

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

246

CRM-M-39483-2018

Date of decision: 31.07.2023

Mukesh Kumar and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. V.K. Puri, Advocate for the petitioners.

Ms. Jasleen Chahal, AAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioners have invoked the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of FIR No.260 dated 20.03.2017 under Section 420 of the IPC and Section 107(2) of the Trademarks Act, 1999 (for short, 'the Act') registered at Police Station Jind City.

2. Learned counsel for the petitioners submits that a perusal of the allegations levelled in the FIR clearly reveal that the dispute, if any, between the parties is purely of civil nature and emanates on account of a conflict between them with respect to the use of trademark "SOFTFREE PREMIUM" pertaining to marketing of tissues, facial tissues, sanitary napkins and paper tissues.

3. Learned counsel has vehemently argued that the provisions of Section 115(1) of the Act bar the Court from taking cognizance of an offence under Section 107/108/109 of the Act in the absence of complaint in writing by Registrar or any officer authorised by him, however, there was no such complaint made by the Registrar. Learned

counsel has asserted that since the provisions of Section 115(1) of the Act were not adhered to, the petitioners had been discharged under Section 107 of the Act. Learned counsel has thus argued that once the petitioners had been discharged for the commission of an offence under Section 107 of the Act, offence of cheating under Section 420 of the IPC, would not be made out, hence, on this ground itself the FIR in question be quashed as continuation of criminal proceedings in the case in hand would be an abuse of the process of law. In support, learned counsel has placed reliance upon *Anil Kumar Vs. State of Punjab and another, CRM-M-9229-2009 D/d 22.03.2011*.

4. Per contra, learned counsel for the State while controverting the submissions made by the counsel opposite has contended that the petitioner has been using a trademark which stood registered in the name of the complainant i.e. "SOFTFREE" to their own advantage, without any licence and thus have been playing a fraud upon the public at large in addition to causing wrongful loss to the complainant. It has still further been submitted that after the investigation was completed not only final report under Section 173(2) of the Cr.P.C. stands filed before the Trial Court but even charges stand framed against the petitioners and the trial is at an advance stage as prosecution evidence is being recorded before the Trial Court. Hence, Learned State counsel while praying for dismissal of the instant petition has lastly argued that from the allegations levelled in the FIR a prima facie case for commission of an offence under Section 420 of the IPC is clearly made out against the petitioners.

5. I have heard learned counsel for the parties and perused the

relevant material on record.

6. This Court does have wide and extensive powers under Section 482 of the Cr.P.C., however, these powers must be exercised sparingly and with a great deal of circumspection. No doubt, learned counsel for the petitioners vehemently contended that since the petitioners had been discharged under Section 107 of the Act, hence, the FIR in question was liable to be quashed, however, this Court does not find any merit in his contentions. The offence under Section 107 of the Act is separate from an offence under Section 420 of the IPC; both these offences constitute distinct ingredients. It is certainly not the case of the petitioners that they were discharged under Section 107 of the Act because no substance was found in the allegations levelled in the FIR in question. Merely because the petitioners have been discharged under Section 107 of the Act, cannot be a ground for quashing of the FIR in question moreso, since the order of discharge under Section 107 of the Act has been passed only on account of non-compliance of Section 115(1) of the Act. As far as prosecution of a person for commission of an offence under Section 420 of the IPC is concerned, there is no such bar on the Court to take cognizance.

7. Furthermore, on a bare reading of the FIR in question which has been annexed as Annexure P-1, prima facie commission of an offence under Section 420 of the IPC is made out against the petitioners. This Court cannot be expected to delve into the truthfulness or otherwise of the allegations levelled in the FIR while invoking its inherent jurisdiction under Section 482 of the Cr.P.C. Charges stand framed and evidence is being adduced before the Trial Court which

would be tested on the touchstone of cross-examination during trial. The case law relied upon by the learned counsel for the petitioners would certainly not come to his rescue as the facts of the instant case are clearly distinguishable from the said case.

8. Accordingly, the instant petition is dismissed.

9. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

31.07.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No