

(1998) 10 MAD CK 0075

In the Madras High Court

Case No : Criminal O.P.No.15797 of 1997

Anja Match Industries and another

APPELLANT

Vs

M/s. South Indian Lucifer Match Works owned by P. Iyya
Nadar Charitable Trust and another

RESPONDENT

Date of Decision : 07-10-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 12, 155(2), 156(3), 36, 419
Penal Code, 1860 (IPC) — Section 415, 419, 420(b)
Trade and Merchandise Marks Act, 1958 — Section 78, 79

Citation : (1999) CriLJ 181 : (1998) 2 CTC 651

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Mr. R. Raghupathi and Mr. N.A. Ravindran, for the Appellant; Mr. Thiagarajan, for Mr. P. Pandi, Mr. C.M. Gunasekaran, Government Advocate, for the Respondent

Judgement

1. Anja Match Industries and M/s. Bhavadharani Match Industries (A2 and A3), the petitioners herein, represented by their proprietor, A.

Ramamoorthi, seeking to quash the F.I.R. registered in Crime No.550 of 1997 on the file of the Sub Inspector of Police, Sivakasi Town Police

Station, Sivakasi, has filed this petition requesting this court to invoke the powers u/s 482, Cr.P.C.

2. M/s, South Indian Lucifer Match Works owned by P. Iyya Nadar Charitable Trust, represented by its power of Attorney Mr. S. Manoharan,

filed a complaint on 18.9.1997 before the Judicial Magistrate, Sivakasi against four persons and arrayed the petitioners as A2 and A3 for the

offences under Sections 419 and 420, I.P.C. and under Sections 78(a) and 79 of the Trade and Merchandise Marks Act. This was referred to for

investigation to the second respondent, the sub Inspector of Police, Sivakasi, u/s 156(3) CrP.C. On receipt of the same, the second respondent

registered the case in Crime No.550 of 1997. On taking up the investigation, the second respondent recovered the offending articles from a lorry

stationed at Parasakthi Colony Sivakasi and produced the same before the Judicial Magistrate Court, Sivakasi on 19.9.97. The learned Judicial

Magistrate on the same day remanded the articles in P.R.No.202 of 1997 and entrusted the same with the Sub Inspector of Police, Sivakasi to

keep the properties intact and produce the same before the said court as and when required.

3. Mr. Ramamoorthi representing A2 and A3 and two others filed an application for anticipatory bail before this Court and obtained the same on

29.9.1997. Thereupon Mr, Ramamoorthi alone on behalf of the petitioners (A2 and A3) has filed the present petition before this court for quashing

the proceedings initiated in Crime No.550 of 1997. This was admitted on 12.11.1997 and stay was granted. On receipt of notice, the respondents

have entered appearance. The matter was heard on 3.9.98, 9.9.98, 10.9.98, 14.9.98, 17.9.98 and 21.9.98.

4. The facts culled out from the records filed alongwith the quashing application could be summarised as follows:-

(a) The complainant is a public trust, trading in the manufacture and sale of safety matches in the name and style of the South Indian Lucifer Match

Works. The complainant is using the trade mark ""Camel"" with varieties of artistic works by employing beautiful and attractive colour scheme

affixing the label containing the picture of ""Camel"" on the safety matches manufactured by the complainant. All such different varieties of ""Camel

brand trade marks have been registered under the Trade and Merchandise Marks Act.

(b) Recently, the complainant received lot of complaints that the "Camel" trade mark is being misused by several parties in the areas of U.P., Delhi

and Haryana. On further enquiry, the complainant came to know that the petitioners A2 and A3 with the help of A1, a transport carrier, are selling

the safety matches with the impugned trade mark "Camel" imitation brand.

(c) It was further revealed that the petitioners are using not only A1 and A4 but also others to sell the matches by deceiving the unaware

purchasers by making them to believe the spurious goods as the goods of the complainant. By this, they also evaded the central excise duty and

shared the revenue of the exchequer among themselves.

(d) On collecting these particulars, the complainant filed the above complaint, which was registered in Crime No.550 of 1997 by the Sivakasi

Town Police Station for the offences under Sections 419 and 420, I.P.C. and under Sections 78(a) and 79 of the Trade and Merchandise Marks

Act, which is sought to be quashed through this petition.

5. Mr. Raghupathi, the counsel representing Mr. N.A. Ravindran, appearing for the petitioners, would elaborately argue by citing several

authorities that the proceedings and the investigation arising out of Crime No.550 of 1997 are liable to be quashed. The gist of his submissions is as

follows:-

(a) The complaint which was filed by the complainant before the learned Judicial Magistrate, Sivakasi was simply referred to for investigation u/s

156(3), Cr.P.C. without application of judicial mind. The said order is not a speaking order which does not contain the reasonings. The learned

Judicial Magistrate ought not to have referred the complaint for investigation, since the same did not disclose the offences stated therein.

(b) Iyya Nadar Charitable Trust had already executed registered Lease Deed in favour of the petitioners and the same has been periodically

renewed and the lease deed is still in force which expires on 30.3.2003. By virtue of this lease deed, the petitioners are permitted to use the trade

mark u/s 2(m) of the Act. Section 36 of the Act would also provide that the proprietor of a trade mark has power to assign the trade marks and

the rights appearing from the register to be vested in any other person. By virtue of this provision, the petitioners are legally permitted to use the

trade mark and as such they cannot be proceeded against through criminal prosecution under the Act.

(c) At any rate, the reading of the Complaint would not make out the offences under Sections 419 and 420 I.P.C. which alone are the cognizable

offence. Once there are no ingredients for the cognizable offence, the police officer has no authority to investigate into non-cognizable offence,

namely, Section 78(a) and 79 of the Trade and merchandise Marks Act, without prior sanction of the learned Judicial Magistrate u/s 155(2)

Cr.P.C.

(d) The complaint suffers from mala fide also, since the complainant has suppressed not only about the lease deed but also of the pendency of the

Civil cases between the parties in O.S.No.17 of 1997, 18 of 1997 and 19 of 1997 with reference to the infringement.

(e) Moreover, according to the complaint, they came to know about the offences in the year 1977. Even then, the complaint was filed only in

1997, without any explanation for the said delay. As such, the complaint would become invalid, since it was filed after the expiry of the period of

limitation.

6. In reply to the above submissions, Mr. Thiagarajan, the learned senior counsel appearing for the first respondent/complainant, would submit the

following:-

(a) The reading of the complaint would certainly make out the offences under Sections 419 and 420, I.P.C. read with Sections 78(a) and 79 of the

Trade and Merchandise Marks Act, as there are specific averments about the deceit, wrongful gain and the passing off of the offending articles.

Assuming for the sake of argument that the offences under Sections 419 and 420 were not made out the police has got authority to investigate for

the other offences under the Act, since the order directing the investigation u/s 156(3), Cr.P.C. could be construed to be an order u/s 155(2),

Cr.P.C., as the said powers are already vested with the Magistrate.

(b) No doubt, it is true that the Rajapalayam Industrial and Commercial Syndicate, represented by Ramamoorthi, was permitted to use the trade

mark for some period. But through a notice on 31.12.1986, the said permission was cancelled asking the said company to stop the use of the

trade mark belonging to the complainant. At any rate, the petitioners, Anja Match Industries (A1) and Bhavadharani Match Industries (A2) have

never been permitted to use this trade mark. Though the proprietor of these match industries was one of the Directors of the said Rajapalayam

Commercial and Industrial Syndicate Ltd., the permission was granted only to the Rajapalayam Industrial and Commercial Syndicate Ltd. and not

to the said Ramamoorthi individually.

(c) There is no delay in the complaint because the complainant came to know about the misuse of its trade mark only in August, 1997. The year

mentioned in the complaint was 1977 is a typographical error. Moreover, these offences being a continuous one, would not be subjected to the period of limitation.

(d) Though the suits are pending between the parties with reference to the infringement, the pendency of the same would not disentitle the complainant to approach the criminal court for bringing to the notice of the court about the offences being committed by the accused attracting the various penal provisions of the Act.

(e) Mere allegation regarding mala fide without any basis cannot be the ground for quashing. When the investigation is at the initial stage, the F.I.R. cannot be quashed by this Court by invoking the inherent powers as laid down by this court as well as by the Apex Court, as if it would amount to interference with the investigation. As such, the petition is liable to be dismissed as not sustainable under law.

7. The counsel for both the parties would cite cartload of authorities in support of their respective submissions, Which I shall refer to later.

8. Mr. Raghupathy, the counsel appearing for the petitioner, would contend that the Court could very well look into only the F.I.R. but also the other materials for the purpose of deciding the question whether the F.I.R. could be quashed or not. Though his main contention is that the F.I.R. has to be quashed on the ground of permitted use by placing reliance on the lease deed filed alongwith this quashing application, on production of the copy of the notice dated 31.12.86 by the learned senior counsel appearing for the complaint revoking the said permission already granted, he would now contend that the documents other than the F.I.R. should not be looked into.

9. Similarly, Mr. Thyagarajan, the learned senior counsel appearing for the first respondent, would though at the threshold, as indicated earlier, on the strength of revocation notice, contend that the other documents could also be looked into ultimately, he would harp on the point on the basis of the various authorities, that in order to decide the question to quash the F.I.R., the F.I.R. alone should be looked into without adding into it or without subtracting from it, and not other documents.

10. Thus, at the end, the counsel for both the parties have agreed on one aspect, namely, this court would look into the F.I.R. alone to decide the

issue in question. Further, it is argued by the learned senior counsel for the complainant that normally the F.I.R. cannot be quashed, especially

when the investigation has just started. On the other hand, the counsel for the petitioner would contend that if there are no averments in the F.I.R.

attracting the ingredients of the offences mentioned therein, this Court is well within the power to quash the F.I.R. even at the initial stage.

11. Before launching into the merits of the rival contentions, it is appropriate to refer to the various authorities referred to by both the parties in

relation to the powers of this Court u/s 482 Cr.P.C. to quash the F.I.R. by directing the police to stop the investigation. The decisions are as

follows:-

(1) Ganesan v. State 1995 M.L.J 357; (2) S.D. Ashok kumar Vs. The State, ; (3) Chandra Nath Sarma and Another Vs. Mahesh Nath Sarma, ;

(4) Kurukshetra University and Another Vs. State of Haryana and Another, ; (5) Jehan Singh Vs. Delhi Administration, ; (6) Mrs. Rupan Deol

Bajaj and another Vs. Kanwar Pal Singh Gill and another, ; (7) State of T.N. Vs. Thirukkural Perumal, ; (8) Union of India and others Vs. B.R.

Bajaj and others, ; (9) J.P. Sharma Vs. Vinod Kumar Jain and Others, ; (10) Kaliya Perumal Vs. State, ; (11) State of Bihar Vs. Rajendra

Agrawalla, ; (12) State of Madhya Pradesh v. Dr. Krishna Chandra Saksena, 1997 (1) Crimes 4 SC; Mushtaq Ahmad Vs. Mohd. Habibur

Rehman Faizi and others, ; (14) Nagpur Steel and Alloys Pvt. Ltd. v. P. Radhakrishna and others, 1997 S.C.C. 1073; (15) State of Maharashtra

and others Vs. Ishwar Piraji Kalpatri and others, ; (16) State of Orissa Vs. Bansidhar Singh,

12. In the above decisions, it has been observed as follows:

(a) Where the allegations in the First Information Report, even if they are taken at their face value and accepted in their entirety, do not constitute

the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the First Information Report to

decide whether the offence alleged is disclosed or not. In exercise of the jurisdiction u/s 482, Cr.P.C., the High Court cannot embark upon an

enquiry as to whether the evidence in the case is reliable or not.

(b) u/s 482 Cr.P.C. by invoking the inherent powers, the High Court cannot interfere with the Statutory powers of the police to investigate into

cognizable offence and quash the F.I.R., especially when the allegations made in the F.I.R. constitute the offence, as it amounts to unjustifiable

interference in the police investigation, in clear violation of the principles laid down.

(c) The power of quashing the F.I.R. should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, the High

Court will not be justified in embarking upon the enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R., since

the extraordinary inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

(d) The normal process of the investigation cannot be cut short in a rather casual manner.

(e) The inherent powers conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the

highest court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and

hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of

great magnitude and cannot be seen in their true perspective without sufficient material.

(f) Merely because the offence was committed during the course of a commercial transaction, it would not be sufficient to hold that the F.I.R. did

not warrant the statutory investigation. Whether or not the allegations in the complaint are true is to be decided by the investigating agency on the

basis of the evidence collected during the course of investigation.

(g) At the stage of quashing the F.I.R., the High Court would not be justified in embarking upon an enquiry as to the genuineness of the allegations

made therein. If the ingredients which establish the commission of the offence exist in the F.I.R., it cannot be quashed merely because there was an

animus of the complaint against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations during the

course of investigation. But mere fact that the complainant is guilty of mala fides, would not be a ground for quashing the F.I.R.

13. In the light of these principles, let me now go into the allegations contained in the F.I.R. It would be proper in this context to give the relevant

extract as against the petitioners A2 and A3 contained in the complaint, which is as follows:-

The complainant owns and uses several trade marks and marketed their products. The only Monogram adopted and used by the complainant for the past 50 years is "Comer with varieties of artistic works and by employing beautiful and attractive colour scheme to their trade mark. All such different varieties of "Camel" brand Trade marks have been registered under the Trade and Merchandise Marks Act.

....

The label was got approved by the Central Excise Department and was affixed in the matches manufactured by the complainant in the course of trade from the year 1956. The label was duly registered under the Trade and Merchandise Marks Act as number 439372 in clause 34 and the registration is valid and in force.

....

At present the complainant markets their product affixed with "Camel" Trade mark throughout India.

....

The matches manufactured and sold with the Trade Mark label "Camel" affixed to them are very good quality matches and thus the complainant has established a good reputation among the consuming public. The safety matches affixed with "Camer" Trade mark is having very good market and reception by the sellers and buyers. The complainant has spent large amounts and has worked very hard to make the "Camel" label very popular and a symbol of high quality. The consuming public hold the product of the complainant in high esteem.

The 2nd and 3rd accused are manufacturers of safety matches. They know pretty well that the matches affixed with "Camel" label is in heavy demand and is very popular.

....

While so, the accused have conspired together and have devised a match label deceptively similar to that of the "Camer" Trade Mark label named "Camel" with the same central figure of "Camel". The 2nd and 3rd accused have been affixing the said "Comer" label for the matches

manufactured by their factory.

....

The accused have with a view to cause unlawful gain for themselves and loss to the complainant and harm its reputation been printing and affixing the said "Camel" label. The offending label "Camer" is nothing but a slavish reproductions of the trade mark label "Camel"

....

As aforesaid the colour scheme employed in the complainant's device "Camel" is the most attractive feature and all the deceptively similar trade

mark known in the Annexure "B" have intended for illegal passing off of the goods and they have become successful to deceive the unaware

purchasers who by the mere sight of the colour scheme have been put to believe that such spurious goods are the goods of the complainant. The

2nd and 3rd accused is in possession of all dyes, blocks, film negatives and printing plates keeping it ready for printing any one of the imitation

trade mark cartons shown in Annexure "B" and thus is liable to be punished for the offences under Sections 78(a) and 79 of the Trade and

Merchandise Marks Act.

....

The accused have conspired to cause wrongful loss to the complainant by unlawful passing off these spurious imitation trade marks affixed with and

market them by deceiving the unaware consumers and are making unjust enrichment.

....

Moreover, within a span of three months the unlawful passing of goods has increased in their marketing areas.

14. The offence ""Cheating"" is defined u/s 415 of the Indian Penal code which runs as under:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to

consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not

do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind,

reputation or property, is said to ""cheat"".

Explanation: A dishonest concealment of fact is a deception within the meaning of this Section.

15. The ingredients required to constitute an offence of cheating are:

(1) There should be fraudulent or dishonest inducement of a person by deceiving him.

(2) (a) The person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property, or

(2) (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived, and

(3) In cases covered by (2) (b) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in

body, mind reputation or property.

16. In this context, the Illustration (b) to Section 415 I.P.C. is quite relevant. The Illustration runs thus:-

"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 induced "Z" to buy and pay for the article. "A" cheats.

17. On going through the complaint, it is clear that there are averments that the accused conspired to cause unlawful loss to the complainant by

unlawfully passing off these spurious imitation trade marks affixed with and market them by deceiving the Unaware consumer and are making

unjust enrichment. It is also averred that the Colour scheme employed in the complainant's "Camel" is the most attractive feature and all the

deceptively similar trade marks have been intended for illegal passing off of the goods and they have become successful to deceive the unaware

purchasers who by mere sight of the colour scheme have been put to believe that such spurious goods are the goods of the complainant.

18. In the light of the ingredients required to be established u/s 415, I.P.C. coupled with Illustration (b), the averments quoted above, in my view,

would show that there are prima facie allegations as against the petitioners with reference to the offence ""cheating"".

19. In view of the above conclusion, the other questions with reference to the

failure of obtaining sanction u/s 155(2) CrP.C. would not arise.

Moreover, when the complaint was referred to for investigation by the Magistrate u/s 156, Cr.P.C for both cognizable and non-cognizable

offences, it is the duty of the police to register the case and to investigate the matter and to file the report.

20. It is settled law, in the event of coming to the conclusion that only non cognizable offence was made out, the final report filed by police/could

be taken on file by the court treating the said report as complaint. However, we need not go into the said question, as the same does not arise in

this case.

21. Regarding the offences under Sections 78(a) and 79 of the Trade and Merchandise Marks Act, it is argued by the counsel for the petitioners

that the offending articles were not proved to be falsifying any trade mark and that there is no material to show that it was sold by the petitioners.

This argument would not merit acceptance.

22. u/s 79 of the Act, any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacture, any

goods or things to which any false trade mark or false trade description is applied is liable to be punished.

23. In this case, the specific allegation is that the accused by using the false trade mark marketing the offending articles by passing off and getting

unjustly enriching. Admittedly, 1000 bundles of safety matches with the offending trade mark have been seized from the lorry which was to be

taken to the other areas. Moreover, u/s 78(c) of the Act, any person who makes, disposes of or has in his possession, any dye, block, machine,

plate or other instrument for the purpose of falsifying, or of being used for falsifying, a trade mark shall be punished.

24. On going through the complaint, it is clear that there is a specific allegation that the petitioners A2 and A3 are hi possession of all dyes, blocks,

film negatives and printing plates keeping ready for printing any of the trade carton shown in Annexure "B". Therefore, I am not able to hold that

there are no materials to show that the ingredients of Sections 78(a) and 79 of the Act are absent.

25. It is further argued that the complainant having filed a suit with reference to the infringement could not approach the criminal court for

prosecution. It is noticed that in the grounds raised in the quashing application, it is mentioned that in the suit, the complainant was not able to

obtain interim injunction and therefore they have approached the Criminal court for direction for investigation.

26. But it is now pointed out that the complainant obtained interim injunction in the civil court even prior to the filing of this complaint before the

criminal court. This is not disputed by the counsel for the petitioner. From this it is clear that despite the Civil Court's order granting injunction, the

petitioners are alleged to have continued to commit the offences under Sections 78 and 79 of the Act and that therefore, the complainant was

constrained to approach the criminal court by way of a complaint for prosecution invoking the penal Sections of the I.P.C. and the Act.

27. It is settled law, as laid down in Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, , that

parallel proceedings both in civil and criminal courts are permissible. Mere pendency of the civil suit would not deprive the complainant of his

liberty to request the criminal court to take necessary penal action, as contained in the Act.

28. Further more, it is held in M.S. Sheriff Vs. The State of Madras and Others, that when proceedings pending before both civil and criminal

courts, the criminal proceedings should be given precedence.

29. So, in the light of the above settled principles of law, I do not find any merit in the contentions urged by the counsel for the petitioners.

30. In the result, the petition, which has no merit, is liable to be dismissed and accordingly, the same is dismissed.

31. After pronouncement of this order, Mr. Raghupathi, the learned counsel for the petitioners, would request this Court to permit the petitioners

to place the materials available in their favour before the investigating agency in order to enable them to come to a proper conclusion. Certainly, the

petitioners are at liberty to place the entire materials before the investigating agency before filing the final report However, it is made clear that the

investigating agency shall come to the conclusion uninfluenced by any of the observations made in this order.