
(1999) 01 BOM CK 0044

In the Bombay High Court

Case No : Criminal Writ Petition No. 1535 of 1991

Dilipkumar Nanji Dawda and another

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 21-01-1999

Acts Referred:

Copyright Act, 1957 — Section 63

Penal Code, 1860 (IPC) — Section 34, 482, 486

Trade and Merchandise Marks Act, 1958 — Section 78, 79

Citation : (1999) 5 BomCR 407 : (1999) BomCR(Cri) 407 : (1999) CriLJ 1476

Hon'ble Judges : Pratibha Upasani, J

Bench : Single Bench

Advocate : S.R. Pasbola, for the Appellant; Ms. A.R. Kamat, Addl.P.P., for the Respondent

Judgement

Dr. Mrs. Pratibha Upasani, J.—This Criminal Writ Petition is filled by the petitioners (Original accused Nos. 3 and 4), Dilipkumar Nanji Dawda and Manubhai Lalji Nandu, against the order dated 5th October 1991, of framing of charge against five accused, passed by the learned Judicial Magistrate, First Class, Nasik Road, in R.C. No. 191/91.

2. In the charge, copy of which is annexed as Exh. B at page 70 of the Paper Book, the names of the present petitioners appear at Sr. Nos. 3 and 4. Curiously enough, the complainant has not been made a party respondent and instead, original accused Nos. 1, 2 and 5 have been made respondents. The Roznama reveals that Mr. Pasbola has been appearing for the petitioners. However, he is not present. Ms. Kamat, Addl. Public Prosecutor appears for the State (Respondent No. 1).

3. I have heard Ms. Kamat, learned Addl. Public Prosecutor for the State. I have also perused the proceedings. It appears that ad-interim stay of further proceedings in the lower Court is obtained by the petitioner on 11th September 1992 and all the proceedings in the lower Court are thus stalled though today we

are in the year 1999.

4. It appears from the proceedings that the charge was framed against all the five accused (present petitioners being two accused amongst those five) for offences punishable under sections 482 read with 34 of the Indian Penal Code, read with section 63 of the Copy Right Act, 1957 and section 486 read with section 34 of the Indian Penal Code read with sections 78 and 79 of the Trade and Merchandise Marks Act, 1958.

5. It appears that one Ambala Mavjibhai Patel, who is the complainant in this case, filed a complaint dated 13th April 1991, in which he stated that he was the Distributor/Agent of Nirma Company for the last three years in Nasik District and that he was having his office at Moti Super Market, Peth Road, Nasik. He has also further stated that at the same place, there is also a godown containing the product of Nirma Company and another godown near Ozar village. It is stated by him in the complaint that for Nasik District he calls from Nirma Company about 300 tons of Nirma Soap Cake and Nirma Powder per month and delivery is made as per the orders received by him.

6. It is further stated by the complainant in the above mentioned complaint dated 13th April, 1991 that for the last 3 to 4 months, he observed that there was a decrease in the sale from his office of Nirma Powder and Nirma Soap Cake. Moreover, he also received various complaints about the goods (Nirma Powder and Soap Cake) being of inferior quality. The decrease in sale with respect to these goods was more especially in the City of Nasik. The complainant, therefore, suspected that somebody must be selling duplicate goods of Nirma Washing Powder and Nirma Soap Cake, which was similar in get up with the original and that the said duplicate goods were being sold in the town. He therefore, was on a look out for the person/persons, who were doing these activities. He also informed accordingly to the Company. He further stated that on 12th April 1991, he learnt that in the Grocery Shop of one Rameshkumar Kalantri, which was at Nasik Road, duplicate goods of Nirma Company were being sold. He, therefore, sent one Mr. Rajanikant Patel, from Nasik Peth Road to the Grocery Shop of Rameshkumar Kalantri and asked him to purchase from his shop, two boxes of Nirma Soap. For this purpose, he gave Rajanikant Patel Rs. 376/-. The said Rajanikant Patel accordingly went to the Grocery shop of Rameshkumar Kalantri and purchased from his Grocery Shop two boxes of Soap Cake of Nirma Company and brought them to the Nirma Company's Office at Peth Road. Thereafter the fake goods purchased by Rajanikant Patel from Rameshkumar Kalantri were compared with the original Nirma Soap Cake and it was revealed that the Soap Cakes carrying the name of Nirma Company which were purchased from the Grocery Shop of Rameshkumar Kalantri were fake and duplicate and were similar in get up with the original Soap Cake of Nirma Company. The complainant, therefore, was convinced that these duplicate goods were being sold in the market. Thereafter Jitendra Patel, who also had accompanied Rajanikant Patel to the Grocery Shop of Rameshkumar Kalantri was sent to

Ahmedabad where Nirma Factory is located, for inspection and to verify whether they were original goods of the Nirma Company. Thereafter there was an authentic statement made from the Ahmedabad Factory of Nirma that the goods which were sent to the Factory Laboratory were indeed fake goods and those goods were not manufactured by their Company. Thereafter the complainant Ambalal Mavjibhai Patel narrated the entire incident to the Police Inspector, Crime Branch, Nasik City and law was set into motion. Fake goods were seized from the godown of Ashok Uttamchand Chordiya. The goods were seized from Bharat Ranchhod Mestry's godown also. Panchanamas were also made in respect of that seizure. The goods, which were found and which were seized were duplicate goods of Nirma Soap Cakes and Lifebuoy Soap. Statements of various witnesses were recorded. Samples of the fake goods were sent to the Chemical Analyser.

7. I have perused all the panchanamas and the statements of witnesses and I have considered the role allegedly played by each of the accused.

8. From these statements and the panchanamas recorded by the Police, it thus, appears that there is prima facie case against all the accused for proceeding u/s 482 read with section 34 of the Indian Penal Code read with section 63 of the Copy Right Act, 1957, so also u/s 486 read with section 34 of the Indian Penal Code read with section 78 and 79 of the Trade and Merchandise Act, 1958.

9. The law as to when charge is to be framed is now well settled. The Supreme Court in Union of India (UOI) Vs. Prafulla Kumar Samal and Another, , in para 10, has given guiding principles as to how the Court should apply its mind at the time of framing of charge. Earlier also the Supreme Court has laid down very same principles in State of Bihar Vs. Ramesh Singh, , K.P. Raghavan and Another Vs. M.H. Abbas and Another, and Almohan Das and Others Vs. State of West Bengal, .

10. After perusing the entire record of the case and after hearing the learned Addl. Public Prosecutor, I am convinced that no error is committed by the learned Judicial Magistrate, First Class, by framing charge against all the accused because there is sufficient material to come, prima facie, to the conclusion that the accused had committed offences for which the charge was framed by the learned Magistrate. Out of five accused, against whom charge was framed, only the present petitioners have approached this Court, by way of writ petition. However, for the aforementioned reasons, I find no merit in this writ petition and hence, the same is required to be dismissed, which is accordingly dismissed.

11. Rule discharged. No order as to costs.

12. Interim order is vacated. The petitioners to appear before the lower Court on 26th February 1999.

13. Petition dismissed.