

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 4690 of 2022

With

CRAN 2 of 2024

Arddy Engineering Innovations pvt. Ltd. & Ors.

Vs.

Heraeus Technologies Indian Pvt. Ltd.

For the Petitioners : Mr. Arindam Jana
Ms. O. Mukherjee

For the opposite Party : Mr. Sabyasachi Banerjee
Mr. Ayan Bhattacharjee
Mr. Soumopriya Chaudhury
Mr. Dipak Chaharaj
Mr. D. Chakraborty
Mr. Anurag Modi
Mr. S.N. Upadhyay

Heard on : 29.01.2025

Judgment on : 16.04.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner herein has prayed for quashing of proceeding being complaint case no. 743 of 2021, presently pending before ld. Judicial Magistrate 4th Court Barrackpore, which has been initiated under sections

420/406/461/471/120B and 34 of Indian Penal Code(IPC), including order dated 14/11/2022, by which the court below has issued process against the petitioners.

2. The complainant / opposite party herein contended that complainant is the proprietor of several trademarks and exclusive technologies, including 'Hydris' which is the only product approved by the Research Design and Standard Organization in measuring level of hydrogen in liquid steel, which is essential for safety of railway tracks. The petitioners were granted a distributorship of the products of the opposite party/ company pursuant to a distributorship agreement and were only entitled to use the products and trade marks of the opposite party/ company for the limited purpose of advertising the products of the opposite party/ company. However, the distributorship agreement was terminated by the complainant /opposite party on 24th October, 2013

3. Complainant alleged that the petitioners developed their own hydrogen sensor namely 'Hysen' and in that product, they deliberately affixed the marked 'Hydris' to represent as if the said counterfeit product is the genuine hydrogen sensor, manufactured by the opposite party company and the said counterfeit product were supplied to Indian Railways and other Steel factories, depicting that it is 'Hydris', which has not only caused wrongful loss to the complainant but also amounts to cheating the other entities and also compromising on Railway safety and defence safety.

4. Complainants further allegations is inspite of specific order of injunction passed by a competent Civil Court, injuncting the petitioners from using the mark 'Hydris' in any counterfeit product manufactured by

them, the petitioners not only continued to affix the mark but also continued to supply their counterfeit product with impunity. Therefore, the complainant initiated the aforesaid criminal proceeding against the petitioners herein, relying upon illustration (b) of section 415 of the Indian Penal Code and also on the allegations of committing forgery, in as much as deceptively similar counterfeit mark has been manufactured by the petitioners and used on counterfeit products.

5. Learned court below took cognizance of the offence on 29.12.2011 and it was transferred to the court of 4th Judicial Magistrate, who after examining the complainants witness under section 200 Cr.P.C. observed that prima facie case under sections 420/406/461/471/120B and 34 of IPC has been reasonably made out against the petitioners and accordingly he issued process by an order dated 4th January, 2022.

6. Being aggrieved by the order of issuance of process, the petitioner herein, earlier preferred a criminal Revisional Application before this Court, contending that the accused persons reside outside the jurisdiction of the court but the process has been issued, violating the mandatory provisions of making inquiry, as laid down in section 202 of the Code of Criminal Procedure.

7. This court while adjudicating the said revisional application issued direction upon the court below and on the basis of such direction, the trial court asked OC Noapara P.S. to cause an inquiry in the matter and to file a report regarding the veracity of the accusations made by the complainant. Thereafter, on receipt of report from the said police station on 14.10.2022,

the court below re issued the process under section 204 of Cr.P.C. against the petitioners vide impugned order dated 14.11.2022.

8. Being aggrieved by the said impugned proceeding as well as the order impugned, petitioner contended herein that from the averments of the complaint, it is clear that the International Exclusive Distributorship Agreement (IEDA) was executed between the petitioner/ company and the opposite party in the year 2002 and the same was terminated in the year 2013 after having a longstanding business relationship for 11 years and it clearly shows that there was no initial deception and the opposite party had no grievance against the petitioner/ company till the termination of the IEDA and as such, it clearly negates the allegation filed under section 420 of IPC.

9. Mr. Jana on behalf of the petitioner further submits that immediate after termination of IEDA, a suit against the opposite party herein was filed in the year 2013, claiming damages for violation of the terms of IEDA where the opposite party herein has appeared and the same is pending. He further contended that the allegations levelled in the complaint at best make out a case of a civil claim for damages for alleged breach of contract but not criminal breach of trust or cheating. He also contended that the opposite party herein has already filed a civil suit in respect of the same grievance in 2015 i.e. 6 years prior to the filing to the instant complaint, where he has obtained an order of injunction on 28th October, 2015, against which the petitioner has preferred an appeal, which is also pending. In this context he relied upon the judgment of **Mitesh Kumar J. Shah Vs. State of Karnataka** reported in **(2022) 14 SCC 572**.

10. Relying upon the judgment of *All Cargo Movers India (p) ltd. and others Vs. Dhanesh Badarmal Jain and another* reported in **(2007) 14 SCC 776**, petitioner contended that allegations in the petition of complaint and the stand taken in civil proceeding by the complainant are completely contradictory. The stand taken by the complaint in the civil suit filed in 2015 is one of breach of the terms and condition of the IEDA by the petitioners whereas the case which has been sought to be made out in the petition of complaint, is that counterfeit goods were allegedly supplied by the petitioners to various entities which is a completely new case in respect of the same agreement at a belated stage. Infact the complainant has attempted to enforce his civil rights arising out of the IEDA by filing the instant criminal complaint at a belated stage i.e. 6 years after filing of the civil suit.

11. It is further case of the complainant that no specific allegations has been made against the petitioner 2 and 3 regarding their involvement in the alleged offence as Managing Director of the company concerned and no specific overt act has been alleged against the petitioner no. 2 or 3 regarding their involvement with the alleged offence , although they have been prosecuted. In this context petitioner also relied upon *Sharad Kumar Sanghi's case* reported in **(2015) 12 SCC 781** and *Muksud Saiyed Vs. State of Gujarat* reported in **(2008) 5 SCC 668**.

12. Mr. Jana further argued that from the order impugned, it is clear that the Magistrate has not applied his mind nor he was satisfied that there is ground for proceeding further in the matter and the cognizance in this case has been taken in a mechanical manner and for which also the

proceeding is not sustainable. In this context he relied upon ***Mehmood UI Rehman Vs. Khazir Md. Tunda***, reported in **(2015) 12 SCC 420**.

13. While contradicting the submissions made by Id. Counsel on behalf of the opposite party, Mr. Jana relied upon paragraph 102 (7) of ***Bhajanlal's Case*** reported in **1992 supp (1) SCC 335** contending that with an ulterior motive for wrecking vengeance, on the petitioner and with a view to spite him due to private and personal grudge, the proceeding has been maliciously instituted.

14. To sum up, petitioners sought for quashing the impugned proceeding primarily on the ground that the basic ingredients of the alleged offences have not been made out and it is admitted position that continuous business transaction was carried till the IEDA was terminated and there was no allegation of any inducement by the petitioner or any intention to cheat from the very inception. Furthermore, contradictory pleadings regarding supply of counterfeit goods are apparent from a bare comparison of the injunction order and the petition of complaint. Moreover, the complaint has been lodged after six years from the filing of the suit by OP on the same set of facts, makes it clear that the same has been filed to harass the petitioner. He further contended that the petitioners have primarily relied upon admitted documents such as the plaint, order of injunction obtained by the OP and as such they are of sterling quality and can be relied upon by the Court, while invoking its jurisdiction under section 482 Cr.P.C.

15. Mr. Ayan Bhattacharya and Mr. Sabyasachi Banerjee Learned Senior counsel appearing on behalf of the opposite party submits that the

order impugned issuing process dated 14.11.2022 was passed after a detailed enquiry under section 202 of the Code of Criminal Procedure which was undertaken by the officer in charge, Noapara Police station under the order of the Learned Jurisdictional Magistrate and as such it cannot be said that the Magistrate while invoked his jurisdiction under section 204 of the Cr.P.C. did not apply his mind.

16. Learned counsel for the opposite party contended that the present case clearly attracts section 415, illustration, (b) of the IPC, as the petitioners herein have created counterfeit products by usage of counterfeit marks or labels on such products, creating a deception that the said products are manufactured by a reputed and authorized manufacturer and thereafter sold the same which clearly amounts to cheating. They further contended that the documents filed by the petitioners in support of their contention by way of supplementary affidavits are not tested documents and does not deserve to be considered by this court at this stage and in this context reliance has been placed upon ***State of Bihar Vs. P.P. Sharma*** reported in **1992 Suppl. 1 SCC 222**.

17. In this context they further argued that a prior commercial relationship between the parties cannot be a ground to negate the allegations made in the petition of complaint. Though the petitioner has attempted to depict the case as a civil dispute but in the complaint, the opposite party has clearly levelled the allegations and the mere fact that earlier there was an agreement which was terminated, does not take away the factum of usage of counterfeit product with counterfeit marks. In this

context reliance has been placed upon the cases reported in **(2001) 8 SCC 645, (2013) 2 SCC 801, (2009) 11 SCC 529.**

18. Both Mr. Banerjee and Mr. Bhattacharya strenuously argued that the stand of the complainant before the civil court and the stand of the complainant before the criminal court are not at all contradictory to each other, rather corroborates and support each other. It is an admitted position that by an order dated 28th October, 2015, the District Judge of Sundergah had specifically injuncted the petitioners from usage of the trade mark and trade names including 'Hydris'. Inspite of that petitioner with an impunity continued to not only manufacture counterfeit products and usage of the marked 'Hydris' on such product but supplied the said products claiming to be the distributor of the complainant/ company representing that they are actually the genuine products of the complainant/ company. The order of the civil court till date has not been upset by any higher forum.

19. Ld. Counsel for the opposite party while distinguishing the judgment of The **All Cargo Movers pvt. Ltd. (Supra)**, contended that in the instant case there is no contradiction at all between the stand of complainant before the civil court with that of the stand taken before the criminal court and as such the ratio laid down in the said case is not applicable in the present context. While Contradicting the judgment of **Mitesh Kumar J. Shah (Supra)** Learned Counsel for the opposite parties submits that the ratio laid down in the said judgment is hopelessly inapplicable to the facts of the instant case. The facts and circumstances of the said case has no relevance to the instant case in as much as admittedly the distributorship

agreement provided unilateral authority to the complainant to terminate the distributorship agreement and such distributorship agreement was terminated on 24th October 2013 and thereafter the petitioners who lost entitlement to act as distributor and to advertise the trade mark of the complainant company devised the dishonest plan of manufacturing their own counterfeit product and used the counterfeit mark of the deceptively similar to the complainants trademark, deceptively projecting the said counterfeit product as genuine 'Hydris'.

20. So far as the prayer for quashing the impugned proceeding qua petitioner no. 2 and 3 the petitioners relied on ***Maksood Saiyad Case (supra)*** but the counsel for the opposite parties submits that the ratio of the said case is also not applicable in the present context as there are specific allegations in the impugned petition of complaint against the petitioner no. 2 and 3 which reflects specific individual role against the petitioner no. 2 and 3 and it cannot be said that they have been implicated vicariously as appearing in para 4,6 and 13 of the complainant. Similarly, they argued that the law laid down in the apex court in ***Sharad Kumar Sanghi's case (supra)*** is also not applicable in the present context as the opposite party herein specifically implicated the petitioner no. 1 company along with the petitioner no. 2 and 3 and it is not a case where the company has not been made a party.

21. Mr. Bhattacharya And Mr. Banerjee have also discarded the argument made by the counsel for the petitioner that the trial magistrate while passed the order issuing process did not apply his judicial mind, by arguing that the order issuing process does not require a formal or

speaking order and the Magistrate is supposed to reflect his satisfaction about the result of inquiry or report of investigation under section 202 of the Code and the allegations constituting the offence. They further argued that the term 'satisfaction' has to be understood from the observation made by the Apex Court in ***Mehmood UI Rehman's Case (Supra)*** that no formal or speaking order is required to be passed by the Magistrate. They further argued that in the instant case, the order dated 14th November, 2022 cannot be read in isolation but has to be read along with the order dated 30th May, 2022, where the Ld. Magistrate directed the OC Noapara P.S. to cause an inquiry under section 202 of the Cr.P.C. and such report was filed on 14th October, 2022 and only upon perusal on the said report and after recording of satisfaction by the magistrate, the process was issued against the petitioners herein. Accordingly such complaint should be allowed to proceed to trial and both the parties should be relegated to prove their respective case on evidence and hyper technical interpretation of an order issuing process, cannot be a ground for interjection of this court under section 482 of the Code. Accordingly Ld. Counsel for the opposite party have prayed for dismissal of the application and also for a direction upon the court below for expeditious disposal of the trial of the proceeding in above mentioned C. Case no. 743 of 2021.

22. I have considered submissions made by both parties.

23. During the course of hearing, Learned Counsel appearing on behalf of the opposite Party based his argument on illustration (b) of Section 415 of the IPC in support of his objection against prayer for quashing. Before

going to further details let me reproduced illustration (b) to section 415

IPC which runs as follows:-

A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article, A cheats.

24. On going through the complaint of the present case I find that the allegations levelled against the petitioners herein in a nutshell is that the distributorship agreement was terminated by the complainant on October 24, 2013 and from that date accused should have been seized to use the trademarks or other intellectual properties or property rights of complainant, since they were no longer a distributor of complainant/company w.e.f. April 24th, 2014. But the accused company acting through accused no. 3 and 4, post termination of distributorship agreement approached various customer of the complainant and continued to supply its own counterfeit products by affixing complainants trademark, which are allegedly well established and well accepted by the buyers and the accused persons supplied counterfeit goods to various governmental industries using the brand name of the complainant and thereby cheated such governmental industries to believe that the counterfeit goods supplied by the accused persons are original goods, manufactured by the complainant and thereby cheated and also committed criminal breach of trust upon the complainant and various governmental industries and therefore, the element of *mens rea* on the part of accused persons in committing the criminal breach of trust, cheating and criminal conspiracy are flagrant on the face of the record. To make the allegations specific the complainant stated in the complaint that the accused persons supplied

approximately 7,000 to 8,000 numbers of its own counterfeit goods by affixing the brand name of the complainant 'Hydris' to Bhilai Steel Plant during the year 2014, in violation of distributorship agreement. It is their further case that due to such misappropriation of trademarks of the complainants, the petitioners have made unlawful enrichment, which resulted in huge monetary loss and loss of reputation to the complainant and they have done it with a *malafide* intention to deceive and defraud customers of complainants. It further appears that the Court below before issuance of process under section 204 of the Cr.P.C., called for a report from Noapara Police Station, who submitted a report on 14th October, 2022, which discloses that during inquiry the police authority of the said police station, examined the available witnesses and could learn that the matter against which the complaint has been submitted is transpired during the examination of witnesses.

25. Accordingly in the light of the ingredients required to be established under section 415 IPC, coupled with illustration (b), the averments in the complaint as mentioned above constitutes prima facie offence as against the petitioners with reference to the offence of cheating. In the complaint the specific allegation has been levelled against the petitioners is that in order to derive economic benefit, the petitioners have made false representation about the source or origin of the product and thereby they have allegedly deceived the customers of the petitioner and others, who took delivery of alleged counterfeit products, allegedly believing that the counterfeit goods supplied by the accused person are the original goods manufactured by the complainant and thereby they have cheated both the

complainant as well as various government industries which allegedly resulted in wrongful gain to the petitioners and wrongful loss to the complainants and for which it amounts to cheating.

26. It is undoubtedly true that in the whole transaction there are some elements which are civil in nature. However, in the written complaint there are allegations of cheating, as well as allegation of manufacturing counterfeit goods by affixing the brand name of the complainant, ignoring the safety of the railway tracks and general public, for its own illegal gain, are also there. It may also be that both the parties have filed civil suits against each other claiming damages but that is not enough for making a prayer for quashing, since the allegations made in the complaint regarding cheating and forgery have to be established independently notwithstanding the adjudication by a civil court as to whether the parties are entitled to get damages or not.

27. In *M. Krishnan Vs Vijay Singh & another* reported in **(2001) 8 SCC 645**, the Apex court held that if mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings and therefore, such a course cannot be the mandate of law. This is also because civil proceeding as distinguished from the criminal action have to be adjudicated and concluded by adopting separate yardsticks. In para 6 of the Judgment the Court observed as follows.

“6. Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties.”

28. In the instant case on a careful perusal of the lengthy complaint, it can hardly be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under the sections mentioned in the complaint cannot be said to be absent on the basis of the allegation levelled in the complaint. Now whether the allegations made in the complaint are correct or not has to be decided on the basis of the evidence to be laid in the course of trial. The allegation in respect of which present complaint has been lodged ,cannot be said to be a purely civil dispute or that the initiation of criminal proceeding would be a mere abuse of the process of the court. Infact what has been alleged in the complaint and what has been reported by the police after making enquiry if taken into consideration, it cannot be said that even if the allegations in it's entirety are accepted, no case is made out.

29. It is well settled principle of law that while entertaining a petition under section 482 of the Code, the materials furnished by the defence which are yet to be tested cannot be looked into and it can be entertained at the time of trial for testing. The annexure upon which the petitioners herein have placed much reliance, are neither part of the complaint nor part of the police report. These are only placed before this court at the time of hearing of this application. Treating the said annexure and affidavit, the High Court cannot convert itself into a trial court to pronounce judgment

that the petitioners are innocent and therefore, the proceedings are liable to be quashed.

30. In this case it may further be added that though petitioners counsel Mr. Jana has argued much about taking cognizance and issuance of process by the trial court, but I find that the order issuing process dated 14th November 2022 was passed, after receipt report of an inquiry, made under section 202 of the Code which was undertaken by the officer in charge, Noapara Police Station under the direction of court and therefore it cannot be said that the order impugned was passed by the court below without applying judicial mind.

31. Though petitioners have placed much reliance upon ***All cargo Movers Pvt. Ltd. (Supra)*** in support of his stand that if the party has taken one stand before the Criminal Court and a different stand before Civil Court, the same can be considered in exercise of High Court's power under section 482. However, the plaint and the written statement which was filed by the opposite party/complainant against the petitioners has not been brought on record. On bare perusal of the judgement and order dated 28th October, 2015 by which the injunction was granted in favour of the opposite party herein, narrates the pleading of the opposite party/complainant which was made before the civil court in its application for ad interim injunction and it appears that the stand of the complainant before the civil court and the stand of the complainant before the criminal court are not apparently contradictory to each other. The facts and circumstances of ***Sharad Kumar Sanghi (Supra)*** is also distinguishable in the facts since in the present complaint the opposite party implicated the

petitioner no. 1 company along with petitioner no. 2 and 3 and therefore it's not a case where the company has not been made a party.

32. In view of aforesaid discussion I find that this is not a fit case where the proceeding can be quashed invoking the court's jurisdiction under section 482 of the Code of the Criminal Procedure.

33. CRR 4690 of 2022 stands dismissed. The court below is requested to make best endeavour to expediate the subsequent stages of proceeding. Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)