IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2057 of 2021

Mr. Tapesh Pal

Versus

The State of West Bengal & Another

For the Petitioner	:	Mr. Tapan Dutta Gupta, Adv. Mr. Parvej Anam, Adv. Ms. Puspa Rani Jaiswara, Adv.
For the Opposite Party No. 2	:	Mr. Dipankar Majumdar, Adv. Ms. Diya Mal, Adv.
For the State	:	Mrs. Purnima Ghosh, Adv.
Heard on	:	03.01.2025
Judgment on	:	12.03.2025

<u>Ajay Kumar Gupta, J:</u>

1. By filing this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks for quashing of the proceeding being G.R. No. 1069 of 2019 arising out of Amherst Street Police Station Case No. 311 dated 11.11.2019 under Sections 420/120B of the Indian Penal Code, 1860 read with Section 63 of the Copyright Act and the Charge Sheet being Charge Sheet No. 310 of 2019 dated 18.12.2019 filed under Section 63 of the Copyright Act.

2. The essential facts of the present case are relevant for the purpose of fair and proper disposal of this case are as under: -

2a. One Aman Preet, son of Sri Gurgindar Singh claiming himself to be the authorised person of M/s. Sanspareils Greenlands Pvt. Ltd. and M/s. Freewill Pvt. Ltd., lodged a written complaint with the Deputy Commissioner of Police, Enforcement Branch, Kolkata on 11.11.2019. He alleged, *inter alia*, that some retailers/whole sellers were deliberately selling duplicate and infringing sports goods of "SG" & "Nivia" brands, which are owned by the aforesaid two companies, thereby violating the provision of Copyright Act and causing wrongful gain to them and wrongful loss to the aforesaid two companies.

2b. On the basis of said written complaint, an FIR was registered being Amherst Street Police Station Case No. 311 dated 11.11.2019 under Sections 420/120B of the Indian Penal Code, 1860 read with Section 63 of the Copyright Act against unknown accused persons and initiated investigation.

2c. After culmination of the investigation, the Investigating Agency submitted a charge sheet being Charge Sheet No. 310 of 2019 dated 18.12.2019 under Section 63 of the Copyright Act against the Petitioner before the Learned Additional Chief Metropolitan Magistrate, 2^{nd} Court at Calcutta.

2d. Upon receiving the charge sheet, the Learned Magistrate took cognizance for alleged commission of offence punishable under Section 63 of the Copyright Act. Though, the petitioner claims that the complaint is not at all maintainable against the petitioner as he was not the owner of the shop, where some alleged products were recovered and seized. Hence, this Criminal Revisional application.

3. Both the parties have filed their written notes of arguments in support of their case.

SUBMISSION ON BEHALF OF THE PETITIONER:

4. Learned counsel, Mr. Gupta appearing on behalf of the petitioner prays for quashing of the proceeding on four grounds as under: -

4a. **Firstly**, the petitioner/accused was not the proprietor/shop owner from where the alleged recovery was made at the material time, as such, the proceeding, initiated against the petitioner, is a sheer abuse of process of law.

4b. **Secondly**, M/s Brand Protectors India Pvt. Ltd. having its registered office at 122, Sector – 15, Part – 1, Gurgaon – 122001, Haryana was authorised by M/s Sanspareils Greenlands Pvt. Ltd. and M/s Freewill Sports Pvt. Ltd. to conduct market surveys, investigate, file complaints and give evidence regarding intellectual property violations. The company has re-delegated its power to the complainant, which is impermissible under the law. Moreover, the complainant filed the written complaint in his own name, while it should have been filed in the company's name. Therefore, the proceedings are legally flawed and should be quashed.

4c. To bolster his contention, the learned counsel appearing on behalf of the petitioner referred two judgments as under: -

i. Mehmood Ul Rehman and Ors. Vs. Khazir Mohammad Tunda and Ors.[1] relying particularly paragraphs 19 to 21 as under:

> *"**19.** In Bhushan Kumar v. State (NCT of Delhi) [Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] , the requirement of application of mind in the process of taking cognizance was reiterated. It was further held that summons is issued to notify an individual of his legal obligation to appear before the Magistrate as a response to the alleged violation of law. It was further held that in the process thus issued, the Magistrate need not explicitly state the reasons. Paras 11 to 13 contain the relevant discussion, which read as follows: (SCC pp. 428-29)*
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> > *"11. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression 'cognizance' was explained by this Court as 'it merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by*

[1] (2015) 12 SCC 420;

someone.' It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A 'summons' is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

> *13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."*

20. *The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.*

> ***21.*** *Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected."*

ii. Shankar Finance and Investments Vs. State of Andhra Pradesh and Ors.[2] relying particularly paragraph 13 as under:

> *"**13.** The assumption of the High Court that where the payee is a proprietary concern, the complaint can be signed only by the proprietor of the proprietary concern and not by a power-of-attorney holder of the proprietor, is not sound. It is not in dispute that in this case a power of attorney has been granted by Atmakuri Sankara Rao, as proprietor of M/s Shankar Finance & Investments in favour of Thamada Satyanarayana and the same was produced along*

[2] (2008) 8 SCC 536 : (2008) 3 SCC (Cri) 558 : 2008 SCC OnLine SC 997

with the complaint. The description of the complainant is as under:

> *"M/s Shankar Finance and Investments (a proprietary concern of Sri Atmakuri Sankara Rao, s/o late Sri A.B. Rama Murthy, Hindu, aged about 65 years), having its office at Flat No. 3-B, Third Floor, Maharaja Towers, Vishakhapatnam 3 represented by its power-of-attorney holder Sri Thamada Satyanarayana, s/o late Adinarayana, Hindu, aged 50 years, service, residing at MIG-B-230, Sagarnagar, VUDA Layout, Vishakhapatnam 43."*

The said description is proper and therefore, the complaint has been duly filed by the payee."

4d. **Thirdly**, the Learned Magistrate took cognizance solely on the basis of charge sheet submitted by the Investigating Agency, without applying his judicious mind and did so mechanically without perusing the materials on record. This shows that the Learned Magistrate did not apply his judicious mind and surreptitiously take cognizance. As such, the proceedings are bad in law and are liable to be quashed on this ground alone.

To support of his contention, the learned counsel appearing on behalf of the petitioner has placed reliance of a judgment passed in the case of ***A.R. Antulay Vs. Ramdas Sriniwas Nayak and Ors.***[3] Where the Hon'ble Court held the statute requires to do certain thing in a certain way, "the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

4e. **Lastly**, the First Information Report neither disclosed the name of accused persons nor disclosed ingredients of Section 63 of the Copyright Act. It is vague, non-specific and evasive concerning the alleged offence. Therefore, according to the petitioner, proceeding against the petitioner is absolutely abuse of process of law and for securing ends of justice, the proceeding is liable to be quashed.

4f. The learned counsel also placed reliance of the following judgments in support of the petitioner's case.

> ***i.*** *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Ors. Vs. State of Gujarat and Anr.*[4]*;*
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> ***ii.*** *State of Haryana and Ors. Vs. Bhajan Lal & Ors.*[5]*;*
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> ***iii.*** *Knit Pro International v. The State of NCT of Delhi & Ors.*[6]*.;*
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> ***iv.*** *Mita India Pvt. Ltd. Vs. Mahendra Jain*[7]*.*

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3 AIR 1984 (SC) 718: (1984) 2 SCC 500;
4 (2017) 9 SCC 641
5 AIR 1992 SC 604;
6 (2022) 10 SCC 221.
7 2023 (3) SCALE 18

<u>SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:</u>

5. Per contra, learned counsel appearing on behalf of the opposite party no. 2 vehemently opposed the prayer of the petitioner and further submitted that the inherent power under Section 482 of the CrPC is wide to make orders necessary to give effect to any order under Code or prevent abuse of process of any Court or otherwise to secure the ends of justice. However, such situation does not arise particularly when a prima facie case has been established against the petitioner under Section 63 of the Copyright Act in the present case after investigation.

6. It was further submitted that in the absence of an abuse of process of law, the Hon'ble High Court should refrain from exercising its inherent power under Section 482 of CrPC when none of the conditions or categories set out in the landmark judgment passed in the case of ***Bhajan Lal (supra)*** are met. Therefore, the proceeding should continue allowing evidence to be adduced in the trial to uncover the truth and punish the actual perpetrator.

7. Learned counsel appearing on behalf of the opposite party no. 2 has also placed reliance of a judgment passed in the case of ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and***

Ors. Vs. State of Gujarat and Anr.[8], particularly paragraph no. 16 to support of his submission that the complainant was duly authorised to file complaint against the perpetrator(s) as under:

> "***16.*** *The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:*
>
> ***16.1.*** *Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*
>
> ***16.2.*** *The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*
>
> ***16.3.*** *In forming an opinion whether a criminal proceeding or complaint should be quashed in*

[8] (2017) 9 SCC 641

exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. *While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.*

16.5. *The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*

16.6. *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.*

16.7. *As distinguished from serious offences, there may be criminal cases which have an* *overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.*

16.8. *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*

16.9. *In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

16.10. *There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*

8. It was further submitted that no person is barred from filing a complaint unless specifically prohibited by statute. Therefore, the complaint by the complainant/opposite party no. 2 is maintainable. The judgment passed in the case of ***A.R. Antulay Vs. Ramdas Sriniwas Nayak and Ors.*** discussing locus standi, is not applicable here, as the complainant was duly authorised by the company in writing.

9. Learned counsel also cited a judgment passed in the case of ***Mita India Pvt. Ltd. Vs. Mahendra Jain***[9] to support of his contention that a duly authorized representative can file a complaint, even under special provisions like Section 138 of the N.I. Act. Delegation and sub-delegation of the functions of the general power of attorney holder is permissible if there is specific authorisation.

10. Finally, it was argued that the petitioner's documents related to the shop appended with written notes of argument, cannot be considered without supporting an affidavit. Petitioner would get opportunity to adduce evidence to rebut the allegation of the prosecution during trial, therefore, the matter should be proceeded in accordance with law to decide the issues raised by the petitioner after

[9] 2023 (3) SCALE 18

adducing evidences and, thus, the Criminal Revisional application should be dismissed.

SUBMISSION ON BEHALF OF THE STATE:

11. Learned counsel appearing on behalf of the State submitted that after completion of investigation, a prima facie case has been well established against the petitioner. During investigation, the following counterfeit/duplicate items were seized from the possession of Tapesh Pal, who was present at the shop during recovery:-

(1) 32 pieces wooden cricket bats with handle style as S.G. with cover including two small bats with cover;

(2) 38 pairs football show with spike styled on Nivia different colour & different size;

(3) 21 pieces white colour thigh guard pad styled as S.G. Company;

(4) 7 pieces white colour elbow guard pad style as S.G. and other items.

The complainant identified these items as counterfeit. A notice was served to Tapesh Pal under Section 41A of the CrPC requiring him to explain the possession of counterfeit goods valued at Rs. 42,250/-.

However, he failed to provide a satisfactory explanation and deny his involvement in the offence.

DISCUSSIONS AND FINDINGS BY THIS COURT:

12. I have heard the arguments of the rival parties and on perusal of the record as well as judgments relied by the parties, this Court finds it is admitted fact that a written complaint was lodged by the opposite party no. 2/complainant, Aman Preet in his own name against some unknown accused persons with the Deputy Commissioner of Police, Enforcement Branch, Kolkata. The complainant alleged that the accused conspired to engage in illegal production and sale of counterfeit/duplicate sports goods under the brand name as "SG" and "Nivia", owned by M/s. Sanspareils Greenlands Pvt. Ltd. and M/s. Freewill Sports Pvt. Ltd. and thereby infringed the Copyrights and defrauding the complainant's companies and customers as well.

13. From the perusal of the complaint, it appears that Aman Preet is an employee of M/s. Brand Protectors India Pvt. Ltd. having its registered office at 122, Sector – 15, Part – 1, Gurgaon – 122001, Haryana. He referred himself as Investigating Officer of the company on the basis of authorisation. Training Certificates issued by M/s.

Sanspareils Greenlands Pvt. Ltd. and M/s. Freewill Sports Pvt. Ltd. and internal authorization from M/s Brand Protectors India Pvt. Ltd. and letter of authority issued by the companies are also enclosed with such written complaint.

14. Upon further perusal of the case record, it appears that during investigation, the Investigating Officer with the help of local police conducted raid at M/s. Allied Sports Co. Ltd. situated at 61, Mahatma Gandhi Road, Kolkata – 700 009 and seized (1) 32 pieces wooden cricket bats with handle style as S.G. with cover including two small bats with cover, (2) 38 pairs football show with spike styled on Nivia different colour & different size, (3) 21 pieces white colour thigh guard pad styled as S.G. Company, (4) 7 pieces white colour elbow guard pad style as S.G. and other items. Tapesh Pal was present at the location wherefrom the counterfeit goods were recovered. Additionally, a declaration from Smt. Kalpana Pal, mother of Tapesh Pal, revealed that she had given him a power of attorney to manage her business affairs under the name and style of M/s. Allied Sports Company. The petitioner was looking after entire her business affairs.

15. Thereafter, a notice was served under Section 41A of the CrPC to Tapesh Pal to explain such possession of counterfeit or duplicate goods valued at Rs. 42,250/- but he failed to satisfy the possession of such counterfeit products. He also fails to produce any valid documents of those products.

16. The Investigating Officer also recorded statement of the seizure witnesses. Prima facie it appears that those items were seized from the possession of Tapesh Pal, who was present in the shop styled as “Allied Sports Co.”. Moreover, the petitioner herein signed the seizure list and subsequently surrendered before the Learned Trial Court and prayed for bail. His prayer for bail was allowed on 28.11.2019 as he had duly complied with the notice issued under Section 41A of the CrPC and cooperated with the Investigating Agency.

17. Some counterfeit or duplicate products were seized from the shop, where Petitioner was present. He could not explain the illegal possession of such products and he failed to produce reliable evidence during the investigation. Furthermore, he also fails to produce any document that he was not the owner of the shop owner and/or not looking after the said shop, wherefrom such illegal products were recovered. Petitioner submitted documents along with written notes of arguments without supporting by an affidavit. Those documents are disputed by the opposite party. It cannot be determined by this Court the reliability, genuineness or correctness of the petitioner's claim that he is not the owner or authorised person to look after the business affairs, wherefrom counterfeit items were recovered without adducing evidence during trial. His innocence/guilt is to be decided upon adducing evidence and, for that, trial is essential.

18. Authorisation letters, Training Certificate and internal authorization and their validity are matter of disputed fact which cannot be taken into consideration without evidence. Therefore, the Learned Trial Court will also decide the maintainability of the complaint based on the authorization, delegation or sub-delegation of authority via power of attorney, after considering the evidence.

19. Section 63 of the Copyright Act, 1957 deals with the punishment for copyright infringement stating that anyone who knowingly infringes or abets the infringement of copyright or other rights conferred under the act can be punished with both imprisonment and fine. The punishment for copyright infringement is imprisonment for a term not less than six months but upto three years, and a fine ranging from Rs. 50,000/- to Rs. 2,00,000/-.

20. A charge sheet has also been submitted against the petitioner after conclusion of investigation under Section 63 of the Copyright Act. Evidence collected during investigation also established prima facie case against the petitioner/ accused person. Judgments relied by the Petitioner would not aid any help in deciding the case in his favour as the facts and circumstances of the present case are extremely different. Rather, ***Mita India Pvt. Ltd. (supra)*** clarified that it is settled that though the general power of attorney holder cannot delegate his powers to another person but the same can be delegated when there is a specific clause permitting sub-delegation. Accordingly, this Criminal Revisional application has devoid of merits.

21. Consequently, **CRR 2057 of 2021** is, thus, **dismissed**. Connected applications, if any, are also, thus, disposed of.

22. Case Diary, if any, is to be returned to the learned Advocate for the State.

23. Let a copy of this Judgment be sent to the Learned Trial Court for information.

24. Interim order, if any, stands vacated.

25. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

26. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)