



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

WEB COPY

Crl.O.P.(MD)No.7787 of 2019

and

Crl.MP(MD)No.4748 of 2019

Mr.Jainuladeen

... Petitioner/Accused

Vs.

1.State of Tamil Nadu,
represented by Inspector of Police,
Intellectual Property Enforcement Cell,
Trichy.

... R1/Complainant

2.M/s.Geenply Industries Limited,
Madgul Lounge,
5th Floor,
23, Chetla Road,
Kolkata-700 027
represented by Power of Attorney
Mr.Ankush Raman Khanna

... R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in FIR No.255 of 2018 on the file of the first respondent and quash the same.

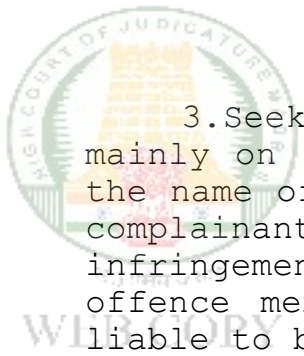
For Petitioner : Mr.K.Rajeswaran
For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor
For 2nd Respondent : Mr.S.Siva Prakash

O R D E R

This criminal original petition is filed seeking quashment of the case in Crime No.255 of 2018 on the file of the first respondent.

2.The case of the prosecution in brief:-

The de-facto complainant, who is the 2nd respondent herein lodged a complaint with the first respondent police stating that he is the owner of the copy right in the artistic work called 'Greenply' and the petitioner is selling counterfeit/spurious items in their name and thereby they caused loss to them. So on the basis of the complaint given by the 2nd respondent, a case in Crime No.255 of 2018 was registered for the offence section 51(a) r/w section 65 of the Copyright Act, 1957.



3. Seeking quashment of the same, this petition has been filed mainly on the ground that the petitioner is selling the plywood in the name of Green Land and they are not using the trade name of the complainant Green Plywood. So according to him, there is no case of infringement of the copyright Act. Since the ingredients of the offence mentioned in the complaint are not attracted, the FIR is liable to be quashed.

4. Heard both sides.

5. The entire CD file has been called for and perused. As mentioned above, the petitioner is facing the charge under section 51(a) r/w section 65 of the Copyright Act, 1957. Now the allegation against the petitioner is that he is using the very same logo as well as the name, which was registered as a Trade Mark by the 2nd respondent, as per the provisions of the Trade Mark Act. So on that ground, the above said criminal proceedings has been initiated.

6. Perusal of the CD file shows that during the course of investigation, the trade mark of the 2nd respondent as well as the brand name of the petitioner has been seized or recovered, wherein we find that the petitioner is using his brand name as 'Green plywood'. The petitioner is also given a statement before the Investigating Officer that during the course of inspection and search, no material bearing the trade name of Green Ply was recovered from his premises. Finding that no such material was recovered, again the second respondent gave a complaint stating that all the plywoods must be seized. It has been stated further that they are purchasing the plywoods from the manufacturer called 'Arafa Plywoods Company', Kerala and they are selling the same in their name called 'Greenland'. The purchase voucher has also been seized, wherein we find that the petitioner purchased the plywoods from Arafa Company, Kerala and the company name is mentioned as 'Hahamed Plywoods'. It is further stated that it is a concerned called 'Green plywoods'. A certificate from the Alpha Company has also been obtained, wherein they have confirmed the supply. After receiving the complaint, search was undertaken, after intimating the same to the Judicial Magistrate No.6, Trichy by the Wing called 'Intellectual Property Enforcement Cell'. So the brand name of the second respondent is 'Green Ply', whereas as mentioned above, by purchasing the commercial plywood from the above Arafa Plywood and Veneers, they are selling their own brand name 'Green Land' and the logo is entirely different, that was used by the second respondent, as we find from the photographs. So the contention on the part of the 2nd respondent that this petitioner is using the trade name and infringed the copy right and they are selling the same is not at all supported by the materials, that have been collected during the course of investigation.



7. Apart from that, the petitioner has also relied upon the judgment of this court in the case of **Sivaji Hi-Tec Foods Pvt. Ltd., represented by its Director, KSS Karunakaran, Chennai-600 117 vs. State rep. By the Inspector of Police and another (2019)2 MLJ (Crl) 313**, wherein section 63 of the Copy Right Act was under consideration. After going through the judgment of various courts, this court has opined that the offence under section 63(a) of the Copy Right Act is a non cognizable offence, which the police has no power to investigate the matter without the permission of the Magistrate.

8. So apart from that, as mentioned earlier, factually also the offence under section 51(a) is not attracted. More over, as per section 65 of the Act, the offence shall be punishable upto two years. Apart from, it is a non cognizable offence. Even after a lapse of four years, the final report has not been filed. On that ground, it is barred by limitation under section 468 Cr.P.C. So this petition is liable to be allowed.

9. In the result, this criminal original petition is **allowed**. The impugned FIR in Crime No.255 of 2018 on the file of the 1st respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector of Police,
Intellectual Property Enforcement Cell, Trichy.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.NITHIANANDAM, Advocate (SR-16291[F] dated 04/04/2022)

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