



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 07th August, 2025
Pronounced on: 10th November, 2025

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CRL.M.C. 1262/2017

SHRI VINAY AGGARWAL

S/o Sh. Jai Gopal

R/o 18/8, Shakti Nagar

New Delhi-110007.

.....Petitioner

Through:

Versus

1. STATE (GOVT. OF NCT OF DELHI)

2. SH. AJAY AGGARWAL

S/o Sh. Jai Gopal

R/o 18/8, Shakti Nagar,

New Delhi-110007.

3. SH. JAI GOPAL

S/o Late Laxmi Narain

R/o 18/8, Shakti Nagar,

New Delhi-110007.

....Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. A Petition under Section 482 Cr.P.C. has been filed to challenge the Order dated 03.11.2016 of learned ASJ who has upheld the Order of learned MM dated 05.09.2016 dismissing the Complaint filed by the Petitioner.
2. The factual background is that the **Petitioner had filed a Complaint** under Section 199 and 200 Cr.P.C. read with Section 156(3) Cr.P.C against the Respondents *Ajay Aggarwal and Jai Gopal* for the offences under Section 406/420/463/467/468/471/506/120-B IPC.
3. The facts as stated in the Complaint were that **he was engaged** in the business of chemical and chemical compounds (organic & non-organic) in all forms which are used for manufacturing of festival dry colour, **gulal**, etc. under the Trademark of **Gopal** since 1989. In the year 1994, for more growth of his firm, **he incorporated M/s Laxmi Narain Jai Gopal Products Pvt. Ltd.**, a Private Limited Company having its registered office at 18/8, Shakti Nagar, Delhi-7. The Complainant appointed himself as the Chairman while Respondent No.2 Ajay Aggarwal, his younger brother, was also made a Director in the Company. The Company was also to continue the same business of Holi **colours**, etc. since the business as commenced by the Complainant had grown exponentially. He also decided to get its Brand name and Trade name registered, for which he filed eight Applications for registration of various Trademarks, Marks and devices under the Trade Marks Act, 1999. The Complainant in between suffered various medical problems because of which he was not able to concentrate much on the business of the Company and relied upon the two **Accused**, being his family members.



4. However, in the month of November, 2011, he came to know that Respondent No.2 Ajay Aggarwal, **his brother**, had been doing activities in the Company which were not only illegal, but were also against the interest of the Company. He also came to know that Respondent No.2 Ajay Aggarwal in connivance with Respondent No.3 Jai Gopal, his father, had already filed two Applications for registration of Trade Mark **Gopal** and **Gopal Gold** for doing identical business on 25.09.2003. Later, he also came to know that these two **Applications stood** registered in the personal name of Respondent No.2 Ajay Aggarwal. However, these facts were never disclosed to the Complainant at any point of time.

5. The Complainant further asserted that he also came to know that Respondent No.2 Ajay Aggarwal had not only opened a Sole Proprietorship Firm in the name and style of *M/s Laxmi Narain Jai Gopal & Sons*, but has also been doing the business under the said Firm. He had opened a Bank Account in the name of the Firm, impersonating himself to be the owner. It was further found that he had launched identical products in the market in order to cause wrongful gain to himself and wrongful loss to the Complainant and the Firm as well.

6. On 14.12.2012, the Complainant got surprised when he saw two Purchase Invoices dated 14.12.2011 whereby the goods mentioned in those Invoices, were sold to the Company of the aforesaid Complainant i.e. **M/s Laxmi Narain Jai Gopal Products (Pvt.) Ltd.** and the address was given as that of 12, Ganesh Market, Sector-7, Rohini instead of the registered Office at 18/8, Shakti Nagar, New Delhi. The Complainant at that time came to know that Respondent No.2, in connivance with Respondent No.3 and



other persons, had committed *criminal breach of trust* and had made changes in the Company, including its address, without the consent and knowledge of the Complainant. Immediately on coming to know all these illegal acts of the Respondents about misappropriation, removal of all statutory **books** and records, including **Books of Account**, which were kept at the registered Office of the Company since 1994, the Complainant visited the registered office of the Company at Shakti Nagar, but only to find that all the furniture, fixtures, computers and all records, had been deliberately taken away by the Respondents to some unknown place and were in the possession of the Respondents.

7. It is, therefore, asserted that **Accused/Respondents** in connivance with each other and other persons have used the goods and articles of the Company along with the funds of the Company for their own use, which can be ascertained only when all the records of the Company are seized from the custody of the Respondents. The Complainant apprehends the possibility of forgery in the statutory books and the records done with an intent to cheat the Complainant financially and also to harm the reputation of the Company. The Complainant asserted that since 07.01.2012, Respondents have put their own locks illegally on the premises of the Company i.e. Shakti Nagar, Delhi, where all the valuable packaging **material/raw** material, etc. of the Company had been stored. Further, both the Respondents refused to open the lock of the Basement of the premises for his access and for its use for the business of the Company. He was not allowed to enter the premises, which was the tenanted property of the Company.



8. The Complainant further asserted that he had come to know that Respondents are not only carrying on the business under a new Proprietorship Firm by using the stocks and other material belonging to the Company or the Complainant illegally, but have also been deriving the illegal benefit of goodwill and reputation of the Company gained by it over the years, in the market. Serious offences of *criminal breach of trust, forgery and fraud in conspiracy* with each other, was alleged to have been committed by the Respondents. Aside from this, the Respondents have also infringed the provisions of Trade Mark Act, 1999 for which the Complainant reserved his right to initiate appropriate proceedings.

9. The Complainant lodged the Complaint dated 07.01.2012 with SHO, P.S. Roop Nagar, but no action was taken by the Police. However, it became a routine for the Respondents to extend threats to the Complainant to withdraw his Complaint. A prayer was, therefore, made for directing the SHO, P.S. Roop Nagar to register the case and to carry out the investigations expeditiously.

10. The Complainant examined himself as CW1 before the learned MM, reiterating the averments made in the Complaint.

11. He also examined CW2/WHC Poonam who proved his written Complaint dated 07.01.2012 as Ex.CW1/5 in regard to which she made a DD entry No.34B Ex.CW2/A.

12. CW3 Vinay Kumar Tyagi, Record Keeper, Trade & Tax Department, Delhi Government produced the certified copies of Dealer Profile and details duly certified by AVATO as Ex.CW3/A and CW3/B. As per the Dealer Profile, the firm in the name of *M/s Laxmi Narain Jai Gopal* was a



Proprietorship firm of Mr. Ajay Aggarwal resident of 18/8, Roop Nagar, Delhi. CW4 Vinay Kumar from Trade Mark Registry produced the Trade Mark Applications applied in the name of ***M/s Laxmi Narain Jai Gopal Products (Pvt.) Ltd.***, the certified copies of which are Ex.CW4/A. The Trade Mark Applications applied by Mr. Ajay Aggarwal also in the name of ***M/s Laxmi Narain Jai Gopal Products (Pvt.) Ltd.*** are Ex.CW4/B. The Trade Mark Applications applied by ***M/s Laxmi Narain Jai Gopal Products (Pvt.) Ltd.*** are Ex.CW4/C.

13. The learned MM considered the Complaint and the evidence led by the Complainant in the Order dated **05.09.2016** and observed that the allegations made in the Complaint were not substantiated by the documents and prima facie no offence was made out. Accordingly, the Complaint was dismissed without merit.

14. Aggrieved, the Petitioner had filed a Criminal Revision No. 58482/2016 before the learned ASJ, who **found** no merit in the Petition and upheld the Order of rejection of Complaint dated 05.09.2016 of the learned M.M.

15. The ***impugned Order has been challenged*** by way of the present Revision Petition ***on the grounds*** that the learned ASJ in its cryptic and erroneous Order has failed to appreciate the factual matrix **as** detailed in the Complaint. The various judgments of the law as enunciated by the Apex Court have been completely ignored. It is the settled law that the summoning of the Accused is based on the presumptive observation which is not required to be undertaken with deeper scrutiny at the initial stage. Only a **bird's** eye view is required to be taken to assess whether a prima



facie case against the accused is made out. The averments made in the Criminal Complaint are on an oral basis in regard to the poor health of the Petitioner. The averment of he being unwell has not been supported with medical documents, was incorrect as all the medical documents pertaining to his medical history had been placed along with the Revision Petition. The learned ASJ has failed to appreciate that he is a chronic patient since his childhood and has undergone various surgeries like two open heart surgeries, kidney, etc., from time to time. Because of the health complications and their side effects, he had to remain away from the day to day affairs of the Company. These relevant medical records have not been appreciated by the learned ASJ and the impugned Order has been made in a casual manner.

16. The learned MM while dismissing the Complaint, had observed that the Petitioner has not relied upon any document to show that he had been in the same business since 1989 as according to him all the **Books of Accounts**, etc. were in the control and custody of the Respondents and also that no independent witness to this effect was examined by him in his support. The learned MM had observed that the Petitioner had failed to prove orally or otherwise the **Books of Accounts**, etc. of the Company and that they had been misappropriated by Respondents. However, once the records had been taken away by Respondent No.2 and 3 and had not left any **footprint** of their illegal acts, the Petitioner could not have produced the said records. His averments and the evidence led was sufficient for summoning of the Respondents.



17. Learned ASJ has also upheld these observations without considering that Respondents had given their respective appearance on 03.11.2016 and had even filed their Reply to the Revision Petition. The learned ASJ had neither gone through the contents of the Reply nor had afforded any opportunity to the Petitioner to address the arguments. However, if the Reply of the Respondents filed in the Revision Petition is **perused**, the factum of business being done since long, is admitted by them. The Respondents have also admitted the factum of changing of Proprietorship Firm to Private Limited Company, hence, prima facie it is sufficient to draw **the** inference that Respondents were liable to be summoned as Accused persons. These aspects have been overlooked by learned ASJ, who has passed the impugned Order in a routine manner.

18. The Petitioner has further stated that Respondents are none other than his brother and father, respectively. The business under the Company was being run jointly and the Petitioner remained **away** from the business because of his serious ailments. There was no person who could depose on his behalf. He himself had stepped into the witness box and deposed about the facts of the case.

19. The learned MM had observed in the Order dated 05.09.2016 that Respondent No.2 had applied for registration of the Brand in the year 2003, while the Company was being run since 1994 without any problem. However, the testimony of the Petitioner recorded on 17.02.2014 has not been appreciated in the right perspective. The Petitioner had filed eight Applications for registration of the Trade Mark in November, 2011 which have not been allowed till date **for** the reason that Respondent No.2 had also



applied and got them registered way back on 25.09.2003. The averments in the Complaint and the depositions of the Petitioner, prima facie **establish** the *mala fides* of the Respondent No.2 Ajay Aggarwal.

20. The various litigations pending between the parties, also has not been appreciated. The twisted facts were presented in the Revision Petition, but the admissions made in the Reply was sufficient for summoning of Respondents. The CW3 Vinay Kumar Tyagi had deposed that as per the Dealer Profile, the name of the Firm was ***M/s Laxmi Narain Jai Gopal Proprietorship Firm*** of Ajay Aggarwal resident of 18/8, Roop Nagar, Delhi. Further, the one Invoice Bill dated 14.12.2011 Ex.CW1/4 issued by **M/s Chemical De Enterprises** having its office at Tilak Bazar, Delhi was also sufficient to show the supply of goods to the Firm of the Petitioner, wherein the address as well as the VAT registration belonged to the Firm of Respondent No.2. Both the learned M.M and learned ASJ have failed to appreciate the Complaint, evidence and have wrongly concluded that no prima facie case is made out. Hence, a prayer is made that the impugned Order dated 03.11.2016 of the learned ASJ be set aside and the Respondents be summoned for the offences as stated in the Complaint.

21. The ***Respondents No. 2 and 3 in their detailed Reply***, have asserted that the Petitioner had earlier filed a similar Application under **Section 156(3) Cr.P.C.** on the same facts, which was dismissed by the Ld. ACMM vide Order dated 27.03.2013. The Revision preferred against the said Order was dismissed by Ld. ASJ vide order dated 03.10.2013.

22. It is asserted that the Petitioner has made a false claim of doing the business since 1989 and the Ld. **ACMM** in the order dated 05.09.2016 has



observed that there is no proof given by the Petitioner about his business since 1989. It is asserted that in fact, it is Respondent No. 2/Ajay Aggarwal, who had started his proprietary Firm *M/s Lakshmi Narayan Jaygopal* from Shakti Nagar in the year 1989-90. The copy of the cheque book is annexed in support hereof. A Suit was filed by Respondent No. 2 as Proprietor of his Firm against **M/s Nanz Food Product Limited** in the Court of Ld. Civil Judge, Delhi in the year 1996 for recovery of the amount.

23. In the Complaint, the Petitioner has claimed that he came to know about the sole proprietorship Firm of Respondent No. 2 on 25.11.2011. However, this averment is false and baseless. Prior to the incorporation of the company, the Petitioner was running the business of **saree/cloth matching fabric** under the name and style of *M/s Suvidha Marketing Corporation* and sold under the name and style of **Triveni Traders**. Further, it is falsely claimed that the Petitioner had been doing the same business since long. It has never been admitted anywhere in the reply that the Petitioner was doing the same business in **gulal** and festival **colours** since 1989. Nor has it been admitted that **Jai Gopal and Sons** was converted into a Private Limited Company. Even the existence of Firm **Jai Gopal and Sons** is denied by the Respondent No. 2 since the beginning. The Petitioner is simply trying to mislead the court.

24. After the incorporation of this Company, the Petitioner himself had also started business in chemicals in the name of **Tritex Bio Chemicals**, parallel to the business of the Company. It is further asserted that the Petitioner has incorrectly asserted that he came to know in November, 2011 that two Applications have been filed by Respondent No. 2 in connivance



with the Respondent No. **3**, for registration of Trade Marks of **Gopal** and **Gopal Gold** for doing the identical business. It is submitted that the two Applications stand registered in the personal name of Respondent No. 2.

25. It is further asserted that Petitioner and Respondent No. 2 are real brothers and Respondent No. 3 is their father and they all are residing in the same premises. In the Civil Suit No. 50/2013, it has been observed in the Order dated 23.07.2014 that, there is no dispute that the trademark **Gopal** and **Gopal Gold** stand registered in the name of the Defendant No. 1 since 25.09.2003. No Application had been filed by the Plaintiff for rectification. In regard to the **gulaal** business being carried out by the Petitioner since 1989, Ld. ACMM has observed that though it is stated that all the records have been taken away by the Respondents, but no oral testimony of the independent witnesses with whom he had business, were examined who could have told about the alleged business at the relevant time, has been adduced.

26. The plea of removal of bank accounts and statutory records was also rejected by the Chairman, Company Law Board while rejecting the interim prayer in Company Petition No. 19 (ND)/2013, by its Order dated 15.02.2013. As regards the siphoning of funds, which allegation was also made in the Company Petition, the Company Law Board appointed a Chartered Accountant vide its Order dated 14.05.2014 in CP No. 19(ND)/2013 in the Petition. The Respondent No. 2 has responded to all the queries of the Chartered Accountant, but no finding adverse to the Respondent No. 2, has been reported by the Chartered Accountant.



27. The Petitioner refers to two Invoices in his Criminal Complaint to claim that the goods were sold to the Company. However, during the Police inquiry, it was satisfactorily explained that the goods could not have been sold to the Company as both the Invoices contain the TIN number and address of the Firm of Respondent No. 2 and not the Company.

28. The major reason for the Petitioner to remain away from the business has been given as illness, which was also has not been accepted by Ld. ACMM, by observing that the evidence within the reach of the Complainant could have been easily proved, but the same has not been produced. It is asserted that the present Petition is false and frivolous and the Petition is liable to be dismissed.

29. The *Rejoinder has been filed by the Petitioner* to the Reply of Respondents No. 2 and 3, wherein he has reiterated the assertions made in the Complaint.

30. Written submissions have been filed on behalf of the Petitioner as well as Respondent No. 2 wherein similar averments as made in their rival pleadings are reiterated.

Submissions heard and record perused.

31. The Petitioner, Shri Vinay Aggarwal, challenges the concurrent orders of the learned Metropolitan Magistrate (MM) and the learned Additional Sessions Judge (ASJ) dismissing his Complaint under Sections 406/420/463/467/468/471/506/120-B IPC. The essence of the Petitioner's argument is that the two courts failed to take a “**bird’s eye view**” required for the initial stage of summoning an accused and ignored prima facie evidence of misappropriation, forgery, and criminal breach of trust



committed by his brother, Respondent No. 2/Ajay Aggarwal, and father, Respondent No. 3/Jai Gopal.

I. Claim of Prior Business and Trademark Infringement:

a. Prior Business Existence since 1989:

32. The Petitioner's foundation for the allegations rests on his claim that he was running the business of chemical compounds and **gulal/Holi colours** under the Trademark of **Gopal** since 1989, and incorporated *M/s Laxmi Narain Jai Gopal Products Pvt. Ltd.* in 1994 for business growth. However, the Petitioner failed to produce any documentary evidence or independent oral testimony to prove the existence of this business since 1989, on the assertion that all records were removed by the Respondents. Even then, the Petitioner would have had his registration documents, bank accounts and similar documents, to prove his proprietorship business.

33. In the absence of a clear documentary admission or corroborative evidence, the contention that the Petitioner had a prior business since 1989, which forms the basis for the cheating and misappropriation allegations, remains unsubstantiated.

34. The observations of the Trial Courts in this regard are therefore, upheld.

b. Trademark Registration:

35. The Petitioner alleges *mala fide* intent and forgery because Respondent No. 2 and got the trademarks **Gopal** and **Gopal Gold** registered on 25.09.2003, without informing the Petitioner.

36. The Respondents concede that the trademarks **Gopal** and **Gopal Gold** stand registered in the personal name of Respondent No. 2, since



25.09.2003. The factum of registration itself, as observed in a Civil Suit No. 50/2013, is not disputed.

37. The learned MM observed that the registration occurred in 2003 while the Company was running since 1994 without an issue. As correctly noted, merely **obtaining a Trademark is not a criminal offence**. For a criminal offence like cheating (Section 420 IPC) or forgery (Section 463 IPC) to be established, there must be evidence that the registration was obtained fraudulently to cause wrongful loss to the Petitioner, which hinges on the unproven claim of the Petitioner's prior business ownership since 1989. Furthermore, no Application for rectification of the trademark, had been filed by the Plaintiff/Petitioner.

II. Allegations of Misappropriation and Removal of Records:

38. The Petitioner alleges that the Respondents committed criminal breach of trust by removing all statutory books, records, and Company articles from the registered office at Shakti Nagar and illegally changing the registered address of the Company.

39. The Petitioner's sole evidence for the removal of records is his oral testimony, arguing that once the records were taken away, he could not produce them. However, the learned ACMM correctly observed that the evidence within the reach of the Complainant, such as oral testimony of independent witnesses or corroborative documents, was not produced.

40. Pertinently, the Respondents pointed out that a similar allegation of removal of bank accounts and statutory records was made in **Company Petition No. 19 (ND)/2013**, and the Chairman of the Company Law Board



had already rejected the interim prayer regarding this issue in the Order dated 15.02.2013.

41. Regarding the siphoning of funds, which is also an allegation in the Company Petition; a Chartered Accountant was appointed by the Company Law Board. The Respondent No. 2 responded to all queries, and **no finding adverse to Respondent No. 2 has been reported by the Chartered Accountant.** These prior findings by the Company Law Board regarding the same set of facts seriously undermine the Petitioner's present allegations of criminal misappropriation and forgery of accounts.

42. The material on record, including the Petitioner's own evidence and the findings of other judicial/quasi-judicial bodies (Company Law Board and Civil Court), suggests that the allegations are more in the nature of a **civil/corporate dispute** concerning company management, trademark ownership, and accounting, rather than a clear case warranting the summoning of the accused for serious criminal offences like cheating, forgery, and criminal breach of trust. For the summoning order, the Court must find sufficient material to show a *prima facie commission of an offence*. The present Petition fails to meet this threshold.

Conclusion:

43. Thus, the Ld. ACMM has rightly observed in the impugned Order that there is no cogent evidence produced by the Complainant in his evidence and that no offence was made out. The Ld. ACMM had rightly dismissed the Complaint which Order has been upheld by the Ld. ASJ vide Order dated 03.11.2016.

44. There is no merit in the present Petition, which is hereby **dismissed**.



45. The pending Applications, if any are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 10, 2025

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