

(2018) 09 MP CK 0042

In the Madhya Pradesh High Court

Case No : Misc. Criminal Case No. No. 11442 Of 2011

Manish Surekha & Anr

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 18-09-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 216, 482
Indian Penal Code, 1860 — Section 420
Copyright Act, 1957 — Section 51, 57, 63
Trademark Act, 1999 — Section 104

Citation : (2018) 09 MP CK 0042

Hon'ble Judges : Anjuli Palo, J

Bench : Single Bench

Advocate : Dinesh Upadhyay, Shahin Fatima

Final Decision : Dismissed

Judgement

This petition under Section 482 of Cr.P.C. has been filed by the petitioners challenging the order dated 14.09.2011, passed by Sessions Judge, Damoh in Criminal Revision No. 100/2011, arising out of the order dated 08.07.2011 passed by the CJM, Damoh, in Criminal Case No. 935/2010.

2. In brief the petitioners' case is that, on 14.11.2009 the complaint of Rajendra Singh, Police Station Kotwali, Damoh seized duplicate auto parts namely filter (130 pieces), rings (99 pieces), SURB bearing (63 pieces), plugs micro (39 pieces) worth Rs. 46,676/- from the petitioners' shop and registered offences under Section 420 of IPC and Section 51/63 of the copyright act against the petitioners. Charge-sheet has been filed before the Court. The trial Court framed charges under Section 420 of IPC and 51 r/w 63 of the copy right Act. Being aggrieved by the aforesaid order, petitioners have filed this revision before the Sessions Court Damoh. By the impugned order dated 14.09.2011 the Sessions Judge Damoh disposed of the criminal revision by directing the CJM, Damoh to frame charges under Section 420 of the Indian Penal Code and Section 104 of

the Trademark Act.

3. The petitioners challenged the impugned order on the grounds that, the learned Courts below committed illegality while framing the charge without any ingredients of the aforesaid offences. Petitioners further submitted that, they are shopkeepers and have been selling the auto-parts after purchasing from Apollo Distributors. They are not manufacturing the auto parts. In support of their contentions, they have filed the bills and TIN number. Investigating agency has not taken the statements of the purchaser nor registered the case against the manufacturer. Sessions Court has no jurisdiction to alter the charge under special law. Hence, the petitioners prayed to set aside the impugned order passed and also pray to discharge the petitioners from the charges levelled against them.

4. Heard learned counsel for the parties finally at the motion stage. Learned Government Advocate vehemently opposed the contentions of the petitioner. Perused the record.

5. After considering the entire record, this Court finds that FIR has been lodged by Rajendra Singh, Manager of Consultant India Pvt. Ltd. under Section 420 of IPC and Section 57/63 of the Copy Right Act.

6. Prima facie, there is sufficient material to frame charges against the petitioners under Section 420 of IPC and Section 104 of Trademark Act. Question of facts are also involved in the case whether the petitioner purchased duplicate parts from another firm or after tagging duplicate particulars on the products. It is pertinent to note that, in the memo of petition, no objection has been raised by the petitioners that he was selling these articles as genuine parts. Hence, mix question of law and facts are involved in this case which are matter of evidence, which can be adjudicated by the trial Court at appropriate stage.

7. Under Section 216 of Cr.P.C. every Court has powers to alter the charges at any stage of the trial. Hence, impugned order passed by the Sessions Court cannot be treated to be beyond its jurisdiction. Hence, it is not an abuse of process of law. It is settled principle of law that charge can be framed prima facie on the material available on record. On the basis of strong suspicion also charge can be framed. At this time, defence taken by the accused cannot be considered. It can be considered at appropriate stage i.e. defence stage.

8. In case of State of Orissa vs. Debendra Nath Padhi reported in (2003) 2 SCC 711, the Hon'ble Supreme Court has held as under :

"From the above judgments referred to by the learned counsel for the appellant, it is clear that all that the court has to do at the time of framing a charge is to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of the materials placed before it by the investigating agency. There is no requirement in law that the court at that stage should either give an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage."

9. Though, it is open to a High Court to entertain the petition under Section 482 of Cr.P.C to quash charges framed by the trial Court, but the same cannot be done by weighing the correctness or sufficiency of evidence. In case of prayer for quashing of the charge, the principle to be adopted should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.

10. It is not open for the High Court to embark upon an enquiry whether the evidence is reliable or not. For quashing a criminal proceeding, the Court has only to consider the complaint, initial statement of complainant and other connected documents and nothing can be added to or subtracted from them. The documents sought to be brought on record by the defence cannot be looked into. This function is clearly within the domain of the trial Court unless there are compelling circumstances choking the conscience of the Court.

11. In the case of Chirag M. Pathak and others Vs. Dollyben Kantilal Patel and others (2018) 1 SCC 330 the Hon'ble Supreme Court has held that:-

"High Court, in exercise of its power under Section 482 of Cr.P.C., cannot undertake a detailed examination of facts contained in FIR, by acting as an appellate court and draw its own conclusion. It is only when no prima facie cognizable offence is made out of its mere reading due to absurdity in allegations."

12. Hence, in the light of the principle laid down by the Hon'ble Supreme Court and looking to the facts and circumstances of the case, the petition is not liable to be allowed. Accordingly, the petition stands dismissed at motion stage.