HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-M-54650-2019 (O&M)
Decided on 26.09.2024
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Shashi Nagpal @ Suresh Nagpal & Anr. ... Petitioners

VS.

State of Punjab & Anr. ... Respondents
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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
****

Present: Mr. Davinder Singh Khurana, Advocate and
Mr. Rajeev Kumar Bagaria, Advocate for the petitioners

Mr. Jaspal Singh Guru, AAG Punjab

Mr. Ajeet Pal Singh Pakka, Advocate for respondent No.2
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Sandeep Moudgil, J.

(1). This petition under Section 482 CrPC filed by the petitioner seeks quashing of the FIR No.0210 dated 20.10.2019 under Sections 420/120-B IPC and Sections 103/104 of Trade Marks Act, 1999, registered at Police Station Kotwali, District Bathinda.

(2). Learned counsel for the petitioners argued that the sale of the spectacle frame was done on 29.07.2013 and since it was alleged that the frame sold was a fake one, the respondent No.2-complainant lodged a consumer complaint dated 03.10.2013 (Annexure P2) which was allowed by the District Consumer Forum, Bathinda vide order dated 20.02.2014 (Annexure P3) and the appeal filed by the petitioners were allowed and that of the complainant's was dismissed, however, when the respondent No.2 approached the National Consumer Disputes Redressal Commission, the case was remanded vide order dated 26.11.2015 (Annexure P5). Thereafter, the complaint was disposed of by the District Consumer Disputes Redressal

Forum vide order dated 04.05.2017. Appeal against this order was carried by the complainant and the matter was remanded again vide order dated 28.11.2017 passed by the State Consumer Disputes Redressal Commission, Punjab. Thereafter, the complaint has been allowed vide order dated 24.08.2022 against which appeal filed by the petitioners is pending.

(3). It is submitted that FIR came to be registered only on 20.10.2019 and the same deserves to be quashed only on the ground of abuse of process of law and for non-disclosure of filing of the consumer complaint. He submits that in any case, the son of the petitioner i.e. petitioner No.2 was not named in the entire transaction and thus, nominating him as an accused is not sustainable. It is averred the occurrence is of 29.07.2013 whereas the FIR has been lodged on 20.10.2019 after a gap of approximately six years and the delay in lodging the FIR is fatal and unexplained.

(4). It is the argument raised on behalf of the petitioner that the authorized representative of the manufacturer of the product was summoned and the statement of Sales Executive of Sterling was recorded on 28.03.2016 in which was admitted that the bill of the petitioner as well as the frame were original. It is submitted that the complainant has not proved any allegation and the petitioners, in order to maintain its reputation and as a goodwill gesture, had even offered to refund the price of the product to the respondent No.2 which is a bona fide offer on the part of the petitioners.

(5). Learned counsel then urged that since the matter has been made to linger on by respondent No.2 before various consumer forums/commissions, time and time again and this very fact has been kept concealed by her in the FIR, which itself is sufficient to show that the matter is essentially of civil nature and criminal colour has been given intentionally and no ingredients as incorporated in the FIR *per se* exists. In this regard, reliance has been placed on ***Syed Yaseer Ibrahim v. State of U.P., (2022) 17 SCC 611*** and ***Mahar Jahan v. State of Delhi, (2004) 13 SCC 421*** wherein it was held that since there is no element of criminality which can stand attracted in matter which essentially involves a civil dispute between the parties, continuation of prosecution amounts to abuse of process which civil dispute is sought to be given colour of criminal wrong doing.

(6). On the other hand, reply dated 29.09.2021 has been filed by Jaspal, PPS, SP City Bathinda wherein it has been averred that the investigation of the case has been completed and challan has been presented before the trial court on 03.12.2020 and since the case is ripe, there is absolutely no justification for quashing the present FIR.

(7). Learned State counsel argued that after considering the evidence on record, it has come in the inquiry that prima facie offences of cheating under Section 420/34 IPC and Section 103 & 104 of the Trade Marks Act have been committed by the petitioner and moreover, the petitioner has failed to produce any document or evidence to prove that the said frame was an original Tommy Hilfiger frame as against his averment that the said frame was purchased from M/s Sterling Meta Plast India P.Ltd. which is a distributor of Tommy Hilfiger products in India.

(8). Heard learned counsel for the parties and gone through the record.

(9). The allegation are that respondent No.2-complainant lodged FIR No.210 dated 20.10.2019 u/s 420, 120-B IPC, Police Station Kotwali, Bathinda alleging therein that the petitioners and Sterling Meta Plast India Pvt. Ltd. Exporters & Importers of Spectacle Frames, Lenses Sunglasses & allied products Regd. Office E/3, Hiral Mansion, Bhagwaadi Kalba Devi Road, Mumbai-400002 who in connivance with each other hatched a conspiracy and sold duplicate Eye Frame by claiming the same to be make Tommy Hilfiger and in this way, committed fraud. The occurrence mentioned in the FIR is of 29.07.2013 whereas FIR has been lodged on 20.10.2019 after the gap of approximately six years.

(10). Admittedly, the parties are pursuing and are involved in various rounds of litigation from the District Consumer Forum till the National Consumer Commission not once but thrice. The FIR incorporates that the petitioner has cheated and duped the respondent No.2 by selling fake spectacles of brand Tommy Hilfiger attracting the penal provisions under the Trademarks Act, 1999 besides Section 420 IPC.

(11). Section 103 of Trade Marks Act, 1999 deals with penalties for applying false trademarks, trade descriptions, and related offences. The main objectives of this provision are to protect the interests of the customers, maintain the integrity of the marketplace, and ensure safeguarding of the rights of each customer by performing fair trade practices. The main aim is to prevent any kind of deception that misleads customers regarding the quality and origin of products. This section ensures that only those who have a certified legal right to a trademark can use it, thereby maintaining the authenticity of goods and services. Violation of Section 103, including illegal use of a trademark or any kind of resemblance towards the registered trademarks, are penalised to ensure that the rights of the brand owners as well as the end-user are safeguarded.

(12). Relying upon the observations made by DCDRF, Bathinda vide its judgment dated 04.05.2017 (Annexure P7) wherein while determining whether the opposite party (petitioners) have supplied fake frame or genuine one, as per the statement of Shailendra Trivedi, Sales Executive of Sterling Meta-Plast India P.ltd. (Annexure P6), it is emphatically argued on behalf of the petitioners that the frame is genuine and was supplied by their firm/company to the petitioners and based upon such finding, there can be no dispute left to be adjudicated either before the consumer courts or even to pursue the FIR as none of the ingredients are made out.

(13). This Court is not in agreement with the above assertion made by the petitioners that the litigation before the Consumer Courts/forum is of distinct nature vis-à-vis the nature of attribution made in the present FIR where the respondent No.2 has made allegation of cheating and conspiracy coupled with selling goods or providing services with false trade mark or description.

(14). On a query put by this Court, learned counsel for the petitioner has drastically failed to show any document or evidence or proof which expressly or even impliedly authorizes the petitioners to sell the products of Tommy Hilfiger. On the contrary, it is the assertion of the petitioners that they are operating without any authorized dealership of the said Brand and so is the position with all the concerned companies/firms all over. How is it possible that firms/dealers can sell products or provide services in relation to a product which has its market value. The sale by unauthorized dealers of "genuine" goods poses the greatest legal challenge to the makers of well-known brands. That being so, the intention of the firm/company selling fake products under the guise of renowned brand-name directly was to cheat and dupe the consumer from the very inception. Therefore, the ingredients of Section 420 IPC coupled with Section 103 & 104 of Trademarks Act are independent of the civil dispute prevailing between the parties and cannot be a ground for dismissal of criminal proceedings against the petitioners.

(15). In view of the discussions made hereinabove, the present petition stands dismissed.

26.09.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*