

(2007) 01 DEL CK 0199

In the Delhi High Court

Case No : Criminal M.C. No. 3611 of 2000

Shri Pawan Kumar

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4
Copyright Act, 1957 — Section 63, 68

Citation : (2007) 136 DLT 723 : (2007) 35 PTC 738

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Swarn Rajan, for the Appellant; D.N. Tripathi and M.N. Dudeja, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Sikri, J.—Sh. Ganeshi Lal Bagla s/o Sh. Nanumal Bagla (respondent No. 2) claiming himself to be the owner of Bagla & Co. (respondent No. 3 herein) lodged FIR 70/99 dated 5.3.99 stating therein that he as owner of Bagla & Co. was manufacturing nail polish with trade mark "Bagla" and Sh. Janinder Kumar Bagla and his sons (accused persons) were manufacturing the same product under the same trade mark "Bagla" and, Therefore, were infringing the complainant's rights in the said trade mark. On the basis of this complaint, premises of the accused persons were raided and thereafter, charge-sheet was filed. The learned MM took cognizance of the said complaint and issued summons to Sh. Pawan Kumar son of Sh. Janinder Kumar Bagla, the petitioner herein. The petitioner has challenged this act of the learned MM and wants quashing of the proceedings arising out of FIR No. 70/99 and with that end in view, present petition is filed.

2. The case of the petitioner is that he has right to manufacture nail polish by using the firm name/trademark/copyright "Bagla" and he, by doing so, is not committing any offence. This claim of the petitioner is founded on the averments that he and the complainants are the legal heirs of Sh. Nanumal Bagla, who had

started the business of manufacturing and sale of cosmetics, including nail polish under the trade name/trademark/copyright "Bagla & Co." He used the same continuously as proprietor till the year 1963 when he went missing and thereafter was not found. His properties including the firm name/trademark/copyright "Bagla" were as such jointly inherited by his legal heirs. There was no partition of his properties nor did he leave any Will or any instrument of succession. Nanumal Bagla had two sons, namely, Janinder Kumar Bagla and Ganeshi Lal Bagla apart from daughters with whom we are not concerned. The complaint is filed by Ganesh Lal Bagla against Janinder Kumar Bagla and his sons.

3. It is stated in the petition that the respective wings of the family of Sh. Nanumal Bagla, namely, Sh. Janinder Kumar Bagla (father of the petitioner) and Sh. Ganeshi Lal Bagla, respondent No. 2 and alleged proprietor of respondent No. 3 have locked horns in three civil suits in this Court over the rights and interests of the said firm name/trade mark/copyright "Bagla" and the right to restrain the other from using the same. The respondent No. 2 has claimed exclusive rights in the firm name/trade mark/copyright "Bagla & Co." including the right to restrain the petitioners.

4. It is further stated that on 14.10.97 M/s. Bagla Cosmetics filed a civil suit being Suit No. 2138/97 in this Court against one M/s. Bagla Cosmetics alleging, inter alia, violation of the firm name M/s. Bagla Cosmetics by the defendant, and praying for inter alias permanent injunction to restrain the impugned user qua passing off along with consequential reliefs of accounts etc. Interestingly, the written statement was filed by Sh. Ganesh Lal Bagla on behalf of Bagla & Co. and not Bagla Cosmetics. The petitioner is the partner in the firm M/s. Bagla Cosmetics, which was initially the proprietorship firm of his father Sh. Janinder Kumar Bagla and is now a partnership firm of his two sons. On 3.11.1997 Bagla & Co. through the respondent No. 2 filed a civil suit being Suit No. 2296/97 in this Court against the petitioner (M/s. Bagla Cosmetics) claiming its own rights in the firm name/trade mark/copyright "Bagla" and seeking to restrain its use by the petitioners by way of a permanent injunction alleging passing off, including consequential relief of accounts etc.

5. It is further stated that in the aforesaid suits, the respective parties prayed for interim injunction. The petitioner had also filed an application under Order 39 Rule 4 CPC for vacation of the ex parte ad interim injunction dated 22.3.99 passed in Suit No. 2296/97. The learned Single Judge of this Court vide order dated 26.5.2000 decided the interim injunction applications.

6. As pointed out above, the respondents No. 2 and 3/complainants have alleged that they have exclusive right to use the firm name/trade name "Bagla" in which they have copyright as well and user thereof by the petitioners not only amounts to infringement but is a criminal act as well for which the complaint is filed alleging violation of Section 63/68 of the Copyright Act.

7. The facts noted above would, however, disclose that the petitioners are not

the strangers. The petitioners like the complainant are the descendants of Sh. Nanumal Bagla and they claim that they have also right to use the same trade name "Bagla" which they have inherited from Sh. Nanumal Bagla. What is more important is the order dated 26.5.2000 passed by the learned Single Judge of this Court. By the said order, interim injunction applications filed in two cross-suits by both the parties against each other have been decided and it is held that both the parties have right to continue to transact business in the name and style "Bagla & Co." Operative portion of the order dated 26.5.2000 reads as under:

In my view it is not permissible at this stage, to lose sight of the fact that the two adversaries are offshoots of the original family business commenced by the patria namely Nanu Mal Bagla in 1985. The business is the same and had been jointly carried out by Nanu Mal Bagla and his two sons. It cannot be held at this stage which part of the Bagla family was transacting business in the style of Bagla Cosmetics. It is also not possible at this stage to return a decisive and unequivocal finding as to which of the rival factions of the family has been doing business after the disruption of the family business due to the disappearance of Sh. Nanu Mal Bagla. As has been clearly set down by the Apex Court in Sohan Lal's case (*supra*), both factions would be entitled to use of the family name "Bagla". Neither of the parties are entitled to injunct the other from transacting business by employing the family name "Bagla". The partnership firm "Bagla Cosmetics" of which Sh. Navin Kumar and Pawan Kumar Bagla sons of Jaininder Kumar Bagla and grandson of Nanu Mal Bagla shall be entitled to continue to transact business in the name and style "Bagla Enterprises". Sh. Ganesh Lal Bagla son of Nanu Mal Bagla and sole proprietor of "Bagla & Co." may continue to transact business in the name and style "Bagla & Co."

8. In view of the civil disputes pending between the parties and the aforesaid view taken by this Court, though deciding interim applications but permitting both the parties to continue to transact business in the name and style "Bagla & Co.", it cannot be said that by manufacturing nail polish under the trade name "Bagla" the petitioners are violating the copyright of the respondents/complainants and thus, *ex facie*, the FIR u/s 63/68 of the Copyright Act would not be maintainable. I may point out here that the respondents have staged after the orders passed by the learned Single Judge of this Court, the petitioners have copied yet another brand of the respondents being trade marks "Siana, London" and "Diana, London" and in respect thereof also complaints are pending. However, we are concerned here with the trade mark/trade name "Bagla & Co." and as of today in view of the judgment of this Court in the suit, it cannot be said that violation of Section 63/68 of the Copyright Act is made out. The summoning orders issued against the petitioner herein are quashed and the complaint is dismissed.

9. The petition is disposed of.