

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-18628-2017
Date of Decision : 13.07.2023**

Subhash Chand Bansal

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. H.P.S.Sandhu, Advocate and
Mr. Yugank Goyal, Advocate for
Mr. A.S.Talwar, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Ms. Priyanka Vij, Advocate for
Mr. A.K.Jain, Advocate
for respondent No.2.

VIKRAM AGGARWAL, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') seeking quashing of FIR No.0133 dated 01.04.2017, registered at Police Station Kaithal City, District Kaithal, under Sections 63, 65, 67 of the Copyrights Act and Section 420 IPC (Subsequently Section 420 IPC was deleted and Section 104 of the Trade Marks Act, 1999 was added), final report submitted under Section 173 Cr.P.C. and all subsequent proceedings arising therefrom qua the petitioner.

2. Bansal Cotton & Oil Mills of which the petitioner was the proprietor

was embroiled in a litigation with regard to trademarks with one Keshav Oil and

Cotton Ginning Industries Private Limited of which respondent No.2 was the director. Both Bansal Cotton & Oil Mills and Keshav Oil and Cotton Ginning Industries Private Limited were engaged in the business of manufacturing and sale of cattle feed, oil cakes, seeds etc. Both sides claimed to have been using the trade mark “DO GAI CHHAP”. As per Bansal Cotton & Oil Mills, this trademark was being used by one M/s Madan Lal Hans Raj and was later on assigned to Bansal Cotton & Oil Mills for consideration whereas Keshav Oil and Cotton Ginning Industries Private Limited claimed to have been using the said trademark since 1972. A civil suit was filed by Keshav Oil and Cotton Ginning Industries Private Limited against Bansal Cotton & Oil Mills which was decreed. RFA No.1654 of 2017 was preferred by Bansal Cotton & Oil Mills in which operation of the judgment and decree dated 01.03.2017 was stayed. However, in the meantime, the FIR in question was got registered by respondent No.2-complainant alleging that the judgment and decree dated 01.03.2017 (Annexure P-1) was being disregarded by the petitioner. The contents of the FIR are as under:-

“Copy of complaint is given to the SHO, Kaithal.

Subject: Request regarding registration of case against Bansal Cotton and Oil Mill, Kaithal, Subhash Bansal, Sachin and other employees.

Sir, I had filed a case in the name of Keshav Oil and Cotton Ginning Industries Private Limited, Bhiwani Road Hansi Vs. Bansal Cotton and Oil Mill, Kaithal (Subhash Bansal). I had filed this case in the court at Hisar. This case was decided in our favour on 01.03.2017 by the court of District Judge, Hisar and direction were given to the respondent that he shall not use our mark i.e. “do Gaye Chap Khal” and Cotton Oil. Now also the respondent is using my mark do gaye chap in his business even after the decision. Now it is requested that a case under Trade Mark Act, Copy Right Act and Section 420 of the IPC was registered against the respondent. The respondent may be prevented from using our mark do gaye chap in his business and those bags with the respondent which have our mark printed on them,

printed empty bags, goods with our mark may be taken into possession and after registering the case the respondent may be arrested and legal proceeding may be initiated. We shall be grateful signed P.K. 31.03.2017 Keshav Oil and Cotton Jinning Industries Pvt. Ltd. Bhiwaqni Road Hansi. Director Shri Parmod Kumar Garg Son of Sh. Madan Lal Garg resident of Mohalla Choadhari Yan Hansi District Hisar 8940037050, 8901030000. Today Police Station : on perusal of the complaint offences under Section 420 and 63, 65, 67 of the Copy Right Act have been found to be committed, case against the aforesaid may be registered and copy may be put in the record, original request may be forwarded to officers for further proceedings through S.01 Ajay Partap No.1057 1/C CIA KTL and copies of the FIR has been forwarded by post to the officer.”

3. Separate replies to the petition were filed by the respondents opposing the same.

4. I have heard learned counsel for the parties and have also perused the case file.

5. Learned counsel for the petitioner submitted that the FIR is completely illegal as the same had been got registered for alleged violation of the judgment and decree dated 01.03.2017, the operation of which had been stayed by a Coordinate Bench of this Court in the Regular First Appeal filed by the petitioner. Learned counsel contended that infact the Regular First Appeal was ultimately allowed by a Coordinate Bench vide judgment dated 08.06.2022 and the same has become final as no appeal against the said judgment was preferred by respondent No.2-complainant. Learned counsel contended that in view of the same, the FIR is nothing but an abuse of the process of law. Learned counsel also contended that without impleading the Company, the FIR against the petitioner could not have been got registered. In support of his contentions, learned counsel

versus Sangita Rane 2015 (2) R.C.R. (Criminal) 120.

On the other hand, it was submitted on behalf of respondents that there is no bar to the initiation of criminal proceedings where civil proceedings had been initiated and that the same could very well go on together. It was, however, conceded that no appeal had been preferred against the judgment dated 08.06.2022 passed by this Court in the Regular First Appeal preferred by the petitioner.

I have given my thoughtful consideration to the arguments addressed by learned counsel for the parties.

Admittedly, the dispute with regard to the trademarks has been settled amongst the parties. A Coordinate Bench of this Court gave its decision in RFA No.1654 of 2017 titled as “Bansal Cotton and Oil Mills versus Keshav Oil and Cotton Ginning Industries Pvt. Ltd” vide judgment dated 08.06.2022 whereby the appeal filed by the present petitioner was allowed and the judgment and decree dated 01.03.2017 passed by the trial Court was set aside. The said judgment dated 08.06.2022 has become final as no appeal has been filed against the same by respondent No.2-complainant. No doubt, civil and criminal proceedings can go hand in hand and there is no bar that once civil proceedings have been initiated, criminal proceedings cannot be initiated. However, if one goes through the FIR, it emerges that the FIR was registered mainly on account of non-compliance of the judgment and decree dated 01.03.2017 passed by the trial Court. Once the said judgment and decree has been set aside by this Court, the grievance raised in the FIR would not survive. In the considered opinion of this Court, the continuation of the FIR would amount to an abuse of the process of law once the main litigation with regard to the trademarks has come to an end. This Court is of the considered opinion that the present case is a classic case where inherent powers can be and

should be exercised to quash the FIR in question. Reliance can be placed upon the judgments of the Hon'ble Supreme Court of India in the cases of *R.P.Kapur vs. State of Punjab (1960) 3 SCR 388* and *State of Haryana and others versus Bhajan Lal and others 1992 Suppl. (1) SCC 335*. In *R.P.Kapur's case* (supra), the Hon'ble Supreme Court of India summarized certain categories of cases where inherent power under Section 482 Cr.P.C. can be and should be exercised which reads as under:-

1. where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
2. where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
3. Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In *State of Haryana and others versus Bhajan Lal and others' case*

(supra), the Hon'ble Apex Court laid down certain categories of cases where powers under Section 482 Cr.P.C. should be exercised. These categories are:-

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In the considered opinion of this Court, the present case also falls within the categories No.2 and 3 respectively enumerated in the categories mentioned above especially in view of the fact that the controversy between the parties has been finally decided and the FIR, as has been noticed previously also, had been registered only on account of non-compliance of the judgment and decree of the trial Court. Therefore, the continuation of the FIR would amount to an abuse of the process of law and miscarriage of justice. The FIR and all subsequent proceedings arising therefrom, therefore, deserve to be quashed.

The argument that the FIR deserves to be quashed on account of the

firm/company not having been arraigned as an accused is devoid of merit because of two reasons. First of all, the offence of using the trademark and violation of the judgment and decree would be attributable personally to the petitioner who was the sole proprietor of the firm and not to the firm. Secondly, the judgment in the case of Sharad Kumar Sanghi's case dealt with a complaint case and not with an FIR case. Still further, the allegations therein were with regard to an act of the company on account of which it was held that the Managing Director could not have been arraigned as an accused without the company having been arraigned.

In view of the aforementioned facts and circumstances, the present petition is allowed and the FIR No.0133 dated 01.04.2017, registered at Police Station Kaithal city, District Kaithal, under Sections 63, 65, 67 of the Copyrights Act and Section 420 IPC (Subsequently Section 420 IPC was deleted and Section 104 of the Trade Marks Act, 1999 was added), final report submitted under Section 173 Cr.P.C. and all subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

13.07.2023
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(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No