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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2021

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

CrI.RC.No.457 of 2016

Telebrands India Private Limited,
Rep. by its Authorized Signatory
Mr.Anil Menon
Having its registered office at
Plot No.168A, 25th Road,
Wagle Industrial Estate, Thane - 400604
and its Branch Office at
No.G-194, Ground Floor,
IIIrd Phase, Spencer Plaza,
Anna Salai, Chennai - 600002.

...Petitioner/Complainant

Vs.

1. R.P.Telebuy Skyshop Private Limited,
Having its registered office at
No.81B, 2nd Floor, Tower A,
Prince Info Park,
Ambattur Industrial Estate,
Chennai - 600058.

2. Mr.Ranjan Pillai
Promoter and Managing Director,
R.P.Telebuy Skyshop Private Limited,
Having its registered office at
No.81B, 2nd Floor, Tower A,
Prince Info Park,
Ambattur Industrial Estate,
Chennai - 600058.

3. Mr.Vasanth
Promoter and Managing Director,
R.P.Telebuy Skyshop Private Limited,
Having its registered office at
No.81B, 2nd Floor, Tower A,
Prince Info Park,
Ambattur Industrial Estate,
Chennai - 600058.

...Respondents/Accused

Prayer:- This Criminal Revision Petition is filed under
Section 397 and 401 of Cr.P.C., to set aside the order dated
16.02.2016 passed in CrI.MP.No.518 of 2016 on the file of the
Chief Metropolitan Magistrate, Allikulam, Chennai - 3.



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For Petitioner : Mr.Harikrishnan
for M/s. Govind Chandrasekhar
For Respondents : Mr.V.Subramanian [R1 & R3]
for M/s.Dass Viswa Associates
No appearance - R2

ORDER

This Criminal Revision Petition has been filed challenging the order dated 16.02.2016 passed by the Chief Metropolitan Magistrate, Allikulam, Chennai - 3, in CrI.MP.No.518 of 2016.

2. The revision petitioner is the petitioner before the trial Court. The petitioner has filed a private complaint under Sections 190(1)(a) and 200 Cr.P.C. r/w Sections 51, 63 & 69 of Copy Rights Act, 1957, by alleging that the kitchen appliance called NICER DICER has been given with the trade mark certificate in his favour on 31.03.2009 and the respondents were advertising an another product called SUPER DICER PRO but having the very same identity of NICER DICER. It is alleged by the petitioner that the respondents have infringed the copyrights granted in his favour and thus, committed an offence under Section 51 and for which they have to be punished under Sections 63 and 69 of the Copy Rights Act.

3. The learned Chief Metropolitan Magistrate dismissed the complaint by making the following observation in paragraph 4 of the judgement as under:-

".....

4. While I perused the case on hands, that the products namely NICER DICER and SUPER DICER PRO are not produced before this Court to find the difference between the two. More so, whether the NICER DICER product is registered under the Copy Right Act in India or not? No record is placed before this Court. The petitioner states that the product SUPER DICER PRO is the one which is looks like a NICER DICER. The material evidences to make out the case to issue process are absent. It is settled law that "It is not necessary that the alleged infringement should be an exact or verbatim copy of the original but its resemblances with the original in a large measure is sufficient to indicate that it is a copy". But in this case, the petitioner has not produced any original or copy to differentiate the same. More so, "Whether or not there has been a violation of copyright is to see if the reader, spectator, or the viewer after having read or seen both the works would be clearly of the opinion and get an unmistakable impression that the subsequent work appears to be a copy of the first". It is also absent in this



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petition. Further the two products are not produced by the petitioner before this Court to get process for comparison. There is no prima facie case to take cognizance under Copy Right Act in the petition. Therefore, this Court is declined to accept the petition which is liable to be dismissed and the same is dismissed."

4. The above observation of the learned Chief Metropolitan Magistrate reveals that no prima facie materials have been produced before the Court to show that the petitioner is the copyright owner and the respondents' advertisement in connection with an another product SUPER DICER PRO was made in violation of the copyright granted in favour of the petitioner. Unless the petitioner produce any materials to show that the copyright granted in his favour was infringed or violated, no criminal action under Sections 63 & 69 of the copyright Act can be taken.

5. It is also submitted by the learned counsel for the respondents 1 & 3 that during the pendency of this proceedings, a civil suit was filed against the petitioner in the High Court in C.S.No.263 of 2016. Since the matter has been settled between the parties, appropriate orders have been passed by this Court in the same on 23.03.2021. In view of the said order, no tension is seen to be present in the respective businesses of the parties. Since the impugned order of the learned Chief Metropolitan Magistrate is well reasoned and correct, I do not find any reason for interference.

In the result, this Criminal Revision Petition is dismissed and the Order dated 16.02.2016 of the Chief Metropolitan Magistrate, Allikulam, Chennai - 3 passed in Crl.MP.No.518 of 2016 is upheld. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Chief Metropolitan Magistrate, Allikulam, Chennai - 3.

+1cc to M/s. Govind Chandrasekhar, Advocate SR. No.58927

+1cc to M/s.Dass & Viswa Associates, SR. No.58550

Crl.RC.No.457 of 2016