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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN
Criminal Revision Case No.1365 of 2019

and

Crl.M.P.No.4742 of 2021
in Crl.R.C.Sr.No.10890 of 2021

Crl.R.C.No.1365 of 2019

Jegan S Damodarasamy

... Petitioner/
De facto Complainant

Versus

1. M/s Tirupur Sree Annapoorna,
Represented by its Managing Partner,
D.Venkatesh.
2. D.Venkatesh ... Respondents/Accused 1 and 2
3. The Assistant Commissioner of Police,
Central Crime Branch,
Tirupur.
... Respondents/Complainant

Criminal Revision Case filed under Section 397 r/w 401 Criminal Procedure Code, to call for the records and set aside the impugned order dated 05.11.2019 passed in Crl.M.P.No.3586 of 2019 in C.C.No.215 of 2019 on the file of the Judicial Magistrate -1, Tiruppur and revert the matter back to proceed with the trial.

For Petitioner : Mr.R.Udaya Kumar
for M/S.Divya Jayamani

For Respondents : Mr.S.Suresh
for R1 and R2

Mr.S.Sugendran
Government Advocate (Crl.Side)
for R3



Crl.M.P.No.4742 of 2021
in Crl.R.C.Sr.No.10890 of 2021

The State Rep.by
The Assistant Commissioner of Police,
Central Crime Branch,
Tirupur,
Crime No.18 of 2018.

... Revision Petitioner/Complainant

Versus

1.M/s.Tirupur Sree Annapoorna,
Represented by its Managing Partner,
D.Venkatesh.

2.D.Venkatesh ... Respondents/Accused 1 and 2

Prayer in Crl.M.P.No.4742 of 2021 :

Criminal Miscellaneous Petition filed under Section 5 of Limitation Act to condone the delay of 41 days in filing Revision against the order passed in Crl.M.P.No.3586 of 2019 in C.C.No.215 of 2019 dated 5.11.2019 by the Judicial Magistrate No.1, Tiruppur.

Prayer in Crl.R.C.Sr.No.10890 of 2021:

Criminal Revision Case filed under Sections 397 and 401 Criminal Procedure Code, to call for the records in C.M.P.No.3586 of 2019 and C.C.No.215 of 2019 in Crime No.18 of 2018 dated 5.11.2019 on the file of the Judicial Magistrate -1, Tiruppur and to set aside the said order.

For Petitioner : Mr.S.Sugendran
Government Advocate (Crl.Side)

For Respondents : Mr.S.Suresh

C O M M O N O R D E R

Criminal Revision Case in Crl.R.C.No.1365 of 2019 has been filed against order dated 05.11.2019 passed in Crl.M.P.No.3586 of 2019 in C.C.No.215 of 2019 by the learned Judicial Magistrate No.I, Tiruppur.

2.It is the case of the petitioner that he preferred a complaint against the respondents 1 and 2 before the third respondent police for infringement of trade mark. After enquiry, the third respondent police filed a charge sheet before the



learned Judicial Magistrate No.I, Tiruppur and the same was taken on file in C.C.No.215 of 2019. During the pendency of the said case, the respondents 1 and 2 herein filed a petition under Section 239 Cr.P.C seeking to discharge them from the above said case. The learned Magistrate, after enquiry allowed the petition and discharged the respondents 1 and 2 in C.C.No.215 of 2019. Challenging the said order, the de facto complainant/petitioner herein has filed the present revision before this Court.

3.Today, when the matter is taken up for hearing, the learned Government Advocate (Crl.Side) appearing for the third respondent would submit that challenging the aforesaid order, third respondent police filed revision case with condonation of delay and the same is pending before the Registry in Crl.M.P.No.4742 of 2021 in Crl.R.C.SR.No.10890 of 2021 and this Court is inclined to take up the above petition along with the revision in Crl.R.C.No.1365 of 2019 and dispose of the case on merits.

4.The learned counsel for the petitioner would submit that the petitioner is running hotels and restaurants under the name and style of ''SREE Annapoorna'' since the year 1960. The respondents 1 and 2 infringed the trade mark of the petitioner and running the business under the name and style of ''Tirupur Sree Annapoorna'', which will affect the rights of the petitioner's company. Hence, the petitioner filed a complaint before the third respondent police and they found prima facie case and register the case in Crime No.18 of 2018. The trial Court taken cognizance of the said case in C.C.No.215 of 2019. During the pendency of the case, the respondents 1 and 2 approached the learned Magistrate by invoking Section 239 Cr.P.C. The learned Magistrate without appreciating the allegations levelled in the complaint and also the statements recorded by the prosecution from the list of witnesses cited in the charge sheet/final report and also even without understanding the scope of Section 239 Cr.P.C., gone into the extent and declared the rights of the respondents 1 and 2 and passed the order.

5.The learned Government Advocate (Crl.Side) appearing for the 3rd respondent would submit that after investigation the respondent police filed the charge sheet before the Court below and the same was taken on file in C.C.No.215 of 2019. Subsequently, the respondents 1 and 2 filed the petition under Section 239 Cr.P.C., the learned Magistrate without considering the allegations levelled in the complaint and incriminating materials wrongly allowed the petition. Challenging the said order, the State has filed the revision case, which is pending in Crl.M.P.No.4742 of 2021 in Crl.R.C.SR.No.10890 of 2021.



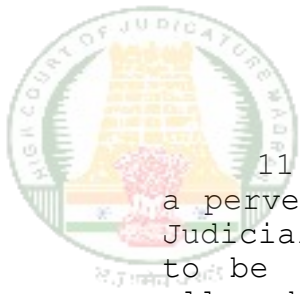
6.The learned counsel appearing for the respondent 2 would submit that the respondents 1 and 2 is having every right to use the trade mark and they have not infringed the rights of the petitioner. He would further submit that in this regard a civil suit in O.S.No.231 of 2018 is pending between the petitioner and the respondents 1 and 2. In order to harass the respondents 1 and 2, the petitioner filed the complaint and the respondent police without considering the pendency of the civil suit, wrongly filed the charge sheet against the respondents 1 and 2. Therefore, the respondents 1 and 2 approached the learned Magistrate to discharge them from the case in C.C.No.215 of 2019. The Court below rightly appreciated the entire materials and also understood the rights of the respondents 1 and 2 and passed the order and hence, there is no merits in this revision and the same is liable to be dismissed.

7.Heard the learned counsel on either side and perused the materials available on record.

8. Admittedly, based on the complaint given by the petitioner/de facto complainant herein, the respondent police registered the case against the respondents 1 and 2 herein and after investigation charge sheet filed and the same was taken on file in C.C.No.215 of 2019. During the pendency of case, the respondents 1 and 2 discharged from the above said case.

9.It is a well settled proposition of law that while deciding the petition under Section 239 Cr.P.C, the Court has to see whether the charge sheet/final report filed by the prosecution reveals prima facie materials available to proceed with the case further or not. The defence taken by the accused/petitioner need not be considered at the time of deciding the petition under Section 239 Cr.P.C.

10.On a reading of the First Information Report and the statement recorded by the prosecution from the list of witnesses cited in the charge sheet/final report clearly show that the petitioner has got registered trade mark and he is running the business. Further, whether the respondents 1 and 2 infringed the rights of the petitioner or not can be decided only after trial, but, not at this stage. At the time of deciding the petition under Section 239 Cr.P.C, the learned Magistrate need not consider the defence taken by the accused and also the documents produced by the accused. However, the Court has to see the complaint filed by the defacto complainant and the charge sheet filed under Section 173 Cr.P.C and also the documents annexed therein. From the reading of the entire materials, this Court finds that there are prima facie materials available to proceed with the case further.



11. Under these circumstances, this Court finds that there is a perversity in the order dated 5.11.2019 passed by the learned Judicial Magistrate No.I, Tiruppur and hence, the same is liable to be set aside. Accordingly, this Criminal Revision Case is allowed. However, the respondents 1 and 2 are at liberty to take all their defence during trial.

12. Since this Criminal Revision Case is allowed, the revision filed by the third respondent challenging the said order, which is pending before the Registry at SR stage has become infructuous. The third respondent/Assistant Commissioner of Police, Central Crime Branch, Tiruppur, who has filed Crl.R.C.SR.No.10890 of 2021 also obtained the benefit of the order passed in Crl.R.C.No.1365 of 2019 filed by the de facto complainant and hence, Crl.R.C.Sr.No.10890 of 2021 is not necessary and the same is rejected. The Registry is directed to return the papers filed in Crl.M.P.No.4742 of 2021 in Crl.R.C.SR.No.10890 of 2021 to the third respondent.

Note : Registry is directed take xerox copy of the papers filed in Crl.M.P.No.4742 of 2021 in Crl.R.C.SR.No.10890 of 2021 for filing purpose.

Sd/-
Assistant Registrar

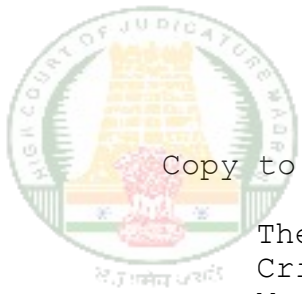
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Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
The Judicial Magistrate No.1 Court,
Tiruppur.
2. The Assistant Commissioner of Police,
Central Crime Branch,
Tiruppur.
3. The Public Prosecutor, (crl side)
High Court, Madras.



Copy to:-

The Section Officer,
Criminal Section,
Madras High Court, Chennai - 600 104.

WEB COPY

Crl.R.C.No.1365 of 2019 and
Crl.M.P.No.4742 of 2021
in Crl.R.C.Sr.No.10890 of 2021

SRA (CO)
CT (29/09/2021)