

(2020) 02 MP CK 0161

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1615 Of 2003

Jayantilal And Ors

APPELLANT

Vs

State Of Madhya Pradesh And Ors

RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 397, 401
Indian Penal Code, 1860 — Section 34, 485, 486, 487, 488
Trade And Merchandise Marks Act, 1958 — Section 24

Citation : (2020) 02 MP CK 0161

Hon'ble Judges : Rajeev Kumar Dubey, J

Bench : Single Bench

Advocate : Manish Datt, Chetan Jaggi, Saurabh Soni

Final Decision : Dismissed

Judgement

1. This criminal revision has been filed under Section 397/401 of the Code of Criminal Procedure against the order dated 23.08.2003 passed by learned

Judicial Magistrate First Class, Sihora, Jabalpur in criminal case No. 290/99 whereby learned JMFC framed charge against the applicants / accused

for the offence punishable under Sections 485, 486, 487, 488 read with Section 34 of IPC.

2. Brief facts of the case which are relevant for the disposal of this criminal revision are that Sharad Kumar Patel (who has died during the pendency

of this revision), non-applicant No.3 Bhupendra Kumar and non-applicant No.4 Azad Kumar Basant Lal lodged a complaint at police station

Majhgawan, Tehsil Sihora averring that they are the partners of firm M/s Radhakishan Narayandas and the firm is engaged in the manufacturing and

marketing of Bidis under the trademark "Khargosh". The said trademark is registered under the Trade And Merchandise Marks Act, 1958 and

bears registration No. 112689. The wrapper in which Bidis are packed is also registered and bears registration No. 164797. The Bidis that are made

by the firm are mainly sent for sale in Uttar Pradesh and the firm has Bidi making units in village Majhgawan, Indrana, Ghughra and Katangi in

Jabalpur District. It is further averred that in the past Chandrika Prasad Patel and Govind Singh, used to work in Majhgawan unit of the firm.

Complainants/ respondents expelled them and ten months ago they also expelled applicants Jayantilal Patel and Ramchandra Patel from the

partnership of the firm M/s. Radhakishan Narayandas. Thereafter they had no relation with the firm and the trademark of the firm. It is further

averred that the information was received that applicants Jayantilal Patel, Ramchandra Patel, Chandrika Prasad Patel and Govind Singh are selling the

Bidis by using the firm's name and trademark and are earning illegal profits and also causing loss to the firm, so action be taken against them. On that

police inquired about the matter and during the enquiry, police raided the premises located at village Gidurha and seized packets of 'Khargosh'

brand Bidis and packaging material and found that applicants are illegally doing business of making and selling Bidis in the name of 'Khargosh'

brand. On that police filed the complaint before the JMFC Sihora against the applicants. On the basis of that complaint Criminal Case No. 290/1999

was registered and learned JMFC, Sihora vide order dated 23.08.2003 framed charge against the applicants for the offence punishable under Sections

485, 486, 487, 488 read with Section 34 of IPC. Being aggrieved from that order applicants filed this criminal revision.

3. Learned counsel for the applicants submitted that earlier applicants Jayantilal and Ramchandra were also the partners of the firm M/s Radhakishan

Narayandas. Complainant wrongly expelled them from the partnership. Applicants Jayantilal and Ramchandra had filed a Civil Suit No. 18A/2006

against that resolution. That Suit was decreed by VIII ADJ, Jabalpur vide judgment and decree dated 22.10.2008 and declared the resolution void. It

was also declared that applicants Jayantilal and Ramchandra are the partners of the firm M/s Radhakrishna Narayandas and are entitled to act as

partners of the firm along with the respondent. So no offence under Sections 485, 486, 487, 488 read with Section 34 of IPC is made out against the

applicants. Learned trial court without appreciating this fact wrongly framed charges against the applicants. So, applicants be discharged from the

aforesaid charges.

4. Learned counsel for the State opposed the prayer and submitted that the implication of the judgment passed by learned Additional District Judge,

Jabalpur is to be considered by the trial court after recording the evidence. At this stage, only on the basis of that judgment charges framed by the trial

court against applicants cannot be quashed. There is sufficient evidence available on record to frame charges against applicants. So the learned trial

court did not commit any mistake in framing charges against applicants for the offences punishable under Sections 485, 486, 487, 488 read with

Section 34 of IPC so, the petition be dismissed.

5. This Court has gone through the record and arguments advanced by the learned counsel for the parties. Hon'ble Apex Court in the judgment passed

in Hem Chand Vs. St. of Jharkhand reported in (2008) 5 SCC 113 has held that at the stage of framing of charge, Court exercises a limited

jurisdiction. It has to see whether a prima facie case has been made out or not, concerned of the Court should be to see whether the case of probable

conviction for commission of an offence has been made out on the basis of the materials found during the investigation. It would ordinarily not

consider whether accused would be able to establish his defence if any. In Bharat Parikh Vs. Central Bureau of Investigation and another, (2008) 10

SCC 109 also held while framing charge the trial Court can only look into the materials produced by the prosecution while giving an opportunity to the

accused to show that the said materials were insufficient for the purpose of framing charge. At the stage of framing of charge, the submissions on

behalf of the accused have to be confined to the material produced by the investigating agency. In Soma Chakravarty Vs. State through CBI, (2007) 5

SCC 403 held at the stage of framing of charge-Material brought on record has to be accepted as true. In State Of Orissa Vs. Debendra Nath Padhi,

AIR 2003 SC 1512 Hon'ble Apex Court considered the matter in detail and held that at the stage of framing of charge the defence of the accused

cannot be considered. In the matter of Sheoraj Singh Ahlawat and others Vs. State of Uttar Pradesh and another, (2013) 11 SCC 476, Their

Lordships of the Supreme Court, while reiterating the law laid down in Debendra Nath Padhi's case (supra), have clearly held that at the time of

framing charge, the accused is entitled to urge his contentions only on materials

submitted by the prosecution, he is not entitled to produce any material at this stage and the Court is not required to consider any such material if submitted.

6. This shows that at the time of framing of a charge, what the trial court is required to, and can, consider only the police report referred to under

Section 173 Cr.P.C. and the documents sent with it. For framing of charge strong suspicion about the commission of the offence and accused's

involvement of offence is sufficient. On merits, materials/ documents filed by accused cannot be considered. The material produced by prosecution

alone is to be considered. Roving inquiry and mini-trial are not permissible. Defence of the accused is not relevant. The only right the accused has at

that stage is of being heard and nothing beyond that. Accused is competent to make his submissions only on the material supplied by the prosecution.

7. If we examine the instant case, in the light of the above pronouncement of the Apex Court, the main contention of the learned counsel of the

applicants is that earlier applicants Jayantilal and Ramchandra were also the partner of the firm M/s Radhakishan Narayandas. Complainant wrongly

expelled them from the partnership. Against that resolution of the firm, Jayantilal and Ramchandra had filed a Civil Suit No. 18A/2006, which was

decreed by VIII ADJ, Jabalpur vide judgment and decree dated 22.10.2008. In that judgment, the court declared that resolution void and it was also

declared that applicants Jayantilal and Ramchandra are the partners of the firm M/s Radhakrishna Narayandas and are entitled to act as partners of

the firm along with the respondents. So applicants are entitled to manufacture and sale the Bidis under the trademark 'Khargosh'. But that

contention of the learned counsel of the applicant does not appear to be correct. From the perusal of the judgment passed by the VIII ADJ, Jabalpur,

a copy of which has been filed by the applicant, it appears that in that case learned trial court framed the issue No. 4 'Whether the applicants are

entitled to use the trademark 'Khargosh' ? and after discussing the evidence produced by the parties regarding that issue, the trial court held that

the trademark 'Khargosh' was registered in the name of firm M/s. Radhakrishna Narayandas. As the applicants were expelled from the firm on

24/12/1998, therefore as per Section 24 the Trade And Merchandise Marks Act, 1958, during the period of expulsion, the applicants were not entitled

to use the trademark 'Khargosh'. It also appears from the record that Sharad Kumar Patel, non-applicant No.3 Bhupendra Kumar and non-

applicant No.4 Azad Kumar Basant Lal had filed Civil Suit No. 1A/2000, before District Judge Jabalpur. In that Civil Suit also vide order dated

05/02/2000 District Judge prohibited the applicants Jayanti Lal Patel and Ramchandra from selling, marketing and distributing Bidis Under the

trademark 'Khargosh'. Against that order applicants filed Miscellaneous Appeal No. 23/2000, which was also dismissed by the Coordinate

Bench of this court vide order dated 18/10/2000 and held that 'the applicants (Defendants of that case) cannot claim exclusive right to the

trademark of Khargosh Chhap of the firm. They are the expelled partners. The trademark is not their exclusive property. They may have the right to

the assets and the profit of the firm but they have no exclusive right to trademark or do business on the foundation of the Goodwill of the firm

represented by its trademark.' So on the basis of the judgment passed by the VIII ADJ, Jabalpur it cannot be said that during the period of expulsion

applicants had the right to use the trademark 'Khargosh'. In these circumstances, whether at the time of incident applicant Jayantilal and

Ramchandra were the partners of the firm and had a right to run a parallel manufacturing unit in the name of the firm M/s Radhakrishna Narayandas

and entitled to use trademark 'Khargosh' is a matter of fact, which would require evidence to decide. So it cannot be considered at this stage.

8. In the complaint it is clearly mentioned that the complainants are the partners of firm M/s Radhakishan Narayandas and that firm is engaged in the

manufacturing and marketing of Bidis under the trademark 'Khargosh'. The said trademark is registered under the Trade And Merchandise

Marks Act, 1958 and bears registration No. 112689. The wrapper in which Bidis are packed is also registered and bears registration No. 164797. The

Bidis that are made by the firm are mainly sent for sale in Uttar Pradesh and the firm has a Bidi making units in village Majhgawan, Indrana, Ghughra

and Katangi in Jabalpur District. It is further averred that ten months ago they had expelled applicants Jayantilal Patel and Ramchandra Patel from the

partnership of the firm M/s. Radhakishan Narayandas, thereafter they had no relation with the firm and the trademark of the firm. Information was

received that applicants Jayantilal Patel, Ramchandra Patel, Chandrika Prasad Patel and Govind Singh are selling the Bidis by using the firm's name

and trademark and are gaining illegal profit and also causing loss to the firm. On that police inquired about the matter and during enquiry police raided

the premises located at village Gidurha and seized packets and packaging material of Khargosh brand Bidis and found that applicants are illegally

doing business of making and selling Bidis in the name of Khargosh brand. So prima facie offence under 485, 486, 487 and 488 of IPC are made out

against the applicants. In these circumstances, there is no need to interfere in the impugned order of the trial court.

9. Hence the criminal revision is dismissed with the liberty to the applicants to raise all their objections before the trial Court at the appropriate stage

which shall be decided by the learned trial Court according to law at an appropriate stage without being influenced by the impugned order or

observation made by this Court in this revision.