



2024:DHC:4887



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IN THE HIGH COURT OF DELHI AT NEW DELHI
Reserved on:- 29th April, 2024
Date of Decision:- 2nd July, 2024

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CS(COMM) 18/2023, CRL.M.A. 18432/2023 & 1733/2023
M/S KG MARKETING INDIA Plaintiff
Through: Mr. Dushyant K. Mahant, Mr. Deepak
Dhyani, Ms. Anshima Puri & Mr.
Karan Kumar, Advs. (M.
9811723901)

versus

MS. RASHI SANTOSH SONI & ANR. Defendants

Through: Mr. Alankar Kirpekar and Mr. Jaspreet
Singh Kapur, Advs. (M. 9550145159)

WITH

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CS(COMM) 477/2023, I.As. 12949/2023, 15516/2023 & 3863/2024
RASHI SANTOSH SONI & ANR. Plaintiffs

Through: Mr. Alankar Kirpekar and Mr. Jaspreet
Singh Kapur, Advs.

versus

K G MARKETING INDIA Defendant

Through: Mr. Dushyant K. Mahant, Mr. Deepak
Dhyani, Ms. Anshima Puri & Mr.
Karan Kumar, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.

Background Facts & Procedural History

2. **CS(COMM) 18/2023** is a suit filed by M/s. KG Marketing India
(*hereinafter, 'KG Marketing'*) through its proprietor, Mr. Karan Kumar. The



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said suit was filed against the Ms. Rashi Santosh Soni and Mr. Santosh Soni (*hereinafter, 'the Defendants'*) seeking an injunction against the use of the mark/label 'SURYA' and the accompanying trade dress (*hereinafter, 'impugned mark/label'*), which is extracted below:



3. In this suit, KG Marketing sought the following reliefs:

a) *Pass an order/decreed of permanent and mandatory injunction restraining the Defendants, their partners/associates, assignees in business, franchisees, licensees, distributors and agents from manufacturing, selling, offering for sale, advertising in print and electronic media, advertising on the internet, directly or indirectly dealing in any product by using impugned mark/trade dress viz.,*



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or any other trade mark or logo/ device, which is identical to and/or deceptively similar to the Plaintiff's well known trade mark, trade dress, get up, lay out and placement of distinctive features as used in the trade mark/label



and its trade dress



amounting to action of passing off, misrepresentation, unfair competition and dilution.

b) Pass an order/decreed of delivery up of all the counterfeited products bearing the impugned trade mark/ trade dress including packing materials, dies, blocks, boxes, advertising and publicity material stationary. account books etc.. to an authorized

Signature Not Verified

Digitally Signed
By:DEVANSHU JOSHI
Signing Date:03.07.2024
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representative of the Plaintiff for the purposes of destruction and erasure.

4. **CS(COMM) 18/2023** was filed on 10th January, 2023 based on the premise that KG Marketing is the prior user of the mark/label 'SURYA GOLD' since 2016 in various forms. Claim was made in the plaint of prior adoption and senior user. KG Marketing also claimed to have filed trade mark applications and sales figures since 2017-2018 till 2021-2022. KG Marketing claimed to have filed various trade mark applications, details of which are extracted below:

S. No.	Artistic Work	Title of Artistic Work	Application and C.C. no.	Status
1		Surya Gold K2	5749649	Pending
2		Surya Gold K2 with device of shining sun	120898	Pending
3		'Surya Crystal'	119678	Pending

Signature Not Verified

Digitally Signed
By:DEVANSHU JOSHI
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5. KG Marketing averred to have an expansive network of dealers, distributors, and stockists across India. It claimed to be one of the largest market leaders in electrical appliances with a pan-India presence over the last six years. Sales data is presented for five fiscal years, showing a peak in sales during 2019-2020 at ₹8,31,88,268.00/- In the year 2021-22, KG Marketing claims to have sales figures of ₹2,15,33,737.00/-. It also claimed that its projects have been advertised in various newspapers and placed on record certain advertisements extracted as below:

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6. An injunction was sought against the Defendants from using the impugned mark/trade dress. Vide order dated 16th January, 2023, the Court granted an *ex-parte ad-interim* injunction relying upon the pleadings of KG Marketing in the following terms :-

“29. Therefore, till the next date of hearing, an ex-parte injunction is granted in favour of the Plaintiff and against the Defendants and its directors, employees, officers, servants, agents and all others, acting for and on their behalf from manufacturing, using, selling, distributing, advertising, exporting, offering for sale, and dealing in any other manner, directly or indirectly, in any product by using impugned mark/ trade dress being



or

any other trade mark or logo/ device, which is identical to and/or deceptively similar to Plaintiff's marks, trade dress, get up, lay out and placement of distinctive features as used in the trade mark/ trade



dress viz. '

which amounts to passing off, misrepresentation, unfair competition and dilution thereof.

30. Defendants, their partners, officers, employees, agents, distributors, franchises, representative and assigns etc. are directed to, (i) provide a complete discovery of any and all documents and



information relating to any and all transactions concerning violation of trademark rights of Plaintiff, and
(ii) preserve all documents and other evidence in their possession relating to the subject matter of the instant suit.”

7. An application under Order XXXIX Rule 4 CPC was filed being **I.A. 10033/2023** on 18th May, 2023. In the said application, the Defendants’ stand was that they are copyright owners of various labels which were being used by them. The said copyrighted works underlying the mark/label ‘SURYA GOLD’ were also registered by the Defendants. It was also alleged that the documents filed by KG Marketing i.e., the newspaper advertisements, invoices etc., were fabricated only for the purposes of the present suit. A specific allegation was raised in the said application that the newspapers being Dainik Savera Times (Delhi) dated 17th June, 2016 and Navshakti (Mumbai) dated 12th July, 2016 were totally fabricated documents. On the strength of these submissions, the Defendants sought vacation of the *ad-interim ex parte* injunction granted on 16th January, 2023. The relevant averments in the said application are set out below:-

“d. The Plaintiff has filed various documents before this Hon'ble Court which are fabricated only for the purpose of the present suit. It is submitted that the Plaintiff, in order to falsely show that it has been advertising its marks/labels in some newspapers, the Plaintiff has filed scanned copies of newspapers such as Dainik Savera Times (Delhi) dated 17.06.2016 and Navshakti (Mumbai) 12.07.2016 at pages 61 and 62 of the list of documents filed by the Plaintiff along with the suit. It is submitted that the said scanned copies of newspapers are false and fabricated. The



Defendants have obtained true copies of the said newspapers and the same are being filed along with the list of documents. A perusal of the true copies of the said newspaper clearly shows that the Plaintiff has superimposed/ pasted/ electronically modified its advertisements by tampering the same. It is submitted that by filing such documents, the Plaintiff has played fraud upon this Hon'ble Court and hence not only the ex-parte ad interim injunction order dated 16.01.2023 deserves to be set aside/vacated on this ground alone, but also appropriate criminal proceedings be initiated against the Plaintiff.

e. The Plaintiff, in order to show that it has been using the subject marks/labels since 2016 has filed copies of invoices dated 15.09.2016, 20.04.2017, 12.04.2019 and 09.04.2019. It is submitted that the aforesaid invoices have also been fabricated for the purpose of the present suit. It is submitted that from the enquiries conducted by the Defendants, it has been revealed that no such businesses/traders exist to whom such invoices were allegedly issued. The affidavits attesting to this fact are being filed along with the list of documents."

8. On 25th May, 2023, the said application was considered by the Court and the following order was passed: -

"1. Mr. Sachin Gupta, on instructions from Mr. V. K. Puri, counsel for Plaintiff, who is present in Court, states that the Plaintiff does not wish to contest the present suit or use the 'SURYA' trademarks. Therefore, the Court may dismiss the suit and vacate the injunction granted on 16th January, 2023.

2. In light of the afore-noted statement, I.A. No. 10033/2023 is allowed and the ad-interim



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injunction granted vide order dated 16th January, 2023 is vacated. I.A. No. 680/2023 is dismissed.”

9. As recorded in the above order, proprietor of KG Marketing himself gave instructions to his counsel to withdraw the suit and consented for vacation of the *ex-parte* injunction. The same was accordingly vacated. The matter was then adjourned to 18th July, 2023.

10. In the meantime, the second suit being **CS(COMM) 477/2023** was filed by the Defendants on 15th July, 2023 seeking to injunct KG Marketing from infringing its design rights being registration nos. 364771-001 in Class 23-04 as also from using the mark ‘SURYA GOLD’ and the accompanying labels.

11. In this suit too, the case of the Defendants was that it was the prior adopter of the mark/label ‘SURYA GOLD’ for tower fans since 2014. It is also averred that it has continuously used the said mark/label since November 2014. In November 2018, as per the plaint, the Defendants established a new business called M/s. Navya Enterprises, which was involved in manufacturing, marketing, trading, and selling home appliances, including Tower Fans. They claimed to have continued to use their mark/label ‘SURYA GOLD’ for tower fans. During the same month, they also engaged Accurate Packaging, a professional design company, to create a distinctive label/package for ‘SURYA GOLD’. After correspondence between November and December 2018 regarding the design, the label/package was finalized and approved by the Defendants. Vide Assignment Deed dated 21st March, 2023, Ms. Rashi Santosh Soni obtained design rights in the Design Registration No. 364771-001 in Class 23-04 of Tower Fan. Subsequently, it also adopted the blue-coloured label in respect of ‘SURYA GOLD’ which is the subject matter of the suit filed by KG Marketing.



12. In the meantime, it is averred that the Defendants applied for registration of the mark/label 'SURYA GOLD' vide application no. 5040609 dated 12th July, 2021 in Class 11 for Fans, Portable electric fans inadvertently mentioning the date of user as '*proposed to be used*'.

13. It is claimed by the Defendants that it is the prior user of the mark/label 'SURYA GOLD' for tower fan labels. Thus, an injunction was sought to restrain KG Marketing. The prayers in this suit are extracted below:

"a) A decree of permanent injunction restraining the Defendant, his principal officers, assignees, family members and anyone acting for and on its behalf from, applying or causing to be applied for the purpose of sale, the design covered by the Design Registration No. 364771-001 or any fraudulent or obvious imitation thereof to any articles in Class 23-04 for the purpose of sale, importing of such articles for the purpose of sale, publishing or exposing or causing to be published or exposed for sale of such articles that may result in Design Infringement;

b) A decree of permanent injunction restraining the Defendant, its directors, executives, partners, proprietors, principal 50 officers, assignees, family members and anyone acting for and on their behalf from directly or indirectly copying, reproducing, storing, using, publishing, advertising Plaintiff No. 1's copyrighted work i.e. Registration No. A-144300/2023, in any manner that may result in infringement of Plaintiff No. 1's copyright subsisting in the said artistic work;

c) A decree of permanent injunction restraining the Defendant, its directors, executives, partners, proprietors, principal officers, assignees, family members and anyone acting for and on their behalf from using, applying, manufacturing and selling,



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offering for sale, advertising or promoting the unauthorized usage of the impugned mark SURYA GOLD K2, the labels i.e.,



which is either identical to or deceptively similar to the mark SURYA



GOLD, the label and the



packaging/trade dress of the Plaintiff No. 1 amounting to passing off and unfair trade in respect of any products whatsoever”

14. In this suit, the Defendants filed the original newspapers dated 17th June, 2016 and 12th July, 2016 to establish that the newspapers relied upon KG Marketing in its suit were fabricated.

15. Upon being confronted by such glaring facts, KG Marketing took the position that its suit being **CS(COMM) 18/2023** may be dismissed. On 18th July, 2023, the Court had considered the entire matter and had also recorded



the statement of the proprietor of the KG Marketing- Mr. Karan Kumar and passed the following order:-

“Statement of Mr. Karan Kumar

I have been in the business of home appliances since 2014. I run my business which is located in Sanjay Gandhi Transport Nagar. The name of my firm is M/s KG Marketing India. It is a partnership firm of myself and my cousin Mr. Gaurav Kwatra. The appliances that we make are induction cookers, gas stoves and tower fans. The brands that we use are 'Ekta Surya', 'Uni Surya' and Surya Gold K2. The firm pays income tax and is an income tax assessee. The annual turnover of the firm is around Rs. 4 to Rs. 5 crores. We sell our products in Delhi and even outside of Delhi. The Defendants have never sent any notice to the Plaintiff about the brand name. We had filed caveats in Mumbai, Delhi and Calcutta as I was told by a common dealer that the Defendants would try to stop our business.

The Defendants use the mark 'Surya Gold' for tower fans. We filed the caveats first before filing this suit. The caveats were filed by my lawyer, who was aware of the same. I do not know as to why the same were not disclosed in the plaint.

Kumar Appliances is one of my dealers in Sadar Bazar at Qutub Road. I am aware of the newspaper Dainik Saveria. I do not know from where it is published. I do not read this newspaper regularly. I do not know where it is circulated. This is the newspaper which is published in Delhi. I engaged an advertisement agent in January, 2023. At that time, I went to the advertisement agent and asked him to publish an advertisement. His name is Ravi Kumar. Again said, I gave him an advertisement



even in 2023. I do not have the mobile number of this agent. He was running only a small advertising agency. I have given at least four or five advertisements to this agency.

Question - Please show the 2023 advertisement on the record.

Answer - It is not on record.

I have got an advertisement published. I cannot recall as to in which newspaper I got the advertisement published in 2023. It was either in Dainik Bhaskar or Delhi Times.

The original newspaper dated 17th June, 2016 has been shown to the Deponent. He admits that his advertisement is not published and the advertisement agent did not give him the original newspaper.

When I asked for the original newspaper, he gave the printout which I have filed on record. I spent approximately Rs.50,000/- for advertising for one year. I had asked the agent to publish one advertisement every year but I have not placed the same on record.

I state that there was a mistake from my side by advertising the advertisement and hence, I signed this affidavit dated 8th July, 2023.

Order dated 18th July, 2023

“2. The Court has considered the matter. The statement of the Plaintiff- Mr. Karan Kumar has been recorded. After having recorded the statement and having perused the original newspapers produced by the Defendants, it is clear



to the Court that the Plaintiff's claim of having advertised in 2016 and 2017 is a completely false plea.

3. The original and certified copies of the said newspapers dated 17th June, 2016 and 12th July, 2017 show that the Plaintiff's advertisement has been superimposed on the original newspaper. Thus, the advertisements are tampered and forged.

4. Prima facie, after recording the statement of the Plaintiff, the Court is convinced that the Plaintiff is prima facie guilty of contempt and of various other illegal acts of having filed forged and tampered documents in the Court which also constitute penal offences.

5. Accordingly, notice to show cause is being issued as to why the Plaintiff ought not be punished in accordance with law. Let reply to this show cause notice be filed within two weeks. Rejoinder thereto be filed within two weeks thereafter.

6. At this stage, the Court is not inclined to permit the Plaintiff to withdraw the present suit as the Plaintiff has obtained an ex-parte injunction on the basis of forged documents which this court is not inclined to condone or overlook as is being sought by the Plaintiff.

7. Let the original and certified copies of the newspapers be placed on record."

16. On the said date i.e., 18th July, 2023, the proprietor of KG Marketing – Mr. Karan Kumar clearly made a statement that the original newspaper does not have his advertisement. The Court came to the *prima facie* conclusion that the newspapers were forged and fabricated. Accordingly, notice was issued to



show cause as to why contempt proceedings ought not to be initiated. In response to the said show cause notice, two affidavits dated 25th May, 2023 and 8th July, 2023 were filed by Mr. Karan Kumar - both of which, read as under: -

Affidavit dated 25th May, 2023

- “1. *I am one of the partners of the Plaintiff firm.*
2. *I deeply regret and most humbly tender an unconditional and unqualified apology to this Hon'ble Court for filing the impugned advertisement before this Hon'ble High Court.*
3. *I say with the greatest humility that I have always had the deepest and highest regard for this Hon'ble Court and have made a mistake in filing the impugned advertisement, which I once again regret and humbly tender an unqualified apology for the same.*
4. *I hold this Hon'ble Court in great respect and esteem and pray to this Hon'ble Court to graciously be pleased to accept the humble apology.*
5. *I say that all along I had an unblemished career. I never had the intention to show any disrespect or dishonor to this Hon'ble Court.*
6. *I sincerely apologise for the hardship caused to the Defendants.*
7. *I say that my family and me are under immense stress and have deep regret for my conduct. I undertake to not repeat this in future.*
8. *I, under the foregoing circumstances, humbly beg to be pardoned for the same.”*

Affidavit dated 8th July, 2023

- “1. *I am one of the partners of the Plaintiff firm and authorized to swear the present affidavit.*
2. *I deeply regret and most humbly, once again,*



tender an unconditional and unqualified apology to this Hon'ble Court for filing the impugned advertisement before this Hon'ble High Court.

3. I hold this Hon'ble Court in great respect and esteem and pray to this Hon'ble Court to graciously be pleased to accept the humble apology.
4. I say that all along I had an unblemished career. I never had the intention to show any disrespect or dishonour to this Hon'ble Court.
5. I say that following the said mistake, I took up the responsibility of rectifying my actions by engaging in community service. I since the last hearing have been regularly going to my local temple, namely Shakti mandir (Goofa mandir), BN West Shalimar Bagh, Near DAV Public School, Delhi-110088 and clean the temple premises and its corridors with a broom in the morning. I also assist my mother with the other cleaning activities in there. My family also conducted a puja and havan at the said temple seeking redemption.
6. I say that, I also took a dip in the holy river Ganges, seeing my actions as a sin, and hoping for purification and atonement.
7. I say that my family and me are under immense stress and have deep regret for my conduct. I pledge to this Hon'ble Court that such a lapse will never recur.
8. I say, in light of these circumstances, I humbly request to be pardoned. I stand before this Hon'ble Court full of regret and seeking its leniency. I am committed to learn from this experience and uphold the respect this esteemed institution so rightfully commands.
9. I, under the foregoing circumstances, humbly beg to be pardoned for the same."



17. In both the above affidavits, apology has been tendered by the proprietor of K.G. Marketing for having filed the fabricated newspapers. He also claims to have taken steps for repentance such as a spiritual dip in the Ganges and service at a local *Mandir*. In the reply affidavit dated 1st August, 2023 to the show cause notice issued by this Court vide order dated 18th July, 2023, an unqualified and unconditional apology was given. Regret was expressed in the following terms:-

- “5. *I say that I once again tendered an unconditional and unqualified apology vide my second affidavit dated 08th July, 2023. The copy of my affidavit dated 08.07.2023 has been attached as Document – 2.*
6. *I say that I am under immense stress and have deep regret and have taken up the responsibility for filing the impugned newspapers before this Hon'ble High Court. I most humbly, once again, tender an unconditional and unqualified apology to this Hon'ble Court for filing the same.*
7. *I say that, I hold this Hon'ble Court in great respect and esteem and pray to this Hon'ble Court to graciously be pleased to accept the humble apology.*
8. *I say that all along I had an unblemished career. I never had the intention to show any disrespect or dishonour to this Hon'ble Court.*
9. *I say that following the said mistake, I took up the responsibility of rectifying my actions by engaging in community service. I since the last hearing have been regularly going to my local temple, namely Shakti mandir (Goofa mandir), BN West Shalimar Bagh, Near DAV Public School, Delhi-110088 and clean the temple*



premises and its corridors with a broom in the morning. I also assist my mother with the other cleaning activities in there. My family also conducted a puja and havan at the said temple seeking redemption.

10. *I say that, I also took a dip in the holy river Ganges, seeing my actions as a sin, and hoping for purification and atonement. I say that the Plaintiff never had the intention to show any disrespect or dishonour to this Hon'ble Court and pledge to this Hon'ble Court that such a lapse will never recur.*
11. *I say that I have learnt my lesson and humbly beg to be pardoned for the same. I once again reiterate that my family and me are under immense stress and have deep regret for my conduct. I pledge to this Hon'ble Court that such a lapse will never recur.*
12. *I say that I have deep regret and seek leniency with folded hands from this Hon'ble Court.*
13. *In view of the circumstances, I most respectfully pray that this Hon'ble Court may kindly be pleased to - a) pardon my mistake; b) drop contempt proceeding against me; c) pass any such further order as this Hon'ble Court may deem fit and proper."*

18. In view of the conduct of the proprietor of KG Marketing, the Defendants filed an application **CRL.M.A. 18432/2023** under Section 340 CrPC in **CS(COMM) 18/2023** alleging that KG Marketing has committed offences under Section 196, 199, 200, 209, 463, 465, 468, 470 of the IPC.

19. In **CS(COMM) 477/2023**, the Defendants filed an application under Order XXXIX Rule 2A CPC being **I.A. 3863/2024**, wherein it was alleged that KG Marketing has been continuing to use the 'SURYA GOLD' mark/label for selling Tower Fans. The same was confirmed through a



discreet purchase made by the Defendants. Additionally, another Tower Fan under the same impugned mark was purchased by the Defendants through Mr. Suraj Kumar from Sawan Home Appliances in Sadar Bazar, Delhi on 16th January, 2024. Although the purchase was successful, the invoice issued did not mention the mark 'SURYA GOLD'. As per the said contempt application, the motor of this fan was manufactured on 20th October, 2023. Thus, supporting the Defendants' claim of continued unauthorized use of the trade mark by KG Marketing.

20. In response to the said application, KG Marketing filed its reply on 20th May, 2024. The relevant portion of the reply to the application under Order XXXIX Rule 2A CPC reads as follows:

“9. *That the contents in Para no.6-9 of the present application are wrong and hence – categorically denied. It is wrong and hence vehemently denied that the Defendant deserves to be proceeded against and tried and punished under the provisions of the Contempt of Courts Act, 1971. It is submitted as reply that the Defendant has not done anything which has caused grave and irreparable losses to the Plaintiffs or any willful and deliberate – contempt of the order of this Hon'ble Court. It is submitted -that Mr. Karan Kumar is a law abiding citizen and has not been engaged in the business of selling goods under the mark 'SURYA' since the order date: 19.07.2023 passed by this Hon'ble Court. That each and every averments in the present application of the plaintiff are based on bare allegations without any substantial documentary proof, hence, allegation of the plaintiffs are liable to be rejected. The contents of relevant para of present reply may -please be read herein as*



part and parcel of para under reply which is not being reproduced for the sake of brevity. –

11. **Further, it is pertinent to mention herein that on the last date of . hearing i.e. 19-02-2024, the Hon'ble Court heard plaintiffs' application under Order XXXIX, Rule 2A of the Code of Civil Procedure, 1908 read with Section 11 and 12 of the Contempt of Courts Act, however, instead of issuing notice for application bearing I.A. No.3863 of 2024, inadvertently notice was issued for application bearing CRL.M.A. No.18432/2023. It may please be noted that application bearing CRL.M.A. No.-18432/2023 was filed in a connecting case Mis. KG Marketing India vs. Ms. Rashi Santosh Soni Anr. bearing CS(Comm.) No.18/2023 and the Plaintiff (herein the 'Defendant') had already filed reply of that application vide Diary No.: 2202883/2023 on 06-12-2023.**
12. *Be that as it may, vide aforesaid order the Hon'ble Court had directed to the Defendant to file reply within 4 weeks which ended on 18-03-2024. However, in the 3rd week of March, 2024, main counsel Shri V.K. Puri for the Defendant fell sick due to severe cough and cold problem and therefore, the Defendant could not be contacted for brief notes for filing the reply to the present application. The counsel of the Defendant after recovery contacted Mr. Karan Kumar and drafted the reply and the same is being filed today i.e. 20-03-2024 along with supporting documents before the Hon'ble Court. Due to aforesaid reasons, there is a delay of 2 days in filing of the reply on behalf of Defendant."*



Arguments on behalf of the parties

21. In the application under Section 340 Cr.P.C, it was submitted by Mr. Dushyant K. Mahant, Id. Counsel appearing for KG Marketing that action under Section 340 CrPC. is not liable to be taken in view of the settled position in law in ***Iqbal Singh Marwah v. Meenakshi Marwah, [(2005) 4 SCC 370]***. The said decision distinguishes between fabrication committed prior to the filing of legal proceedings and forgery and fabrication occurring during the course of legal proceedings, once a person or an entity becomes a party before the Court. In addition, Mr. Deepak Dhyani, Id. Counsel for KG Marketing submitted that his client has no objection to the suit filed by KG Marketing being dismissed and the suit filed by the Defendants being decreed against him.

22. The main plank of Mr. Mahant's argument is that proceedings under Section 340 CrPC cannot be initiated against Mr. Karan Kumar for the following reasons:

- (i) The newspaper was fabricated prior to the institution of the present suit i.e. ***CS (COMM) 18/2023***. Hence, the same document does not fall within the definition of "*document produced or given in evidence in a proceeding in any Court*" in terms of Section 195(1)(b)(ii) CrPC. On this basis, it is argued that only a private complaint is maintainable, and the same may be initiated by the Defendants before a competent Magistrate, however this Court ought not to make a complaint under Section 340 CrPC.
- (ii) Mr. Mahant gave a scenario where a probate petition was filed



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upon a Will that was purportedly forged prior to its submission to the Court. Ld. Counsel argued that under such circumstances, a complaint under Section 340 CrPC would not be maintainable. Since the alleged forgery occurred before the judicial process/proceedings commenced, the dishonesty was not carried out during the proceedings of this Court. It is argued that this distinction is critical as Section 340 CrPC specifically addresses offences such as perjury or the fabrication of evidence that directly impinge upon the integrity of the judicial proceedings. However, where the forged document is presented as evidence during the Court's proceedings, the application under Section 340 CrPC is deemed wholly appropriate. Such an action is justified on the grounds that forgery then becomes an act interfering with the judicial process itself, mandating the Court's intervention under the said provision. This aligns with the principle of *custodia legis*, ensuring that any document submitted into the Court's custody remains protected under the law. Reliance is placed upon the judgment of the Supreme Court in ***Ashok Gulabrao Bondre v. Vilas Madhukarrao Deshmukh and Ors. (2023 INSC 724)***.

- (iii) Ld. Counsel argued that the document in question was used to obtain an *ex-parte* order dated 25th May, 2023 and clarified that Section 340 CrPC, which mentions '*given in evidence*', applies only when a document is officially presented during a trial. It is argued that this section does not apply at the early stage when the document is first used, such as in *ex-parte* proceedings.



Therefore, the Id. Counsel urged that since Section 340 CrPC doesn't apply in this situation, the correct action would be to file a private complaint about the alleged fabrication of the document.

23. In conclusion, Mr. Mahant further submits that the suit **CS(COMM) 18/2023** may be dismissed, and the suit **CS(COMM) 477/2023** may be decreed against KG Marketing in terms of the prayers contained in the suit.

24. Mr. Alankar Kirpekar, Id. Counsel for the Defendants, vehemently opposed the arguments presented by Mr. Dushyant K. Mahant, Id. Counsel. Mr. Kirpekar placed reliance on the decision of the Supreme Court in ***Bandekar Brothers Private Limited v. Prasad Vassudev Keni and Others* [2020] 10 S.C.R. 1075**, for initiating action under Section 340 CrPC. He highlighted that this decision clarifies the application of Section 195(1)(b) CrPC read with Section 340 CrPC concerning allegations of forgery and fabrication. It is his submission that ***Bandekar Brothers (supra)*** differentiates ***Iqbal Singh Marwah (supra)*** regarding the scenario where a document, initially forged, has a direct connection/nexus to the suit in question.

25. Mr. Kirpekar pointed out that the Supreme Court, in ***Bandekar Brothers (supra)*** addressed two specific sets of sections under the IPC—Sections 191 to 193, particularly Sections 192 and 193, read with Sections 196, and secondly, Sections 465, 467, and 471. It is his submission that the decision in ***Iqbal Singh Marwah (supra)*** relates to Section 195(1)(b)(ii) CrPC, and that such interpretation cannot be extended to Section 195(1)(b)(i) CrPC. In the present situation, the two newspapers were allegedly created to falsely establish prior use of a trade mark. These newspapers were then filed before this Court, leading to an *ex-parte* order of injunction based on the



forged documents, which was later vacated due to the documents being forged. Since the forged newspapers were used as evidence to secure an *ex-parte* order, it is urged that there exists a clear legal nexus between the forged documents and the suit, substantiating the need for action under Section 340 CrPC. Reliance is placed on paras 30-33 of the said decision. Further, reliance is also placed on the judgment of the Supreme Court in *Narendra Kumar Srivastava v. State of Bihar [(2019) 3 SCC 318]*.

26. It is further contended that should this Court choose not to initiate proceedings under Section 340 CrPC, the alternative legal remedy available to the parties—filing a private complaint with the Magistrate—may be adversely affected. The Magistrate might hesitate or refuse to proceed with the matter, given the absence of express permission or referral from this Court.

Discussion and Analysis

27. In the context of trade mark, passing off and copyright matters, documents such as newspaper advertisements are of utmost importance. Compared to internal documents of parties such as sales records, invoices, vouchers, and purchase orders etc., Courts place enormous reliance on third-party independent documents like newspapers, advertisements, commercials etc. These documents are expected to be independently verifiable and, hence, are considered more credible. Given their public nature, these documents can significantly influence decisions by providing a reliable source of usage in respect of a label/mark. Thus, the authenticity and accuracy of such documents are crucial in intellectual property disputes.

28. Further, in intellectual property cases, it is common for parties to submit documents that demonstrate independent use of a mark to establish claims of prior adoption, prior use, and prior proprietary rights. Newspapers



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occupy a high position in the hierarchy of documents relied upon by Courts. Therefore, any allegation of fabrication of newspapers is considered extremely serious, as it directly challenges the integrity of the evidence that significantly influences the decision in a proceeding.

29. In the present case, it is undisputed that the newspapers dated 17th June, 2016, and 12th July, 2016, have been fabricated by Mr. Karan Kumar, the proprietor of KG Marketing. Mr. Kumar, the signatory to the plaint, has appeared and categorically admitted that the said newspapers filed by him were fabricated. In his statement, he attempts to explain that he approached an advertising agent who charged Rs. 50,000/- and provided the original printout. He further admits that he was unaware of where the Dainik Savera Times (Delhi) newspaper was printed. When confronted with the original advertisement (as annexed to the Defendants documents), he stated that the advertising agent did not give him the original newspaper. He was also unaware of where the Dainik Savera Times (Delhi) newspaper is circulated.

30. The fact that the newspaper was fabricated is evident from the following comparative table: -

[illegible]

Healthy alternatives to meat and dairy products can help you reach your goal of losing weight and living longer. Studies show that eating a diet rich in plant-based proteins can help you lose weight and reduce your risk of heart disease, diabetes, and other chronic conditions. Some of the best plant-based protein sources include beans, lentils, tofu, and tempeh. These foods are not only high in protein but also contain fiber, which can help you feel full and satisfied. Incorporating these healthy alternatives into your diet can be a simple and effective way to reach your weight loss goals.

श्रीमती सी. श्याम, गुणगवतगंगा रोड, ५३, बाली रोड

10. **QUESTION** The following table shows the number of people who attended the 2008 Summer Olympics in Beijing, China. The number of people who attended the 2008 Summer Olympics in Beijing, China, was 1.1 million. The number of people who attended the 2008 Summer Olympics in Beijing, China, was 1.1 million. The number of people who attended the 2008 Summer Olympics in Beijing, China, was 1.1 million.

[illegible]

किस प्रकार...
 ...
अपराध के मामले में...
 ...
दोष प्रतीत करने में...
 ...

[illegible]

1. *What is the purpose of the study?*
 2. *What are the research objectives?*
 3. *What is the research design?*
 4. *What are the variables?*
 5. *What is the sample size?*
 6. *What are the data sources?*
 7. *What are the data collection methods?*
 8. *What are the data analysis methods?*
 9. *What are the results?*
 10. *What are the conclusions?*



31. A perusal of the above table shows without any doubt that the two newspaper advertisements relied upon by KG Marketing are forged and fabricated. The fabrication has also been admitted by Mr. Karan Kumar in both his affidavits and statement given before the Court. As evidenced from the orders passed by this Court and also the replies, it is clear that the fabrication of the newspapers was done prior to the filing of the suit but for the purposes of the suit. The said newspapers were duly relied upon in the suit for the purposes of claiming prior user/adoption in the mark ‘SURYA GOLD’ since 2016 in support of the prayer for injunction, that too at the *ex parte* stage.

32. The question that arises is whether such fabrication by Mr. Karan Kumar, the proprietor of KG Marketing calls for action by this Court under Section 340 CrPC.

33. In these proceedings, since the application was pending when the new statutes Bharatiya Nyaya Sanhita, 2023 (*hereinafter*, ‘BNS’) and Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter*, ‘BNSS’) were enacted, the matter would continue under the erstwhile Code itself. This is also clear from Section 531 of the ‘*Bhartiya Nagrik Sakshya Sanhita*’ which reads as under:

“531.

(1) The Code of Criminal Procedure, 1973 is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the



provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.

Accordingly, the earlier Codes i.e., CrPC and IPC would be the applicable codes/statutes in the present case.

34. The relevant sections of the CrPC and the IPC are reproduced for sake



of easy reference:

CrPC

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in subclause (i) or subclause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority



to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term “Court” means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

340. Procedure in cases mentioned in section 195.—

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section



(1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.



(4) In this section, “Court” has the same meaning as in section 195”

IPC

“191. Giving false evidence. —Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1. — A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2. — A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

192. Fabricating false evidence.— Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said “to fabricate false evidence”.

“196. Using evidence known to be false.—Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.



463. Forgery. — Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document.—A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any



electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1. —A man's signature of his own name may amount to forgery

Explanation 2. —The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3.—For the purposes of this section, the expression “affixing electronic signature” shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).”

35. Section 340 CrPC clearly stipulates that if the Court is of the opinion that an inquiry ought to be made into any offence referred to in Section 195(1)(b) CrPC committed either:

- a) in relation to a proceeding in that Court or
- b) in respect of a document produced in that Court or
- c) in respect of a document given in evidence in a proceeding in that Court

the Court may record a finding to that effect and direct a complaint to be registered. Under Section 195(1)(b) CrPC, a Criminal Court cannot directly take cognizance of any offence which is alleged to have been committed in relation to a proceeding in any Court, unless there is a complaint in writing by the Court itself, or an officer of the Court authorized by it.



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36. These two provisions stipulate the manner in which forgery, fabrication or other offences which take place in Court proceedings are to be dealt with. Forgery and fabrication of a document is, clearly, a punishable offence under Section 463/464 IPC. The question is whether the Court ought to direct the registration of a complaint in this case or not.

37. In *Patel Laljibhai Somabhai v. The State of Gujarat [(1971) 2 SCC 376]*, the Supreme Court was dealing with a case where a person had filed a civil suit and had relied upon a forged cheque. In respect of the same very forged cheque, a private complaint was filed before the Court of the Judicial Magistrate. This was objected to on the ground that such a private complaint would be barred under Section 476 of CrPC, 1898 (which corresponds to Section 340 CrPC, 1973). The extant provisions of the CrPC and IPC were considered by the Supreme Court. The issue was regarding the interpretation of Section 195(1)(c) CrPC, 1898 (which corresponds to Section 195(1)(b)(ii) CrPC) regarding its application to instances in which a party to a proceeding has presented a forged document as evidence. Specifically, the question was whether prosecution can be initiated against that party for committing offences under Sections 467 and 471 IPC. According to the Supreme Court, the two main interpretations revolve around Section 195(1)(b) CrPC are:

- *First view*: To fall under the prohibition of Section 195(1)(b) CrPC, it must be committed by the party specifically in their role as a party to the proceeding. Such an interpretation means that the offence should occur after the individual has become a party to the proceeding.
- *Second view*: Offence can be committed by the individual before they become a party to the proceeding, as long as the document related to the offence is later produced or given in evidence in the proceeding.



38. The Supreme Court also considered the purpose of the Section 195(1)(b) and Section 340 CrPC, and held that the underlying purpose of enacting these provisions is to curb the inclination of private parties, who feel aggrieved by certain offences, to initiate criminal prosecutions on grounds that may be frivolous, vexatious, or insufficient—often driven by a desire for revenge or to harass their adversaries. These specific offences are placed under the Court’s control because they directly affect the judicial process itself. The relevant portions of the said decision are as follows:

*“5. We are directly concerned only with Clause (c) of Section 195(1). What is particularly worth noting in this Clause is (i) the allegation of commission of an offence in respect of a document produced or given in evidence in a proceeding in a court; and (ii) the commission of such offence by a party to such proceeding. The use of the words "in respect of" in the first ingredient would seem to some extent to enlarge the scope of this clause. Judicial opinion, however, differs on the effect and meaning of the words "to have been committed by a party to any proceeding in any court". As Clause (b) of Section 195(1) does not speak of offence committed by a party to the proceeding, while considering decisions on that clause this distinction deserves to be borne in mind. **Broadly speaking two divergent views have been expressed in decided cases in this connection. According to one view, to attract the prohibition contained in Clause (c) the offence should be alleged to have been committed by the party to the proceeding in his character as such party, which means after having become a party to the proceeding, whereas according to the other view the alleged offence may have been committed by the accused even prior to his becoming a party to the proceeding provided that the document in question is produced or given in evidence in such proceeding. The language used seems to us to***



be capable of either meaning without straining it. We have, therefore, to see which of the two alternative constructions is to be preferred as being more in accord with the legislative intent, keeping in view the statutory scheme and the purpose and object of enacting the prohibition contained in Section 195(1)(c).

7. The underlying purpose of enacting Section 195(1)(b) and (c) and Section 476 seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of these offences and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by Section 190 Cr.P.C. of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the



commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to us to be more appropriate to adopt the strict construction of confining the prohibition contained in Section 195(1)(c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party. It may be recalled that the superior court is equally competent under Section 476A Cr.P.C. to consider the question of expediency of prosecution and to complain and there is also a right of appeal conferred by Section 476B on a person on whose application the Court has refused to make a complaint under Section 476 or Section 476A or against whom such a complaint has been made. The appellate court is empowered after hearing the parties to direct the withdrawal of the complaint or as the case may be, itself to make the complaint. All these sections read together indicate that the legislature could not have intended to extend the prohibition contained in Section 195(1)(c) Cr.P.C. to the offences mentioned therein when committed by a party to a proceeding in that court prior to his becoming such party. It is no doubt true that quite often-if not almost invariably-the documents are forged for being used or produced in evidence in court before the proceedings are started. But that in our opinion cannot be the controlling factor, because to adopt that construction, documents forged long before the commencement of a proceeding in which they may happen to be actually used or produced in evidence, years later by some other party would also be subject to Sections 195 and 476 Cr.P.C. This in our opinion would unreasonably restrict the right possessed by a person and recognized by Section 190 Cr.P.C. without



promoting the real purpose and object underlying these two sections. The Court in such a case may not be in a position to satisfactorily determine the question of expediency of making a complaint.”

The Court drew a distinction in the said case that if forgery had been committed much prior to the suit itself being filed, the restriction or the prohibition from filing a private complaint would not apply.

39. In ***Iqbal Singh Marwah (supra)***, the Constitution Bench of the Supreme Court considered Sections 195(1)(b) and 340 CrPC in a case where it was alleged that a Will had been forged. A private complaint was filed by the Appellants seeking prosecution of the mother for forgery. The Trial Court dismissed the complaint, but upon revision, it determined that forgery had been committed prior to the documents being produced in Court, and the matter was remanded back. This order was upheld by the High Court. The Supreme Court, while considering this position, observed as follows:-

“9. The scheme of the statutory provision may now be examined. Broadly, Section 195 Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 - 188 IPC which occur in Chapter X of the IPC and the heading of the Chapter is - 'Of Contempts Of The Lawful Authority Of Public Servants'. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as - 'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause clearly relate to



giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court.

10. Section 195(1) mandates a complaint in writing of the Court for taking cognizance of the offences enumerated in clauses (b) (i) and (b)(ii) thereof. Sections 340 and 341 Cr.P.C. which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is --'Provisions As To Offences Affecting The Administration Of Justice'. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the Section where



there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the Sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the Sections which follow them than might be afforded by a mere preamble.(See Craies on Statute Law, 7th Ed. Pages 207, 209). The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, viz., which is committed after the document is produced or given in evidence in Court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in Court cannot, strictly speaking, be said to be an offence affecting the administration of justice.

11. It will be useful to refer to some earlier decisions touching the controversy in dispute which were rendered on Section 195 of Code of Criminal Procedure 1908 (for short 'old Code'). Sub-section (1) (c) of Section 195 of Old Code read as under:

"Section 195

(1) No Court shall take cognizance –

(c) Prosecution for certain offences relating to documents given in evidence. -- of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in



evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate"

It may be noticed that language used in Section 195(1)(b)(ii) Cr.P.C. is similar to the above provision except that the words "by a party to any proceeding in any Court" occurring therein have been omitted. We will advert to the effect of this omission later on.

20. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in Sachida Nand Singh, after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of society at large.

21. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the



same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. [...]

...

23. That apart, the section which we are required to interpret is not a penal provision but is part of a procedural law, namely, Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by Court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the learned counsel for the appellants can, therefore, have no application here.

*24. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in *M.S. Sheriff v. State of Madras* [1954] 1 SCR 1144 give a complete answer to*



the problem posed :

...

25. *In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis. 26. In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference. 27. The appeal is, accordingly, dismissed."*

40. The distinction that was brought out in ***Iqbal Singh Marwah (supra)*** is that the offence did not occur after the documents were produced or given in evidence in a proceeding before a court; hence, the private complaint would stand and would not be covered by the exception under Section 195(1)(b) CrPC. In both of these cases, however, it is important to note that the Supreme Court allowed private complaints to continue. In ***Bandekar Brothers (supra)***, the Court revisited the decision in ***Iqbal Singh Marwah (supra)*** when an offence was committed concerning documents prior to them becoming *custodia legis*. Additionally, in ***Bandekar Brothers (supra)***, the Court considered the decisions in ***Kailash Mangal v. Ramesh Chand [(2015) 15***



SCC 729] and Narendra Kumar Srivastava v. State of Bihar [(2019) 3 SCC 318] and observed as follows:-

“29. Thus, *Iqbal Singh Marwah (supra)* is clear authority for the proposition that in cases which fall under Section 195(1)(b)(ii) of the CrPC, the document that is said to have been forged should be custodia legis after which the forgery takes place. That this judgment has been followed in several subsequent judgments is beyond cavil – see *Mahesh Chand Sharma v. State of U.P and Ors.* (2009) 15 SCC 519 (at paragraphs 21-23); *C.P. Subhash v. Inspector of Police, Chennai and Ors.* (2013) 11 SCC 559 (at paragraphs 12 and 13); *Kishorbhai Gandubhai Pethani v. State of Gujarat and Anr.* (2014) 13 SCC 539 (at paragraphs 14 and 15) and *Vishnu Chandru Gaonkar v. N.M. Dessai* (2018) 5 SCC 422 (at paragraphs 14 and 17).

30. However, Shri Mishra, undaunted by the fact that *Iqbal Singh Marwah (supra)* and its progeny are all cases relatable to Section 195(1)(b)(ii) of the CrPC, has argued that the same reasoning ought to apply to cases falling under Section 195(1)(b)(i) of the CrPC. First and foremost, as has been pointed out hereinabove, every judgment that follows *Iqbal Singh Marwah (supra)* is in the context of offences mentioned in Section 195(1)(b)(ii) of the CrPC. Secondly, there is direct authority for the proposition that the ratio in *Iqbal Singh Marwah (supra)* cannot be extended to cases governed by Section 195(1)(b)(i) of the CrPC.

31. Thus, in *Kailash Mangal v. Ramesh Chand* (2015) 15 SCC 729, this Court was confronted with the conviction of the appellant under Sections 193 and 419 of the IPC in a case initiated on a private complaint. *Iqbal Singh Marwah (supra)* was put in the forefront of the argument, stating that the offence that had been committed on the facts of this case had been committed



with respect to a document prior to its being custodia legis. This Court distinguished Iqbal Singh Marwah (*supra*) as follows:

“9. While restoring the conviction of the appellant under Section 193 IPC, the High Court has relied upon a decision of the Constitution Bench of this Court in *Iqbal Singh Marwah v. Meenakshi Marwah*. A Constitution Bench of this Court in *Iqbal Singh Marwah* case held that the protection engrafted under Section 195(1)(b)(ii) CrPC would be attracted only when the offence enumerated in the said provisions has been committed with respect to a document after it had been produced or given in evidence in proceedings in any court i.e. during the time when the document was in custodia legis. Where the forgery was committed before the document was filed in the Court, the High Court was held not justified in quashing the prosecution of the accused under Sections 467, 468, 471, 472 and 477-A IPC on the ground that the complaint was barred by the provisions of Section 195(1)(b)(ii) CrPC. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis. 10. In the instant case, the false affidavit alleged to have been filed by the appellant was in a proceeding pending before the civil court and the offence falls under Section 193 IPC and the proceeding ought to have been initiated on the complaint in writing by that court under Section 195(1)(b)(i) IPC. Since the offence is



said to have been committed in relation to or in a proceeding in a civil court, the case of Iqbal Singh Marwah is not applicable to the instant case.”

...

33. The aforesaid judgments clearly lay down that when Section 195(1)(b)(i) of the CrPC is attracted, the ratio of Iqbal Singh Marwah (supra), which approved Sachida Nand Singh and Anr. v. State of Bihar and Anr. (1998) 2 SCC 493, is not attracted, and that therefore, if false evidence is created outside the Court premises attracting Sections 191/192 of the IPC, the aforesaid ratio would not apply so as to validate a private complaint filed for offences made out under these sections.

...

54. Shri Mishra then argued that Surjit Singh (supra) had been relied upon by the High Court, which judgment was overruled in Iqbal Singh Marwah (supra). Though this is correct, the reasoning that Iqbal Singh Marwah (supra) is not applicable to the facts of the present case, to which the provisions of Section 195(1)(b)(ii) of the CrPC do not apply, is a finding made by the High Court in the impugned judgment which is unexceptional. For this reason also, incorrect reliance based on Surjit Singh (supra) would not avail the Appellants in the present case.”

41. In *Ashok Gulabrao Bondre v. Vilas Madhukarrao Deshmukh*, [2023] 3 S.C.R. 820 again, the Court considered *Iqbal Singh Marwah (supra)* and observed that a private complaint would be entertainable. In *Ashok Gulabroa (supra)*, the Appellant filed a complaint against the Respondents, alleging that they committed offences under various sections of IPC. Respondent No. 2 had created forged documents—a personal recognizance bond and a surety bond in a criminal case. These documents were filed in the criminal case before the



JMFC. The JMFC dismissed the complaint. Dissatisfied with this dismissal, the Appellant sought revision. Vide judgment dated 14th March, 2005, the Id. Additional Sessions Judge of Nagpur ruled that such a complaint could only be filed with the written consent of the concerned court or a subordinate court. Despite dismissing the complaint, the Judge acknowledged the severity of the allegations and observed that if the appellant filed an application under Section 340 CrPC, the JMFC ought to conduct a preliminary inquiry and record findings accordingly. This decision by the Revisional Court was subsequently challenged by the Appellant in the High Court, which was dismissed, and hence the appeal before the Supreme Court. Placing reliance on *Iqbal Singh Marwah (supra)*, the Supreme Court observed as follows:

“20. It could thus clearly be seen that this Court, on unequal terms, has held that the view taken in the case of Sachida Nand Singh (supra) that Section 195(1)(b)(ii) of the Cr.P.C. would be attracted only when the offence enumerated in the said provision was committed in respect of a document after it has been produced or filed in evidence during proceedings before any Court, i.e. during the time when the document is custodia legis. The Court has clearly held that, insofar as the Will which is alleged to have been fabricated before it was produced in the Court, the embargo created by Section 195(1)(b)(ii) of Cr.P.C. would not come into play.

21. It has been held that in such a case, the Court will be entitled to take cognizance of the offence only on the basis of the complaint made by the complainant.

22. In that view of the matter, we find that the view taken by the Revisional Court as well as the High Court is not sustainable.



23. *The impugned judgment and order passed by the Revisional Court as well as the High Court are quashed and set aside.*

24. *The matter is remitted back forthwith to the learned JMFC, Ramtek for considering the complaint of the appellant on its own merits.*

25. *Taking into consideration that the litigation is pending for almost a decade, we request the learned JMFC to decide the complaint of the appellant on merits as expeditiously as possible and in any case within a period of one year from today.*

26. *We further make it clear that we may not be understood to have expressed any opinion on merits and nothing observed herein should be construed to have bearing on the merits of the matter.”*

42. Forgery and fabrication are a serious matter. In none of the cases discussed above, the Court has condoned forgery and fabrication. Section 195(1)(b)(ii) CrPC deals with commission of an offence in respect of a document produced or given in evidence in proceeding in any Court. However, Section 195(1)(b)(i) deals with offences alleged to have been committed, **in relation to**, a Court proceeding. In the background of the above law, the facts relating to the present case have to be considered. Under the Commercial Courts Act, 2015, every Plaintiff or party has to file an affidavit in support of the plaint and also give a statement of truth with the plaint and the documents. In the statement of truth dated 10th January, 2023 filed by Mr. Karan Kumar, along with plaint, he has given a statement of truth stating as under:-

“STATEMENT OF TRUTH

Under the First Schedule, Order VI-Rule 15A and Order X-Rule 1)



I, Karan Kumar, S/o. Mr. Vijay Kumar, age about 34 yrs, having address at BG-147, 1st Floor, Sanjay Gandhi Transport Nagar, Delhi - 110042, being the authorized person of the Plaintiff do hereby solemnly affirm and state as under:

- 1. That I am one of the partner and authorized signatory of the Plaintiff and I am competent to swear the present affidavit.*
- 2. That I am fully conversant with the facts and circumstances of the case and have also examined the relevant documents and records in relation thereto.*
- 3. I say that para 1-34 of the accompanying plaint are based on the records of the plaintiff in its course and believed on the true and para 35-43. are based on legal advice believed to be true and correct.*
- 4. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copy there of annexed with the plaint and that I do not any other documents in my power, possession, control or custody.*
- 5. I say that there is no false statement or concealment of any material fact, document or record and I have included information that according to me is relevant for the present plaint.*
- 6. I say that the above mentioned pleading comprises of a total of 25 pages, each which has been signed by me.*
- 7. **I say that the documents annexed with the list of documents are true copies of the documents referred to and relied upon by me.***
- 8. I say that I am aware that for any false statement of concealment made herein, I shall be liable for action against me under law."*



43. Specifically, in respect of the documents at Serial No. 6 of the list of documents filed on behalf of KG Marketing i.e. advertisement, the following has been stated:-

6.	The copies of advertisements / Screenshot of respective webpages of e-commerce websites whereby the goods of the plaintiff are being sold/acquired.	Publically available on World Wide Web and on News Paper/print media.	True copy	Publically available on World Wide Web and on News Paper/print media.	Plaintiff to counsel for plaintiff	58-65
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44. Both these facts read together shows that although the alleged fabrication of the newspaper might have been done earlier, the affidavit filed before the Court makes a categorical assertion that the document is true and there is no false statement or concealment of any document. The authenticity of these documents has been initially vouched for by the Deponent, Mr. Karan Kumar, who has now admitted that the documents are fabricated. Therefore, the offence has taken place once the suit was filed before this Court and the document was relied upon for obtaining relief.

45. Until the Defendants pointed out the original newspaper, KG Marketing did not admit to forgery or fabrication of the newspapers. The newspapers were filed and relied upon with the plaint as being authentic newspapers. The affidavit sworn was clearly false and contrary to the recently sworn affidavit, which admitted the forgery and fabrication. This, in the opinion of this Court, discloses an offence of forgery, fabrication, and filing of a false affidavit, which clearly calls for the lodging of a complaint under Section 340 CrPC.

46. The forgery and fabrication of the documents were admitted during the



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Court proceedings by Mr. Karan Kumar, who initially filed a false affidavit and thereafter resiled from the same. Moreover, such reliance on a forged and fabricated document cannot go unpunished, in the opinion of this Court. The purpose of the provision Section 340 CrPC. would be undermined if the fabrication of a newspaper is permitted to go unpunished without even an investigation. Persons who indulge in forgery and fabrication, especially, in respect of documentary evidence which relied upon heavily that too in order to obtain an *ex-parte* injunction cannot be allowed to go scot-free.

47. Under such circumstances, this Court is of the opinion that the offence of forgery/fabrication of newspapers having been admitted and the filing of false affidavit having taken place during the proceedings being pending before this Court, a case is made out for registration of a complaint under Section 340 CrPC. The worthy Registrar General to take action within four weeks in this regard and lodge a complaint with the concerned Judicial Magistrate within four weeks. Let the entire documents relating to the present two suits be transmitted to the concerned Judicial Magistrate by the worthy Registrar General for action to be taken in accordance with law.

48. **CS(COMM) 18/2023** having been filed on the basis of forged and fabricated newspapers dated 17th June, 2016 and 12th July, 2016 and in view of the statement made by Mr. Deepak Dhyani, Id. Counsel, under the instructions of Mr. Karan Kumar, the suit is dismissed with costs of Rs.5,00,000/- being imposed on KG Marketing. The same shall be deposited in the following manner:

- a. Rs. 2.5 lakhs to the Delhi High Court Legal Services Committee (**A/c no.: 15530110008386**)



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b. Rs. 2.5 lakhs in favour of the Defendants.

Both deposits to be made within three months.

49. Consequently, **CS(COMM) 477/2023** is decreed. KG Marketing India shall stand restrained from using the mark 'SURYA GOLD' or the impugned trade dress which is extracted below for its tower fans:



50. Further, in **CS(COMM) 477/2023** a permanent injunction is granted in terms of paragraphs 44(a) to 44(e) of the plaint. In this suit, in view of the decree passed, KG Marketing shall pay costs of Rs. 5,00,000/- in favour of the Defendants.

51. In view of the above directions, let the decree sheet be drawn in the above terms in favour of the Defendants - Rashi Santoshi Soni and Santosh Soni and against KG Marketing. Total costs of Rs.10,00,000/- to be paid within three months by KG Marketing in the manner as set out above.

52. Both suits are thus disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 2, 2024/mr/dn