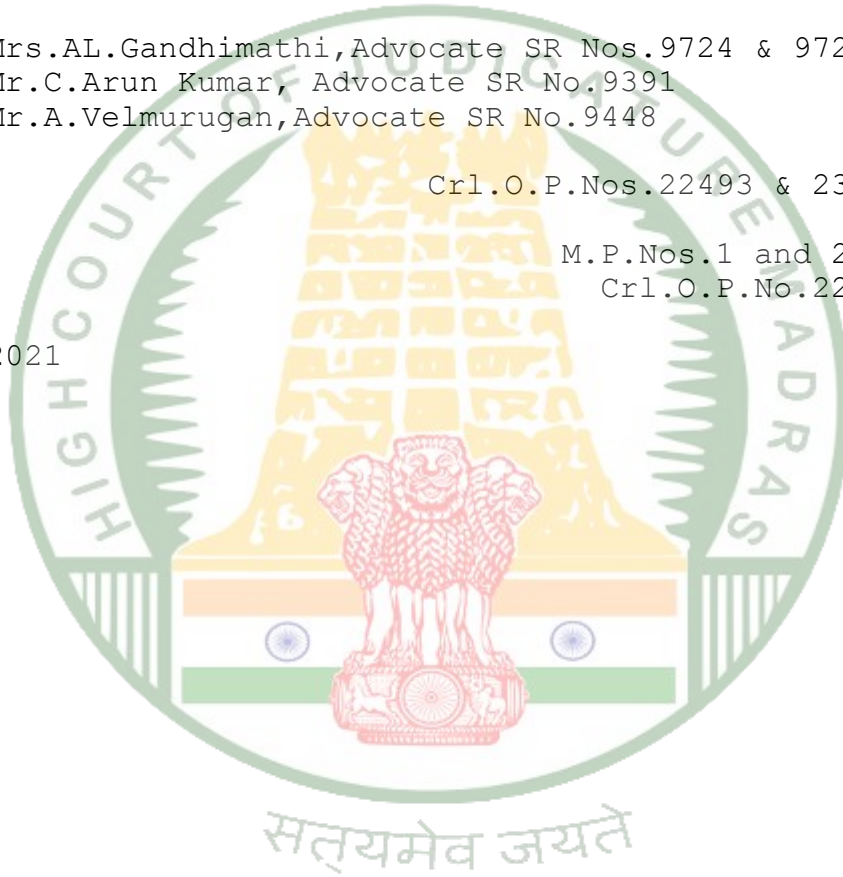
+2 CC to Mr.C.Arun Kumar, Advocate SR No.9391

+1 CC to Mr.A.Velmurugan,Advocate SR No.9448

CrI.O.P.Nos.22493 & 23891 of 2015
and

M.P.Nos.1 and 2 of 2015 in
CrI.O.P.No.22493 of 2015

RSV(CO)
RG.20.04.2021



WEB COPY