



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.10.2021	01.11.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.17910 OF 2018

1.M.V.Balasubramaniam
2.B.Jayashree
3.B.Nithish Harihar

..Petitioners/Accused 2,4,5

- Vs -

1.The State, rep. By
Inspector of Police
Central Crime Branch
Salem.
FIR No:15/18

2. Sivanandham

..Respondents/Respondents

Criminal Original Petitions filed u/s 482 Cr.P.C.
praying this Court to call for the records of FIR
No.15/2018 pending on the file of the Inspector of Police,
Central Crime Branch, Salem and quash the same.

For Petitioners : Mr. K.Sukumaran for
Mr. M.R.Gokulakrishnan

For Respondent : Mr.C.E.Pratap, GA (Crl. Side)
for R-1
Mr. John Sathyan for
Mr. I.Arokiasamy, for R-2

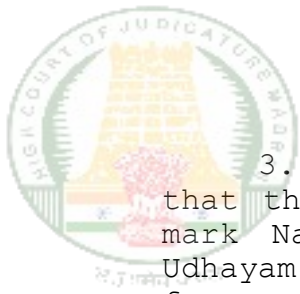
ORDER

The present petition has been filed to quash the FIR
in No.15/2018 registered by the 1st respondent at the
instance of the 2nd respondent.

2. The FIR had come to be registered at the instance
of the 2nd respondent, by virtue of his complaint, in and by
which it has been alleged by the 2nd respondent that though



the petitioners, through the retirement deed, had retired from the affairs of the partnership firm, viz., Narasus Coffee Company, as early as on 27.8.2006 for which a sum of Rs.26.5 Crores was paid and, thereafter, none of the petitioners and the other accused had any right or title over the trademark/word mark "NARASUS" and that the said trademark/word mark is the exclusive property of the partnership firm of the 2nd respondent of which his wife and son are the other partners, however, in detriment to their right and title, the petitioners and the other accused are using the trademark/word mark "NARASUS" for all the products prepared and marketed by them under their brand Narasu's Roller Flour Mills for which the 2nd respondent filed C.S. No.291/07 on the file of this Court seeking a restraining order against the petitioners and the other accused from using the trademark/word mark and various other suits in regard to usage of the trademark/word mark has also been filed by the parties and inspite of the interim directions issued by this Court as also the other courts in the various petitions/suits filed by the parties and also the same having been confirmed by the Division Bench of this Court in the intra court appeal, the petitioners and the other accused are still interfering with the exclusive right and title of the 2nd respondent to the trademark/word mark "NARASUS" by giving licence for the utilisation of the trademark/word mark "NARASUS" to third parties for the utilising the same in the products, though the petitioners and other accused do not have any right and title over the trademark/word mark and even the very licence given by the petitioners clearly reveal that the petitioners have only applied for the trademark/word mark and, therefore, granting licence to some of the other petitioners to use the trademark/word mark, is nothing but an attempt on the part of the petitioners to pass off the 2nd respondent's trademark/word mark by uttering falsehood while granting licence and that the exclusive right and title vested with the 2nd respondent. It is the further case of the 2nd respondent that in furtherance to the said act of granting licence, the petitioners have placed fraudulent and fabricated materials, which were created and filed as Ex.R-5 before the Principal District Judge, Salem, in I.A. No.4 of 2016 in O.S. No.5 of 2016 knowing fully well that the said exhibit is a fabricated document and, therefore, the present complaint was preferred by the 2nd respondent to take suitable action against the petitioners and the other accused under the relevant provisions of the Indian Penal Code. On the basis of the said complaint, the 1st respondent has registered the FIR u/s 193, 196, 120-B, 34 and 465 IPC against the accused, in all 5, of which A-2, A-4 and A-5 are the petitioners herein and A-1 and A-3 are the firms in which the petitioners are the partners/Directors.



3. Learned counsel appearing for the petitioners submitted that the petitioners are estopped from using the trademark/word mark Narasu's, Narasu's Coffee, Narasu's Delite and Narasu's Udhayam as well as the device mark with a lady sipping coffee from a cup held in her hand enclosed within a circle in respect of coffee beans, coffee powder, chicory powder, roasted coffee, instant coffee and liquid coffee and they have been granted exclusive right to use the word marks Narasu's Power, Narasu's Vetri, Narasu's Wheel with the device of a lady sipping coffee from a cup held in her hand enclosed within a circle and found within a dotted oval shaped outline for all types of wheat products including Atta, Maida, Suji, Rough Barn, Bran Flakes, Wheat Atta to the exclusion of Narasu's Corree Company.

4. It is the submission of the learned counsel for the petitioners that the learned single Judge of this Court, while passing the above directions in the original applications in C.S. No.291/2007 has categorically held that insofar as coffee products are concerned, the word mark would be the exclusive property of Narasu's Coffee Company, but insofar as wheat products is concerned, the said word mark would be the exclusive property of Narasu's Roller Flour Mills and one cannot enter into the territory of business of the other by using the said word mark. It is the submission of the learned counsel for the petitioners that the said order of the learned single Judge also found favour with the Division Bench of this Court and in line with the said orders, the petitioners have given the licence to certain other persons to carry on business acts by using the word marks for the specified products to which they have been permitted vide the above order.

5. It is the further submission of the learned counsel for the petitioner that though application has been filed for using the word mark, which is pending, however, in view of the order of this Court above, the petitioners are not barred from using the word marks and, in fact, the petitioners have been granted exclusive rights to use the said word mark for wheat products and such being the case, the grievance of the 2nd respondent that the petitioners have no right to use the said word mark, is wholly misconceived and that the petitioners have not only an exclusive right to use the said word mark, but that exclusivity extends to the petitioners entering into licence agreement with other persons as well.

6. It is the further submission of the learned counsel for the petitioners that the offence relating to Section 193 and 196 IPC would not survive as no material has been placed to show that the documents/exhibits placed before the court below are false or fabricated documents and further, the said fact, as on



7. Learned counsel for the petitioners further submit that initially the complaint filed by the 2nd respondent u/s 156 (3) Cr.P.C. was forwarded to the Inspector of Police, Hasthampatty Police Station for registration of the case by the Judicial Magistrate No.3, Salem, vide order dated 2.3.18. But on the basis of a petition filed by the 2nd respondent, the said order was modified and the complaint was directed to be forwarded to the Inspector of Police, CCB, Salem, to register a case and investigate the same, vide order dated 15.3.2018. It is the submission of the learned counsel for the petitioners that once the complaint stood forwarded to the Inspector of Police, Hasthampatty Police Station, the court below cannot modify its order except for clerical and arithmetical errors in view of the bar u/s 362 Cr.P.C. However, the Court below had passed a fresh order though the previous order was very much alive. Therefore, the said order is wholly unsustainable and not maintainable.

9. It is the further submission of the learned counsel for the 2nd respondent that only for the purpose of exclusivity, the petitioners were paid a sum of Rs.26.5 Crores by the 2nd respondent and, therefore, it does not lie in the mouth of the petitioners to contend that they can use the word mark in similarity on the products, except for products relating to coffee.

<https://hcservices.ecourts.gov.in/hcservices/>



of the 2nd respondent, after taking into consideration the decision in C.S. No.291/2007 as affirmed by the Division Bench on appeal. That being the case, it is the submission of the learned counsel for the 2nd respondent that the licence granted to third parties is a gross violation of the order passed by this Court and, therefore, the complaint at the instance of the 2nd respondent, which has culminated in the FIR does not require any interference.

11. It is the further submission of the learned counsel for the 2nd respondent that use of deceptively similar word mark and granting a licence to third parties to use the said word mark is against the well settled law on trade marks and it is clear infringement of the rights of the 2nd respondent to use the word mark exclusively in its products. Such being the case, the learned single Judge in C.M.A. No.2470/2016 having taken into consideration the decisions of the learned single Judge as also the affirmation of the said order by the Division Bench and the other orders passed by the various judicial forums which lean in favour of the 2nd respondent, the 2nd respondent has taken the judicious route to file the complaint against the petitioners for infringement of the trademark of the 2nd respondent.

12. It is the further submission of the learned counsel for the petitioner that insofar as the contention of the petitioners relating to the bar u/s 362 Cr.P.C. for the trial court to modify the order, in view of the apprehension of the 2nd respondent and also the act of the law enforcing agency before whom the complaint for placed for registration of the case, who were going hand in glove with the petitioners, the 2nd respondent had knocked the doors of the temple of justice and appreciating the apprehension of the 2nd respondent, the court below had rightly modified the order and the bar, alleged by the petitioners would not operate as no order on merits has been passed on the case, but only registration of the case was entrusted to another investigating agency. In fine, it is the submission of the learned counsel for the 2nd respondent that the appreciating all the materials, the direction for registration of FIR has been registered on the basis of the various affirmative orders obtained by the 2nd respondent in his favour and, therefore, no interference is warranted with the registration of the FIR by the 1st respondent.

13. This Court paid its careful consideration to the submissions advanced by the learned counsel for the parties and perused the materials available on record.

14. The genesis on which the whole fabric of the complaint is woven and the resultant registration of the FIR is that the petitioners have utilised the word mark "Narasu's" for the



products marketed by them and that with regard to the said marketing, they have given licence to the other petitioners to use the word mark, though they have no rights over the said word mark and that they have applied for the word mark only after entering into the licence with third parties and, therefore, their act in using the word mark belonging to the 2nd respondent is nothing but clear infringement of the order passed by the learned single Judge in C.S. No.291/2007 as affirmed by the Division Bench and also followed by the learned single Judge in CMA No.2407/2016.

15. To address this issue, it is but necessary to advert to the order passed by the learned single Judge in C.S. No.291/2007, which was a suit filed by the 2nd respondent herein as against the petitioners claiming exclusive rights over the word mark "Narasu's". For better appreciation of the case, the findings recorded by the learned single Judge as also the operative portion of the order in and by which the rights that are available to the petitioners and the 2nd respondent have been detailed, are quoted hereunder for better appreciation of this case :-

"15. In view of the above, a journey into the law relating to infringement or passing off, of a trademark or copy right, is wholly unnecessary for deciding the dispute on hand. Prima facie, the partnership firms own these trade marks and hence the partners who now constitute these firms will have exclusive rights over the marks owned by them. Hence, all the applications are disposed of with the following directions :-

(a) The word marks Narasu's, Narasu's Coffee, Narasu's Delite and Narasu's Udhayam as well as the device mark with a lady sipping coffee from a cup held in her hand enclosed within a circle, can be used by the plaintiff in C.S. No.291 of 3007, viz., Narasu's Coffee Company, to the exclusion of the defendants, in respect of coffee beans, coffee powder, chicory powder, roasted coffee, instant coffee and liquid coffee included in Clause 30, subject to any restriction (including disclaimer, if any) that had been imposed under the Certificates of Registration bearing trade mark Nos.337509, 337510, 73371 and 73369. The defendants in C.S. No.291 of 2007 are restrained from using the same word mark and device mark in respect of these goods such as coffee and coffee products.

(b) The word marks Narasu's Power, Narasu's Vetri, Narasu's Wheel and நரசுஸ் with the device of a lady sipping coffee from a cup held in her hand



WEB COPY

enclosed within a circle and found within a dotted oval shaped outline, may be used by Narasu's Roller Flour Mills in relation to all types of Wheat products including Atta, Maida, Suji, Rough Bran, Bran Flakes, Wheat Attato the exclusion of Narasu's Coffee Company.

(c) If Narasu's Coffee Company, carries on business in Wheat products, it shall not use the above same or similar word mark and the device mark for those products. Similarly, if Narasu's Roller Flour Mills carries on business in coffee products, it shall not use the same or similar word mark or device mark in relation to such products."

16. It is conceded by the learned counsel on either side that the order passed by the learned single Judge in C.S. No.291/2007 has been affirmed by the Division Bench. It is borne out by record, as is evident from the order of the learned single Judge in C.S. No.291/2007 that very many litigations have been initiated by the 2nd respondent against the petitioners against one forum or the other and various orders have been invited. However, all the orders sync with the order passed by the learned single Judge. Even in one other application in A. Nos.858 to 860/2011 in C.S. No.698/2011, filed by the 2nd respondent, one other learned single Judge of this Court has passed orders in consonance with the orders passed in C.S. No.291/07.

17. However, curiously, CMA No.2407/16 had been filed by the 2nd respondent herein relating to the grant of licence by the petitioners to third parties in which order was invited from one other learned single Judge of this Court, wherein it has been opined that the petitioners did not have any right to enter into any licence with third parties for the use of the word mark "Narasu's" and the petitioners were estopped from using the word mark "Narasu's". However, the said order was taken in appeal before the Hon'ble Apex Court in which an order of status quo has been granted, which is not in dispute. In effect, the status quo order of the Hon'ble Supreme Court would only mean that for the present the Hon'ble Apex Court has revived what was the position before the passing of the order of the learned single Judge in CMA No.2407/16, as any other interpretation given to the said status quo order would render the said order of the Hon'ble Apex Court otiose. Such being the case, the one and only inference that could be drawn from the said order is that the situation as was prevailing prior to the order of the learned single Judge in CMA No.2407/16 stood restored pending final adjudication of the proceeding by the Hon'ble Apex Court. Therefore, in that backdrop, the order passed in C.S.



No.291/2007 needs to be looked into to come to a just and reasonable finding whether the act of the petitioners has infringed the rights of the 2nd respondent in the exclusive right to the word mark "Narasu's".

WEB COPY

18. In the above scenario, a careful perusal of the order passed in C.S. No.291/07 reveals that while the 2nd respondent has been given exclusive right to use the word mark as well as device mark for such of the products mentioned in clause (a) of the order, which relates to coffee to the exclusion of the petitioners, vide clause (b) of the order, the petitioners have been given exclusive rights to use the word mark with device mark for the products mentioned in the said clause to the exclusion of the 2nd respondent. Vide clause (c) of the order, a clear mandate is prescribed that Narasu's Coffee Company shall not use the same or similar word mark and device mark for its business in Wheat products and Narasu's Flour Mills shall not use the word mark and device mark in relation to business in coffee products. From the above, there is a clear demarcation provided in the said order wherein the products in relation to which the petitioners and the 2nd respondent have exclusive rights has been codified.

19. Once the petitioners claim that they have been provided with exclusive rights to use the word mark and device mark for its wheat products, the petitioners can enter into licence agreement with any person of their choice, but the said agreement would be subject to the result of the orders that would be passed by the Hon'ble Apex Court. That being the case, the FIR at the instance of the 2nd respondent is nothing but an attempt by the 2nd respondent to scuttle the petitioners from using the said word mark and device mark to which they are entitled by virtue of the order in C.S. No.291/07. The order passed in CMA No.2407/16 has been put on hold by the order of status quo granted by the Hon'ble Apex Court and that being the factual position, the FIR registered by the 1st respondent on the complaint of the 2nd respondent cannot be allowed to continue.

20. Be that as it may. One other curious aspect which has been brought to the notice of this Court by the learned counsel for the petitioners is the fact that initially, vide order dated 2.3.18, learned Judicial Magistrate No.3, had directed the registration of the complaint by the Inspector of Police, Hasthampatty Police Station, Salem, on the basis of the complaint given by the 2nd respondent u/s 156 (3) Cr.P.C. However, subsequent to the said order, on the petition of the 2nd respondent, alleging bias on the part of Hasthampatty Police in investigating the matter, the learned Magistrate had modified the earlier order passed on 2.3.18 and ordered registration of the complaint by the Inspector of Police, CCB, Salem and for



WEB COPY

investigation of the case. The sum and substance of the stand of the learned counsel for the petitioners is that once an order has been passed on the complaint, the learned Magistrate has no powers to modify the order, except for correcting the clerical and arithmetical errors, in view of the bar envisaged u/s 362 Cr.P.C.

21. To appreciate the said submission, it is but necessary to refer to Section 362 Cr.P.C., which is quoted hereunder :-

"362. Court not to alter judgment - Save as otherwise provided by the Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

22. A careful perusal of the above provision of law makes it abundantly clear that the Court, once it signs the final order disposing of the case, except for correcting the clerical and arithmetical errors, no other alterations could be made in the final order passed by the Court. In the above backdrop, the operative portion of the order passed by the learned Judicial Magistrate requires to be looked into to find out whether clerical and arithmetical errors are corrected or is there any correction modifying the order, which is made impermissible u/s 362 Cr.P.C. The operative portion of the order of the learned Magistrate is quoted hereinbelow :-

".....

"Justice should not only be done. But seems to be done"

Hence, on considering the entire records, in the interest of justice the earlier order of this Court on 02.03.2018 is hereby modified as the complaint herein is forwarded to the Inspector of Police, CCB, Salem, to register the case to investigate the matter and to file the report on or before 6.4.18."

23. From the above order, it is implicitly clear that the final order directing a particular investigating agency to investigate the case and file a final report has been modified by the order dated 15.3.2018 on the petition of the 2nd respondent herein, which is per se impermissible in view of the bar u/s 362 Cr.P.C. Once the court below has passed an order directing investigation by a particular investigating agency, if any grievance is expressed by any of the parties, the course open to the said party is to approach the higher judicial forum



and no petition could be entertained before the same court for modification of the order in view of the bar u/s 362 Cr.P.C. However, the court below has totally failed to appreciate or turn its mind to Section 362 Cr.P.C. before passing the said order for modification. The said order passed by the court below is wholly unsustainable and deserves to be set aside.

24. However, in view of the discussion made above, since this Court has already expressed its view that the complaint, which has led to the registration of the FIR itself is misconceived and cannot be allowed to stand, this Court is inclined to quash the FIR by allowing the present petition.

25. For the reasons aforesaid, this criminal original petition is allowed and the FIR No.15/2018 on the file of the Inspector of Police, Central Crime Branch, Salem/1st respondent herein is quashed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

GLN

To

1. Inspector of Police,
Central Crime Branch,
Salem.

2. The Judicial Magistrate No.3,
Salem.

3. The Public Prosecutor,
High Court, Madras.

CRL. O.P. NO. 17910 OF 2018

KSM (CO)
PR (23/11/2021)