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Criminal Original Petition No.17587 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.17587 of 2023

Peter

S/o.Inniyasi

...Petitioner

Vs

1.State represented by its
Inspector of Police,
Central Crime Branch,
Chennai.

2.B.Thiyagu

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records in C.C.No.5225 of 2020 pending on the file of Metropolitan Magistrate for Exclusive Trial of CCB Cases and CBCID Cases, Egmore, Chennai and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.V.Vargees Amal Raja

For Respondents : Mr.A.Damodaran,
Additional Public Prosecutor [R1]



ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.5225 of 2020 pending on the file of Metropolitan Magistrate for Exclusive Trial of CCB Cases and CBCID Cases, Egmore, Chennai.

2. Heard Mr.V.Vargees Amal Raja, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for first respondent.

3. A1 and A3 had already approached this Court and challenged the very same proceedings in CrI.O.P.No.6357 of 2021 and this Court allowed the petition and quashed the proceedings by order dated 07.06.2023. For proper appreciation, the relevant portion is extracted hereunder:

"6. This Court, on perusal of the impugned final report, finds that the allegation against the petitioners is that they were in possession of duplicate Reebok/Adidas Bags, Caps and Belts. The said allegation would not attract the offence under Section 63 of the Copyright Act, 1957. Section 63 of the Copyright Act, 1957 reads as follows:

"63. Offence of infringement of copyright or other rights conferred by this Act - Any person knowingly infringes or abets the infringement of -

(a) the copyright in a work, or

(b) any other right conferred by this Act, [except the right conferred by section 534 – A],

[shall be punishable with imprisonment for a term which shall not



be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that [where the infringement has not been made for gain in the course of trade or business] the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation - Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section."

Section 13 of the Copyrights Act, 1957 reads as follows :

13. Works in which copyright subsists - (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-

- (a) original literary, dramatic, musical and artistic works,
- (b) cinematograph films; and
- (c) [sound recording].

7. From the above provisions, it is clear that unless the infringement relates to original literary, dramatic, musical and artistic works, cinematograph films and sound recordings, the provisions of the Act are not applicable. In the instant case, there are no such allegations. Hence, the offence under Section 63 of the Copyright Act, 1957 is not made.

8. As regards the offence under Section 420 IPC, there is nothing in the impugned final report to suggest that there was any deception practised upon any person. The possession of spurious goods is certainly not a legal act. However, in the absence of the ingredients to constitute the offence of cheating, one cannot be prosecuted merely because he was in possession of spurious goods. In order to constitute the offence of 420 IPC, there must be a deception practised on any person dishonestly or fraudulently. The impugned final report does not satisfy those necessary ingredients to attract the said offence of Section 420 IPC. The Judgment of the Madhya Pradesh High Court in ***Kasim Ali vs. The State of Madhya Pradesh***



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dated 13.06.2016 in Misc. Criminal Case No.1362 of 2015 relied upon by the learned counsel for the petitioners squarely applies to the facts of the instant case. This Court is not in agreement with the view taken by the Delhi High Court in ***Sunil Kumar Gupta and another vs. State*** reported in **1998 (47) DRJ 84** for the aforesaid reasons.

9. Hence, the impugned final report is liable to be quashed. Accordingly, Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed."

The above order will also enure to the benefit of the petitioner (A2).

Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.5225 of 2020 pending on the file of Metropolitan Magistrate for Exclusive Trial of CCB Cases and CBCID Cases, Egmore, Chennai, is quashed insofar as the petitioner herein is concerned.

08.08.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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1.The Metropolitan Magistrate for Exclusive Trial
of CCB Cases and CBCID Cases, Egmore, Chennai.

2.The Inspector of Police,
Central Crime Branch,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J



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