
(2016) 09 BOM CK 0098

In the Bombay High Court

Case No : Criminal Revision Application No.163 of 2004.

Perfetti Van Melle India Pvt. Ltd., A Registered Company under the Companies Act, having its Registered Office at : D-62, Defence Colony, New Delhi 110 024 Through its Senior Executive(Legal) Shri Anand Devraj Tiwari, Age: 29 years - Applicant @HASH The S

Date of Decision : 01-09-2016

Acts Referred:

Copyright Act, 1957 — Section 51, Section 63
Criminal Procedure Code, 1973 (CrPC) — Section 239
Trade and Merchandise Marks Act, 1958 — Section 77, Section 78, Section 79

Citation : (2016) ALLMRCri 4913

Hon'ble Judges : N.W. Sambre, J.

Bench : Single Bench

Advocate : Mr. Amol S. Sawant, Advocate, for the Applicant; Mr. K.D. Munde, A.P.P, for the Respondent No. 1; Mr. M.H. Patil, Advocate, for the Respondent Nos. 4 and 5

Final Decision : Dismissed

Judgement

N.W. Sambre, J.(Oral) - Pursuant to the complaint filed by the representative of the applicant-Company, Crime No. 3032 of 2000 came to be registered for an offence punishable under section 77, 78, 79, 21(2) of the Trade & Merchandise Marks Act, 1958 (hereinafter shall be referred to as the "Trade Marks Act") and Section 51 and 63 of the Copyright Act, 1957.

2. The complaint as is lodged speaks of following facts :

The applicant is the producer of Toffies, bubbles and candies and also engaged in the business of selling the same. It is then claimed that, the Italian Company Perfetti S.P. is helping the applicant Company to produce and sell "Alpenliebe" candies w.e.f. 1995. It is then claimed that in September, 1999, it was noticed by the applicant that when Kasturi Fine Foods (I) Pvt. Ltd., and Atlantic Confectionery Private Limited, situated at Dhule are marking Narial Indich in a similar label to that of one used by the applicant and as such there is infringement of Trade Marks Act and Copyright Act. As such, same has resulted

into registration of crime in question.

3. So far as the above referred crime is concerned, the same was preceded with suit for injunction bearing No. 1 of 1999 initiated at District Court, Dhule, against the respondent-accused, which I am informed that the said suit came to be disposed of with certain observations as regards recalling of goods, disposal of the same etc. As such, civil proceedings have already attained finality under both the above referred statutes i.e. Trade Marks Act and Copyright Act.

4. The respondent-accused thereafter moved an application under Section 239 of the Code of Criminal Procedure seeking discharge on 29th August, 2000 and learned Magistrate vide order below Exh. 16 i.e. application for discharge, has allowed the same on 2nd January, 2004.

5. The reason for allowing the said application is that the applicant has failed to disclose any registration under Trade Marks Act. Apart from above, what is noticed by the Magistrate is, there is no iota of evidence to prima facie infer the constitution of offence under both the above referred statutes.

6. As such, original complainant-applicant herein has questioned the order of discharge on merits.

7. This Court, on 22nd November, 2004, has admitted the present revision based on the certain judgments cited by the applicant so as to substantiate that the registration under the Copyright Act is not required.

8. In the above referred background, Mr. Sawant, learned Counsel for the applicant would urge that the application for discharge has been allowed by the learned Magistrate contrary to the scheme of both the statutes, as according to him, there is prima facie material before learned Magistrate to constitute the commission of offence under the relevant provisions. He would then urge that the respondents-accused are required to be stand to trial.

9. Learned A.P.P. supports the above referred submissions of the learned Counsel for the applicant.

10. Learned Counsel for respondents-accused has tried to demonstrate that maximum punishment has been provided is three years for the offences under both the statutes. He would then urge that looking to the fact that the alleged offence came to be registered on 15th May, 2000, the prosecution of the respondents, particularly looking to their age, will hardly serve any purpose, as there is no subsequent complaint from applicant that respondents-accused have involved in similar types of offences. He would then submit that perusal of the record of the present case would also depict that the applicant has not placed on record any material to infer as regards constitution of offence under relevant provisions of both the statutes, as neither material for demonstrating Copyright nor evidence for substantiating the claim under Trade Marks Act is brought on record.

11. Having bestowed my thoughts to the submissions made, Mr. Sawant, learned Counsel for the applicant was right in pointing out that the application under the provisions of Sections 23 of the Trade Marks Act of 1958 came to be moved on 24th July, 1992 and even though same is granted subsequent to the date of offence, however, such registration relegates back to the date of application and as such, the applicant holds appropriate registration of the goods in question under the provisions of Trade Marks Act.

12. This takes me to the next point as regards the offence under the relevant provisions. Section 29 of the Trade Marks Act provides for infringement of registered trade mark and Section 31 provides for registration under the Act to be prima facie evidence of validity of such Trade Mark. Section 77 of the Act provides for falsifying and false supply of Trade Mark as is alleged in the present case and Sections 78 and 79 provide for penalty of applying false Trade Marks, description etc. which is punishable with maximum period of two years and fine and in exceptional cases below six years. So far as Section 79, which provides for penalty for selling goods to which false Trade Marks or false description is supplied, is punishable for a period of 3 years and fine.

13. It is required to be noted that though the registration qua Trade Mark brought on record, however, there is hardly any material placed on record, much less copy of charge-sheet so as to constitute offence under the Copyright Act or claim as has been alleged in the first information report, commission of crime under the Trade Marks Act.

14. Apart from above, this Court is required to take judicial note of the fact that the suit being No. 1 of 1999 is already disposed of way back.

15. Having regard to the fact that the offence is punishable with maximum of three years and fine, in my opinion, the respondents-accused have suffered for a period of sixteen years, as present proceedings are pending against them as hanging sword. In my opinion, there is also sufferance of respondents-accused.

16. The civil suit has already attained finality, as the applicant has not questioned the verdict of the civil suit.

17. In my opinion, no case for exercising revisional jurisdiction, at this stage, is made out. As such, Criminal Revision Application fails and stands rejected.