

(2011) 10 DEL CK 0153

In the Delhi High Court

Case No : Criminal M.C. No. 1013 of 2010 and Criminal M.A. 3643 of 2010

New Hariom Industries and Another

APPELLANT

Vs

Dandi Salt P. Ltd.

RESPONDENT

Date of Decision : 03-10-2011

Acts Referred:

Copyright Act, 1957 — Section 63

Citation : (2011) 9 AD 33 : (2011) 48 PTC 231

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : V.P. Gahiraiya, for the Appellant; Vikas Khera, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—By this petition, the Petitioner confines his relief to quashing of FIR No. 240/2009 u/s 63 of the Copyright Act registered on the complaint of the Respondent. Though in the petition other reliefs such as direction to the Respondent not to conduct raid at his business premises have also been sought, however said prayers have not been pressed during arguments.

2. Learned Counsel for the Petitioner contends that both the parties are carrying on business at Gujarat and are well-known to each other. Despite knowledge about the Petitioners, search warrants were taken against unknown persons. Subsequently, even the copyright of the Respondent has been cancelled and thus it cannot claim violation of the copyright qua the Petitioners. Learned Counsel for the Petitioner contends that no document has been filed by the Respondent to show that it was a prior user. Even perusal of the two labels show that there is nothing common and the two labels are clearly distinct in colour and design. Further, in the complaint nothing has been placed except the labels and hence it cannot be proved that there was deceptive similarity.

3. Learned Counsel for the Petitioners relies upon Sh. Churiaram Aggarwal and Anr. v. M/s Aggarwal Sweet Corner and Anr. 1990 PTC 175 and Pramod Kumar

Bhandari v. State 1996 PTC (16) to contend that when warrants are obtained against unknown persons such search warrants are liable to be quashed.

4. Learned Counsel for the Respondent on the other hand contends that the raid was conducted at the railway yard where the goods were stored. The Respondent did not know who was the actual manufacturer and there is no evidence placed on record by the Petitioners as well to show that the Respondent was aware of the manufacturer. The Respondent was the registered copyright owner at the relevant time and thus the FIR was rightly registered. There is no document placed on record to show that the Petitioners were the prior user or registered owner of the copyright. Reliance is placed on Sumeet Machines Private Ltd. Nasik and Ors. v. Sumeet Research and Holding Ltd. and Ors. 1993 PTC 75 to contend that under the Copyright Act there is no prohibition and both civil and criminal actions can be instituted simultaneously as both the actions are not mutually exclusive but clearly co-extensive and quite different in content and consequences.

5. I have heard Learned Counsel for the parties. The facts as set out in the FIR registered on the complaint of the Respondent are that it is an old established company having countrywide manufacturing, marketing and sale of salt since 2000. The Respondent adopted the trademark/label "Dandi" in respect of salt and other related auto parts and has been continuously using the same. The word ""Dandi"" has been derived from the Respondent's trade name and is a substantial and essential part of the tradename M/s Dandi Salt Pvt. Ltd. The Respondent had created and adopted an artistic wrapper/packaging in the year 2000 which was continuously used by them. The wrapper/packaging of the Respondent is unique in its feature/make-up/goodwill and production in the business of salt using the trademark Dandi and Dandi label. The Respondent had applied and the label of the Respondent was duly registered under the provisions of Indian Copyright Act, 1957. The Respondent further claimed to be the proprietor of the said trademark/label in respect of the said goods on account of its prior adoption and continuous user being the originator and owner of the dandi label. According to the Respondent some unscrupulous manufacturers/traders/persons/firms unknown to the Respondent had brought the goods through goods-train, which were lying in the railway yard, Aadarsh Nagar, Delhi under the false trademark/label/copyright/packaging thus violating the Respondent's trademark/copyright and its proprietary right therein. Thus it was alleged that the accused has harmed the goodwill and reputation of the company. On the basis of the said complaint search warrants were issued and on recovery of the goods the abovementioned FIR was registered. The principal contention of the Petitioners is that Respondent knew the Petitioners as both of them were manufacturing and selling goods in Gujarat, it could not have obtained warrants against unknown person and thus the search warrants and the consequent registration of FIR thereon is liable to be quashed on this ground itself.

6. In Churiaram Aggarwal (supra) this Court quashed the search warrants as that the Petitioner therein was running his trade in a different name from the trade-name of the Complainant and the Complainant was well aware of the business being run by the Petitioner/Accused in the said case which fact was admitted by the Complainant. Despite the same, he took general search warrants. The business therein was of sweets having display board and did not relate to the goods lying here and there. Thus the facts of Churiaram Aggarwal (supra) are not applicable to the facts of the present case. Further this Court took due note of the fact that the Magistrate takes cognizance of an offence and not an offender but held that where offenders were known, the complaint should not be filed against unknown persons. Similarly, in Pramod Kumar Bhandari (supra) relying on Churiaram Aggarwal (supra) this Court held that the Petitioner therein was not carrying on business clandestinely to justify issuance of a general search warrant. Thus the facts of the two cases are not applicable to the present case.

7. In the present case the goods were lying unidentified at the railway yard and thus the Respondent was justified in taking search warrants against unknown persons. Further even assuming that the search warrants were illegally obtained, it is well-settled that the evidence collected pursuant to an illegal search does not become inadmissible in evidence during trial. In Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, the Constitution Bench of the Hon'ble Supreme Court held that in a criminal trial the evidence collected even pursuant to an illegal search is not rendered inadmissible in evidence. Their Lordships held:

24. So far as India is concerned its law of evidence is modelled on the rules of evidence which prevailed in English Law, and Courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. In Barindra Kumar Ghose v. Emperor, ILR 37 Cal 467:7 IC 359 the learned Chief Justice Sir Lawrence Jenkins says at pt page 500:

Mr. Das has attacked the searches and has urged that, even if there was jurisdiction to direct the issue of search warrants, as I hold there was, still the provisions of the Code of Criminal Procedure have been completely disregarded. On this assumption he has contended that the evidence discovered by the searches is not admissible, but to this view I cannot accede. For, without in any way countenancing disregard of the provisions prescribed by the Code, I hold that what would otherwise be relevant does not become irrelevant because it was discovered in the course of a search in which those provisions were disregarded. As Jimutavahana with his shrewd common sense observes ? a fact cannot be altered by 100 texts,? and as his commentator quaintly remarks: ?If a Brahmana be slain, the precept ?slay not a Brahmana does not annul the murder?. But the absence of the precautions designed by the Legislature lends support to the argument that the alleged discovery should be carefully scrutinized.

In Emperor v. Allahdad Khan, ILR 35 ALL 358:19 IC 332 the Superintendent of

Police and a Sub-Inspector searched the house of a person suspected of being in illicit possession of excisable articles and such articles were found in the house searched. It was held that the conviction of the owner of the house u/s 63 of the United Provinces Excise Act, 1910, was not rendered invalid by the fact that no warrant had been issued for the search, although it was presumably the intention of the Legislature that in a case u/s 63, where it was necessary to search a house, a search warrant should be obtained beforehand. In *Kuruma v. Queen*, 1955 AC 197 where the Privy Council had to consider the English Law of Evidence in its application to Eastern Africa, Their Lordships propounded the rule thus:

The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how it was obtained.

8. Thus on the ground that the search warrants were allegedly got issued illegally against unknown persons, the FIR in question cannot be quashed. I find no merit in the present petition. Petition and application are dismissed.