

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

264

CRM-M-39653-2021 (O&M)
Date of decision: 29.03.2023

DEEPAK

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Puneet Gupta, Advocate for the petitioner

Mr. Deepak Grewal, DAG Haryana

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 CrPC for quashing of the FIR No.0193 dated 29.07.2021 registered under Sections 63 and 65 of the Copyright Act, 1957 (for short 'the Act, 1957') at Police Station Narwana City, District Jind.

Briefly put the facts of the case are that complainant Dalip Kumar S/o Sh. Nanak Chand R/o H.No.72, Ward No.9, Near Model Town, Anandpur Sahib is an authorised investigating officer of M/s RK Associates, which claims the authorization of M/s Supreme Industries Ltd. to take action against the people who are manufacturing, selling or supplying pipes under the name of M/s Supreme Industries Ltd. On 29.07.2021, the complainant along with his team, conducted a survey of market in Narwana including

petitioner's shop. The complainant allegedly found out that the petitioner is selling and supplying pipes under the name of their authorising company M/s Supreme Industries Ltd. He informed the Station Incharge and thereafter, the complainant along with ASI Pawan Kumar 368, ASI Bhim Singh 858, Constable Sachin Kumar 542 reached at the shop of 'Subhash Chand and Sons' Prem Kabadi Wali Gali, Narwana on government vehicle No.HR-31-P-9157 driven by Constable Abhishek No.666. The shop owner Deepak s/o Subhash Chand r/o Narwana was present in his shop. The complainant alongwith police officials checked the material at the shop and during the checking of the shop, 19 bundles of 1 inch pipe of green colour, 39 bundles of 1 inch pipe of blue colour, 5 bundles of 1 inch pipe of white colour and 13 bundles of $\frac{3}{4}$ inch pipe of blue colour were found on which the mark Supreme was depicted. From the aforesaid bundles as mentioned in the complaint, one bundle of the pipe was separated, as sample and the rest of the bundles of the pipes were packed in the 13 white gunny bags. The sample and the rest of the bags were duly stamped by the stamp PK/1 and were handed over to ASI Bhim Singh. All 13 bags containing pipe bundles and sample were taken into possession by the police.

Learned counsel would submit that as per the allegations against the petitioner, spurious pipes were found in his possession, purportedly manufactured by M/s Supreme Industries Limited, which does not attract the offences under Sections 63 and 65 the Act, 1957. It is his further submission while referring to the photographs of the pipes, Annexure P-2, that even otherwise, the said pipes had a distinct label of 'Suprem

White Gold’ whereas the label used by the above industries is ‘Supreme Driti’. He relies on the judgments passed by this Court in the cases of **Anil Kumar Vs State of Punjab and another**, 2011 (18) RCR (Criminal) 304 and **Gurmukh Singh and another Vs State of Punjab**, 2011 (18) RCR (Criminal) 308.

Learned State counsel while referring to the status report filed in the present case submits that after conclusion of the investigation, challan was presented in the present case on 25.11.2021 and the case was posted for consideration on charge. The ingredients of the offences are fulfilled. He prays for dismissal of the petition.

Despite service none appears for respondent No.2-Sh. Dalip Kumar son of Sh. Nanak Chand, Investigation Officer, RK Associates, Roopnagar, Punjab.

Heard the learned counsel for the parties.

It is apposite to make a reference to Section 13 of the Act, 1957, which read thus:

Section 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.
- (2) to (5) xx xx xx xx xx

In the case of **M/s Bikaner Steel Mills Vs. State of Punjab**, 2007 (1) R.C.R. (Criminal) 773, FIR had been registered under Sections 420 IPC, 63 and 64 of the Act, 1957 and 79 of Trade and Merchandise Act on a

complaint submitted by the Central Coordinator Brand Protection of Tata Steels against the petitioner therein, alleging that complaints from various authorized dealers and distributors were received by the company that the reinforcement bars produced by using TMT technology, being one of their products, was manufactured and embossed as TA-TA TMT bars by the petitioners, who were passing the said product in the market as original TATA product. Thereby the customers were being misled, as they were unable to identify the original TATA TISCON from the counterfeit. This Court held that, “As per Section 13 of the Act, 1957, copyright could subsist in original literary, musical and artistic works, cinematograph films and sound record. There could be thus no copyright in the steel bars produced by TATA TISCON by using TMT Technology”. Consequently, the FIR was quashed as no offence under Sections 63 and 64 of the Act, 1957 was made out with regard to the allegations of production counterfeit steel bars.

This Court quashed the FIR registered under Sections 63 and 65 of the Copy Right Act, 1957, Section 420 IPC and 78/79 of Trade Mark Act in the case of **Anil Kumar Vs. State of Punjab and another**, 2011 (18) RCR (Criminal) 304, on the ground that the provisions of the Act, 1957 were not applicable to goods mechanically produced. It was observed that offences could not be made out. The allegations against the petitioner were that he is selling fake shoes and chappals of Adidas and Reebok companies at original price by declaring the same to be original, thereby cheating the innocent persons and causing economic and financial loss at large scale to

the companies. And even from the godown, 288 pairs of shoes and 100 pairs of chappal on which forged sticker of Adidas company had been affixed were found and on the inner side of the recovered shoes seal of made of China, Indonesia and Korea had been affixed.

In the case of **Satpal Vs. State of Punjab** 2011 (1) RCR (Criminal) 281, wherein the accused who was manufacturing Ayurvedic medicines similar to those manufactured by complainant was facing trial for the offences under Sections 51, 52, 63 and 64 of Copy Right Act, 1957, it was held by this Court that no offence under the Copy Right Act was made out.

The issue that arose in **Gurmukh Singh Vs. State of Punjab**, 2011 (18) R.C.R. (Criminal) 308 was whether using of trade mark of some other firm would attract the provisions of the Copy Right Act, 1957. The allegations in this case were that petitioners were using trade marks of some other firms on the bags of potatoes. During investigation, it was found that the petitioners were using false trade mark, thus, the offence under the Act, 1957 and Trade Mark Act was made out, upon which the challan was presented and the case was fixed for framing of charge. This Court quashed the FIR noticing that the provisions of Copy Right Act are attracted to original literary dramatic, musical and artistic works; cinematograph films; and sound recording and offence under Sections 78 and 79 of the Trade Mark and Merchandise Act was non-cognizable and could not be investigated by the Police. Further, that after coming into force of the Trade

Mark Act, 1999, the complaint can be initiated by the Registrar and the raid could be conducted by an officer not below the rank of DSP.

In the case in hand, the allegations made in the complaint filed on behalf of M/s Supreme Industries Ltd. were that the petitioner was selling and supplying fake pipes in the market under their name, which do not attract the provisions of the Copy Right Act, in view Section 13 thereof, as the works in which it subsists are (a) original literary, dramatic, musical and artistic works; (b) cinematograph films; and (c) sound recording.

Having regard to the facts and circumstances of the case, the provisions and the judgments referred to hereinabove, this Court finds merit in the petition.

Accordingly, the present petition is allowed. FIR No.0193 dated 29.07.2021 registered under Sections 63 and 65 of the Act, 1957 at Police Station Narwana City, District Jind and all other consequential proceedings arising therefrom are hereby quashed.

(AMAN CHAUDHARY)
JUDGE

March 29, 2023

M.Kamra

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