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CrI.O.P No.2832 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.02.2023**

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.2832 of 2021
and CrI.M.P.Nos.1571 & 1572 of 2021

1. Hafizabi

2. Ansar Basha

... Petitioners/accused 1 & 2

Vs.

1. The State represented by
The Station House Officer,
Kottakuppam Police Station,
Villupuram District.

2. Javed Abbas Raza

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pending on the file of the learned District Munsif cum Judicial Magistrate, Vanur, Villupuram District in C.C. No.85 of 2020 and quash the criminal proceeding.

For Petitioners : Mr.E.Kannadasan
for Mr.M.Machavatharan

For Respondent-1 : Mr.A.Gopinath
Government Advocate (CrI.side)

R2 : Mr.K.Sivakumar



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ORDER

This Criminal Original Petition has been filed to call for the records in C.C. No.85/2020 on the file of the learned District Munsif cum Judicial Magistrate, Vanur, Villupuram and quash the same.

2. The petitioners are the accused 1 and 2. The second respondent *de facto* complainant is the power agent of one Kamruddin Ibrahim Mehsaniya who was running Vayu Track Auto Gas and engaged in marketing and selling dates bearing brand name “KIMIA”. As per the complaint of the second respondent, the KIMIA dates are packed in cartons and boxes which bear the original artistic work and the same is registered in No.A124970/2018 under the provisions of Copyright Act, 1957. The second respondent came to know that one M/s.Abisabi Trading known as 'Rose Traders' along with some unknown persons in Tamil Nadu, packing and selling the dates in boxes and Cartons by using the brand name “KIMAA” represented in the same manner and style of the second respondent's product “KIMIA”. Hence the second respondent had given a complaint and on the basis of the same, the first respondent had registered a case in Cr. No.388 of 2019 for the offences under Sections 63(a), 65 of Copyright Act, 1957 and



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Section 420 IPC. After investigation was completed charge sheet has been filed before the learned District Munsif and Judicial Magistrate, Vanur, Villupuram District against the petitioners for the offences under Section 63(a) and 65 of the Copyright Act and the same was taken on file in C.C. No.85 of 2020.

3. The learned counsel for the petitioners submitted that the second respondent's company itself had lost its rights to claim that “KIMIA” is their exclusive trademark; an order has been passed in this regard in Commercial IP Suit (L) No.6425/2020 (LD/VC/GSP/43/2020) with Interim Application (L). No.6433/2020 (LD/VC/IA/1/2020) and Leave Petition (L).No.97/2020 before the High Court of Bombay; the said Court has held in its order dated 05.01.2021 that “KIMIA” is one of the varieties of dates and hence there is no bar to sell or trade the dates in any form by other persons; the first respondent police had not seized any boxes containing the copied art work of “KIMIA”; the petitioners have applied the trademark for “KIMAA” as early as on 08.09.2018 and the same is pending; without producing any documents to show that the petitioners have violated the Copyright Act, the case has been charge sheeted; the statement of the important witnesses like



the Registrar of Trademarks also not obtained by the investigation Agency;

since the materials do not disclose any offence against the petitioners, the proceedings are liable to be quashed.

4. The learned Government Advocate (Crl.side) submitted that at the threshold stage itself it cannot be concluded that the trademark used by the petitioners to sell their dates did not resemble the words used by the second respondent's company; in cases of this nature, a lot of factual aspects are involved and hence the accused should be subjected to the process of the trial. In support of his contention, the learned Government Advocate cited the decision of this Court held in ***Shyam Singh Vs. State represented by the Assistant Commissioner of Police*** reported in ***2016 SCC OnLine Mad 2323***.

5. The learned counsel for the second respondent submitted that the petitioner's company along with others tried to copy the trademark of the second respondent and sell their goods by confusing the purchasers; the purchasers believed the product of the petitioners as that of the second respondent's product and buy the same; the act of the petitioners is nothing



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but infringement of Copyrights and the first respondent police had rightly investigated the matter and filed charge sheet against the petitioners; if the petitioners are not subjected to the process of trial that will affect the interest of justice.

6. On perusal of the records, it is seen that both the petitioner's company and the second respondent's company are doing their trade in dates. While the second respondent's dates boxes contained the letters “KIMIA”, the dates boxes of the petitioners contain the letters “KIMAA”. It is alleged that the cartons of the petitioners also have the same artistic work and hence the public might get misguided and believe that the marks affixed on the respondent's product is the genuine one. The first respondent police conducted a detailed enquiry and enquired many witnesses including the second respondent about the Copyright violation alleged to have been committed by the petitioners.

7. The petitioner's product boxes contained the name “KIMAA”. There is more or less a resemblance between “KIMAA” and “KIMIA” and only if essential materials recovered by the first respondent police are



produced during the course of trial, the trial Court can appreciate the materials on record. On the face of it the statement of the witnesses would disclose that the products of the petitioner contain more or less similar name and style.

8. The learned counsel for the petitioners submitted that the second respondent has lost his trademark right with respect to “KIMIA” and hence the second respondent cannot claim any exclusive right over the said trademark. All these facts have to be explored in detail. Unless the trial is allowed to be proceeded, the various facts stated by the petitioners cannot be put to test.

9. In ***Shyam Singh's case (cited supra)*** this Court has held as under:

“... 25. In fact, Section 51 of the Copyright Act, 1957 prescribes speaks of 'Infringement of Copyright', Section 63 A of the Copyright Act provides for an offence of infringement of Copyright or other rights conferred by the Act. It cannot be forgotten that the Criminal proceedings are based on 'Public Police'. At the risk of repetition, at this stage, this Court relevantly points out that in Crl.O.P. No.25539 of 2011 and Crl.O.P. No.25535 of 2011 dated 03.07.2011 had directed the trial Court to proceed further in respect of offence under Section 51(b) r/w.63 of the Copyright Act, 1957 and Sections 420, 481, 483 & 486 of IPC.



26. *It is needless for this Court to point out that only during trial of the main case, Cod,tual aspects relating to Copyright Infringement and other offences under Penal Code, 1860 can only be decided once for all. Before that one cannot come to an ipso facto conclusion that the charges levelled against the Petitioner/A2 are groundless. It is to be significantly pointed out that when there is an ex facie material to frame a charge against the Accused, the charge cannot be said to be a 'Groundless' one and an Accused cannot be discharged as per the decision J. Prem v. State reported in 2000 Criminal Law Journal at page 619 and pages 622 & 623 (Madras). Indeed, at the time of framing of charge, a Court of Law is to consider the police Report and Documents to determine whether the allegations against the Accused are 'Groundless' or whether there is the said presumption is a rebuttal one, by an Accused, for which, an opportunity to take part in the Trial' must be provided. The issue as to whether standard materials and the materials in dispute seized during investigation are deceptively likewise in character and whether it attracts the infringement of copyrights secured by the De- facto Complainant are all that fall within the ambit of the trial Court at the time of final hearing of the case and in this regard, letting in oral and documentary evidence through relevant/Competent witness and marking of necessary documents which are subjected to cross examination on behalf of the Accused side only will prove to establish the case of the prosecution. In short, it is for the trial Court to appreciate the material evidence of witnesses to be adduced and documents to be marked through appropriate witnesses as Exhibits. Before that it is not for this Court to conduct a 'Mock Trial' on the basis of available materials on record."*



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10. So the materials available in this case also would show the similarities in the name “KIMIA” and “KIMAA”. Unless the petitioners and the second respondents are allowed to produce relevant materials and witnesses are examined about their perception about the identity of the products, the puzzle involved in this case cannot be resolved. The process of trial would benefit the petitioners who can take the liberty of cross-examining the witnesses and establish their defence.

11. Since the charge sheet is based upon the materials sufficient to frame charges against the petitioners for the offences under Section 63(a) and 65 of the Copyrights Act, I feel the proceedings should be allowed to progress before the trial Court.

12. In view of the above stated reasons, this Criminal Original Petition is dismissed. However taking into consideration of the impact on the business of the respective parties, the learned trial Judge is directed to complete the trial as expeditiously as possible within a period of three months from the date of receipt of a copy of this order.



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13. The petitioner's presence is not required for each and every hearing unless it is necessary for any special reasons. Hence I feel their personal appearance can be dispensed. Accordingly, the petition in C.M.P. No.1572 of 2021 is ordered. However the petitioners shall appear before the trial Court as and when required by the trial Judge for any specific stage or proceedings or for any specific reason. Connected miscellaneous petition in C.M.P. No.1571 of 2021 is closed.

23.02.2023

Index : Yes/No
Speaking Order / Non speaking order
Neutral Citation : Yes / No
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To:

1. The District Munsif Cum Judicial Magistrate,
Vanur, Villupuram.
2. The Station House Officer,
Kottakuppam Police Station,
Villupuram District.
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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