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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved On: 28th February, 2024

Pronounced On: 28th May, 2024

+ CRL.M.C. 1991/2012 & CRL.M.A. 1470/2013 (Clarification),
14308/2015 (Final Hearing), 941/2022 (Early Hearing)

COLGATE PALMOLIVE COMPANY & ORS. Petitioners

Through: Mr. Mukul Rohatgi, Mr. Arvind Nigam, Mr. Ramesh Gupta and Mr. Arvind Varma, Senior Advocates with Mr. Saif Khan, Mr. Achutan Sreekumar, Mr. Rishi Agrawala, Ms. Niyati Kohli, Mr. Pratham Vir Agarwal and Ms. Smridhi Sharma Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Mukesh Kumar, APP for the State.
Mr. Sanjay Jain, Senior Advocate with Ms. Harshita Sukhija, Ms. Palak Jain and Mr. Nishak Tripathi, Advocates for R-2.

+ CRL.M.C. 2739/2012
G L VERMA

..... Petitioner

Through: Mr. Kunal Khanna, Mr. Swastik Bisarya, Ms. Vridhi Pasricha, Mr. Pravav Prasoon and Mr. Prakash Walia, Advocates.

versus



STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for the State.

Mr. Sanjay Jain and Mr. Mohit Mathur, Senior Advocates with Mr. Akash Nagar, Mr. Mayur Gala, Ms. Manviya Arun, Ms. Anjalika Arora and Mr. Sumit Mishra, Advocates for R-2.

+ CRL.M.C. 2639/2012 & CRL.M.A. 1469/2013 (Clarification)

K V VAIDYANATHAN & ORS.

..... Petitioners

Through: Mr. Mukul Rohatgi, Mr. Arvind Nigam, Mr. Ramesh Gupta and Mr. Arvind Varma, Senior Advocates with Mr. Saif Khan, Mr. Achutan Sreekumar, Mr. Rishi Agrawala, Ms. Niyati Kohli, Mr. Pratham Vir Agarwal and Ms. Smridhi Sharma Advocates.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for the State.

Mr. Sanjay Jain and Mr. Mohit Mathur, Senior Advocates with Mr. Anurag Ahluwalia, Mr. Akash Nagar, Mr. Mayur Gala, Ms. Arushi Singh, Ms. Manviya Arun, Ms. Anjalika Arora and Mr. Sumit Mishra, Advocates for R-2.

+ CRL.M.C. 2823/2012 & CRL.M.A. 20243/2012 (Clarification)

MANUEL ARRESE

..... Petitioner



Through: Mr. Mukul Rohatgi, Mr. Arvind Nigam, Mr. Ramesh Gupta and Mr. Arvind Varma, Senior Advocates with Mr. Saif Khan, Mr. Achutan Sreekumar, Mr. Rishi Agrawala, Ms. Niyati Kohli, Mr. Pratham Vir Agarwal and Ms. Smridhi Sharma Advocates.

versus

STATE & ANR

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Through: Mr. Mukesh Kumar, APP for the State.
Mr. Sanjay Jain and Mr. Mohit Mathur, Senior Advocates with Mr. Anurag Ahluwalia, Mr. Akash Nagar, Mr. Mayur Gala, Ms. Arushi Singh, Ms. Manviya Arun, Ms. Anjalika Arora and Mr. Sumit Mishra, Advocates for R-2.

+ CRL.M.C. 2824/2012 & CRL.M.A. 1915/2013 (Clarification)
MITCHELL ABRAHAMSEN

..... Petitioner

Through: Mr. Mukul Rohatgi, Mr. Arvind Nigam, Mr. Ramesh Gupta and Mr. Arvind Varma, Senior Advocates with Mr. Saif Khan, Mr. Achutan Sreekumar, Mr. Rishi Agrawala, Ms. Niyati Kohli, Mr. Pratham Vir Agarwal and Ms. Smridhi Sharma Advocates.

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STATE & ANR

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Through: Mr. Mukesh Kumar, APP for the State.



Mr. Sanjay Jain and Mr. Mohit Mathur,
Senior Advocates with Mr. Anurag
Ahluwalia, Mr. Akash Nagar, Mr.
Mayur Gala, Ms. Arushi Singh, Ms.
Manviya Arun, Ms. Anjalika Arora and
Mr. Sumit Mishra, Advocates for R-2.

+ CRL.M.C. 2825/2012 & CRL.M.A. 1916/2013 (Clarification)

STEPHEN C PATRICK

..... Petitioner

Through: Mr. Mukul Rohatgi, Mr. Arvind
Nigam, Mr. Ramesh Gupta and Mr.
Arvind Varma, Senior Advocates with
Mr. Saif Khan, Mr. Achutan
Sreekumar, Mr. Rishi Agrawala, Ms.
Niyati Kohli, Mr. Pratham Vir Agarwal
and Ms. Smridhi Sharma Advocates.

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STATE & ANR

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Mayur Gala, Ms. Arushi Singh, Ms.
Manviya Arun, Ms. Anjalika Arora and
Mr. Sumit Mishra, Advocates for R-2.

+ CRL.M.C. 2826/2012 & CRL.M.A. 1909/2013 (Clarification)

MICHAEL J TANGNEY

..... Petitioner

Through: Mr. Mukul Rohatgi, Mr. Arvind
Nigam, Mr. Ramesh Gupta and Mr.
Arvind Varma, Senior Advocates with



Mr. Saif Khan, Mr. Achutan Sreekumar, Mr. Rishi Agrawala, Ms. Niyati Kohli, Mr. Pratham Vir Agarwal and Ms. Smridhi Sharma Advocates.

versus

STATE & ANR

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Through: Mr. Mukesh Kumar, APP for the State.

Mr. Sanjay Jain and Mr. Mohit Mathur, Senior Advocates with Mr. Anurag Ahluwalia, Mr. Akash Nagar, Mr. Mayur Gala, Ms. Arushi Singh, Ms. Manviya Arun, Ms. Anjalika Arora and Mr. Sumit Mishra, Advocates for R-2.

+ CRL.M.C. 2827/2012 & CRL.M.A. 1907/2023 (Clarification)
IAN COOK

..... Petitioner

Through: Mr. Mukul Rohatgi, Mr. Arvind Nigam, Mr. Ramesh Gupta and Mr. Arvind Varma, Senior Advocates with Mr. Saif Khan, Mr. Achutan Sreekumar, Mr. Rishi Agrawala, Ms. Niyati Kohli, Mr. Pratham Vir Agarwal and Ms. Smridhi Sharma Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for the State.

Mr. Sanjay Jain and Mr. Mohit Mathur, Senior Advocates with Mr. Anurag Ahluwalia, Mr. Akash Nagar, Mr. Mayur Gala, Ms. Arushi Singh, Ms.



Manviya Arun, Ms. Anjalika Arora and
Mr. Sumit Mishra, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petitions under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seek setting aside of order dated 02.04.2012 passed by the learned Metropolitan Magistrate, Patiala House Courts in CC No. 7/2/09 titled '*Anchor Health and Beauty Care Pvt. Ltd. v. KV Vaidyanathan & Ors.*', whereby the petitioners have been summoned to face trial in the said complaint case under the relevant provisions of the Indian Penal Code, 1860 ('IPC'). The petitioners also seek quashing of the impugned complaint instituted on behalf of respondent no. 2/Anchor Health and Beauty Case Pvt. Ltd. (hereinafter referred to as 'Anchor').

2. The details of the petitioners in the present batch of petitions are as under:

Case Number	Parties	Summoned under:	Hereinafter referred to as:
CRL.MC. 1991/2012	Petitioner no. 1: Colgate – Palmolive Company Petitioner no. 2: Colgate – Palmolive (India) Limited	Sections 465/469/471/34 of the IPC	'Colgate'



CRL.MC. 2739/2012	Petitioner: GL Verma	Sections 197/465/466 of the IPC	‘Deputy Registrar’
CRL.MC. 2639/2012	Petitioner no. 1: KV Vaidyanathan Petitioner no. 2: RA Shah Petitioner no. 3: Sanjiv Kumar Srivastava	Sections 465/469/471/34 of the IPC	‘Directors’
CRL.MC. 2827/2012	Petitioner: Ian Cook	Sections 465/469/471/34 of the IPC	‘Directors’
CRL.MC. 2823/2012	Petitioner: Manual Arrese		
CRL.MC. 2826/2012	Petitioner: Michael J. Tangney		
CRL.MC. 2824/2012	Petitioner: Mitchell Abrahamsen		
CRL.MC. 2825/2012	Petitioner: Stephen C. Patrick		

Background

3. *Vide* the impugned order, the learned Metropolitan Magistrate, in a complaint filed by Anchor, has summoned the petitioners under various provisions of the IPC, as stated hereinabove, by *prima facie* coming to a finding that the two documents, i.e., the copy of certificate of registration of



Trade Mark bearing number 1223059 and the certified copy of the said certificate for use in legal proceedings were forged.

4. The case of Anchor, in the complaint filed before the learned Metropolitan Magistrate is as under:

- i. C.S. (OS) 1709/2005 was instituted by Colgate before this Court alleging infringement of copyright, Trade Mark, passing off etc. against Anchor. It was alleged in the said plaint, that Colgate, through its Directors had produced a copy of certificate of registration of Trade Mark Number 1223059 and during the proceedings in the said plaint, they further produced a document purported to be a certified copy of the said certificate for ‘use in legal proceedings’. It was the case of Anchor that both the said documents were forged and were never issued by the Trade Mark Registry. The primary contention raised in the said suit was that red and white colored Trade Mark applied to a carton for “*toothpaste, toothpowder, non-medicate mouthwash and dentifrices*” and identified by the title “*Colgate Strong Teeth*” is Colgate’s registered Trade Mark and the subject matter of registration number 1223059 in class 3, dated 14.08.2003 under the Trade Marks Act, 1999. It was averred that the use of a toothpaste pack in identical red and white colors by Anchor (defendant in the said suit) amounts to an infringement of the said registration.
- ii. It was alleged that Colgate had also instituted Suit No. 4118/96 before the Hon’ble High Court of Judicature at Bombay, wherein they were denied an interim injunction to restrain Anchor from using the combination of red and white colour on the toothpaste carton. An



appeal preferred by Colgate against the said order was also dismissed by a learned Division Bench of the Hon'ble High Court of Judicature at Bombay.

- iii. It was further alleged that Colgate instituted a number of suits before this Court alleging infringement and/or passing off against Anchor for use of the combination of red and white color in respect of Anchor Dental Care products. Except for in IA No. 3502/2003 filed in Suit No. 691/03, Colgate was not granted an interim injunction in any proceeding. The said order was also modified by a learned Division Bench of this Court in FAO (OS) No. 347/2003 and Anchor was allowed to sell tooth powder in containers with a red and white colour combination, with a blue band. The said interim order was subsequently made final.
- iv. It was alleged that the petitioners had failed to establish any *prima facie* case, before any forum, for a grant of interim injunction.
- v. It was alleged that CS(OS) No. 1709/05 was instituted by Colgate before this Court pleading that a fresh cause of action had arisen in their favour on the basis of new registration of Trade Mark under no. 1223059. Anchor took various objections to the same, including one in relation to maintainability of the said suit. During the course of hearing of the injunction application in the said suit, Anchor discovered that the subject matter of Trade Mark no. 1223059 was only a black and white label, in which no right to combination of the red and white colour was granted by the Registrar of Trade Mark. In order to meet the said objection, Colgate filed a document purported to be a 'certified copy of



registration no. 1223059 for use in legal proceedings’, in which the subject matter of registration being red and white combined colours was specifically added, despite not being there in the original.

- vi. It was alleged that Colgate willfully and intentionally made statements in an application under Order XXXIX Rules 1 and 2 and supporting affidavits and also fabricated the certificate of registration of Trade Mark no. 1223059.
- vii. Anchor filed W.P.(C) 4165-66/2006 before this Court, wherein it was pleaded and sought to be established that the subject matter of Trade Mark no. 1223059 was not the red and white colour combination applied to ‘Colgate Strong Teeth’. In the said case, while issuing notice, a learned Single Judge of this Court passed an *ex-parte* order restraining Colgate from acting in pursuance of the aforesaid Trade Mark. In response to the said writ petition, the petitioners re-affirmed their claim. The Registrar of Trade Marks also filed a response to the petition, in which it was categorically stated that the subject matter of Trade Mark no. 1223059 was not the red and white colour as applied to carton identified by the title ‘Colgate Strong Teeth’. Colgate further consented to surrender the original registration certificate. *Vide* order dated 09.02.2009, it was directed that the original certificate of registration be surrendered for cancellation and that a fresh certificate be issued in lieu thereof, strictly in conformity with advertisement in relation to the said Trade Mark published in Trade Mark Journal No. 1325 (Suppl. – 1) dated 20.12.2004. The Registrar was further directed



to suitably delete the conditions concerning registration of colour combination indicated in the certified copy.

- viii. It was alleged that Anchor received a copy of letter dated 01.06.2009 addressed by the office of the legal counsel of Colgate to the Registrar of Trade Marks claiming that the original certificate has been lost. Therefore, the petitioners did not surrender the original certificate in terms of order dated 09.02.2009 passed by a learned Single Judge of this Court in WP(C) 4165-66/2006.
- ix. On a request made by Colgate, a duplicate of certificate of Trade Mark No. 1223059 was alleged to have been issued by the Registrar of Trade Marks. It is the case of Anchor that the said duplicate also demonstrated that the original certificate of registration was fabricated. It was alleged that the duplicate issued was not an exact replica of the purported original certificate. The representation of the mark attached to duplicate certificate was in black and white. Moreover, the label in the duplicate stands pasted on the face of the certificate of registration itself and not an annexure in the form of representation sheet, like in the original certificate.
- x. It was further alleged that despite having full knowledge of the fact that the red and white colour combination was not subject matter of Trade Mark registration no. 1223059, Colgate filed IA No. 2331/09 under Order VI Rule 17 of the Code of Civil Procedure, 1908. The following averments made in Para 12B(ii) of the proposed plaint:

“The Plaintiffs red and while colour Trade Mark applied to a carton for “toothpaste, tooth powder, non-medicated mouthwash and dentifrices” and identified by the title “Colgate Strong Teeth” is



subject matter of registration no. 1223059 in class 3 dated 14.08.2003 under the Trade marks Act, 1999. A certificate for use in legal proceedings pertaining to the said registration have been applied for and the plaintiffs undertake to file the same as soon as it is received from the Trade Marks Registry. Copy of the certificate of registration alongwith colour representation of the mark on Form TM-1 are annexed hereto collectively marked as Annexure XX.”

- xi. On the basis of the aforesaid facts and circumstances, it was alleged that the petitioners had fabricated the copy of the original certificate of registration and placed the same on judicial record. The petitioners had further fabricated the certified copy as well. Accordingly, a complaint was filed under Sections 197/463/464/465/469/470/471 of the IPC.

Submissions on behalf of Colgate and the Directors

5. Learned Senior Counsels for Colgate and the Directors made the following submissions:

5.1. It is submitted that an application dated 14.08.2003 was filed with the Trade Mark Registry by Colgate for “Colgate Strong Teeth Carton” in the color combination of red and white. A representation sheet containing visual representation of colour packaging carton depicting the mark applied for and also the disclaimer was also attached with the said application as per the statutory form TM-1, as provided in Section 18 of the Trade Marks Act, 1999 read with Rules 25, 27, 28 and 29 of the Trade Mark Rules, 2002.

5.2. It is submitted that on 20.12.2004, the Trade Mark registry published the TM No. 1223059 in Journal No. 1325 Suppl. (1) in a black and white format, ie., without the colour combination of red and white. It is therefore submitted that the same was a lapse on part of the Trade Mark Registry.



5.3. It is submitted that on 10.02.2005, the Trade Mark Agents of Colgate addressed a letter to the Registrar of Trade Marks bringing the aforesaid error to their attention. A request to rectify the same and update the records was also made.

5.4. On 15.09.2005, the Trade Mark Registry issued the certificate for registration as regard the Trade Mark no. 1223059 with the red and white colour combination, as applied. [The copy of said certificate was filed as Annexure – XX in CS(OS) 1709/2005].

5.5. It is submitted that on 14.12.2005 Colgate filed a CS (OS) No. 1709 of 2005 [renumbered as CS (COMM) NO. 381 OF 2018] against Anchor claiming infringement of its copyrights and Trade Mark registration no. 1223059 in Class 3 dated 14.08.2003 for Colgate's Red & White colour Trade Mark applied to the carton of its Colgate Strong Teeth product as well as pertaining to its Colgate Active Salt and Colgate Strong Teeth package designs and other artistic elements of the packaging. Anchor's infringing toothpaste carton is called Anchor All Round Protection.

5.6. Alongwith the said suit, Colgate also filed a true copy of the registration certificate of Trade Mark no. 1223059 along with the colour representation sheet of the mark in form TM-1. On 07.12.2005, Colgate's Trade Mark agents filed an application in Form TM-70 for a certificate for use in legal proceedings, i.e., a certified copy, for the Trade Mark registration no. 1223059. The said copy was received on 28.02.2006 and was placed on record in the aforesaid suit on 13.03.2006. The said certificate clearly demonstrated that the registration certificate mentioned the colour combination of red and white.



5.7. On 18.01.2006, Anchor filed a written statement in the aforesaid suit, raising the defence that – (i) Red and White colour combination is not distinctive to Colgate and is descriptive in oral care products; (ii) Colgate has abandoned the use of Red and White colour combination by using different colours; (iii) Colgate has no copyright or Trade Mark rights in Red and White; (iv) Elements like the ‘Swirl Device’ and the ‘Spectrum Arrow’ Device are not registrable under the Trade Marks Act.

5.8. It is submitted that IA No. 7001/2006 for injunction came up for hearing on 03.08.2006. The original Trade Mark registration certificate no. 1223059 was produced and the same was inspected by learned counsel appearing for Anchor in the said suit. The said fact has also been recorded by the learned Joint Registrar (Judicial) in order dated 03.08.2006. The aforesaid IA was finally disposed of *vide* order dated 17.02.2011, wherein it is recorded that learned counsel for Anchor has no objection if the original Trade Mark registration certificate no. 1223059 is produced at the time of recording of evidence.

5.9. In view of the aforesaid, it is submitted that the averments raised in the complaint by Anchor to the effect that a fabricated document has been placed on record by Colgate, are misplaced and ought to be rejected.

5.10. It is submitted that in the meantime, Anchor had filed WP(C) 4165-66/2006 before this Court, alleging that – (i) the Registrar of Trade Marks did not accept the application made by Colgate for registration no. 1223059; (ii) Registrar of Trade Marks issued the certificate of registration on 15.09.2005, without passing of any order for the acceptance of the application; (iii) Anchor did not have the opportunity to oppose Colgate’s application for



Trade Mark registration no. 1223059, when it was advertised in black and white; (iv) Anchor applied for a certified copy of the said registration certificate but was unable to obtain one; (v) Colgate had applied for a copy of the registration certificate for use in legal proceedings on 07.12.2005, i.e, a week prior to filing the suit and obtained a copy on 28.02.2006.

5.11. It is submitted that by making the aforesaid averment, Anchor had made a misguided attempt to demonstrate some kind of collusion between Colgate and the Trade Mark Registry to substantiate the allegation levelled by it.

5.12. It is submitted that on 21.03.2006 Colgate voluntarily impleaded itself as a party in the said Writ Petition.

5.13. It is submitted that on 03.01.2007, the Trade Marks Registry also filed a counter affidavit in the said writ petition stating that – (i) Anchor has an alternate remedy under the Trade Marks Act and could have filed a rectification against the registration in question; (ii) the High Court of Delhi lacks territorial jurisdiction as the registration certificate and the certified copy have been issued by the Trade Marks Registry; (iii) the hearing officer, in his order, had not imposed any colour condition and hence, the mark was open to all colours as per section 10 of the Trade Marks Act; (iv) the certified copy for registration no. 1223059 was issued from the Trade Marks registry Mumbai. The computer data entered in the system cannot easily be manipulated by interpolating other conditions; and (v) an electronic computerized record is generated and maintained by the National Informatics Centre, Government of India, hence manipulation of data will not be possible.



5.14. Attention of this Court is further drawn to order dated 09.02.2009 passed by Learned Single Judge of this Court, in the aforesaid writ petition, wherein the following directions were passed:

“(i) Issue a fresh registration in the same class, strictly in conformity with the advertisement dated 20.12.2004, in relation to the mark in the Trade Marks Journal No. 1325 (Suppl. 1).

(ii) Take appropriate consequential action to ensure that the conditions concerning registration of colour combination indicative in the certified copy are suitably deleted from the data base of the Trade Mark Registry, i.e. in respect of no.1223059 in Class 3.”

5.15. It is submitted that the writ petition filed by Anchor did not make any allegations of forgery of Trade Mark registration. The counter filed by the registry also clarified the reason for publication of the mark in black and white and the Trade Mark registry admits the fact that the Trade Mark registration certificate as well as the certified copy were issued by them. Therefore, it is submitted that the issue in relation to the alleged discrepancy in the registration certificate and the publication was put to rest in the said writ petition.

5.16. It is submitted that on 16.02.2009, Colgate filed IA No. 2321/2009 in CS(OS) 1709/2005, seeking amendment of plaint as Anchor had launched another product called ‘Rider’ toothpaste, infringing Colgate’s Trade Mark in a similar manner. In the said amended plaint, it was averred that *“however, the Plaintiffs will not be pressing their claim against the Defendants with respect to registration No. 1223059 at this stage as the Plaintiffs registration has been stayed by an order of the Court in Writ Petition (Civil) No. 4165-66/2006”*. The said amended plaint was withdrawn, as recorded in order dated 06.07.2009.



5.17. It is submitted that learned Senior Counsel for Colgate had undertaken to surrender Trade Mark registration certificate no. 1223059, as recorded in order dated 09.02.2009 passed in WP(C) 4165-66/2006. However, inadvertently, the original certificate was misplaced by Colgate's counsel. Accordingly, on 12.03.2009, a request was made to the Trade Mark registry to issue a duplicate Trade Mark registration certificate, as per the advertisement made in the Trade Mark journal. Accordingly, on 21.05.2009 the TM Registry issued a duplicate TM Registration Certificate in black and white format.

5.18. Consequently, Colgate's counsel addressed a letter dated 01.06.2009 to the Trade Mark Registry with a copy marked to the counsel for the Anchor stating that the Registry has now re-issued a duplicate registration certificate for Trade Mark No. 1223059 which is in black and white format, which is in compliance of the order dated 09.02.2009 passed by the High Court of Delhi in the aforesaid writ petition.

5.19. On 09.10.2009, Anchor filed an Criminal Miscellaneous Application No. 11901 of 2009 under Section 340 of the CrPC for perjury in CS(OS) No. 1709 of 2005, making allegations similar to those levelled in the complaint which is subject matter of the present proceedings.

5.20. In the background of the aforesaid facts and circumstances, it is submitted that the present case, essentially involves an error committed on part of the Trade Mark Registry – First when the Trade Mark no. 1223059 was published in black and white in the Trade Mark journal even though the application and consequent approval was for a colour combination of red and white and second, when the certified copy for use in legal proceedings was issued with a rectified red and white colour combination. It is submitted that



on account of an inadvertent error on part of the Trade Mark Registry and Colgate's counsel, Colgate and its Directors cannot be made to face prosecution. The allegations made are baseless and frivolous and the impugned summoning order ought to be set aside.

5.21. It is further submitted that as per the complaint itself, the persons arrayed as accused were residing outside of Delhi. They were residents of either Mumbai or the United Kingdom. In these circumstances, it is submitted that the learned Metropolitan Magistrate was bound to follow the procedure under Section 202 of the CrPC, which provides as under:

“202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant”



5.22. It was further pointed out that the impugned summoning order, erred in relying upon the averments made in the complaint, especially that *“The accused No11 also admitted that the certified copy of the certificate of registration of trademark no.1223059 was false, forged, Illegal, procured, filed and relied upon in the judicial proceedings.”* It is submitted that no such averment was made by accused no. 11, i.e., Colgate. It is further submitted that in the complaint, Anchor has alleged that Colgate has not only fabricated the original certificate of registration of the Trade Mark, but also fabricated the certified copy thereof in which interpolations have been made in the entry related to the subject Trade Mark. It is further submitted that the complaint was not filed under Section 195(1)(b) of the CrPC. It is submitted that it is an admitted case of Anchor itself that the documents were produced along with the plaint in judicial proceedings and therefore, the aforesaid provisions would squarely apply to the present case. It was submitted that Section 195(1)(b) of the CrPC would also apply in view of 192 of the IPC which provides for offence of fabricating false evidence punishable under Section 193 of the IPC. It is further pointed out that Section 107 of the Trade Marks Act provides as under:

“107. Penalty for falsely representing a Trade Mark as registered.—

(1) No person shall make any representation—

- (a) with respect to a mark, not being a registered Trade Mark, to the effect that it is a registered Trade Mark; or
- (b) with respect to a part of a registered Trade Mark, not being a part separately registered as a Trade Mark, to the effect that it is separately registered as a Trade Mark; or
- (c) to the effect that a registered Trade Mark is registered in respect of any goods or services in respect of which it is not in fact registered; or



(d) to the effect that registration of a Trade Mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitation entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) For the purposes of this section, the use in India in relation to a Trade Mark of the word “registered”, or of any other expression, symbol or sign referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference is to registration as a Trade Mark under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a Trade Mark under the law of a country outside India and in relation solely to goods to be exported to that country or in relation to services for use in that country.”

In view of the aforesaid provisions, it was pleaded that no formal complaint was filed by the Trade Mark Registry itself.

5.23. It is submitted that the Directors have been summoned without any application of mind. It is submitted that it is well settled law that for Directors of a company to be summoned, the complainant would have to establish vicarious liability which is completely missing in the present case. It is submitted that the entire litigation is handled by the Trade Mark agents and the Directors who are in Mumbai or in the United Kingdom, have no connection with the alleged actions.



5.24. Attention of this Court was drawn to the Counter Affidavit filed by the Trade Mark Registry to the aforesaid Writ Petition to submit that Anchor is deliberately trying to mislead by saying that the Trade Mark registry accepted the fact that the certificate was not issued, which is as per the stand taken by them in the aforesaid counter affidavit, is incorrect and false. It is pointed out that the learned Metropolitan Magistrate, while passing the impugned order made observations in relation to the same, on the basis of the averments made in the complaint filed by Anchor.

5.25. Reliance is placed on the following judgments:

- i. State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335,
- ii. A.M. Chakraborty v. Ved Vrat, 30 (1986) DLT 165,
- iii. Ashok Chaturvedi v. Shitul H. Chanchani, (1998) 7 SCC 698,
- iv. S. K. Alagh v. State of Uttar Pradesh and Others, (2008) 5 SCC 662,
- v. Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668,
- vi. Maharashtra Distribution Limited v. Datar Switchgear Limited, (2010) 10 SCC 479,
- vii. Thermax Limited and Others v. K.M. Johny and Others, (2011) 13 SCC 412,
- viii. Smt. Nagawwa v. V.S. Konjalgi and Others, (1976) 3 SCC 736,
- ix. Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749,
- x. Mohammed Ibrahim and Others v. State of Bihar and Another, (2009) 8 SCC 751,
- xi. Colgate Palmolive (India) Ltd. and Ors v. Anchor Health and Beauty Care Pvt. Ltd., 2019 SCC OnLine Del 8770.



Submissions on behalf of the Deputy Registrar

6. Learned counsel for the Deputy Registrar made the following submissions:

6.1. It is stated that the procedure for processing an application of Trade Mark is as under:

- i. An applicant claiming the proprietorship of the Mark shall file application for registration in respect of particular goods or services on FORM TM-1 along with prescribed fee, mention the Trade Mark if word mark or pasting Label if in the form of label, name and address of the applicants, statement of use of the mark, if applicants do not have the business address in India must provide the address for service in India.
- ii. The Trade Marks Registry having its head office at Mumbai and Branch offices at Ahmadabad, Delhi, Kolkata and Chennai and notify the jurisdictions of the applicants to file their applications for registration.
- iii. The Trade Mark application number and the date of application is allotted by the computer system as soon as prescribed fee is paid through system.
- iv. The Head office and its branches enter the data relating to the said application including Trade Mark, name and address of the Applicants, name of goods or services, class of goods or services, statement of use and any colour conditions claimed by the applicants if any and service address for communications under the supervision of Examiners of



Trade Marks, who is the In charge of the Section appointed by the Registrar of Trade Marks.

- v. The Examiner In charge of the section scrutinizes the details of data entered as well as any deficiencies in the application, if found in order , then he/she clears the ‘check report’ and application is sent to ‘ the examiner of Trade marks’, for examination of said application and subsequent registration.
- vi. The Examiner of Trade Marks examine the application for registration and comes to the conclusion that application is fit for registration is proposed for acceptance to the controlling officer and after approval it published In the Trade Marks Journal to file notice of opposition by any person within three months and may be extendable for One month from the date of available of said Journal to the general public.
- vii. If the Examiner raise the objection for registration of Trade Mark, the objections are communicated to the applicants in writing, to submit reply and hearing in the matter. After hearing the arguments and examining of documents submitted by the applicants, the Registrar shall order the said application for publication in the Trade Marks Journal and imposed the conditions under Section 18(4) of the Act or refuse the application and said order of refusal is appealable to the Intellectual property Appellate Board constituted for that purpose.
- viii. If no opposition has been filed against the said publication within the prescribed period and if notice of opposition filed and decided by the Registrar of Trade Marks in the favour of the Applicants, the said Application shall proceed for registration. The registration certificate of



Trade Mark is generated through computer system by the examiner and/or - and/or his/her Assistant under the supervision of Examiner, who is the in Charge of Registration Section appointed by the Registrar of Trade Marks. The registration certificate is compared with the details of Application filed by the applicants for registration and data entered in the system, no officer in the registration is authorized to amend or correction of data already entered the system, if any deficiency is found the matter is to be referred to the Examiner of EDP in-charge. The Examiner of Trade Marks, Who is the Group B officer and In Charge of registration puts up a note in the file that no opposition has been filed against the published Trade Mark and time period to file notice of opposition has expired and he/she proposes to issue certificate as printed from the system, accordingly the controlling officer puts the signature and is counter signed by the Registrar of Trade Marks. It may kindly be appreciated that such 'registration certificate' do NOT indicate the condition/s, if any, imposed by the Registrar of Trade Marks and it is not for legal use at all.

- ix. That, it is established procedure, the applicants have to file request to issue legal certificate to use in legal proceedings or to obtain registration abroad, with prescribed fee and request to be examined by the Examiner of Trade Marks and put a note that request is in order and propose to issue legal certificate generated from the system itself, he has not authorized to add or to delete the matters already entered in the system.



- x. The office of Registrar of Trade Marks has independent Section for correction and amendment with the Controlling Officer. The Complainant have not approached the registrar of amendments and correction Section, where they are looking for data entered in the system and if any difference they have to correct in proper way. Hence complaints have the alternative remedy to avail the same, which they never availed.
- xi. The Application No. 01223059 dated 14.08.2003 was filed by Colgate for registration of Trade Mark COLGATE LABEL at the Trade Marks Registry, New Delhi office and counter signed by then Assistant Registrar of Trade Marks, the data was entered at trade Marks Registry, New Delhi. Further, hearing in the matter, that is, show cause took place at Delhi office and after acceptance, the said application was published in the Trade Marks journal No. 1325 (1) dated 20-12-2004 by the Examiner in charge and Controlling officer of the Publication Section. The Examiner of Trade Marks and In Charge of registration section has printed the certificate No. 423210 dated 15-09-2005 through system and put up before the petitioner for counter signature and the petitioner 'signed in good faith' that certificate, from the data base, is same as in the system and compared by the Examiner in Charge of the Registration and also put the same for signature of Mr. S. Chandrasekharan, Registrar of trade Marks. That Mrs S. V. Desai, Examiner of Trade Marks was In Charge of Registration Section and Mr. C. B. Uchil, Examiner of Trade Marks was the In Charge of Legal certificate section.



6.2. Learned Counsel for the Deputy Registrar further pointed out that Sections 19 and 21 of the Trade Marks Act provides for withdrawal of acceptance and opposition to registration certificate. It was further submitted that even as per the case of Anchor the alleged action attributed to the Deputy Registrar would bring his case in the category of ‘act done by public servant in discharge of official duties’. It is submitted that admittedly, there is no sanction under Section 197 of the CrPC and accordingly, the Deputy Registrar could not have been summoned by the learned Metropolitan Magistrate.

6.3. It is submitted that the Registry has multiple offices and National Informatics Centre has control over all the data. It was further argued that the NIC was not called to bring on record evidence to justify that the document which is alleged to be forged was not issued by the Registry. Reliance is placed on Paras 4, 8, 9 and 10 of **Harvir Singh and Ors. v The State of Madhya Pradesh and Ors., I.L.R. [2017] M.P. 723**. Reliance was further placed on Para 4 of judgment dated 26.10.2009 passed by the Hon’ble Supreme Court in **Criminal Appeal No. 1941/2009** titled “**Parminder Kaur v. State of U.P. & Ors.**”

Submissions on behalf of Respondent No. 2/‘Anchor’

7. Learned Senior Counsels for Anchor made the following submissions:

7.1. It is submitted that a perusal of the advertisement published in the Trade Marks journal reflects that – (i) It is categorically mentioned that it is an advertisement before acceptance in terms of the proviso to Section 20(1) of the Trade Marks Act; (ii) the advertisement shows the number allocated to the Trade Mark, i.e, 1223059 and the date, i.e., 14.08.2003; (iii) the advertisement contains the full particulars of Colgate, the Trade Mark applicant; (iv) the



advertisement also contains the description of the goods for which the Trade Mark is applied and the class in which the goods would fall; (v) the picture of the carton for packaging, which was subject matter of the application, was not in colour, instead it was in black and white; (vi) the claim as regards the colour combination, i.e., '*a particular shade of red and white applied to the carton in which the goods are packaged*' is missing from the advertisement and (vii) the disclaimer to the effect '*the splash colours yellow and blue do not form part of the mark and serve only to embellish the carton*' is missing from the advertisement.

7.2. It is submitted that a perusal of the aforesaid advertisement, as published, makes it clear that the application as advertised before acceptance contained errors manifest from the face of the record. Colgate did not take any steps to seek rectification of the said errors in terms of Section 20(2) of the Trade Marks Act. Therefore, the un-corrected advertisement has attained finality.

7.3. It is submitted that in the present case, Colgate instituted CS (OS) No. 1709/2005 on 13.12.2005. Alongwith the said suit, a copy of the certificate Trade Mark registration no. 1223059 'for use in legal proceedings' was filed. It is submitted that ideally, the said certified copy ought to be an exact replica of the original certificate. However, the same is a fabricated version which is a two page document. The first page does not show the Trade Mark and it merely refers to a representation annexed. The second page shows that coloured copy of the packaging carton in a particular shade of red and white. It is submitted that collectively, the two pages were grouped together to create



an impression that the said document was a true copy of the Trade Mark as registered.

7.4. It is submitted that during the pendency of the aforesaid suit, another document purporting to be certificate for use in legal proceedings under Section 137 of the Trade Marks Act, in respect of registered Trade Mark number 1223059 was sought to be filed. The said document comprised of three pages, first being a covering letter dated 28.02.2006 signed by the Deputy Registrar. The second page merely mentioned the Trade Mark registration and referred to another annexure stating that the same was a true copy of the Registration number 1223059. The third page had two segments. The upper half contained the registration number 1223059, the details of the application, i.e., Colgate, registration date, certificate number, Trade Mark type and word mark, goods description, classification of goods and a sentence against the head 'conditions and limitations' stating 'the mark consists a particular shade of red and white applied to the carton in which the goods are packaged, the splash colours yellow and blue do not form part of the mark and serve only to embellish the carton'. The lower half reproduced the exact replica of the advertisement before acceptance which was in black and white and without any colour claim or disclaimer.

7.5. In view of the aforesaid, it is submitted that the document filed before the Court for use in legal proceedings was forged and fabricated at the behest of Colgate and its directors.

7.6. In view of the above documents which were found to be forged and fabricated, Anchor filed W.P.(C) 4165-66/2006. In the said writ petition, Anchor made a specific prayer for quashing the registration certificate that



would have been issued in the first instance in terms of Section 23(2) of the Trade Marks Act, in form O-2 as well as the certificate obtained for use in legal proceedings on 28.02.2006, issued under Section 137 of the Trade Marks Act. It is pointed out that on 21.03.2006, at the stage of admission itself, an interim order was passed restraining Colgate and its officers from acting in pursuance to the certificate of Registration No. 1223059 as well as its certified copy.

7.7. In the pending CS (OS) 1709/2005, Anchor served Colgate with a notice to produce the original certificate of registration. However, Colgate did not respond to the same. It is submitted that before the learned Joint Registrar (Judicial), during the course of hearing in I.A. 7001/2006, in supposed compliance of the aforesaid notice, learned counsel for the Colgate produced some documents claiming it to be original certificate. The said documents was just shown and taken back with the understanding that the copy of the same would be supplied to the Anchor in due course. An order to the said effect was also passed, however, the same was not complied with. In view thereof, it is submitted that the submission advanced on behalf of Colgate and its directors that on 03.08.2006, Anchor's counsel did not raise any objection to the certificate shown is misguided.

7.8. On 28.06.2006, the Registrar of Trade Mark filed a counter affidavit to W.P.(C) 4165-66/2006 admitting that the aforesaid registration number 1223059 was arising out of the advertisement published in the Trade Mark's journal which was admittedly in black and white and did not reflect any colour combination of red and white.



7.9. Thereafter, the writ petition was disposed of on 09.02.2009. The directions have been reproduced herein above. It is pointed out that the aforesaid order is in a nature of a judgment which has not been challenged by any of the parties to the said writ petition and has therefore, attained finality.

7.10. Instead of complying with the aforesaid, Colgate, on 01.06.2009, applied for issuance of a duplicate certificate of registration in form TM-59 as per Trade Mark Rules, 2002. The letter addressed by Colgate to that effect reflects that Colgate had acknowledged that the certified copy of the registration certificate on 21.05.2009 was in black and white. It is submitted that on a reading of the letter, it is clear that the representation contained in form TM-1 as regards the manifestation of proposed Trade Mark is not determinative factor for the eventual registration in view of the scheme of Section 18 of the Trade Marks Act.

7.11. It is submitted that so far in any proceedings before this Court or before the learned Trial Court, neither Colgate nor the Trade Marks Registry has been able to produce the original certificate reflecting the red and white colour combination supposedly issued by Registrar of Trade Marks.

7.12. In view of the aforesaid facts and circumstances, it is submitted that the impugned summoning order does not suffer from any irregularity or any illegality. Section 197 read with Section 34 of the IPC has been invoked against the Deputy Registrar who at the relevant time was working as an Assistant Registrar in the Trade Mark Registry and was responsible for issuing the certificate for use in legal proceedings. It is submitted that the Deputy Registrar was fully aware of the discrepancies between the Trade Mark advertised and the copy issued by him. The said official was working in



collusion with Colgate and is therefore liable to be prosecuted. It is further submitted that in view of the documents fabricated by Colgate and its officials, as alluded to hereinabove, the said persons are also liable to be prosecuted.

7.13. Learned Senior Counsel for Anchor further submits that the judgment passed by a learned Single Judge of this Court in **Colgate Palmolive (India) Ltd. and Ors v. Anchor Health and Beauty Care Pvt. Ltd., 2019 SCC OnLine Del 8770** is of no relevance in the present proceedings as the same was delivered in the context of different facts and circumstances.

7.14. Learned Senior Counsel drew the attention of this Court to the complaint filed on behalf of Anchor, and in particular, paragraphs 4.4, 4.6, 4.7, 4.9, 4.10, 4.13, 4.16, 4.18 and 4.23 thereof. It is submitted that the original certificate of registration of Trade Mark No. 1220359 was never surrendered, which at this stage is sufficient to draw an adverse inference reference *qua* the petitioners. It is submitted that since the complainant has been examined as CW-1, Section 202 of the CrPC has been complied with. It is submitted that the learned Metropolitan Magistrate, while passing the impugned order, has examined Section 197 of the CrPC to show that the same would not be applicable in the present case. It is further submitted that applicability of Section 197 of the CrPC would be a mixed question of law and fact. It is further submitted that the impugned order does not suffer from any illegality as the learned Metropolitan Magistrate has formed an opinion on the basis of documents produced which were part of proceedings instituted before this Court. It is submitted that at this stage, the learned Metropolitan



Magistrate had to only form a *prima facie* view that the documents, as alleged, were forged.

7.15. It is further submitted that the stand of the petitioners that the advertisement in journal, was an error for which a necessary communication was made to the Trade Mark Registry, was not part of pleading in the civil suit. It is further submitted that the trial in the complaint case would be covered under the Chapter of Warrant Trial of Complaint Cases, where at the stage of pre-charge stage, the petitioner will have ample opportunity to produce evidence to rebut the allegations made by Anchor.

7.16. Learned Senior Counsel for Anchor placed reliance on the following judgments:

- i. Vijay Dhanuka v. Najima Mamta, (2014) 14 SCC 638;
- ii. Sunil Todi v. State of Gujarat, 2021 SCC OnLine SC 1174;
- iii. Ram Singh v. Madhuri Singh, 2017 SCC OnLine Del 6664;
- iv. Ramveer Upadhyay v. State of U.P., 2022 SCC OnLine SC 484;
- v. Chilakarmarthi Venkateshwarlu v. State of A.P., (2020) 17 SCC 595;
- vi. Nishant Tiwari @ Sonu and Others v. State of U.P. and Anr., 2014 SCC OnLine All 15218;
- vii. Mariam Fasihuddin and Ors. v. State and Ors., MANU/SC/0051/2024;
- viii. Krishnamurthy and Ors. v. State of Karnataka, MANU/SC/0248/2022.

Rejoinder on behalf of Colgate and its Directors

8. By way of rejoinder, learned Senior Counsel for Colgate and its Directors submitted as under:

8.1. On 14.08.2003, Colgate had applied for registration of Trade Mark in red and white colour combination. On 20.12.2004, the Trade Marks Registry



published the Trade Mark No. 1223059 in Black and White colour combination which was an error on part of the Registry. On 10.02.2005, Colgate complained of the same to the Trade Marks Registry. On 15.09.2005, the Registry rectify its mistakes and issued the certificate in red and white colour combination which is the first document alleged to have been forged. The Second document alleged to have been forged is one which was received on 28.02.2006 pursuant to Colgate's application for obtaining a copy of the certificate for use in legal proceedings.

8.2. It is submitted that after the writ petition filed on behalf of Anchor was disposed of on 09.02.2009, as referred to hereinabove, Colgate applied to the Registry for issuance of a duplicate certificate which was again issued in black and white. On 11.02.2011, Colgate had applied for a copy of the certificate for use in legal proceedings as the same has to be filed in the civil suit. On 05.12.2011, the Registry issued a certificate in red and white colour combination which was accordingly surrendered to the Registry on 09.12.2011 by Colgate and a request was made for rectification and updation of records in compliance with the aforesaid order dated 09.02.2009.

8.3. It is submitted that the complaint would not be maintainable in view of the bar in Section 195(1)(b) of the CrPC as the allegations made by Anchor in the present complaint as well as the application under Section 340 of the CrPC filed by them in CS(OS) 1709/2005 are with respect to the same transaction. Reliance is placed on **M/s Bandekar Brothers Pvt. Ltd. & Anr. v. Prasad Vassudev Keni & Ors., (2020) 20 SCC 1.**

8.4. In the background of facts and circumstances of the case, it was submitted that whether the documents are right or wrong, they cannot be



termed as forged documents under the provisions of the IPC and therefore, the petitioners are not liable to be prosecuted. The error committed is inadvertent and there was no intention or *mens rea* to commit an offence as alleged.

8.5. It is pointed out that a similar mistake in near identical circumstances was committed around the same point in time and a complaint was filed by Anchor. *Vide* a judgment dated 30.05.2019, passed by a learned Single Judge of this Court in CRL.M.C. 3946/2014, the said complaint was quashed. The said judgment was carried on appeal before the Hon'ble Supreme Court. The appeal so filed, i.e., SLP (CrI.) 7686 of 2019 was dismissed *vide* order dated 20.11.2019.

8.6. Lastly, it was submitted that the present complaint is *malafide* and actuated by the rival in the business, especially if one sees the list of accused which includes foreign individuals who have nothing to do with the applications to the Trade Mark Registry or the receipt of documents therefrom. This is apart from the fact that there is no vicarious liability in criminal law unless specifically provided. The complaint being an abuse of the legal process deserves to be nipped in the bud and quashed.

Analysis and Findings

9. The relevant dates and events for adjudication of the issues raised in the present petition are as under:

- i. **14.08.2003** – Application is filed by Colgate for registration of Trade Mark for 'Colgate String Teeth Carton' in the combination of red and white. The application is numbered as 1223059. A pictorial representation of Trade Mark applied for in Form TM-1 is as under:

01223059

17 4 AUG 2003

व्यापार चिन्ह रजिस्ट्री
TRADE MARK REGISTRY
नई दिल्ली
NEW DELHI

No. 13667 Dated 16-8-3

उपरोक्त राजकीय संस्था कायदे
-मते राजकीय संस्था कायदे and
-मते राजकीय संस्था कायदे के पत्र व्यवहार
के अन्तर्गत लिखें

The above Official Number
is allotted to your application
to be essentially quoted in
further Correspondences.

GOODS : Toothpaste, tooth powder, non-
should be given in all future
correspondence. This number is
merely an application number and
should not be mistaken for
CLASS acceptance or registration on the
Trade Mark. The use of the word
"registered" or letter "R" in circle
if the mark is registered is
USER Hence under 1937 for the trade mark COLGATE and
September, 2002 for the remaining
The above Official Number
is allotted to your application
to be essentially quoted in
further Correspondences.

The mark consists of a particular shade of Red and White applied to the carton in which the goods are packaged. The splash colours Yellow and Blue do not form part of the mark and serve only to embellish the carton.



ANAND & ANAND ADVOCATES
R-41 Nizamuddin East



FORM TM-1

2

TRADE AND MERCHANDISE MARKS ACT, 1958

Application for Registration of Trade Mark (other than a textile mark or certification Trade Mark or defensive trade mark) in Part A/B of the Register, Section 18 (1) - Rule 25



in the name (s) of:

COLGATE - PALMOLIVE COMPANY

A Company organised, registered and existing under the laws of New York, U.S.A.
Manufacturers and Traders

whose address is :

300, Park Avenue, New York,
New York 10022,
U.S.A.

Who claim(s) to be the proprietor(s) thereof (and by whom the said mark is proposed to be used or) and by whom and his (their) predecessor(s) in title the said mark has been continuously used since 1937 for the word COLGATE and since September, 2002 in respect of the remaining carton.

The mark consists of a particular shade of Red and White applied to the carton in which the goods are packaged. The splash colours Yellow and Blue do not form part of the mark and serve only to embellish the carton.

Dated this 13th day of August, 2003

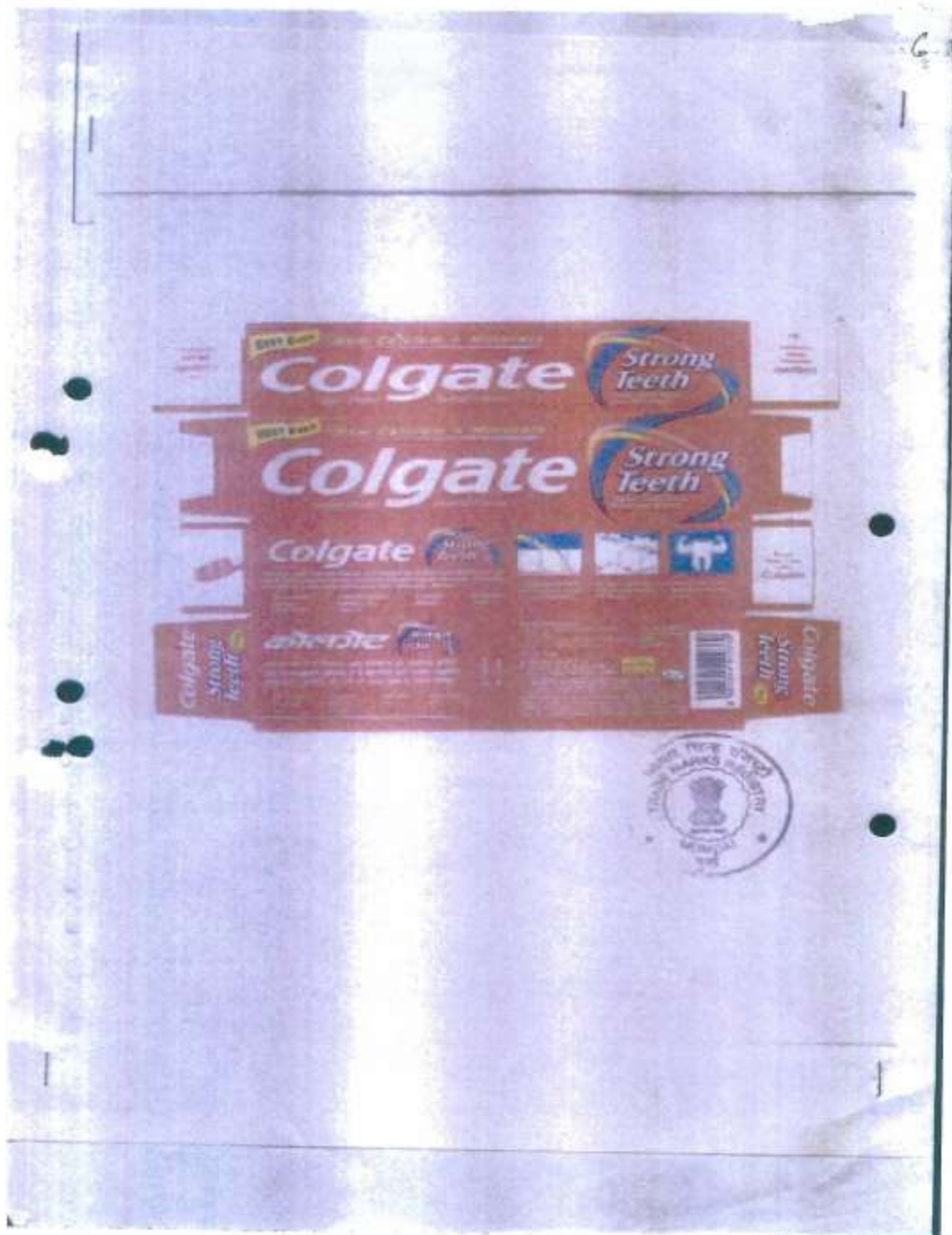
Address for service in India:

ANAND & ANAND, Advocates (Code 295)
B-41, Nizamuddin East
New Delhi - 110 013

The Registrar of Trade Marks
The Trade Marks Registry, NEW DELHI

FOR APPLICANTS

ANAND & ANAND, Advocates
B-41, Nizamuddin East,
New Delhi-110013
(Code-295)





- iii. 28.02.2006 – A 'certificate for use in legal proceedings' pertaining to registration of Trade Mark No. 1223059 is issued by the Trade Marks Registry. A pictorial representation of the said certificate is as under:

7

संख्या/No.- प्रमा.-46/Cert.-46 1995
भारत सरकार/Government of India
व्यापार चिन्ह रजिस्ट्री/TRADE MARKS REGISTRY
सेन्ट्रल बिल्डिंग, Central Building, 101, महर्षि कर्वे मार्ग, 101, M. K. Road,
मुंबई - 400 020/Mumbai - 400 020

दिनांक/Date 28/2/06

प्रेषक : व्यापार चिन्ह पंजीकार, मुंबई
From : The Registrar of Trade Marks, Mumbai
सेवा में/To,
M/s. Anand and Anand
Deo Datta

विषय/Subject : आवेदन संख्या/Application No. 1223059/3 वर्ग/in Class _____
in the name of मैसर्स/M/s. _____ के नाम से

महोदय/महोदया,
Sir / Madam,

उपर्युक्त व्यापार चिन्ह/चिन्हों से संबंधित With reference to your request(s) on Form TM-46-received आपके पत्र क्रमांक with your letter No. _____ दिनांक dated the _____ के साथ फॉर्म टी एम - 46 पर प्राप्त आपकी प्रार्थना/प्रार्थनाओं के प्रसंग में व्यापार चिन्ह पंजीकार के निर्देशानुसार उपर्युक्त व्यापार चिन्हों में से प्रत्येक से संबंधित प्रमाणपत्र, व्यापार चिन्ह अधिनियम, 1999 की धारा 137 के अधीन इसके साथ संलग्न किया जाता है/किए जाते हैं। relating to the above Trade Mark(s), I am directed by the Registrar to enclose herewith a certificate(s) under Section 137 of the Trade Marks Act, 1999 relation to each of the aforesaid Trade Marks as desired by you.

यह प्रमाणित प्रति, किसी अनुवर्ती स्वत्वधारी के अभिलेखन हेतु संबंधित अनुरोध से जुड़े अधिकांश के हित में बिना किसी पूर्वाग्रह के जारी की जाती है। इस दस्तावेज में कोई विसंगति पाए जाने पर इसे अयोहस्ताक्षरी-वरित व्यापार चिन्ह परीक्षक- के पास डाटा संशोधन हेतु भेजे। This certified copy is being issued without prejudice to the rights arising out of any request pending for recordal of subsequent proprietors, if any discrepancy, is noticed in this document, kindly intimate the same to the Sr. Examiner of Trade Marks, Mumbai for updation of the data.

भवदीय Yours Faithfully

श्री. एल. वर्मा
G. I. VERMA
सहायक, सी. ई. ओ. ऑफिस, ट्रेडमार्क,
आस. बिल्डिंग, 101, म. क. रोड,
महर्षि कर्वे मार्ग, 101, Central Bldg.,
मुंबई - 400 020, Mumbai-20.



Register Trade Mark Details for TM No. 122305 as on 28-Dec-2005

Registration No. 122305 Class 003 Appropriate Office: Delhi

Proprietor Details:
Name: COLGATE PALMOLIVE COMPANY

Category: Goods (Manufactures) A COMPANY INCORPORATED, REGISTERED AND EXISTING UND
Trade Desc: MANUFACTURER AND MERCHANT
Trading as:
Temp. Address: COLGATE PALMOLIVE BUILDING, 307 PARK AVENUE, NEW YORK 21, UNITED
STATES OF AMERICA.
Address for Service: 10/11, NITENDRA EAST, NEW DELHI - 110 013.
Holding: 01
Priority Details:

Registration Date: 11/09/2001 Certificate No.: 422305 Issued On: 15/09/2001
Renewal Date: Registration Valid Until: 11/09/2011
Journal No.: 10/01/01 Status: Registered

Trade Mark Type: Goods Word Mark: COLGATE

Goods Description: TOOTH PASTE, TOOTH POWDER, NON-MEDICATED TOOTH PASTE AND
CONDITIONS & Limitations: THE MARK CONSISTS A HORIZONTAL STRIP OF RED AND WHITE
REFLECTED TO THE JUNCTION IN RED. IN THE GOODS ARE COLOURED, THE
STRIP COLOURS YELLOW AND BLUE DO NOT FORM PART OF THE MARK
AND SHOWN ONLY TO IDENTIFY THE CANTON.

Regulation:
Associated with TM No. 122305

Priority Date:

(As per the before acceptance under section 20(1))
Priority:
122305 - August 14, 2001.
COLGATE PALMOLIVE COMPANY (A CORPORATION
INCORPORATED UNDER THE LAWS OF THE
STATE OF DELAWARE) having its principal
place of business in the State of
DELAWARE, U.S.A. COLGATE PALMOLIVE BUILD-
ING, 307 PARK AVENUE, NEW YORK 21,
UNITED STATES OF AMERICA.
TRADE MARKS AND MERCHANTS
ADDRESS for service in India/Agent's Address: ANAND AND ASSOCI-
ATES, 10/11, NITENDRA EAST, NEW DELHI - 110 013.
Telephone No. 011/177933
FAX No. 011/177933
E-MAIL: ANAND@ANANDASSOCIATES.COM
WEBSITE: WWW.ANANDASSOCIATES.COM

122305 - August 14, 2001.
COLGATE PALMOLIVE COMPANY (A CORPORATION
INCORPORATED UNDER THE LAWS OF THE
STATE OF DELAWARE) having its principal
place of business in the State of
DELAWARE, U.S.A. COLGATE PALMOLIVE BUILD-
ING, 307 PARK AVENUE, NEW YORK 21,
UNITED STATES OF AMERICA.
TRADE MARKS AND MERCHANTS
ADDRESS for service in India/Agent's Address: ANAND AND ASSOCI-
ATES, 10/11, NITENDRA EAST, NEW DELHI - 110 013.
Telephone No. 011/177933
FAX No. 011/177933
E-MAIL: ANAND@ANANDASSOCIATES.COM
WEBSITE: WWW.ANANDASSOCIATES.COM



DPM-46/Cert. A

व्यापार चिन्ह अधिनियम, 1999
TRADE MARKS ACT, 1999
(1999 का अधिनियम 47) (ACT 47 OF 1999)
(केवल कानूनी कार्यवाही में उपयोग के लिए)
(FOR USE IN LEGAL PROCEEDINGS ONLY)

1415

विदेश में पंजीकरण प्राप्त करने हेतु।
 केवल रिकॉर्ड के प्रयोजन के लिए

For use in obtaining Registration in Abroad
 For the purpose of records only

यह सतुष्टा प्रमाणित किया जाता है कि

IT IS HEREBY CERTIFIED THAT

यह अनुसूचक व्यापार चिन्ह/चिन्हों की संख्या _____
 जिसका प्रतिस्पर्ध/कोटोकोपी यहाँ
 चिपकाया गया है, के संबंध में व्यापार चिन्ह/चिन्हों के
 रजिस्टर में प्रविष्टि की कोटोकोपी/सही प्रतिनिधि है।

The annexure is a Photo copy / true copy of the
 entry in Register of Trade Marks relating to the
 Registered Trade Mark No. 12332345
 representation / photo copy where of is attested/
 annexed here to.

व्यापार चिन्ह अधिनियम 1999 की धारा 3 (2) के अंतर्गत
 प्राधिकृत
 (Authorised under Section 3 (2) of the
 Trade Marks Act, 1999)

दिनांक / Dated this _____ day of _____, 200_____

भारत सरकार / Government of India
 व्यापार चिन्ह रजिस्ट्री / TRADE MARKS REGISTRY
 सेंट्रल बिल्डिंग / Central Building
 101, महर्षि कर्वे मार्ग / 101, M. K. Road.
 मुंबई - 400 020 / Mumbai - 400 020



iv. **09.02.2009** – Order passed in W.P (C) 4165-66/2006 filed by Anchor is as under:

“ In present case, following relief are claimed:

“(i) Issue Writ of Certiorari or any other appropriate writ or directions quashing the certificate of registration of trade mark no. 1223059 in Class 3 being issued by the Registrar in breach of the Provisions of Sections 18(4), 18(5) and 20 of the Act;

(ii) Issue a Writ of Certiorari and/or any other appropriate writ or directions for quashing the certified copy of certificate dated 28th February, 2006 issued by the respondents no. 2 & 3 being illegal and contrary to the records, particularly as advertised in Trade Marks Journal published on CD-ROM bearing No. 1325 (Suppl 1) dated 20th December, 2004 and provisions of the Trade Marks Act, 1999 and the Rules framed thereunder;

(iii) Issue a Writ of mandamus and/or any other appropriate writ or directions to appropriate authority to seize the records pertaining to application no. 1223059 and/or to the respondents to produce the records pertaining to application under no. 1223059 in Class 3 before this Hon'ble Court forthwith;”

Mr. Praveen Anand, learned counsel for the Respondent no. 3 submits that according to his instructions, the Certificate of Registration of Trademark no. 1223059 in Class 3 issued by the Registrar would be surrendered for cancellation and that the Registrar may accordingly be directed to issue a fresh Certificate of Registration strictly in accordance as marked advertised in the Trade Marks Journal No. 1325 (Suppl.1) dated 20th December, 2004. Learned counsel for the petitioners submits that suitable directions may be issued to the Registrar who may also be directed to withdraw the existing certified copy issued on 28.02.2006 to the Respondent Nos. 2-3.

In view of the above statements, it is hereby directed that upon the Respondent Nos. 2 & 3 surrendering the certified copy of the Registration and original certificate of registration of trade mark



no. 1223059 in Class 3, within four weeks, the Registrar of Trade Marks shall:

- (i) Issue a fresh registration in the same calls, strictly in conformity with the advertisement dated 20.12.2004, in relation to the mark in the Trade Marks Journal No. 1325 (Suppl.1).
- (ii) Take appropriate consequential action to ensure that the conditions concerning registration of colour combination indicative in the certified copy are suitably deleted from the data base of the Trade Mark Registry, i.e. in respect of no. 1223059 in Class 3.

The petition and the accompanying application disposed in terms of above directions.

Order dasti to the parties.”

- v. **21.05.2009** – A duplicate of the certificate of registration of Trade Mark No. 1223059 is issued by the Trade Marks Registry. A pictorial representation of the said certificate is as under:



भारत सरकार
GOVERNMENT OF INDIA
व्यापार चिह्न रजिस्ट्री
TRADE MARKS REGISTRY

बौद्धिक संपदा भवन, एन्टोप हिल पोस्ट ऑफिस के निकट,
Intellectual Property Bhavan, Near Antop Hill Head Post Office,
एच. एम. रोड, एन्टोप हिल, मुंबई - 400 037.
S.M. Road, Antop Hill, Mumbai - 400 037.

दूरभाष / Tel : 24101144, 24101177, 2410251, 24112211 फैक्स / Fax : 24140803
वेबसाइट / Website : www.ipindia.gov.in

संख्या/नं./ No.R / TM-59/149

दिनांक / Dated :

सेवा : पंजीकार व्यापार चिह्न
FROM: THE REGISTRAR OF TRADE MARKS

21/5/09

किस/ TO:
Grand and Grand.

Ref. Delhi-110013

विषय : फॉर्म टीएम-59 पर अनुरोध
Subject : Request on Form TM-59

पंजीकृत व्यापार चिह्न संख्या :
Registered Trade Marks

1222059

वर्ग

No. & Class

नवीकरण/ मोडिफिकेशन
Continuation/ Modification

आपके टीएम-59 दिनांक के अनुरोध के उत्तराक्ष में मुझे पंजीकार व्यापार चिह्न द्वारा
पंजीकृत व्यापार चिह्न संख्या वर्ग के प्रमाणपत्र की प्रतिलिपि इस पत्र के साथ संलग्न
करके का निवेदन करता हूँ।

With reference to your request on form TM-59 dated 13/3/09, I am directed by the
Registrar of Trade Marks to enclose herewith a Duplicate Copy of the Certificate of
Registration No. 1222059 pertaining to Registered Trade Mark No. 1222059 in Class 3
as directed by you.

प्रत्यक्ष / Yours faithfully,

सहायक पंजीकार व्यापार चिह्न
Asst. Registrar of Trade Marks

संलग्न : उपरोक्त / Encl. As above



- vi. **05.12.2011** – A copy of certificate for use in legal proceedings of Trade Mark No. 1223059 is issued by the Trade Marks Registry. A pictorial representation of the said certificate is as under:

Page 1 of 1

THE TRADE MARKS ACT, 1999.
(ACT 47 OF 1999)
(SECTION 137)
(FOR USE IN LEGAL PROCEEDINGS ONLY)
(as per data available on computer as on today.)

REG. NO. 1223059

15/12/11

In the month of Registered No. 1223059 in Class-3

IT IS HEREBY CERTIFIED THAT

The annexure hereto is the True copy/Photo copy of the entry in Register of Trade Marks relating to Registered Trade Mark No. 1223059 in Class-3

JAY PRAKASH
Registrar of Trade Marks
Govt. of India
Trade Marks Registry
(Authorized Under Section 20(1) of the Trade Marks Act, 1999)
Plot No. 33, Sec-14, Darya, New Delhi-110 013

Dated this Monday 05th day of December 2011.

Checklist: The certified copy of the register is issued on the basis of computer data as on today. If any discrepancy is noted, please contact immediately to up date the record.

TO
MR. PUNJ AND ASSOC.
G-14, JALAN KANDARI EAST, NEW DELHI - 110 013.

http://197.168.202.46/tno/legal/Legal46.aspx

05/12/11

24

Page 1 of 1

[illegible]

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Journal of Internal Medicine 247: 395–402

Trade Mark Application Number : 4223058

TradeMark NO: 1233069

For a complete listing of titles, visit:

Name: COLGATE PALMOLIVE COMPANY

Category: Study incorporated

Springfield Ave.

Prisporitor Address: COLGATE PALMOLIVE BLDG - 300 PARK AVENUE, NEW YORK 12, NY 10022

Address For Service: ANAND AND ANAND,
9-11, HAZRATGANJ EAST, NEW DELHI-110 003

Residence: United States of America

Priority Country: United States of America

Uniquely Determined:-

Continuous flow, active

Overfitting Index: 0.000000

Reproduction (Estimote) 4-670000000
 Reproduction (Estimote) 4-670000000

General Requirements

September 1999

9-11-2019 10:00 AM

Used Since: 04/01/2007

Trade Mark: Typos DEVICE

Word Mark: COLGATE

© 2000 Blackwell Science Ltd
Journal of Internal Medicine 247: 391–397

Goods & Description: Class - 3 TOOTHPASTE, TOOTHPOWDER, NON-ABRASIVATED MOUTHWASHER AND DENTIFRICE ALL BEING GOODS INCLUDED IN CI 188.1.

Condition 5. Limitation: THE MARK CONSISTS OF A PARTICULAR SHADE OF RED AND WHITE APPLIED TO THE CARTON IN WHICH THE GOODS ARE PACKAGED, THE SPLASH COLOURS YELLOW AND BLUE DO NOT FORM PART OF THE MARK AND SERVE ONLY TO EMBELISH THE CARTON.



<http://192.168.202.46/tour/legal/Legal46.aspx>

12/1/2014

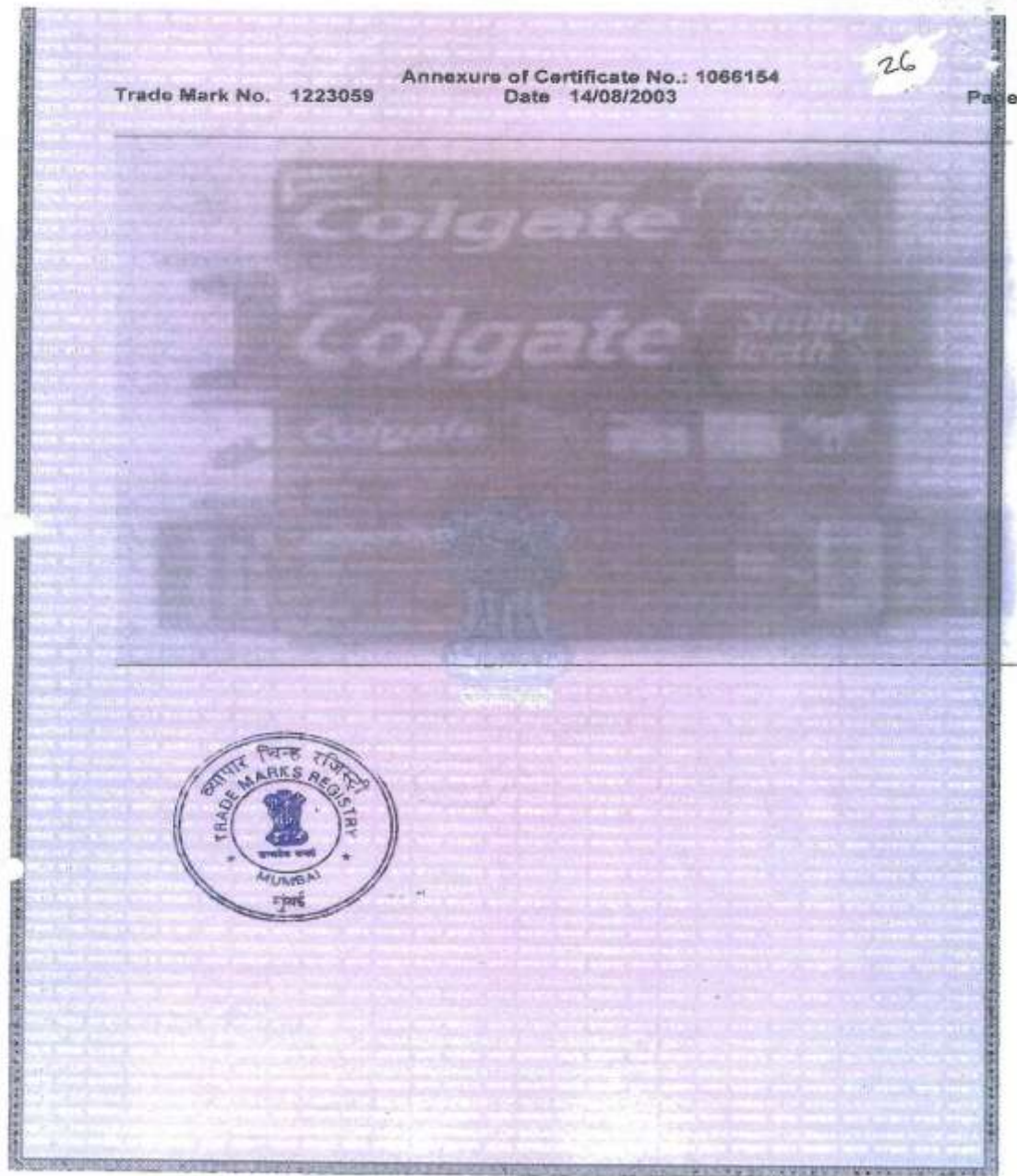


- vii. **09.12.2011** – Letter is sent to the Trade Marks Registry on behalf of Colgate, stating as under:

“We have now obtained a certificate for use in Legal proceedings, from a perusal of which we note that the colour condition is still mentioned and accordingly as the condition contrary to the order of the Hon’ble Delhi High Court, we are surrendering the same with a request that the records of the Registry should be updated and colour condition should be removed. We also request that a fresh certificate for use in Legal Proceeding without the colour condition should be issued.”

- viii. **03.07.2012** – A fresh registration certificate for Trade Mark No. 1223059 is issued by the Trade Mark Registry. A pictorial representation of the said certificate is as under:

Signature Not Verified





10. The learned Metropolitan Magistrate, while passing the impugned order, made the following observations:

“4. In view of the averments made in the complaint as well as the testimony of CW-1, it is prima-facie established that the trademark registration no. 1223059, relied upon by the accused persons in the suit No. 1709/05 before Hon’ble High Court of Delhi, was not for red and white colour label but the same was in respect of black and white colour label in which no specific right to combination of colour was granted by Registrar of Trade Marks while processing the said registration. The accused no.11 had admitted before the Hon’ble High Court of Delhi on 09.02.2009 that the said registration no.1223059 was not for red and white colour combination trademark and hence consented to surrender the original certificate of registration and certified copy thereof for cancellation **and also admitted that the certified copy of the registration was false, forged. Illegal, procured, filed and relied upon in the judicial proceedings.**’ The Registrar of Trade Marks i.e. accused no.12, in his reply to the writ petition i.e. Ex.CW-1/U, has admitted that the said registration of trade mark no.1223059 was not pertaining to red and white colour as applied in carton titled “Colgate Strong Teeth”. In para 2(xiii) of the said reply, he has stated - That in reply to contents of this sub-para (xii) it is submitted that the application on Form TM-1 filed by the respondent Colgate Palmolive Co. contained the conditions as Form TM-1, however, the condition was not published in Journal or reflected in CD because hearing officer has not imposed colour condition in his order. In para (B) of REPLY TO GROUNDS of the said reply he stated - In reply it is submitted that the hearing officer has passed the order without the colour condition consequently the mark was published in black and white. And in para 2(xxx) of the said reply he stated - In reply to contents of this sub-para, it is submitted that the Registration Certificate was issued. However, in the instant case, if the Hon’ble High Court so directs, the Registrar may issue a notice under Section 57(4) of the Act. **Thus prima-facie It is made out that the accused no. 12 by issuing a certified copy of the certificate of registration in respect of registration no. 1223059 knowing and believing such certificate containing entries not forming part of the original records of the said registration, committed the offence of forgery.**”

(emphasis supplied)



A perusal of the aforesaid observation reflects that much has been relied on the averments made in W.P.(C) 4165-66/2006 filed by Anchor and the reply thereto filed by the Trade Marks Registry.

11. At this stage, it would be thus relevant to refer to the averments made on behalf of the Anchor in W.P.(C) 4165-66/2006 and the response thereto filed on behalf of the Trade Mark Registry.

Averments made on behalf of Anchor	Response made on behalf of the Trade Mark Registry
Para 2(xiii) – As per Rule 43 of the Trade Mark Rules, 2002, the marks applied for registration are published in the journal in CD - ROM form and contain the colour representation of such Trade Marks as are required to be registered in colour form. All other marks where no such claim or condition as to the colour are subjected to are published in black and white colours. The marks as published in CD-ROM form are supposed to be published from the Camera ready copy of the trade mark, electronically scanned into a Desk Top publishing package.	Para 2(xiii) – The application on Form TM-1 filed by Colgate contained the conditions as Form TM-1, however, the condition was not published in Journal or reflected in CD because hearing officer has not imposed colour condition in his order.



Para 2(xv) – Section 21 of the Trade Marks Act, read with Rules 47 to Rules 57 of the Trade Mark Rules, 2002, confer a valuable legal right on any person including the petitioners to oppose the grant of registration in accordance with the procedure prescribed therein on the basis of the particulars of the application including the conditions of limitations, if any, subject to which the application was either accepted or ordered to be advertised before acceptance under Section 20 of the Act.	Para 2(xv) – That the contents of the said para were admitted only to the extent of what is a matter of record.
Para 2(xvi) – Since the application no. 1223059 in Class 3 was not advertised before acceptance in the Trade Marks Journal without any condition or limitation shown therein to which the said application was subjected to, the said application was not opposed by Anchor.	Para 2(xvi) – Anchor could have raised the issue before the Registrar of Trade Marks or file an opposition because mark was published as black and white.
Para 2(xvii) – The registration of	Para 2(xvii) – Anchor could have



Trade Mark subject matter of application no. 1223059 in Class 3 could not have been made by the Registrar without first complying with the provisions of Section 18(4) and 18(5) of the Trade Marks Act, if the same was to be registered subject to any condition or limitation and further without passing an order for the acceptance thereof, at the second instance after the period of notice of opposition had expired. The Registrar could not have granted the registration certificate in favour of the applicant/Colgate in any other form than the one in which the mark was advertised before acceptance in the Trade Marks Journal No. 1325 (Suppl. 1) dated 20.12.2004.	filed the petition for cancellation of advertisement even after issuance of Registration Certificate. Anchor can also file rectification petition before the Registrar of Trade Marks within the meaning of Section 57 of the Act.
Para 2(xxiv) – The certified copy of entry relating to registered trade mark under no. 1223059 in Class 3 is contrary to the Registrar’s own records, contrary to the original	Para 2(xxiv) – The certified copy was issued from the Trade Marks Registry, Mumbai relating to electronic data within the meaning of Section 6 of the Trade Marks



registration certificate and the particulars published in the Trade Marks Journal No. 1325 (Suppl. 1) dated 20.12.2004.	Act, 1999. It is pertinent to mention the provisions of Rule 119 stipulate as under: <i>“The Registrar may furnish certified copies of any entry in the register or certified copies of any documents referred to in sub-Section (1) of Section. 148 or of any decision or order of the Registrar, or give a certificate other than a certificate under sub-section (2) of Section 23 as to any entry, matter or thing which he is authorized or required by the act or the rules to make or do, upon receipt from any person of an application therefore in Form TM-46 accompanied by the prescribed fee. The Registrar shall not be obliged to include in any certificate or certified copy, a copy of any make unless he is furnished by the applicant with a copy thereof suitable for the purpose:</i> <i>Provided that the Registrar, may furnish the certified copies of the documents aforementioned within thirty working days on a request in Form TM-70 received to that an effect on payment of five times the ordinary fee for such request.”</i>
Para 2(xxvi) – The perusal of the impugned certified copy issued by	Para 2(xxvi) – Computer data entered in the system cannot easily



the Registrar on 28.02.2006 under signature of the Assistant Registrar clearly demonstrate that the computerized records of the Government of India, Trade Marks Registry have been manipulated by interpolating the conditions and limitations clause subsequently to the transfer of date to CD-Rom bearing Trade Marks Journal No, 1325 (Suppl, 1) dated-20th December, 2004.	be manipulated by interpolating other conditions. The copy of electronic register was issued from the Trade Marks Registry, Mumbai as certified copy of Registered Trade Mark No. 1223059 in Class 3.
Para 2(xxvii) – The Assistant Registrar of Trade Marks, i.e., GL Verma is in-charge of and responsible for maintenance of computerized records and issuance of certified copies and as such is personally liable to answer the question of vital importance raised in. the present writ petition.	Para 2(xxvii) – Electronic computerized record is generated and maintained by National Informatics Centre, Government of India; hence, manipulation of data entry will not be possible, however, Sh. GL Verma may also file a separate affidavit if Hon'ble High court so desires during the course of the proceedings.
Para 2(xxx) – The certified copy of the entry relating to Trade Mark	Para 2(xxx) – It is submitted that the Registration Certificate was



no. 1223059 in Class 3 issued by the Registry on 28.02.2006 is liable to be quashed by issuance of writ of Certiorari and Trade Marks Registry is liable to be directed to remove the endorsement relating to the condition and limitation interpolated into the computer and to issue a certified copy of the entity related to Anchor as per the particulars advertised in the Trade Marks Journal No. 1325 (Suppl. 1) dated 20.12.2004.	issued. However, in the instant case, if the Hon'ble High Court so directs, the Registrar may issue a notice under Section 57(4) of the Act. The Tribunal of its own motion, may, after giving n notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2) or the petitioner could have moved before IPAB with application for Rectification.
<u>GROUND S URGED BY ANCHOR</u>	<u>REPLY TO GROUNDS BY THE TRADE MARKS REGISTRY</u>
(B) The respondents could not have published the application no. 1223059 in Trade Marks Journal No. 1325 (Suppl. - 1) dated 20.12.2004 without passing a specific order in writing recording the grounds for conditional order of publication before acceptance in	(B) The hearing officer has passed the order without the colour condition consequently the mark was published in black and white.



violation of the provisions of Section 18(4) and 18(5) of the Trade Marks Act.	
D) The respondents issued the certificate of registration in respect of application no. 1223059 in Class 3 without complying with the provisions of the Section 23 of the Act. The respondents committed gross violation of law in issuing the certificate of registration without passing any formal order for the acceptance of the application under no. 1223059 in Class 3 subsequent to the expiry of period of notice of opposition,	D) According to Section 23(4), the Registrar may amend register or certificate of registration for the purpose of correcting a clerical error or an obvious mistake and the petitioner could have availed this opportunity. The hearing was held in this case and order was duly passed by the hearing officer.
(F) The Assistant Registrar, in collusion with others manipulated the statutory record of the Registrar of Trade Marks by interpolating the particulars of condition and limitation on the computer with a view to furnish undue advantage to Colgate	(F) No manipulation can easily be made in the computerized system. The Assistant Registrar, i.e, Sh. GL Verma could also file a separate affidavit in this regard, if so directed.



Palmolive Company and to cause prejudice to the public at large including the Petitioners.	
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(emphasis supplied)

12. The case of Anchor is that the certified copy of the certificate of registration of Trade Mark bearing number 1223059 dated 15.09.2005 and the certificate for use in legal proceedings corresponding to the said certificate are forged.

13. It is pertinent to take note of the response filed by the Trade Marks Registry to W.P.(C) 4165-66/2006 filed by Anchor, and in particular, the following averments:

- i. In response to Para 2(xiv), wherein it was specifically averred by Anchor with regard to the certified copy of entry relating to registered trademark no. 1223059, it was responded by Trademark Registry by stating that the *“certified copy was issued from Trademark Registry Mumbai relating to electronic date within the meaning of Section 6 of the Trademark Act, 1999”*.
- ii. Similarly, a specific averment was made in Para 2(xvi) that the certified copy issued by the Registrar under signature of respondent no. 3 therein (Deputy Registrar) demonstrating that the computer records of Government of India, Trademark Registry have been manipulated for interpolating the conditions and limitations clauses. The said averment was responded to by the Trade Marks Registry by stating *“It is submitted that the computer data entered in the system cannot easily be manipulated by interpolating other conditions. The copy of electronic*



register was issued from the Trade Marks Registry, Mumbai as certified copy of Registered Trade Mark No. 1223059 in Class 3.”

iii. Similarly, averments were made in Para 2(xxvii) with regard to manipulation by respondent no. 3 therein (Deputy Registrar) as being a person in-charge and responsible for maintenance of computerized records and issuing of certified copies. It was responded to by the Trademark Registry by stating that the “*electronic computerized record is generated and maintained by National Informatics Centre, Government of India; hence, manipulation of data entry will not be possible*”

iv. Again, in response to Para 2(xxx), it was stated “*it is submitted that the Registration Certificate was issued.*”

14. In view of the aforesaid, when the Trade Marks registry is not denying the issuance of certified copy of certificate claimed to be forged by Anchor, the aforesaid observation by the learned Metropolitan Magistrate cannot be sustained.

15. At this stage, it will also be relevant to refer to the submissions made on behalf of Anchor before the learned Single Judge, recorded in order dated 09.02.2009 passed in W.P.(C) 4165-66/2006, as under:

“Learned counsel for the petitioners submits that suitable directions may be issued to the Registrar who may also be directed to withdraw the existing certified copy issued on 28.02.2006 to the Respondents Nos. 2-3.”

16. This further reiterates the fact that at no point of time, any statement was made by the Trade Marks Registry or an admission was made by Colgate



that the certified copy of the registration certificate was not issued by the Trade Marks Registry.

17. Similarly, with regard to copy for use in legal proceedings dated 28.02.2006, it is not the case of Anchor that it was not issued by the Trade Marks Registry. As regards the interpolation, as alleged by Anchor with regard to the description of the Trade Mark to be in colour combination of red and white, it is relevant to note that a similar certificate for use in legal proceedings was issued by the Trade Marks Registry on 05.12.2011, which was returned by Colgate *vide* a letter dated 09.12.2011, as highlighted hereinabove. With regard to the certificate dated 05.12.2011, it may be noted, it was issued under the signature of 'Jai Prakash, Examiner of Trade Marks, Govt. of India, Trade Marks Registry'. The present circumstance clearly reflects that the documents could have been generated on account of some error.

18. Be that as it may, in view of the aforesaid facts and circumstances, it was incumbent upon the learned Metropolitan Magistrate to conduct an inquiry from the office of the Trade Marks Registry to ascertain whether the alleged forgery is reflected from the records of the said department.

19. It is the case of Anchor that duplicate copy of the Registration Certificate dated 21.05.2009 also demonstrated that the copy of certificate of registration dated 15.09.2005 was fabricated. It was alleged that the duplicate issued was not an exact replica of the purported original certificate. The representation of the mark attached to duplicate certificate was in black and white. Moreover, the label in the duplicate stands pasted on the face of the certificate of registration itself and not an annexure in the form of



representation sheet, like in the copy of registration certificate. It is pertinent to note that a fresh certificate dated 03.07.2012 was issued by the Registry which also has a label pasted as an annexure which is similar to the copy of the registration certificate dated 15.09.2005 (i.e., the alleged forged document). Further, in absence of any record from the office of the Registry, the aforesaid submission of Anchor cannot be accepted. To conclude otherwise on the basis of the aforesaid submissions would be a mere presumption and cannot establish forgery.

20. The relevant provisions with regard to Forgery, in the IPC, read as under:

“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.”

21. It is not the case of Anchor that the seals used in the copy or the signatures of the issuing authority have been forged. The case of Anchor is that the copy of the registration certificate was not in conformity with the advertisement of application no. 1223059 in Trade Mark Journal published on 20.12.2004. In order to prove that the copy of the registration certificate issued on 15.09.2005 placed on record by Colgate was not a copy of the original certificate issued, the same had to be verified from the records of the Trade Marks Registry. The case of Anchor that the certified copy of certificate of registration dated 28.02.2006 issued, contrary to the advertisement published in the Trade Mark Journal, by the Deputy Registrar in collusion with Colgate would amount to forgery, is also not made out. In



the present case, both the alleged forged documents have been signed and sealed by the person authorised to do so, i.e, the Deputy Registrar. Hon'ble Supreme Court, in *Mohd. Ibrahim (supra)* had held that an execution of a sale deed by someone in his own name with regard to a property which he otherwise does not own, would not constitute making a false document, as such person is not impersonating the actual owner or claiming himself to be authorized or empowered by such owner to execute the sale deed on the owner's behalf. It was observed and held as under:

“13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by



someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of “false documents”. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant’s land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner’s behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. **But to fall under first category of “false documents”, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.**

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

(emphasis supplied)



22. Learned Senior Counsel for Anchor laid stress on that fact that despite an undertaking given before this Court, the original certificate of registration was never surrendered to the Trade Marks Registry, and therefore, an adverse inference shall be drawn *qua* Colgate. The said submission cannot be accepted. Forgery of a document cannot be simply inferred, but has to be established in accordance with law.

23. Another issue which arises in the peculiar facts of the present case is with regard to the maintainability of the complaint filed by Anchor with respect to the bar of Section 195 of the CrPC. The learned Metropolitan Magistrate, while passing the impugned order, observed as under:

“3. I have heard the arguments from the counsel for complainant on the point of summoning and perused the entire record. The present complaint case has been primarily filed by the complainant against accused persons on the ground that the accused persons have malafidely and intentionally forged, fabricated, procured and filed the certified copy of registration certificate issued by the Registrar of registration trademark no.1223059. The said forgery is alleged to be committed by the accused persons prior to the filing the said document on record of Hon’ble High Court of Delhi. It is settled law that if the forgery is committed with respect to a document prior to filing of the same in the Court proceedings, the bar of Sec. 195 Cr.P.C. is not applicable. It is held by Hon’ble Supreme Court in **Iqbal Singh Marwah vs. Meenakshi Marwah, AIR 2005 SC 2119.**

“Criminal Procedure Code, Sections 195(1)(b)(ii) and 340-

Offence with regard to forgery of document- If a document was forged and thereafter produced in the Court, then aggrieved party can file a complaint-Bar of Section 195(1)(b)(ii) will not apply-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 proceedings in any court i.e., during the time when the document was in custodial egis.”



Since in the present case the forgery is alleged to have been committed prior to filing of the documents before the Court, so in view of the abovesaid case-law, the bar of Sec.195(1)(b)(ii)Cr.P.C is not attracted in the present case.”

24. The learned Metropolitan Magistrate was of the view that since the alleged forgery has been committed prior to filing of documents before the Court and therefore, the bar of Section 195(1)(b)(ii) of the CrPC would not be attracted. The Hon’ble Supreme Court in *M/s Bandekar Brothers Pvt. Ltd (supra)*, while dealing with the provisions of Section 195(1)(b) of the CrPC, observed and held as under:

“23.In Iqbal Singh Marwah (supra), a 5-Judge Bench was constituted in view of a conflict between decisions of this Court as follows:

“2. In view of conflict of opinion between two decisions of this Court, each rendered by a Bench of three learned Judges in Surjit Singh v. Balbir Singh [(1996) 3 SCC 533] and Sachida Nand Singh v. State of Bihar [(1998) 2 SCC 493] regarding interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (for short “CrPC”), this appeal has been placed before the present Bench.”

26.Importantly, the Court then stated that Section 195 of the CrPC is an exception to the general provision contained in Section 190 thereof, and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated under Section 195, which must be necessarily follow the drill contained in Section 340 of the CrPC (see paragraph 21). An important reason is then given by the Court, which is that the victim of a forged document which is forged outside the court premises and before being introduced in a Court proceeding, would render the victim of such forgery remediless, in that it would otherwise be left only to the court mentioned in Section 340 of the CrPC who decides as to whether a complaint ought or ought not to be lodged in respect of such complaint. Paragraph 23 therefore states:

“23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred



to in Section 195(1)(b), as the section is conditioned by the words “court is of opinion that it is expedient in the interests of justice”. This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.”

27. Paragraph 25 of the judgment then refers to how the broader interpretation that was accepted in *Surjit Singh* (supra) would be capable of great misuse. This was put by the Court as follows:

“25. 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* [(1998) 2 SCC 493] 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 the society at large.”



28. The Court then held that where it is possible, interpretatively speaking, an impracticable result should be avoided (see paragraphs 26 and 27). The Court, which was dealing with a forged will that had been introduced in Court proceedings after it was forged, therefore concluded:

“33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh [(1998) 2 SCC 493] has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC 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.

34. 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(1)(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) CrPC 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.”

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.

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.”

25. In the aforesaid case, the Hon’ble Supreme Court was examining the validity of two complaints filed by the appellants therein under Section 340 read with Section 195 of the CrPC, in respect of offences under Sections 191 and 192 of the IPC. The said two complaints were returned stating that the same could be filed only in the Court where the proceedings were pending in which the said offences were said to be committed. During the pendency of proceedings in the aforesaid complaints, an application was filed, by way of which the appellants therein relying upon the judgment in *Iqbal Singh Marwah (supra)* prayed that the said complaints be converted into private complaints. The same was allowed by the learned Metropolitan Magistrate, converting the said complaints into private complaints and process under Sections 191, 192 and 193 of the IPC was issued. A revision was filed by the respondents therein against the said orders on the ground that the same was barred under Section 195(1)(b)(i) of the CrPC and the mandatory procedure under Section 340 of the CrPC ought to have been followed. In a counter affidavit filed in the said revision, a plea was taken for the first time that Sections 463, 464, 465, 467, 468, 471, 474, 475 and 477-A of the IPC were also made out against the respondents therein and on account of the same, a private complaint would be maintainable. The Hon’ble Supreme Court, after examining the original complaints filed by the appellant therein and after a detailed analysis of the judgment in *Iqbal Singh Marwah (supra)* observed and held as under:



“46. A perusal of the aforesaid complaints leaves no manner of doubt that the first complaint attracts the provisions of Section 191 IPC, and the second complaint attracts the provisions of Section 192 IPC. However, for the first time in the counter-affidavit to the revision application that was filed by the respondents before the learned Sessions Judge, the appellants stated:

“II. The said application is liable/ought to be dismissed inasmuch as a perusal of the complaint and its accompaniments not only make out a case under Sections 192/193 IPC but the same also leads to a conclusion that the offences under Sections 463, 464, 465, 467, 468, 469, 471, 474, 475 & 477-A IPC have also been made out and as such, the accused persons be proceeded accordingly.

V. The said application deserves to be dismissed because the law relating to the bar engrafted in Section 195(1)(b)(ii) of the Code of Criminal Procedure is not applicable to a case where forgery of the document was committed before the document was produced in the court. As such, the documents forgery of which have been committed were not the custodia legis.”

47. There is no doubt that realising the difficulties in their way, the appellants suddenly changed course, and applied to the Magistrate vide application dated 9-5-2011 to convert what was a properly drafted application under Section 195 read with Section 340 CrPC, into a private complaint. A reading of the two complaints leaves no manner of doubt that they have been drafted keeping the ingredients of Sections 191 and 192 IPC alone in mind — the only argument from the appellants now being that since certain debit notes were forged prior to their being introduced in the court proceedings, not only would the ratio in *Iqbal Singh Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101]* apply, but also that the ingredients of the “forgery” sections of IPC have now been made out. While it is important to bear in mind that in genuine cases where the ingredients of forgery as defined in Section 463 IPC have been made out, and that therefore, a private complainant should not be left remediless, yet it is equally important to bear in mind the admonition laid down in an early judgment of this Court. Thus, in *Basir-ul-Huq v. State of W.B. [Basir-ul-Huq v. State of*



W.B., (1953) 1 SCC 637 : 1953 SCR 836 : AIR 1953 SC 293 : 1953 Cri LJ 1232] , this Court cautioned : (SCR p. 846 : AIR p. 296, para 14)

“14. Though, in our judgment, Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195 of the Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it.”

48. Equally important to remember is that if in the course of the same transaction two separate offences are made out, for one of which Section 195 CrPC is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) CrPC must be followed. Thus, in *State of Karnataka v. Hemareddy* [*State of Karnataka v. Hemareddy*, (1981) 2 SCC 185 : 1981 SCC (Cri) 395] , this Court referred to a judgment of the Madras High Court (*V.V.L. Narasimhamurthy, In re* [*V.V.L. Narasimhamurthy v. State*, 1953 SCC OnLine Mad 236 : AIR 1955 Mad 237]) and approved its ratio as follows : (*Hemareddy case* [*State of Karnataka v. Hemareddy*, (1981) 2 SCC 185 : 1981 SCC (Cri) 395] , SCC pp. 190-91, paras 7-8)

“7. ... In the third case, Somasundaram, J., has observed :
(V.V.L. *Narasimhamurthy* case [V.V.L.



Narasimhamurthy v. State, 1953 SCC OnLine Mad 236 : AIR 1955 Mad 237] , SCC OnLine Mad)

‘The main point on which Mr Jayarama Ayyar appearing for the petitioner seeks to quash this committal is that on the facts an offence under Section 193 IPC is disclosed for which the court cannot take cognizance without a complaint by the court as provided under Section 195(1)(b) of the Criminal Procedure Code. The first question which arises for consideration is whether on the facts mentioned in the complaint, an offence under Section 193 IPC is revealed. Section 193 reads as follows:

“193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

“Fabrication of false evidence” is defined in Section 192. The relevant portion of it is:

“Whoever causes any circumstance to exist intending that such circumstance may appear in evidence in a judicial proceeding and that such circumstance 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”.”

The effect of the allegations in the complaint preferred by the complainant is that the petitioner has caused this will to come into existence intending that such will may cause the Judge before whom the suit is filed to form an opinion that the will is a genuine one and, therefore, his minor daughter is entitled to the property. The allegation, therefore, in the complaint will undoubtedly fall under Section 192 IPC. It will, therefore, amount to an offence under Section 193 IPC i.e. fabricating false evidence for the purpose of being used in the judicial proceeding. There is no doubt that the facts disclosed will also amount to an offence under Sections 467 and 471 IPC. For prosecuting



this petitioner for an offence under Sections 467 and 471, a complaint by the court may not be necessary as under Section 195(1)(b) CrPC a complaint may be made only when it is committed by a party to any proceeding in any court.

Mr Jayarama Ayyar does not give up his contention that the petitioner, though he appears only a guardian of the minor girl, is still a party to the proceeding. But it is unnecessary to go into the question at the present moment and I reserve my opinion on the question whether the guardian can be a party to a proceeding or not, as this case can be disposed of on the other point viz. that when the allegations amount to an offence under Section 193 IPC, a complaint of court is necessary under Section 195(1)(a) CrPC and this cannot be evaded by prosecuting the accused for an offence for which a complaint of court is not necessary.'

8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under Section 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld."

(emphasis supplied)

26. In view of the aforesaid legal position, it is therefore necessary to determine whether in the present case, two separate offences are made out, one of which would fall within the meaning of Section 195 of the CrPC necessitating the procedure to be followed under Section 340 of the CrPC. If the answer to the aforesaid question is in affirmative, then as per the judgment in *M/s Bandekar Brothers (supra)*, it will not be possible to split these offences and the provisions of Section 195(1)(b) CrPC will apply.



27. It is pertinent to note that in the present case, Anchor has filed an application under Section 340 of the CrPC [Cr. Misc. Application No. 11901/2009 in C.S.(OS) 1709/2005] before a learned Single Judge of this Court. The subject clause of the said application reads as “*Application under section 340 of the Code of Criminal Procedure for taking action against the plaintiffs and their directors as well as their constituted attorneys and other persons responsible for the conduct of the businesses of the plaintiffs for committing offences as are punishable under sections 191, 193, 196, 199, 200 & 209 of the Indian penal code read with section 195(1)(b) of the Code of Criminal Procedure*”. Some of the averments, relevant to the present issue, made in the application, are as under:

“10. It is thus apparent that the plaintiffs, despite having full knowledge about the use of red and white combination of colours in respect of dental care products by the defendants instituted multiple litigations, in or one form or the other, seeking substantially the same reliefs to restrain the use of the colour combination of red and white in respect of Anchor Dental Care products. However, the plaintiffs miserably failed to make out any prima facie case for the grant of interim injunction in any of the proceedings as detailed in paragraph 9 above or in the present case.

11. The above suit being C.S.(OS) No. 1709/05 was instituted by the plaintiffs on 14th December, 2005 by pleading a fresh cause of action having allegedly accrued in their favour on the basis of trade mark registration no. 1223059 in class 3 dated 14th August, 2003 under the Trade Marks Act, 1999, a certificate of registration whereof was purportedly issued by the Registrar of Trade Marks on 15th September, 2005.

12. Along with the suit the plaintiffs produced on record a copy of the certificate of registration of Trade Marks . No. 1223059 in Class 3, attaching therewith coloured representation ,of the A mark representing to this Hon’ble Court that the subject matter of registration of Trade Mark 1223059 consist of red and white colour trade mark applied to a



carton for toothpaste, toothpowder, non-medicated mouthwash and dentifrices and identified by the title “Colgate Strong Teeth” (knowing well that such representation was false) in order to allege infringement of the said red and white colour trade mark applied to carton of Anchor All Round Protection by the defendants. Copy of certificate as produced by the plaintiffs with the suit is attached herewith as **Annexure-D** for reference and convenience purpose.

15. In order to meet the objections - raised by the defendants, about the subject matter of registration of n trademark no. 1223059 at the time of hearing, the plaintiffs obtained and filed a document purported to be the “certified copy of registration no. 1223059 for use-in legal proceedings” in which the subject matter of registration being red and white combination of colours was specifically added/inserted/interpolated despite being not the subject matter of advertisement of the mark in the Trade Mark Journal and/or original registration. The said document .form part of the record of the present proceedings and the same be referred to for the purpose of present .application. It is pertinent to mention that the Registrar of Trade Marks did not supply the certified copy of entry relating to trademark no. 1223059 to the defendants despite their request being pending prior in point of time to that of plaintiffs. Copy of the alleged certified copy as produced by plaintiffs on record of the Hon’ble Court is annexed hereto as Annexure-E for the purpose, of reference and convenience only. The defendants do not admit the correctness, legality and authenticity of the Annexure E in any manner whatsoever.

16. On discovery of the said material facts and that the plaintiffs have willfully, intentionally and deliberately made statements which are false and/or which the plaintiffs knew and believed to be false and/or does not believe to be true in relation to material particulars in the plaint, application under Order 39 and Rules 1 & 2 of the Code of Civil Procedure and supporting affidavits and also produced a fabricated/ forged certificate of registration of trade mark no. 1223059 by attaching a colour representation of the mark as an attachment thereto in an illegal manner and also produced certified copy of the entry, being contrary to official records and original registration, the defendants filed a writ petition bearing no. W.P.(C) No. 4165-66 of 2006 before this Hon’ble Court. In the said writ petition, the defendants pleaded and established that the subject matter of registration no. 1223059 in class 3 was not red and white colour trade applied to a carton and identified by the title



“Colgate Strong teeth” for the reasons enumerated therein. Copy of the writ petition filed by the defendants is enclosed herewith for the perusal of this Hon’ble Court marked as Annexure-F. The defendants crave leave of this Hon’ble Court to refer to and rely upon the averments made in the said writ petition as part of the present application as the same are not being reproduced herein for the sake brevity and to avoid repetition.

21. The Registrar of Trade Marks being a party to writ petition no. 4165-4155 of 2006, also filed his reply/counter reply in which categorical statement was made that the subject matter of registration no. 1223059 was not red and white colour as applied to carton identified by the title “Colgate Strong Teeth”. Copy of the said/reply counter reply filed by the Registrar is annexed hereto as Annexure-K.

24. The offences of forgery committed by the plaintiffs prior to the institution of the suit and/or during the pendency of the present suit outside the judicial record in court are punishable under Sections 463, 464, 465, 469, 470 and 471 of Indian Penal Code and are the subject matter of private complaint lodged by the defendants against the plaintiffs and their Directors and persons responsible for the conduct of their business in the Court of competent jurisdiction in accordance with the provisions of law. The defendants are therefore not seeking any relief in the present application for the offences of forgery having been committed by and on behalf of plaintiffs in relation to the certificate of registration of Trade Mark no. 1223059 and the so called certified copy thereof as the same are subject matter of separate criminal complaint.

34. The averments made in the above paragraph in the plaint further proves that the production of copy of certificate of registration along with coloured representation of the mark on form TM-1 in support of false statement constitute offence as are punishable under Sections 191, 193, 196, 199, 200 and 201 of the Indian Penal Code. In the said paragraph, the plaintiffs did not make truthful statements and declarations that vide order dated 9th February, 2009, the original certificate of registration as well as certified copy thereof have been directed to be surrendered for cancellation and issuance of fresh certificate of registration strictly in accordance with the advertisement for the application in the Trade Mark Journal 1325(Supl-1). The trade mark no. 1223059 was advertised in the Trade Mark Journal No.- 1325 (Supl-1) in black



and white without there being any claim or right for the combination of read and white colour allegedly applied to the carton for toothpaste, tooth powder non-medicate mouthwash and dentrifices and identified by the title “Colgate Strong Teeth”.

36. The plaintiffs not only fabricated the copy of the original certificate of registration and produced the same on record, but also fabricated the certified copy thereof in collusion and in conspiracy with others in which a- false entry and interpolations have been made. The plaintiffs caused the circumstances to exist intending that such circumstances and false entries and interpolations made in the certified copy of the entry relating to trademark no. 1223059 appeared in evidence in a judicial proceeding so as to persuade this Hon’ble Court to form an opinion upon the evidence and to entertain an erroneous opinion attaching the material fact in issue.

38. The Registrar of Trade Marks also committed an offence punishable under Section 197 of the Indian Penal Code by issuing a certified copy of the n certificate of registration in respect of trademark no. 1223059 knowing and believing that such certificate contain entries and interpolations which does not form part of the original record of registration of trademark no. 1223059. It is pertaining to mention that the certified copy of the entry relating to trademark no. 1223059 is admissible in evidence under Section 137 of the Trade Marks Act, 1999. The defendants reserve their right to take appropriate actions against the officer who abused the powers of the Registrar to make unauthorized tampering with the records etc.

39. The defendants respectfully submit that the declaration made on oath in the form of affidavits duly attested by Oath Commissioners are receivable as evidence in judicial proceedings and in support of the plaint as well as applications for the grant of interim injunction. This Hon’ble Court is authorized by law to receive such evidence on affidavit as material fact for the purpose of passing appropriate orders for the grant or refusal of an order of interim injunction. The declaration made on oath in the form of affidavits are also admissible as evidence under Delhi High Court Original Side Rules. **The plaintiffs having- full knowledge of the fact that the declaration as are made by them in the form of affidavits filed in support of the plaint as well as application for the grant of interim injunction are admissible in evidence, intentionally and deliberately made false statement concerning the material facts**



in issue i.e., the nature of the rights as are subject matter of registration of the trademark no. 1223059. The plaintiffs have thus committed offences under various provisions of the Indian Penal Code. The plaintiffs are not only guilty of giving false evidence and fabricating false evidence', making false statement in declarations which is by law receivable as evidence but also verified the said declarations to be true knowing the same to be false in relation to material particulars and have thus committed offence under Section 200 of the Indian Penal Code.

42. The plaintiff no. 1 is a company incorporated as per the allegation made in the plaint, under the laws of State of Delwave, USA, Mr. R.A. Shah is claimed to be the constituted Attorney of plaintiff no. 1 and is resident of Panorama, 2nd Floor, 203, Walkeshwar Road, Mumbai 400006, Maharashtra, India. Mr. R.A. Shah is responsible for the conduct of legal affairs of the plaintiffs' companies.

43. Following are the Directors and Principle Officers of plaintiff no. 1 as per the information of the defendants who are responsible for the conduct of their business:

- a) Mr. Ian Cook, Chairman, President and Chief Executive Officer
- b) Mr. Michael J. Tangney, Chief Operating Officer, Colgate-Europe, Greater Asia and Africa.
- c) Stephen C. Patrick, Chief Financial Officer
- d) Mr. Mitchell Abrahamsen, VP, Hills Pet Nutrition
- e) Mr. Manual Arese, VP, Chief Procurement Officer."

45. The defendants respectfully submit that the offences as are punishable under Sections 193, 196, 199, 200 & 209 of the Indian Penal Code have been committed by all the Directors as well as Principle Officers of the plaintiffs' companies in conspiracy and in collusion with each other and in furtherance of their common intention and objective. The Directors and the Principal Officers of the plaintiffs' companies have entered into a criminal conspiracy to commit the offences which are punishable for a term of two years and upwards and are therefore collectively liable to be punished for the said offences in conjunctions with the provisions of Sections 34 and/or 120B of the Indian Penal Code.



46. In view of the above facts and circumstances, it is prayed:

(i) that this Hon'ble Court may initiate an enquiry into the offences as have been committed by the plaintiffs through their Directors and other persons responsible for the conduct of their business in or in relation to the present proceedings for giving false evidence, fabricating false evidence, making false declarations, giving false evidences' and using such, evidence knowing the same to be false and still using the same as true.

(ii) It is further prayed that a finding to the effect that the plaintiffs, and their Directors and all other persons responsible for the conduct of their businesses including Mr. K.V. Vaidyanathan, Mr. Dinesh Castellino and Mr. Sanjeev Krishna Srivastav have committed offences punishable under Sections 193, 196, 199, 200 & 209 of the Indian Penal Code be recorded and a complaint thereof in writing be made to the Magistrate, 1st Class having jurisdiction to try and punish the accused persons in accordance with law."

(emphasis supplied)

28. It is also relevant to point out here that in the complaint filed on behalf of Anchor before the learned Metropolitan Magistrate, the same averments as in the aforesaid application under Section 340 of the CrPC have been made. From the averments, as reproduced hereinabove, the case of Anchor, in the application under Section 340 of the CrPC is primarily that the plaintiffs therein, including the Director and Principal Officers of Colgate have committed offences under Sections 191, 193, 196, 199, 200 & 209 of the IPC by conspiring and colluding with each other. The offences, as alleged, were stated to have been committed in relation to the alleged forged and fabricated copy of certificate of registration number 1223059 as well as its copy for use in legal proceedings. The aforesaid averments also reflect that Anchor has sought directions against Directors of Colgate as well.



29. It is the specific case of Anchor that Colgate had failed to establish any *prima facie* case before any forum for grant of interim injunction with respect to use of red and white combination of colours in respect of dental care products by Anchor and filed CS(OS) 1709/2005 claiming a fresh cause of action on the basis of certificate of registration by placing on record a forged copy of the registration certificate as well as certificate for use in legal proceedings. In the present circumstance, an inquiry under Section 340 of the CrPC, as prayed for by Anchor, cannot be separated from the alleged forgery with respect to the documents in question. The foundational fact for initiation of prosecution for offence punishable under Section 193 of the IPC in the facts of the present case, as averred by Anchor, would be establishing the fact that the documents are forged.

30. In view of the above, this Court is of the considered opinion, as alleged by Anchor, in the same course of transaction, two separate offences have been committed and for one set of offences, complaint of Court is mandatory and therefore it is not possible to split them up. In these circumstances, the complaint with regard to other set of offences for which no complaint of Court is required cannot be sustained. The present complaint would not be maintainable and the learned Metropolitan Magistrate could not have taken cognizance of the said complaint.

31. In view of the aforesaid discussion, CC No. 7/2/09 titled '*Anchor Health and Beauty Care Pvt. Ltd. v. KV Vaidyanathan & Ors.*' and the impugned summoning order dated 02.04.2012 passed by the learned Metropolitan Magistrate are set aside and quashed.

32. The petitions are allowed and disposed of accordingly.



33. Judgment be uploaded on the website of this Court, *forthwith*.
34. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA
JUDGE

MAY 28, 2024/bsr