

(1983) 05 DEL CK 0018

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 188 of 1982

Lakshmi Narain Mehta

APPELLANT

Vs

Gramophone Co. of India Ltd. and Others

RESPONDENT

Date of Decision : 26-05-1983

Acts Referred:

Citation : (1983) 24 DLT 246

Hon'ble Judges : N.N. Goswamy, J

Bench : Single Bench

Advocate : B.P. Kathuria, K.K. Luthra, N.K. Bhardwaj, Geeta Luthra and D.B. Sethi, for the Appellant;

Judgement

N.N. Goswamy, J.

(1) The prayer in this petition is for quashing of the proceedings in two criminal cases titled as :

(1) Music India Limited v. The Pyramid and others and (2) gramophone "Company of India Limited v. The Pyramid and others. Both these cases are pending adjudication before Shri Jaswant Singh, Metropolitan Magistrate, New Delhi.

(2) In brief the two complaints are to the effect that M/s. Gramophone Company of India and Music India Limited have their registered "offices in Calcutta and Bombay respectively. They have their branches in Delhi. They make and produce records containing musical, literary and artistic thesis and have the exclusive right to reproduce the works contained in the records directly from the plates or the records manufactured and made by them under the various names. A large scale piracy of their copyright is sound is taking place on tapes and cassettes. The pirates have not to pay anything to the musicians and other artists. All that they need is a cheaper duplicating machine, tape records and a number of sound system to make copies out of the popular records of the said company. They, Therefore, sell their duplicates cheaper and in the process deprive the-companies

of their legitimate income and the Government of huge amount of excise, incometax and sales-tax. Their establishments and godowns are kept in concealed places.

(3) The two complainants had filed complaints earlier to the same effect against unknown persons u/s 64 of the Copyright Act, 1956 and Sections 420, 482 and 486 of the Indian Penal Code and Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958. The concerned magistrate u/s 202 of the Code of Criminal Procedure had directed the C.I.D. (Grime) Delhi to investigate, for the time being, against even firms which were dealing in the infringing articles and to seize and produce the infringing materials, cassettes, tapes and/or records, plates, appliances or machines for making the infringements, labels, blocks, dyes, etc. In pursuance of the investigation the Grime Branch recovered "2240 cassettes. Those two complaints were later consolidated but the learned magistrate refused to issue a general search warrant. However, the magistrate permitted the police u/s 64 of the Copyright Act, 1956 to search all susceptible places. Raids were organized and a number of infringing articles were recovered from two firms. The inspector of crime branch submitted a report that during the raids conducted on five shops, there was some confrontation between certain persons of the companies and the shopkeepers and the raids had to be abandoned. The complainants thereafter filed an application and requested the magistrate to issue general search warrants. The petitioner, herein) moved an application against the complainants alleging that the said complaints were made with a view to play fraud on Court by making unknown as the accused persons, though later on it submitted a list of dealers who were dealing in infringing articles. The learned magistrate directed search warrants against seven firms. According to the report submitted by the police officer nothing had been seized from three firms but cassettes had been recovered from four of those seven firms named by the complainants. On November 5, 1980 the premises of the petitioner were searched but nothing was found in the shop. The petitioner had challenged the search made in Ms premises while the complainants had challenged the order whereby the learned magistrate had declined to issue general search warrants. The matter came up before a learned Single Judge of this Court. Vide judgment and order dated March 27, 1981 the petition filed by the petitioner was dismissed while the petitions filed by the complainants were allowed. The learned single Judge directed the learned magistrate to issue general search warrants so that the real culprits may be discovered.

(4) Against the aforesaid judgment and order dated 27th of March, 1931 the petitioner, herein, filed a petition for special leave to appeal in the Supreme Court. The Supreme Court dismissed the petition but made the following observations:

"WE would like to observe that simply because the general search warrant has been directed to be issued it should not be used indiscriminately & the officer making use of that general warrant while effecting general searches should take

sufficient care & caution".

In accordance with the order passed by this Court the magistrate had issued general search warrants.

(5) After the aforesaid order passed by this Court the complainants have filed a second complaint which is the subject matter of this petition. The complaint is based on the same facts. In addition the complainants have mentioned five accused and the sixth is "other known and unknown persons". In paragraph 14 of the complaint, the complainants have mentioned about the earlier complaints filed by them in the month of July, 1980 and have also stated that a general search warrant had been issued under the orders of this Court. They have further stated that the offences are being continued by the accused and others and as such it has become necessary for them to file a second complaint. The prayer in the second complaint is the same as was made in the earlier complaint. The complainants also filed an application under Sections 91/93 of the Code of Criminal Procedure for issuance of the general search warrants for Delhi and New Delhi in the name of D.C.P. (Crime) Delhi for search, seizure and production of all the alleged infringing materials bearing the false trade mark of the company of the respondents 1 and 2, infringing cassettes, tapes, records, plates, labels, blocks, dyes, appliances, copying equipments and duplicating machines for making the infringements and all other materials and documents.

(6) On consideration of the complaint and the application mentioned above the learned metropolitan magistrate issued the general search warrants to the D.C.P. (Crime) on 19-10-1981. The search warrants issued by the learned magistrate could not be executed till the date they were made returnable and as such the complainants filed an application for extension.

(7) The petitioner has challenged the order directing general search warrants as also has prayed that there is no grounds for extension of time for the said search warrants. He has contended that the power to issue general search warrants is extra-ordinary and could not be resorted to in a light manner. According to the learned counsel the order passed by the learned magistrate whereby he had issued general search warrants is a laconic order and is liable to be quashed on the ground of non-application of mind. Reliance has been placed on various judgments of the High Courts. It is, however, not necessary to deal with the various judgments of the High Courts in view of the fact that the matter stands decided by their Lordships of the Supreme Court in the case of V.S. Kuttan Pillai Vs. Ramakrishnan and Another, . It was observed that issuance of a search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed his discretion in favor of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting the search warrant.

(8) It is true that the impugned order dated 19-10-1981 passed by the learned magistrate whereby general search warrants were issued is a laconic order and no reasons have been stated therein. However, the order has to be considered from the point of view of the facts of the case. It is pertinent to mention that the order has been passed on an application of the complainants wherein they had specifically mentioned the earlier complaints and the order passed by a learned Judge of this Court (M.L. Jain, J.). The general search warrants had been directed by this Court for the reasons given in the judgment passed by this Court. In these circumstances, it has to be borne in mind that the learned magistrate was aware of the reasons given by this Court and Therefore it cannot be assumed that the order suffers from non-application of mind. In any case, the petitioners having failed earlier in this Court as also in the Supreme Court cannot come up again with the same pleas and contentions which were raised by them earlier. The complaints and orders are based on similar facts and are inter-parties. In these circumstances, the contention of the learned counsel for the petitioner that the general search warrants could not be issued has to be negated.

(9) The next contention of the learned counsel for the petitioner was that the complainants could not file a second complaint. This contention has also no merit because the complainants in their complaints have mentioned about the earlier complaints and have given reasons for filing the second complaint. The reason given by the complainants is that the offence is still continuing and they have been able to name at least five accused in the second complaint. The offence being a continuing offence, there is no bar in law in filing the second complaint.

(10) The only other contention of the learned counsel for the petitioner was that there is no ground for extending the period for return of general search warrants. This matter has yet to be considered by the learned magistrate who will take note of the reasons stated in the application and will arrive at an independent finding. The learned magistrate will also direct the concerned police officers to abide by the observations of their Lordships of the Supreme Court made in the earlier petition and reproduced above.

(11) For the reasons recorded above, I do not find any merit in this petition which is dismissed.

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