

(2003) 08 CAL CK 0025
In the Calcutta High Court
Case No : C.R.R. No. 185 of 1998

Ashis Kanti Dutta Gupta and Another	APPELLANT
Vs	
State of West Bengal and Another	RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 102B, 420
Trade and Merchandise Marks Act, 1958 — Section 78, 79

Citation : (2004) 1 CHN 689 : (2004) 29 PTC 718

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Jaymalya Bagchi and Kallol Mondal, for the Appellant;

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—This application dated 20th January, 1998 has been filed u/s 482 of the Code of Criminal Procedure. By this application the petitioners pray for quashing of G.R. Case No. 2227 of 1997 arising out of Jagacha Police Station Case No. 106 of 1997. The case is pending in the Court of the learned Sub-Divisional Judicial Magistrate, Howrah.

2. The opposite party No. 1 filed a petition of complaint under Sections 420, 120B of the Indian Penal Code read with Sections 78, 79 of the Trade and Merchandise Marks Act, 1958. The petitioners were impleaded as accused Nos. 3 and 4 in the said petition of complaint, while the accused Nos. 1 and 2 were their employees. It was alleged that the petitioners in violation of regulations of the Trade and Merchandise Marks Act were selling duplicate paddy thrashing machines registered under trade mark "Puspak" when the complainant was the authorised dealer of such Puspak paddy thrashing machine. It was alleged that such actions of the petitioners amounted to commission of an offence punishable under Sections 78, 79 of the Trade and Merchandise Marks Act, 1958 as well as Sections 420, 120B of the Indian Penal Code. A prayer was made in the petition

of complaint for giving a direction on the Officer-in-Charge, Jagacha Police Station for treating it as an F.I.R. u/s 156(3) of the Code of Criminal Procedure. By an order dated 28th November, 1997 the learned Chief Judicial Magistrate was pleased to send the said petition of complaint to the Officer-in-Charge, Jagacha Police Station for investigation u/s 156(3) of the Code of Criminal Procedure by treating the said petition of complaint as an F.I.R. Consequently the Jagacha Police Station Case No. 106 dated 7th December, 1997 was initiated under Sections 420, 120B IPC and 78, 79 of the Trade and Merchandise Marks Act, 1958.

3. On 9th December, 1997 the petitioners were produced before the learned Magistrate. On the same date a joint application was filed by the petitioners and the de facto complainant (i.e., the opposite party No. 2 herein). It was stated in that joint application that the parties (i.e., the petitioners and the de facto complainant) had mutually settled all the disputes between them. Both the parties made a prayer before the learned Magistrate for passing necessary order so that the talk of compromise in progress between the parties could achieve fruitful result. While considering the petitioners' application for bail on the said 9th December, 1997 the learned Magistrate also took into consideration such joint application and considering the facts and circumstances of the case and particularly the fact that the de facto complainant was not inclined to proceed with the case, the learned Magistrate was pleased to grant bail to the petitioners.

4. In spite of the fact that the complainant expressed her intention not to proceed with the case in view of the settlement of disputes between the parties, the case however, remained pending as the learned Magistrate by his previous order had directed the police authority to investigate into the matter. Facing with this situation the petitioners have approached this Court by filing this application for quashing of the proceedings.

5. The application was admitted by an order dated 21st June, 1998 while further proceeding of the case was stayed by this Court. The learned Counsel for the petitioners was also directed to serve notice on the opposite party No. 2 and to affirm an affidavit of service. The learned Counsel appearing for the petitioners submits that notices were duly sent to the opposite party No. 2 and she received the notice by putting her signature on the acknowledgement card. The acknowledgement card and copies of the notice have been produced in Court along with an unverified affidavit of service. He submits that the affidavit of service will be affirmed and filed in Court in course of the day. I am satisfied with this service of notice on the opposite party No. 2. The matter was in the list yesterday when no one appeared for the opposite parties. Today also no one appears for the opposite party No. 2.

6. The learned Counsel for the petitioners submits that in the facts and circumstances of the case allowing the proceeding to continue any further will amount to sheer abuse of the process of the Court. He submits that there is no dispute that the de facto complainant having settled the disputes with the

petitioners by filing written application before the learned Magistrate expressed her uncategorical intention not to proceed against the petitioners in the criminal case initiated on the basis of her petition of complaint. Besides, the learned Counsel submits that offence, if any, committed under Sections 78, 79 of the Trade and Merchandise Marks Act being non-cognizable, the learned Magistrate could not have passed the order so as to direct the investigating agency to treat the petition of complaint as an F.I.R. and make an investigation u/s 156(3) of the Code of Criminal Procedure. He submits that as will appear from the petition of complaint itself there was absolutely nothing which could make out an offence against the petitioners under Sections 420, 120B of the Indian Penal Code. In support of his contention that the proceedings could not be investigated u/s 156(3) of the Code of Criminal Procedure because of allegation made for commission of an offence under Sections 78, 79 of the Trade and Merchandise Marks Act, he relies on the Single Bench decision of this Court given in the case of Zahir Ahmed v. Azam Khan, reported in 1996 Criminal Law Journal 290.

7. After hearing the learned Counsel for the petitioners and considering the materials on record and also after considering the Single Bench decision relied on by him, I am of the view that this is a fit and proper case where the proceedings are required to be quashed by this Court in exercise of its inherent power. In view of the fact that the de facto complainant herself expressed in no uncertain terms that she was not inclined to proceed against the petitioners on the basis of the petition of complaint earlier filed by her, I am of the opinion that if the proceeding is allowed to be continued any further, it will amount to sheer abuse of the process of the Court. The opposite party No. 2 in spite of notice has not come forward to dispute the case of the petitioners that the disputes between the parties had already been settled and the opposite party No. 2 who had initiated the proceedings on the basis of her complaint, told the learned Magistrate by filing a written application that she was not inclined to proceed with the case any more. Besides, I do not find any reason to take a contrary view from the view taken in the Single Bench decision cited by the learned Counsel for the petitioners. It has been held in the case relied on that the offences punishable under Sections 78, 79 of the Trade and Merchandise Marks Act being non-cognizable, the learned Magistrate could not direct an investigation to be made u/s 156(3) of the Code of Criminal Procedure because such an investigation can be made only in the cognizable offence. This being the position the petition of complaint could not be sent by the learned Magistrate as has been done, for making an investigation by the concerned police authority treating the same as an F.I.R. The learned Counsel for the petitioners also appears to be correct when he says that the petition of complaint did not utter a single word as to how the petitioners had committed any offence under Sections 420, 120B of the Indian Penal Code. By perusing the petition of complaint I did not find any materials whatsoever on the basis whereof it can be said that the offence punishable under Sections 420, 120B of the Indian Penal Code was actually made out on the basis of the allegations made in the petition of complaint. This is one

more ground, in my considered view, on which the proceedings cannot be maintained against the petitioners. In my considered view, the proceedings if allowed to be continued any further will amount nothing but sheer abuse of the process of Court.

8. For the foregoing reasons I am of the view that this petition must succeed. Accordingly, the application is allowed. The proceedings being G. R. Case No. 2227/97 arising out of Jagacha P.S. Case No. 106/97 under Sections 420, 120B of the Indian Penal Code and Sections 78, 79 of the Trade and Merchandise Marks Act is hereby quashed.

9. Let the order be sent down at once.

10. Let urgent xerox certified copy of this order, if applied for, be furnished to the learned Counsel for the petitioners expeditiously.