

(1990) 09 MAD CK 0042

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 8557 of 1987

J. Arumugam and two others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 05-09-1990

Acts Referred:

Penal Code, 1860 (IPC) — Section 482, 483

Citation : (1990) 09 MAD CK 0042

Hon'ble Judges : J. Arunachalam, J

Bench : Single Bench

Advocate : Mr. U.N.R. for M/s C. Daniel and Sathys Rao, for the Appellant; Mr. Hameed Sultan, Government Advocate (Criminal Side), for the Respondent

Judgement

Mr. J. Arunachalam, J.—This petition coming on for hearing upon perusing the petition and the affidavit filed in support thereof and upon

hearing the arguments of Mr. U. N. R. Rao, for M/s. C. Daniel and Sathya Rao, Advocates for the petitioner and of Mr. Hameed Sultan,

Government Advocate (Cri. Side) on behalf of the State, the Court made the following order :

The petitioners are the accused in C.C. No. 249 of 1987 pending on the file of the Judicial First Class Magistrate, Vallore. The respondent who is

the Sub-Inspector of Police, Gudiyatham Town Police Station, after completing investigation in Crime No. 183 of 1986, filed a final report before

the trial Magistrate, alleging commission of offences by the petitioners, punishable u/s 468, 482 and 483 I.P.C.

2. The prosecution case is that the first informant, Venkatachalam, was the proprietor of Golden Match Industries, Gudiyatham and his factory was

allotted the trade mark label of "Running Deer" for the matches manufacturing in

the factory. The petitioners joined together with the common intention to cause wrongful loss to the first informant, coupled with the mens rea to forge the trade mark label of ""Running Deer"". On or before 27.3.1986 at Gudiyatham, they printed the forged trade mark labels and affixed them to their match boxes to cheat consumers to believe that the match boxes were manufactured by Golden Match Factory, Gudiyatham. It is also the prosecution case that during the course of the same transaction, the petitioners counterfeited the trade mark of ""Running Deer"" which had been allotted to the Golden Match Factory, Gudiyatham and used the counterfeited trade-mark in their match boxes in such a manner as reasonably calculated to cause to be believed that the match boxes had been manufactured by the Golden Match Factory, Gudiyatham.

3. In this petition filed u/s 482 Cr.P.C. to call for the records and quash the pending prosecution as not maintainable and in because of the process of court, the learned counsel for the petitioners contended that Sections 482 and 483, I.P.C., do not deal with trade mark, but concern themselves with property mark. If that be so, framing of charges for offences under Sections 482 and 483, I.P.C., cannot be sustained. He also contended that the words ""any false trademark"" in Section 482 I.P.C. and the words ""trade mark"" in Section 483 Cr.P.C. have been omitted with effect from 25.11.1958. However, the learned counsel appearing for the petitioner fairly stated, that the offences u/s 77 and 79 of the Trade and Merchandise Act, 1958, may be attracted on facts.

4. I have heard Mr. Hamid Sultan, Learned Government Advocate, appearing on behalf of the respondent. A perusal of the charge-sheet positively shows that the case against the petitioners refers to forging of trade mark and counterfeiting of trade mark and the user of such counterfeited trade mark. If that be so, the offence u/s 482 I.P.C. which deal with property mark will not be attracted. Therefore, it will be necessary to set aside the charges already framed by the learned Magistrate and remand the matter, for the trial court to decide, on the materials before it, the possibility or otherwise of framing appropriate charges under the Trade and Merchandise Marks Act, 1958. It will also be necessary for the trial Magistrate to consider the nature of procedure to be followed depending upon the offences for which charges are to be framed, being

cognizable or non cognizable. With these observations, this petition is allowed, setting aside the charges already framed, with the direction, detailed above, for the trial Magistrate to dispose of the calendar case in accordance with law.