
(2019) 11 DEL CK 0525

In the Delhi High Court

Case No : Civil Suits (COMM) No. 80 Of 2016

Dharampal Satyapal Sons Pvt. Ltd. & Anr

APPELLANT

Vs

Ifb Agro Industries Ltd

RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 195(1)(b), 195(1)(b)(ii), 209, 340, 340(1), 468, 468(3), 470, 473

Indian Penal Code, 1860 — Section 199, 200, 209

Citation : (2019) 11 DEL CK 0525

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Bishwajit Dubey, Aditya Marwah, C.M. Lall, Anish Kapur, Atishree Sood, Nikita Suri, Athira Pillai, Rook Ray

Judgement

Rajiv Sahai Endlaw, J

Crl.M.A. No.40263/2019 (of the defendant under Section 340 Cr.P.C.)

1. The defendant in this suit for permanent injunction to restrain infringement of trade mark and for ancillary reliefs, amidst the cross-examination of PW1, by this application seeks preliminary enquiry into the offence allegedly committed by the plaintiffs and its Directors and calls upon this Court to send a complaint of the said offences to the Magistrate.

2. The application came up first before this Court on 15th November, 2019 when the counsel for the plaintiffs appeared on advance notice.

3. Attention of the senior counsel for the defendant / applicant was drawn to several pronouncements of the Courts including in Vishal Kapoor Vs. Sonal Kapoor 2014 SCC OnLine Del 4484 (DB), Punjab Tractors Ltd. Vs. International Tractors Ltd. 2009 SCC OnLine Del 2978 and Amarsang Nathji Vs. Hardik Harshadhbai Patel (2017) 1 SCC 113, holding the application under Section 340 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to be not maintainable at this

stage. The senior counsel for the defendant / applicant however on 15th November, 2019 contended that in accordance with the dicta of the Supreme Court in Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 370, the application lies at this stage and complaint in pursuance thereto has to be made at this stage only. The arguments remained inconclusive on 15th November, 2019 and were adjourned to today.

4. The senior counsel for the defendant / applicant has been heard further and the counsel for the plaintiffs has also been heard.

5. The senior counsel for the defendant / applicant, in response to the judgments to which his attention was drawn on 15th November, 2019, has referred to Deepika Prashar Vs. Suman Singh Virk MANU/DE/2228/2016 where, prior to final disposal of the suit, application under Section 340 of the Cr.P.C. was entertained and complaint forwarded to the Magistrate. The senior counsel for the defendant / applicant has also contended that the facts of the present case are such where a complaint needs to be made immediately. It is also argued that one of the offences committed by the plaintiffs and its Directors is under Section 209 of the Indian Penal Code, 1860 (IPC), period of making complaint with respect where to, vide Section 468 of Cr.P.C. is of three years only and if this application is not disposed of immediately, the complaint of such offence may become barred by time. Reliance in this regard is placed on H.S. Bedi Vs. National Highway Authority of India 2016 SCC OnLine Del 432.

6. Per contra, the counsel for the plaintiffs, besides referring to orders passed by me holding such applications under Section 340 of the Cr.P.C. to be not maintainable at the interim stage and dismissing the same with liberty to the counsel to, at the stage of final arguments, invoke the same, has also referred to Ace Design Ltd. Vs. Gaurav Sarup Sharma 2019 SCC OnLine Del 8105 and Vishal Kapoor Vs. Sonal Kapoor 2014 SCC OnLine Del 4484 (DB).

7. In Punjab Tractors Ltd. supra also, the defendants filed an application under Section 340 of the Cr.P.C. amidst cross-examination of the witness of the plaintiff, referring to the earlier affidavits and the subsequent affidavits by way of examination-in-chief of the witness of the plaintiff and claiming that perjury had been committed therein. Relying on (i) Rewashankar Moolchand Vs. Emperor AIR 1940 Nagpur 72 holding that proceedings under Section 340 Cr.P.C. should not be resorted to when the criminal case is calculated to hamper fair trial of issue in the Civil Court before which the matter would probably go on for longer; and, (ii) Jindal Polyester Ltd. Vs. Rahul Jaura 124 (2005) DLT 613 and Kuldeep Kapoor Vs. Susanta Sengupta 126 (2006) DLT 149 holding that applications under Section 340 of the Cr.P.C. should be dealt with at the final stage only and not at the interim stage, it was held that the law is that a prosecution for perjury should not be ordered by the Court before the close of the proceedings in the case in which false evidence is given and that it is highly wrong for a Court to take action under Section 340 of the Cr.P.C. against a witness or a party for giving false evidence when trial is underway. It was further held that Section 340 of the

Cr.P.C. cannot be resorted to, when genuineness of documents alleged to be forged and false in a case, was still subject matter of a pending civil suit. It was reasoned that a witness is entitled to an opportunity to correct himself. It was yet further held that if the application under Section 340 of the Cr.P.C. were to be considered and allowed at the interim stage, it would give a handle to the defendants against the plaintiffs and would give unfair advantage to the defendants over the plaintiffs in the suit proceedings, when it was still to be decided by the Civil Court whether the documents were indeed forged and fabricated. It was also reasoned that formation of prima facie view that a person charged has intentionally given false evidence is a condition precedent for directing lodging of a complaint; existence of mens rea or criminal intention behind act complained of will have to be looked into and considered before any action under Section 340 of the Cr.P.C. is recommended; before setting the criminal law into motion, the Court has to exercise great care and caution and no prosecution ought to be ordered unless reasonable probability of conviction is found. The application under Section 340 of the Cr.P.C. was dismissed.

8. In Vishal Kapoor supra, not only was the aforesaid view approved of but reference was also made to Rugmini Ammal by LR's Vs. V. Narayana Reddiar (2007) 12 SCC 611 holding that (a) "normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered"; (b) that as per language of Section 340 of the Cr.P.C., the Court is not bound to make a complaint and the course of making a complaint would be adopted only if the interest of justice requires and which expediency would normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact such commission of offence has upon administration of justice; and, (c) where voluminous evidence has been adduced and the forgery is with respect to one document only and the effect of such piece of evidence on the broad concept of administration of justice is minimal, the Court may not consider it expedient in the interest of justice to make a complaint.

9. Comparatively recently, in Amarsang Nathji supra it was held that (i) mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the IPC; it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings; (ii) even after the above position has emerged, still the Court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) of the Cr.P.C., having regard to the overall factual matrix as well as the probable consequences of such a prosecution; and, (iii) the Court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

10. In Iqbal Singh Marwah supra also, it has been held that where the forged document is just a piece of evidence in voluminous evidence adduced and the effect of such forged document on the broad concept of administration of justice is minimal, the Court may not consider it expedient in the interest of justice to make a complaint.

11. I may at this stage emphasize that for the test aforesaid laid out for making a complaint to be applied also, conclusion of entire evidence in the proceeding in which the offence is alleged to be committed, is essential. Therefrom also it follows that complaint cannot be made at interim stage.

12. That brings me to the emphatic reliance placed by the senior counsel for the defendant / applicant on Iqbal Singh Marwah supra. The Constitution Bench therein was constituted to resolve conflict of opinion in earlier judgments regarding interpretation of Section 195(1)(b)(ii) of the Cr.P.C. The question for consideration was, whether Section 195(1)(b)(ii) of the Cr.P.C. would apply where forgery of a document was committed before the said document was produced in the Court. It was held that where offence as enumerated in Section 195(1)(b)(ii) of the Cr.P.C. had already been committed earlier and later on the document was produced or given in evidence in Court, the same was not within the ambit thereof. The senior counsel for the defendant / applicant however drew attention to paragraph 24 thereof to contend that therein it has been laid down that the complaint is to be filed immediately as delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost.

13. I am unable to agree. As aforesaid, Supreme Court in Iqbal Singh Marwah supra was not concerned with the question as has been addressed in the judgments cited above, of maintainability of an application under Section 340 of the Cr.P.C. during the pendency of the suit. The Constitution Bench in paragraph 24 supra relied upon by the senior counsel for the defendant / applicant observed that owing to the order under Section 340 Cr.P.C. being appealable and the order of the Appellate Court keeping the direction for making of the complaint in abeyance, may result in the complaint being not proceeded with for decades. It was thus concluded that the procedure prescribed for filing a complaint by the Court is such which may not fructify in the actual trial of the offender for an unusually long period. The said factor dissuaded the Constitution Bench from accepting the broad interpretation sought to be placed on Section 195(1)(b)(ii) of the Cr.P.C. It is thus not as if the Constitution Bench vide the said judgment issued a direction for making of the complaints at interim stage of the proceedings where the offence within the meaning of Section 340 of the Cr.P.C. is claimed to have been committed.

14. That brings me to the last argument of the senior counsel for the applicant / defendant, of the complaint unless immediately made, becoming barred by time.

15. The said aspect having not been dealt with in any of the judgments cited

above, it is deemed necessary to pen this order.

16. It is the case of the defendant / applicant in the application, that

(i) the plaintiffs in the plaint have pleaded that sales prior to 2013-14 under the subject trade mark were made by Dharampal Satyapal Ltd. which demerged into several companies including plaintiff no.2 DS Spiceco Pvt. Ltd.; (ii) in support of the above, PW1 in his affidavit by way of examination-in-chief attributed sales of the product under the subject trade mark from 2005-06 to 2012-13 to another company by the name of Dharampal Satyapal Sons Pvt. Ltd. ; (iii) there is therefore a clear discrepancy in what is stated in the plaint and the supporting Chartered Accountant's certificate and the affidavit by way of examination-in-chief of the witness of the plaintiff; (iv) the witness of the plaintiff during cross-examination on 24th January, 2019 deposed that the specimen invoices were genuine and the decision to file them as evidence was taken by the plaintiffs and also produced documents alleging them to be originals of the invoices filed as Ex.PW1/8 (Colly); (v) however on the defendant objecting, the counsel for the plaintiffs made a statement that the invoices produced were not originals but computer printouts of the invoices on the letter head of the plaintiff no.2; (vi) in Ex.PW1/8 (Colly), all the bills of 2009 to 2013 are purported to be of plaintiff no.2 D.S. Spiceco Pvt. Ltd. which was incorporated only on 26th June, 2013; (vii) evidently, these bills could not have been issued by plaintiff no.2; (viii) the witness of the plaintiffs in cross-examination could not answer how a company incorporated in 2013 could have issued bills prior to its incorporation; (ix) the witness subsequently admitted that the documents Ex.PW1/8 (Colly) belonged to DSL Food Division which was then D.S. Spiceco Pvt. Ltd. and therefore the document was printed on the letter head of DS Spiceco Pvt. Ltd. for submission in the Court; and, (x) the plaintiffs and its Directors have committed offences referred to in Section 195(1)(b) of the Cr.P.C. and which includes the offence under Section 209 of the IPC.

17. Once the law has prescribed the procedure of Section 340 of the Cr.P.C. for making of a complaint of certain offences, and the law with respect to which Section 340 Cr.P.C. as has evolved is of complaint thereunder being filed not at the interim stage of the proceeding in the Courts in which the offence is claimed to have been committed, but at the final decision thereof, I find the interpretation placed by the senior counsel for the defendant / applicant that the complaint if made at that stage would be barred by time, to be illogical. Such an interpretation would be hit by the principle of law, of none suffering from an act of the Court.

18. Not only so, Section 468(3) Cr.P.C. provides that the period of limitation in relation to offences which may be tried together shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment. The defendant / applicant also alleges the plaintiffs and its Directors to have committed offences enumerated within Section 195(1)(b) of the Cr.P.C. and has not confined the offence to that

under Section 209 of the Cr.P.C. I find that the offences referred to in Section 195(1)(b) of the Cr.P.C. include offences, for making of complaint with respect thereto no period of limitation is prescribed in Section 468 of the Cr.P.C. prescribing the limitation for taking cognizance of certain offences. Reference in this regard may be made to State of H.P. Vs. Tara Dutt (2000) 1 SCC 230, relying on Section 468(3) and holding that when the accused was charged with offences for which no limitation is provided in Section 468, then cognizance of offences for which limitation is provided cannot be said to be barred by limitation.

19. I also find that:

A. Section 470 of the Cr.P.C. provides for exclusion of time in certain cases and following the principle thereof also, the time till when the civil proceedings in the course of which offence is found to have been committed is pending, would be excluded while computing the period of limitation under Section 468 of the Cr.P.C.

B. Section 473 of the Cr.P.C. enables the Court to take cognizance of an offence after the expiry of period of limitation, if satisfied on the facts and in the circumstances of the case that the delay was properly explained or that it is necessary so to do in the interest of justice; considering the requirement of Section 340 of the Cr.P.C., time for making the complaint would be extended thereunder as well.

C. Neither counsel cited any judgment on the said aspect inspite of asking. I find the question to be no longer res integra.

A Division Bench of the High Court of Karnataka in C. Ramanna Gowda Vs. The Registrar (Vigilance) High Court of Karnataka MANU/KA/0060/2006 held that the time spent for holding preliminary enquiry under Section 340 of the Cr.P.C. to form an opinion that it is expedient in the interest of justice that the complaint be lodged for enquiring into the offence which appeared to have been committed, should be excluded while computing the period of limitation. I respectfully concur with the view taken therein.

D. The High Court of Punjab & Haryana also in Balwant Singh Vs. Rajinder Singh 2011 SCC OnLine P&H 11660 negated the plea in opposition to Section 340 of the Cr.P.C., of the offence allegedly committed being stale, by holding that the matter could not have become stale when the complaint was filed within time, but the delay in consideration thereof was on account of the respondent and the Court itself, and not on account of the applicant.

E. The Constitution Bench of the Supreme Court in Sarah Mathew Vs. Institute of Cardio Vascular Diseases (2014) 2 SCC 62 though not concerned with the question as has arisen herein, held that delay caused by the Court in taking cognizance of a case cannot deny justice to a diligent complaint.

20. Thus the aspect of limitation also does not dissuade me from taking a view different from as taken in the earlier cases.

21. As far reliance by the senior counsel for the defendant /applicant on Deepika Prashar supra is concerned, therein, after noticing the aforesaid judgments, the complaint was ordered to be made at the interim stage, finding a blatant case of the defendants therein having practiced falsehood on oath in the written statement and at the stage of admission/denial and no further enquiry being necessary. On the contrary here, the evidence of the plaintiffs is still to be concluded. Even the cross-examination of PW1 has not been concluded. It is well nigh possible that PW1 or any other witness of the plaintiffs in their evidence, explains the inconsistency alleged and opportunity wherefor cannot be denied. Further, the weight of the said evidence vis-à-vis the entire evidence of the plaintiffs can also be seen at the final stage of adjudication only.

22. Thus, no case for making a complaint under Section 340 of the Cr.P.C. against the plaintiffs or its Directors or against PW1 is made out. The application is dismissed with liberty to the plaintiffs to, at the final stage seek prosecution of the plaintiffs and its Directors and any other witness and with the clarification that the date of invocation of Section 340 of the Cr.P.C. by the defendant/ applicant in such case would be the date on which the present application was filed.