

(2004) 09 BOM CK 0042

In the Bombay High Court

Case No : Show Cause Notice No. 295 of 2004 in Contempt Petition No. 107 of 2003 in Chamber Summons No. 555 of 2001 in Suit No. 4913 of 2000

Majid A. Oomerbhoy

APPELLANT

Vs

Rashi S. Oomerbhoy and Others

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 15

Citation : (2005) 2 BomCR 844

Hon'ble Judges : Aguiar A.S., J

Bench : Single Bench

Advocate : Shyam Diwan, Viky Singh, Prakash Shinde and Nivit Dhruva, instructed by M. Dhruva and Co, for the Appellant; Sanjay Jain and Kalpesh Joshi, instructed by Malvi Ranchoddas and Co. for respondent No. 1 and Vinit Naik, instructed by Kalpesh I. Nansi, for the Respondent

Final Decision : Dismissed

Judgement

Aguiar A.S., J.—Contempt Petition No. 107 of 2003 is filed by the petitioner who is the uncle of respondent No. 1, partners in the rest while firm M/s. Omerbhoy, for the dissolution of which the suit being Suit No. 4913 of 2000 is pending in this Court. In the said suit an ad interim order came to be passed on 6-12-2000 whereby Court Receiver High Court, Bombay was appointed as Receiver of the partnership business and shops. Subsequently by order dated 30-7-2001 this Court (D.K. Deshmukh, J.) confirmed the order dated 6-12-2000, appointing Court Receiver as Receiver of the assets of the partnership firm of M/s Ahmed Omerbhoy. The said order of 30-7-2001 recorded a compromise/interim arrangement between the parties to the effect that the partners of the said firm shall not carry on any business on the basis of the trade mark of the said firm. By Chamber Summons No. 555 of 2001 M/s. Oomerbhoy was joined as respondent. Respondent No. 1 is the Chairman and Managing Director of the said firm while respondent Nos. 2 to 4 are directors. The said Chamber Summons was taken out by the petitioner praying that the Court Receiver be directed to take

possession of the flat bearing flat No. 5, 2nd floor, Trust, Veer Nariman Road, Mumbai which was in the occupation of R.R. Oomerbhoy Pvt. Ltd. who was represented by their Advocates.

2. Some time in July/August 2001 the petitioner discovered that the respondent M/s. R.R. Oomerbhoy had commenced manufacturing/distribution of mustard oil under the brand name "Mastman" which is deceptively similar to the suit trade mark MASTAAN. Hence the petitioner took out Notice of Motion No. 2841 of 2001 for restraining M/s. R.R. Oomerbhoy Pvt. Ltd., from using the trade name MASTAAN. By order dated 30th November, 2001 this Court (Rebello, J.) directed initiation of proceedings in respect of the alleged infringement of trade mark and passing of the goods of the petitioner as that of the respondents. By the aforesaid order Court Receiver was directed to engage the services of an Advocate to initiate the proceedings and the Court Receiver was given liberty to seek the opinion of Advocate Mr. Kane.

3. The petitioner also challenged the infringement of the trade mark POSTMAN by the respondents M/s. R.R. Oomerbhoy who had commenced the manufacturing, distribution and marketing of ground nut oil under the brand name POSTIANO which was deceptively similar to the trade mark POSTMAN.

4. In March/April, 2003, based on the opinion given by Advocate Mr. Kane Court Receiver filed a suit against M/s. R.R. Omerbhoy being Suit No. 547 of 2003 for restraining the said M/s. R.R. Omerbhoy Pvt. Ltd., from infringing the trade mark MASTAAN and POSTMAN and for other reliefs. On 25/28th April, 2003 Court Receiver took out Notice of Motion No. 566 of 2003 praying for restraining the respondents from using the trade marks MASTAAN and POSTMAN, which was granted. In July, 2003 appeals were filed by M/s. R.R. Omerbhoy being Appeal Lodging Nos. 522 of 2002 and 534 of 2003 from the order dated 25/28th April, 2003. Both the appeals came to be dismissed by the Division Bench by order dated 28th July, 2003. It appears that while dismissing the said appeals the Division Bench made some observations against the respondents, to the effect that the respondents had circumvented the orders of this Court from time to time and the respondents by their said action are in contempt of the orders of this Court by carrying on business on the basis of the trade mark of the said firm. Hence the present petition for contempt has been filed by petitioners against the said respondents and the firm of M/s. R.R. Omerbhoy Pvt. Ltd.

5. When the contempt petition came up for admission on 22nd January, 2003 this Court (R.M.S. Khandeparkar, J.), after hearing learned Advocate for the parties and perusal of the records, was pleased to order issue of show cause notice u/s 12 of the Contempt of Courts Act. Para 11 of the said order reads as under:

11. "The perusal of the records, prima facie, disclose that even though there was an order dated 30th July, 2001 based on the agreement between the parties that the partners of the firm shall not carry on any business on the basis of the trade

marks of the suit firm, the respondent Nos. 1 and 5 attempted to deal with the business on the basis of a mark similar to the trade mark of the suit firm soon after the order dated 30th July, 2001 and, the fact that such an act amounted to violation of the trade mark of the suit firm was confirmed by the learned Single Judge by his order dated 25th and 28th April, 2003 and further confirmed by the Division Bench by its order dated 28th July, 2003."

6. The Court further observed that the conduct of the respondents prima facie, discloses the act of Contempt of Court on the part of the respondents, and therefore, warrants issuance of notice of contempt to the respondents, not only u/s 12 of the Contempt of Courts Act but also in terms of Section 15, the former being on account of violation of the above referred Court's orders and latter being for interference with the property while it was in custodia legis. Pursuant to the said order the office has filed a separate petition being suo motu Contempt Petition No. 1 of 2004 which was placed before the Division Bench and has been admitted On 15th July, 2004.

7. By the said order this Court issued show cause notice to respondents u/s 12 of the Contempt of Courts Act, returnable on 25th February, 2004. Pursuant thereto the answering respondents filed affidavits which are on record. The answering respondent No. 1 in his affidavit dated 8th January, 2004 has denied that he has committed any breach of the order passed by this Court either in his personal capacity or as director of respondent No. 5. He has also denied that he has carried on any business on the basis of any trademark of the firm M/s. Ahmed Omerbhoy. It is alleged that the petition has been filed by the petitioner out of vendetta against him and his family members. According to respondent No. 1, the petitioner himself is in breach of the partnership agreement between himself and the petitioner and the petitioner has carried on the partnership business for his personal gain, to the detriment of the other partners and that the petitioner has commenced competitive business in the name of Omerbhoy Investments Pvt. Ltd., of manufacturing and selling of various oils under different names in competition with the business of the partnership. It is also alleged that the petitioner has siphoned off and/or embezzled large amounts of the partnership business and committed other irregularities and improprieties in conducting the said partnership business and that it was only when the petitioner was confronted with instances of his wrong doings that he issued the notice of dissolution and filed the suit for dissolution of the partnership firm. However, even after filing the suit, the petitioner has continued to manufacture and sell the oil products under the brand names Taj-Brand-Imported R.B.D. Palmolein Oil, and Taj-Brand-Sunflower Refined Oil, which were trademarks of the partnership firm. Respondent No. 1 has also denied that he was in charge of respondent No. 5 company and contends that he holds only 0.06% of the total paid up capital of respondent No. 5. It is pointed out that the allegations contained in the affidavit in support of Notice of Motion No. 2891 of 2001 was only against respondent No. 5 and not against him. Penultimately, respondent No. 1 has prayed that in the event of this Court coming to the conclusion that he has committed contempt of

this Court's order his unconditional apology to this Court be accepted.

8. Riyad Rashid Omerbhoy, respondent No. 3 has also filed affidavit dated 8th January, 2004 on behalf of himself and of respondent Nos. 2, 4 and 5. He too has denied that he has committed contempt of this Hon'ble Court by willfully, intentionally and contemptuously disobeying the order dated 30th July, 2001 and points out that none of the answering respondents, except respondent No. 1 are parties to the above suit, which is for dissolution of the firm viz. M/s. Ahmed Omerbhoy and therefore there could be no question of the respondents having committed contempt of any orders of this Court passed in the above suit. Respondent No. 3 has further denied that the respondents have committed contempt of this Court by willfully, intentionally and contemptuously disobeying the order dated 28th July, 2001 passed in Appeal Lodging No. 522 of 2003 and Appeal Lodging No. 534 of 2003 by using the trademark Mastman and Postiano. It is pointed out that the said order dated 28th July, 2003 passed in Appeal Lodging No. 534 of 2003 does not relate to the answering respondents at all and therefore no question arises of having committed any contempt of the said order. So far as order dated 28th July, 03 in Appeal Lodging No. 522 of 03 is concerned it is pointed out that although the appeal filed by respondent No. 5 was dismissed the stay granted by the Single Judge was extended for a further period of 6 months from the date of the said order in respect of trademark Postiano and the ad interim stay in respect of Mastman was vacated. It is further pointed out by the respondents that they had stopped manufacturing the products under the trademark Mastman with effect from 10th June, 2003 and that the sale was last effected by the 5th respondent in respect of Mastman brand oil on 12th June, 2003. Further the 5th respondent has not manufactured and/or sold any oil in the name of MASTAAN after the aforesaid dates and so far as Postiano is concerned the 5th respondents stopped manufacturing and sale of any oil with effect from 22nd July, 2003 and the said product was last sold by the 5th respondent on 31st July, 2003. It is thus submitted by the respondents that even before the ad interim stay in respect of trade name MASTAAN was vacated with effect from 28th July, 2003, the 5th respondent had stopped manufacturing and selling any products under the said brand name. Similarly after passing of the order dated 28th July, 2003 the 5th respondent stopped manufacturing and selling any oil under the brand name POSTIANO. Finally, it is prayed that in the event of this Court coming to the conclusion that contempt has been committed of this Court's order then the unconditional apology of all the answering respondents be accepted.

9. From the averments as stated in the contempt petition it is clear that the genesis of the alleged contemptuous behaviour of the Answering respondents is in respect of the order dated 30th July, 2001 passed by this Court in Chamber Summons No. 555 of 2001 and Notice of Motion No. 3419 of 2000. More specifically, contempt is alleged to have been committed in view of the order, as reflected in para 19 of the said order which reads as follows:

19. It is also agreed that the partners of the suit firm shall not carry on any business on the basis of the trade marks of the suit firm. The Court Receiver shall however be entitled to take steps that may be necessary to safeguard the trademarks of the firm as also take action against the persons who may be unauthorisedly using the trademarks of the firm."

By the said order dated 30th July, 2001 the appointment of the Court Receiver as Receiver, of the assets of the firm i.e. Ahmed Omerbhoy, which presumably included the trademarks of the said firm was confirmed vide order dated 6th December, 2000.

10. It was only in August/September 2001 that the petitioner discovered that R.R. Omerbhoy Pvt. Ltd., respondent No. 5 had commenced manufacturing, selling, offering for sale, dealing or using the trademark "MASTMAN" which was identical or almost identical or deceptively similar to the brand name "MASTAAN", of which the partnership firm was the registered owner. In view thereof the Court Receiver took out Notice of Motion No. 2841 of 2001 on 8th November, 2001 for injunction restraining respondent No. 5 from manufacturing, selling, offering for sale, dealing or using the trademark "MASTMAN" which was identical or deceptively similar to the brand name "MASTAAN". By the said order this Court (F.I. Rebello, J.), directed Court Receiver by consent of the parties to consult Advocate Mr. Kane to initiate proceedings in respect of the alleged infringement of the trade mark and actual passing of the goods of the firm, against the respondents. Similarly by order of 18th December, 2001 this Court (F.I. Rebello, J.) again directed the Court Receiver to take the opinion of the said Advocate Mr. Kane, and on the basis of his opinion to take appropriate proceedings against the said respondents. On the basis of the opinion received from Advocate Mr. Kane, the Court Receiver filed a suit in this Court being Suit No. 547 of 2003, praying for a perpetual injunction, restraining the defendant Nos. 1 and 8 to 11 therein, by themselves, their directors, servants, dealers, distributors and agents etc. from infringing the trade mark "MASTAAN" which was the property of the partnership firm M/s. Ahmed Omerbhoy. In the said suit Court Receiver took out a Notice of Motion, being Notice of Motion No. 566 of 2003, seeking interim reliefs. A Single Judge of this Court (Bobde, J.) vide order dated 25th and 28th April, 2003 allowed the Notice of Motion in terms of prayer Clause (a) holding that the trade marks "MASTMAN" and "POSTIANO" were deceptively similar to the trademarks "MASTAAN" and "POSTMAN" owned by M/s. Ahmed Omerbhoy and granted injunction on the ground of passing off and infringement. The Court further held that the use of the said marks by the respondent Nos. 1 to 4 through respondent No. 5 was an obvious attempt to circumvent the orders of this Court and that respondent No. 5 had been operated by respondent Nos. 1 to 4 to use deceptively similar trade marks knowing fully well that M/s. Ahmed Omerbhoy has stopped using those marks and also with a view to be relieved of the liability purchasing the marks in the course of sale of the marks upon dissolution and winding up.

11. Appeals from the said order were filed by respondent No. 5 and respondent No. 1, being Appeal Lodging Nos. 522 and 2003 and 534 of 2003, respectively. However, both these appeals were dismissed by two separate orders dated 28th July, 2003 passed by the Division Bench which, also held that the use of the trademarks by respondent Nos. 1 to 4 through respondent No. 5 was an attempt by respondent Nos. 1 to 4 through the instrumentality of respondent No. 5 a company in which respondent Nos. 1 to 4 held shareholdings and strongly disapproved the manner in which respondent Nos. 1 to 4 attempted to circumvent the order passed by this Court on 30th July, 2001, under which all the partners including respondent No. 1 had agreed not to carry on any business on the basis of the trademark of M/s. Ahmed Omerbhoy.

12. It is the submission of learned Advocate for the respondents that in fact there is no breach of any judgment or order or of any undertaking of this Court but even if it is held that there is a breach, then the said breach was not willful or deliberate. It is submitted that the order dated 30th July, 2001 is only an order recording an arrangement by consent of the parties and as such there is no order of the Court. There is only a direction to the Court Receiver to take necessary steps to protect the assets of the firm and also to take action against the persons who may be unauthorisedly using the trademarks of the firm. It was pursuant to the said direction that the Court Receiver has filed suit being Suit No. 547 of 2003 for an injunction against the respondents from infringing the trade marks of M/s. Ahmed Omerbhoy Notice of Motion No. 566 of 2003 was taken out in the said suit and this Court by its order dated 25/28th April, 2003 granted the injunction restraining the respondents from continuing to use the infringed trademarks of the firm by use of deceptively similar trade marks viz. MASTMAN and POSTIANO.

13. It is submitted out that "civil contempt" means "wilful disobedience of any judgment, decree, direction, order, writ or other process of the Court or willful breach of an undertaking given to a Court. It is contended that the order dated 30th July, 2003 which was passed by consent of the parties is not an order of the Court. It is only a record of an agreement between the parties and therefore the provisions of Contempt of Court Act would not be attracted. On the other hand it is contended by the learned Advocate for the petitioner that the order dated 30th July, 2003 is an order invitum. It is an order invited by the parties with a view to buy peace and hence is an arrangement by the parties to bind themselves with the authority of the Court. In view of the fact that both the parties wanted their interim arrangement to have the force of an order of the Court, any infringement of the said order, to my mind, would amount to breach of the order of the Court. However, the question whether the breach amounts to a willful or contumacious disobedience of the order of the Court cannot be answered with any certainty in view of the facts and circumstances of the case.

14. Clause 19 of the said order is an agreement by the parties not to carry on any business on the basis of trade marks of the said firm. The trademarks

adopted by the respondents in carrying out the business of their company viz., R.R. Omerbhoy & Co., are not the trademarks of the firm of M/s. Ahmed Omerbhoy. No doubt, the trade marks adopted by the said respondent No. 5 are trade names deceptively similar to the trademarks of the partnership firm of M/s. Ahmed Omerbhoy but they cannot, to my mind be said to be the trademarks of the firm of M/s. Ahmed Omerbhoy.

15. No doubt the trademarks adopted by respondent No. 5 are trade names deceptively similar to the trademarks of the partnership firm of Ahmed Omerbhoy. Clause 19 prohibits the parties from carrying on business on the basis of the trademarks of the said firm. Clause 19 also enjoins the Court Receiver to take necessary steps to safeguard the trademarks of the firm M/ s. Ahmed Omerbhoy. It was pursuant to this obligation cast upon the Court Receiver that the Court Receiver took out Notice of Motion No. 2841 of 2001 for an injunction restraining respondent No. 5 from using the trade name deceptively similar to the trade names of the firm. The order passed is pursuant to an arrangement by the parties by consent not to carry on any business on the basis of the trademarks of the said firm. The trademarks MASTMAN and POSTIANO adopted by the respondents in carrying on the business of their company viz., R.R. Omerbhoy & Co., are not the trademarks of the firm M/s. Ahmed Omerbhoy, It seems that it is in view of the uncertainty whether the respondents were carrying on business on the basis of the trademark of the firm Ahmed Omerbhoy that this Court by orders dated 30-7-2001 and 18th December, 2001 directed the Court Receiver to obtain opinion of a legal expert as to the nature of action that should be adopted against respondents.

16. It was on the basis of the opinion from Advocate Mr. Kane that the Court Receiver ultimately filed Suit No. 547 of 2003 for infringement of the trademarks of the partnership firm and for injunction preventing respondent No. 5 from passing off the goods of the partnership firm of M/s. Ahmed Omerbhoy as that of respondent No. 5 Company R.R. Omerbhoy. It may be noted that the respondent No. 5 did not carry on business in the trade-names of the partnership firm Ahmed Omerbhoy, viz. MASTAAN and POSTMAN. If the respondent had done so then the petitioner need only have filed a suit for injunction simpliciter to restrain the respondents from carrying on business in the trade-name of M/s. Ahmed Omerbhoy. It was on the advice of a legal expert that the Court Receiver filed a suit for infringement of the trademarks of the partnership firm Ahmed Omerbhoy on the ground of passing of and for injunction and consequential reliefs by way of damages. Thus it can be seen that there was considerable doubt as to whether respondent No. 5 started carrying on business on the basis of the trademark of the firm of M/s. Ahmed Omerbhoy. In the said suit a Notice of Motion was taken out being Notice of Motion No. 566 of 2003 and this Court by order dated 25/28 April, 2003 granted an injunction restraining respondent No. 5 from carrying on business in the trade names MASTMAN and POSTIANO. The Single Judge also made some adverse comments against respondent No. 5 for carrying on the said business in deceptively similar trade names, being fully aware of order dated

30-7-2001, prohibiting the parties from carrying on the business in the trade names of the partnership firm M/s. Ahmed Omerbhoy, as MASTMAN and POSTIANO, were deceptively similar to the trade names MASTAAN and-POSTMAN.

17. It is the case of the respondents that immediately after passing of the said order dated 25/28th April, 2003 they stopped manufacturing or selling the products manufactured by them under the trade name of MASTMAN and POSTIANO. Thereafter the respondents filed an appeal from the said order dated 25 and 28th April, 2003 being Appeal Lodging Nos. 522 of 2003 and 534 of 2003. Pending the said appeals the Appellate Court granted stay of the order of the Single Judge by order dated 28th July, 2003. Subsequent to the dismissal of the appeals stay was granted by the Division Bench against its own order for a period of 6 months from the date of the order. According to the respondents they ceased manufacturing and sale of the product POSTIANO with effect from 22nd July, 2003 i.e. before the order of the Appellate Court itself.

18. Respondent No. 3 in his affidavit on behalf of herself and respondent Nos. 2, 4 and 5 has stated that the 5th respondent has stopped manufacturing the product under the trademark MASTMAN with effect from 18th June, 2003 and the last sale was effected by the 5th respondent of MASTMAN brand oil on 12th June, 2003. Thus the 5th respondent has not manufactured or sold any oil in the trade name MASTMAN after the aforesaid dates i.e. 18th June, 2003. So far as trade name POSTIANO is concerned, the 5th respondent stopped manufacturing with effect from 22nd July, 2003 and the product was last sold by the 5th respondent on 31st July, 2003. It is submitted by the said respondent that even before the ad interim stay was vacated in respect of POSTIANO, the 5th respondent stopped manufacturing and selling any products under the brand name and immediately after passing of the order, the 5th respondent stopped manufacturing or selling the goods under the brand name POSTIANO. This has not been controverted by the petitioner by filing any rejoinder. However, the petitioners have sought to justify the filing of the petition belatedly on the basis of three purchase memos which are at Exhibits J, K and L to the said petition.

19. Exhibit J is a copy of the credit memo from "The Willingdon Sports Club dated 30th August, 2003 wherein Item No. 3 shows sale of POSTIANO 1 kg. Exhibit "K" is a copy of the receipt from Janta Grain store dated 12th September, 2003. Item 3 of the said receipt shows the sale of POSTIANO while Exhibit "L" is a receipt dated 29th August 2003. Item No. 7 shows the sale of MASTMAN. It is thus sought to be argued that even after orders of this Court the respondents have continued the business of selling their products under the trade names MASTMAN and POSTIANO. Clearly these receipts do not take the case of the petitioner any further as the said receipts are from retailers. Obviously, the retailers would have some stock available with them even after the respondents stopped manufacturing the products MASTMAN and POSTIANO. Thus from the averments in the petition and uncontroverted statement in the affidavits filed by the respondents in response to the show cause notice it will be seen that the

respondents did not carry on the business of manufacture and sale of their products in defiance of the courts orders.

20. The respondent No. 5 company had admittedly carried on their business in the trade names of MASTMAN and POSTIANO. A Single Judge of this Court by orders dated 25/28th April, 2003 and the Division Bench by order dated 28th July, 2003 held that these trade marks were deceptively similar to the trade marks of partnership firm of M/s. Ahmed Omerbhoy viz., MASTAAN and POSTMAN and therefore were guilty of passing off. The respondents were by the aforesaid order restrained from using the deceptively similar trade marks. The respondents have denied that they were carrying on the business in the trade names of the partnership firm Ahmed Omerbhoy and contend that it was with a view to obviate the use of these trademarks that they obtained the opinion of trade marks experts that the trade marks which they purported to adopt for the sale of their products would not be deceptively similar to the trademarks of Ahmed Omerbhoy. Reference is made by respondent No. 3 in his affidavit dated 18-3-2004 to the opinion obtained by the respondents from a Patent and Trademark Attorney stating that the Trademark MASTMAN did not appear to be similar to MASTAAN. In respect of POSTIANO respondent No. 5 obtained the opinion of Mr. T.N. Daruwala, partner of Jehangir Gulabbhai who opined that the mark "POSTIANO" is not similar to any other mark including POSTMAN. Whether obtaining the opinion of these experts could be considered as further evidence of willfulness on the part of the respondents to cash in on the trade name of the partnership firm of M/s. Ahmed Omerbhoy is a matter for debate. Whether the petitioners wittingly or unwittingly carried on the business in trade names which are deceptively similar to that of the partnership firm of Ahmed Omerbhoy is doubtful. It was in view of some doubt in the interpretation of Clause 19 of the said order dated 30th July, 2001 that this Court directed, the Court Receiver to obtain the opinion of a legal expert and pursuant to the said opinion, the Court Receiver filed the suit for infringement of trademarks and for passing off and not a suit for an injunction simplicitor restraining the respondents from carrying on business in the trade name of the partnership firm of M/s. Ahmed Omerbhoy. It is not the case of the petitioner that the respondents have carried on business in the trade names of the erstwhile partnership firm Ahmed Omerbhoy, viz., MASTAAN and POSTMAN. If the respondents had used the trade marks MASTAN and POSTMAN they would have been clearly in breach of the order dated 30th July, 2001 passed by this Court, albeit by consent.

21. The petitioners have prayed that the respondents be convicted and detained in civil prison for having committed contempt of the orders of this Court by willfully, intentionally and contemptuously disobeying this Court order dated 30th July, 2001. Contempt proceedings are quasi criminal in nature. The guilt of the accused or contemnor has to be proved beyond reasonable doubt. The respondents had before the Single Judge, as well as before the Appellate Court prayed that they be allowed to modify the design and the packaging of their products so as not to infringe the trademarks of the partnership firm, which

request of course was turned down as being belated. No doubt the Single Judge as well as the Division Bench of this Court have held the respondents guilty of having acted willfully and contemptuously in infringement of the Court order dated 30-7-2001 but that was in a suit for passing off and for damages. From the above discussion it is clear there is some doubt whether the respondents carried on business on the basis of the trade mark of the partnership firm of Ahmed Omerbhoy. It therefore cannot be said with any degree of certainty that the respondents deliberately carried on business on the basis of the trade mark of the Ahmed Omerbhoy and thereby committed breach of the order of this Court dated 30th July, 2001. In these circumstances the respondents are entitled to have benefit of doubt and therefore cannot be held criminally liable. It may also be pointed out that the suit for infringement and passing off is pending. In the said suit the plaintiffs/petitioners have claimed damages. The question whether the respondents are liable to pay damages for passing off their products as that of their erstwhile firm of M/s. Ahmed Omerbhoy will be decided in that suit. The respondents stopped manufacturing and selling their products in the names MASTMAN and POSTIANO immediately on passing of orders by the Single Judge and Division Bench. The respondents have also tendered their unconditional apology in the event of this Court holding them guilty of infringing the order dated 30-7-2001, which order directed the Court Receiver to take steps to protect the property of the firm of Ahmed Omerbhoy including its trade marks pursuant to which the Court Receiver has filed the suit for passing off. Clearly the petitioners cannot claim any right to damages in respect of the alleged contempt by the respondents. The facts of the case do not warrant any action under the Contempt of Courts Act.

22. Hence petition dismissed. Show cause notice stands discharged. Bond executed by the respondents to stand discharged.

23. Certified copy expedited.