

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1005 of 2019

Sri Amaresh Banerjee

Vs

The State of West Bengal & Ors.

For the Petitioner : Ms. Pampa Dhabal,
Mr. D. Brahma.

For the State : Mr. Binay Panda,
Ms. Puspita Saha.

For the Opposite Party No. 2 : Mr. Ayan Basu,
Mr. Jay Chakraborty,
Mr. Sumit Routh.

Hearing Concluded on : 09.01.2024

Judgment on : 15.01.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 16.01.2019 passed in Shyampukur P.S. E.B. case No. 28 of 2009 by the Learned Additional Chief Metropolitan Magistrate, Calcutta under Sections 120B/420 of the Indian Penal Code and 103, 104 of the Trade Mark Act, 1999.
2. The said order is in respect of a prayer for reinvestigation by the defacto complainant vide petition dated 11.04.2016.
3. **The Court vide its order dated 16.01.2019 held as follows:-**

“.....This Court is of the view that effective investigation has been done in the present case and no worthwhile purpose would be served in directing further investigation as there is mistake of fact. To sum up, there exists no cogent ground to allow the prayer for reinvestigation and accordingly the application dated 11.04.2016 filed by the defacto complainant praying for reinvestigation merits to be rejected.

Hence, it is,

Ordered

That the application dated 11.04.2016 filed by the de facto complainant Amaresh Banerjee praying for reinvestigation of this instant case is considered and rejected.

The FRMF being no. 52/2015 dated 11.07.15 against the accused persons Amal Majumder, Bappa Ghosh, Lakshman Dutta, J.B. Roy, A.V. Joshi, S.K. Ghosh and Company, Nandi Brothers, as submitted by the IO stands accepted.

The accused persons who are not sent up in the charge-sheet are hereby discharged from this instant case and also discharged from their bail bonds if any.

The instant case stands dropped accordingly.

Return CD.

Sd/-
Addl. Chief Metropolitan Magistrate – 1
Calcutta”

4. The petitioner herein being the complainant states that he is a manufacturer of coaltar under its trade name ‘Anchor’ with specific colour and art-work and carries on its business of manufacturing, selling and marketing and the place of business is 159, B.K. Pal Avenue, Kolkata – 5.
5. The said trade mark was originally held in the name of Aruna Banerjee, the mother of the petitioner on the original registration date 17.03.1950, who carried on the business under the name and style M/S Sekhar & Co. at 5/1, Nirode Behari Mullick Road, Habibag, Calcutta.
6. Subsequently, the said trade mark was transmitted and assigned in favour of the petitioner since about 1st August, 1975 and the same has been renewed from time to time and lastly renewed on and from 17th March, 2007 for ten years in favour of the petitioner bearing the original trade mark registration no. 1142850 and as such the petitioner is the registered proprietor of the said trade mark and entitled to all its benefits under the law of trade mark.

7. The petitioner also obtained the copy right registration certificate from copy right board i.e. the Government of India Copy Right office, bearing certificate no. A-72756/2005 dated 04.05.2005.
8. It is further stated that the opposite party no. 1 is carrying on his business of coaltar under the name and style M/S Tara Tar Products as proprietor.
9. On 3rd May, 2008, for the first time the petitioner discovered that the opposite party no.1 with the wrongful intention of capturing the market of 'Anchor' brand coaltar started to copy the same identical trade mark by falsifying the art work of the petitioner's trade mark and used the same by selling the coaltar under the said trade mark to the unlimited detriment of the petitioner.
10. The petitioner requested the opposite party no.1 not to do the mischief but in spite of that the opposite party no. 1 did not stop the sale and marketing of the said coaltar.
11. The petitioner then filed an application under Section 156(3) Cr.P.C., initiating the present proceedings in this case.
12. It is submitted that the investigating officer filed a final report from which it appeared that the investigation was not properly done.
13. On 11th April, 2016 the petitioner filed an application praying for re-investigation/further investigation before the learned Trial Court.

- 14.** On 16.01.2019, the Learned Additional Chief Metropolitan Magistrate, Calcutta passed an order, rejecting the application for re-investigation/further investigation filed by the petitioner.
- 15.** Hence the revision.
- 16.** It submitted that the learned Trial Court failed to consider that the opposite parties have committed the offences under both the Acts that is Trade Mark Act and also the Copy Right Act on the date of the complaint and during the material time of complaint.
- 17.** The Learned Court also failed to consider that the marks appearing on the tin carton containing coal tar seized from the accuseds during investigation was deceptively similar to the mark of the de facto complainant, but in the report the said fact was ignored without showing any reason.
- 18.** The case of the opposite party no.2 and the State is that on proper investigation and in the absence of any evidence as to the offences alleged, a final report was submitted.
- 19.** In the affidavit in-opposition, the opposite party no. 2 has denied the entire case of the petitioner.
- 20.** Supplementary affidavit has been filed by the petitioner wherein it is stated that one Title Suit being Title Suit No. 1706 of 2009 has been filed by the petitioner before the learned City Civil Court at Calcutta VIII Bench along with an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Criminal Procedure. The opposite

party also filed affidavit in-opposition in the said suit. A copy of the Title Suit and the Affidavit-in-opposition are annexed herewith and marked with the letter R-2. The said suit was dismissed for default on 20.05.2013, but subsequently restored on 13.12.2023 on payment of cost. **The suit is now pending.**

21. Two volumes of the case diary have been placed before this Court by the learned counsel for the State.

22. The Supreme Court in several precedents has discouraged such criminal proceedings initiated by the complainant only to harass the other party. Some of the rulings are as follows:-

- a) M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).*
- b) Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).*
- c) Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).*
- d) R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).*
- e) Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).*

23. The Supreme Court in ***Randheer Singh Vs. State of Uttar Pradesh & Ors.***, (2021) 14 SCC 626, held:-

On noting several precedents the Court finally held:-

*“.....There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. **The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.**”*

24. In ***Paramjeet Batra vs State of Uttarakhand & Ors.***, Criminal Appeal No. 2069 of 2012 (arising out of SLP (Crl.) No. 7720 of 2011), on 14 December, 2012, the Supreme Court held:-

*“7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. **Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has***

happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

8. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise."

25. Under the Commercial Courts 'Act', 2015, a "commercial dispute"

is defined under Section 2(1)(c).

"Section 2(1)(c)(xvii) lays down:-

*(1) * * **

*(a) * **

*(b) * **

(c) "commercial dispute" means a dispute arising out of—

** * **

** * **

** * **

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

** * **

26. In *Vinubhai Haribhai Malaviya Vs The State of Gujarat*, on 16.10.2019 in Original Appeal 478-479 of 2017, a Three Judge

Bench of the Supreme Court held:-

“9. The question of law that therefore arises in this case is whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding.

38. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct “further investigation” and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] has, in no uncertain terms, stated that principle, as aforenoticed.

40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct “reinvestigation” or “fresh investigation” (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct “further investigation” after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three- Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions

of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue “further investigation” and file supplementary charge- sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.”

27. By a Judgment dated 12.10.2022 the Supreme Court in Criminal Appeal No. 1768 of 2022 (**Devendra Nath Singh Vs State of Bihar & Ors.**) relying upon several precedents including **Vinubhai Haribhai Malaviya vs The State of Gujarat (Supra)** held:-

“12.5. The case of **Divine Retreat Centre** (supra) has had the peculiarity of its own. Therein, the Criminal Case bearing No. 381 of 2005 had been registered at Koratty Police Station on the allegations made by a female remand prisoner that while taking shelter in the appellant-Centre, she was subjected to molestation and exploitation and she became pregnant; and thereafter, when she came out of the Centre to attend her sister’s marriage, she was implicated in a false theft case and lodged in jail. Parallel to these proceedings, an anonymous petition as also other petitions were received in the High Court, which were registered as a suo motu criminal case. In that case, the High Court, while exercising powers under Section 482 CrPC, directed that the said Criminal Case No. 381 of 2005 be

taken away from the investigating officer and be entrusted to the Special Investigating Team ('SIT'). The High Court also directed the said SIT to investigate/inquire into other allegations levelled in the anonymous petition filed against the appellant-Centre. However, this Court did not approve the order so passed by the High Court and in that context, while observing that no unlimited and arbitrary jurisdiction was conferred on the High Court under Section 482 CrPC, explained the circumstances under which the inherent jurisdiction may be exercised as also the responsibilities of the investigating officers, inter alia, in the following words: -

"27. In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order 29 under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

39. The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself.

- 28.** The dispute in this case admittedly relates to trademark/copyright and comes with the definition of “commercial dispute” Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015 and is thus a civil dispute. A title suit has already been instituted by the petitioner against the opposite party no. 2 and is subjudice. The petitioner has prima facie tried to harass the opposite party no. 2 by filing a Criminal Case and then being made to face an investigation, both conducted in a fair manner and ending in Final Reports (FRMF).
- 29.** In the present case, this court finds that the materials on record vis a vis the Final Reports prove that the investigation and further investigation have been conducted in a fair manner and is prima facie not malafide and thus the final report(s) filed are in accordance with law. (There was an investigation and further investigation, both of which ended in final report (FRMF).
- 30.** There is thus no scope for interference in respect of the order under revision. Any further indulgence shown to the petitioner/complainant would clearly amount to an abuse of the process of court and law and also be against the interest of justice.
- 31.** Admittedly a title suit is pending between the parties in respect of the same dispute.
- 32.** The order under revision dated 16.01.2019 passed in Shyampukur P.S. E.B. case No. 28 of 2009 by the Learned Additional Chief Metropolitan Magistrate, Calcutta under Sections 120B/420 of the

Indian Penal Code and 103, 104 of the Trade Mark Act, 1999, **being in accordance with law requires no interference and is thus affirmed.**

33. CRR 1005 of 2019 is dismissed.

34. All connected applications, if any, stand disposed of.

35. Interim order, if any, stands vacated.

36. Copy of this judgment be sent to the learned Trial Court at once.

37. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)