

Vishwa Mitter of M/S. Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot

Vs

O. P. Poddar and Others

Criminal Appeal No. 516 of 1983

(D. A. Desai, A. N. Sen JJ)

30.09.1983

JUDGMENT

DESAI, J. -

1. Appellant Shri Vishwa Mitter, a dealer in beedies and cigarettes as also the constituted attorney of M/S Mangalore Ganesh Beedies Works, Mysore filed a complaint in the Court of Sub-Divisional Magistrate, First Class, Pathankot on December 6, 1977 complaining of commission of offences by the four respondents impleaded as accused under Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958 ('Act' for short) and Section 420, IPC. It was alleged in the complaint that the principals of the complainant M/s Mangalore Ganesh Beedies Works, Mysore are the registered owners of four trade marks in respect of beedies manufactured by them. The name under which beedies manufactured by the principals of the complainant are sold in the market is 'Mangalore Ganesh Beedies' having a registered trade mark in the wrapper being pink colour wrapper containing the motif of Lord Ganesha and the numeral '501'. One additional registered trade mark used by the manufacturers of the beedies is the 'Ganesh Beedies' wrapped in a wrapper as mentioned above and bearing a multicolour seal label containing the numeral '501' at its centre. The owners of the registered trade mark came to know that respondent No. 4 - M/s Shri Ganesh Beedi Works, Chakradharpur, Bihar were guilty of infringing the trade mark by using a wrapper and seal label identical with or deceptively similar to the registered trade mark and the principals of the complainant filed a suit complaining of infringement and passing off against the fourth respondent. There was a prayer for perpetual injunction in the suit. The suit ended in a decree in favour of the owners of the registered trade mark. Somewhere in August, 1977, the complainant who is a dealer in the beedies manufactured by the owners of the registered trade mark came to know that the fourth respondent was selling beedies of inferior quality after wrapping them in a wrapper and using the trade mark deceptively similar to that of the registered trade mark. A complaint thereupon was filed which led to the seizure of some goods. Subsequently, the complainant came to know that the fourth respondent in league with the second and third respondents were storing for sale and selling beedies of inferior quality wrapped in deceptively similar wrapper and were thereby infringing the registered trade mark despite the injunction of the Court. It was alleged that respondents Nos. 1 to 3 knowing of the registered trade mark in favour of the principals of the complainant were storing for sale and selling beedies of inferior quality manufactured by the fourth respondent and wrapped in wrappers falsifying the registered trade mark and thereby it was alleged that respondents committed offences under Sections 78 and 79 of the Act and Section 420 of the IPC.

2. On this complaint being filed after a preliminary enquiry, the learned Magistrate directed process to be issued to the accused. The accused moved revision petition in the High Court of Punjab and Haryana at Chandigarh with a request to quash the proceedings. The learned single Judge of the

High Court accepted the revision petition on the narrow ground that the order issuing the process is not a speaking order and directed the learned Magistrate to consider the question of issuing process afresh. When the matter came back to the learned Magistrate, he after hearing the parties held that no case was made out for issuing the process and proceeded to dismiss the complaint. The reasons which impelled the learned Magistrate to reach the aforementioned conclusion may better be extracted in his own words :

That complainant who has filed the present complaint is not the holder of the trade mark which is said to have been impugned by the accused, in collaboration with each other. He is only a sub-dealer of M/s Mangalore Ganesh Beedies Works, Vinoba Road, Mysore, and there must be hundred and thousand dealers of this firm like him. It is only M/s Mangalore Ganesh Beedies Works, who are holders of the trade mark and it is only they who are competent to file the complaint against the accused. The complainant has got no cause of action, because the trade mark which is impugned by the accused does not belong to him, but belongs to M/s Ganesh Beedies Works, Mysore, Karnataka State. As no trade mark of the complainant has been violated by the accused as he is only a sub-dealer and not holding any trade mark, I find no reason absolutely to issue the process and the complaint is hereby dismissed.

The complainant moved the High Court of Punjab and Haryana in Revision Petition No. 652 of 1980, which was dismissed in limine. Hence this appeal by special leave.

3. The reasons which appealed to the learned Magistrate to come to the conclusion that the complaint filed by the complainant cannot be entertained because he is not the registered owner of the trade mark is clearly erroneous.

4. Section 4 of the Code of Criminal Procedure, 1973 provides for trial of offences under the Indian Penal Code and other laws. Sub-Section (1) of Section 4 deals with offences under the Indian penal Code. Sub-section (2) of Section 4 provides that all offences under any other law (other than offences under the Indian Penal Code) shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Fasciculus of sections included in Chapter XIV of the Criminal Procedure Code set out conditions requisite for initiation of proceedings. Section 190 provides for cognizance of offence by Magistrates which inter alia provides that subject to the provisions of Chapter XIV, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence - (a) upon receiving a complaint of facts which constitute such offence;... Section 190 thus confers power on any Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitute such offence. It does not speak of any particular qualification for the complainant. Generally speaking, anyone can put the criminal law in motion unless there is a specific provision to the contrary. This is specifically indicated by the provision of sub-section (2) of Section 4 which provides that all offences under any other law - meaning thereby law other than the Indian Penal Code - shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It would follow as a necessary corollary that unless in any statute other than the Code of Criminal Procedure which prescribes an offence and simultaneously specifies the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, the provisions of the Code of Criminal Procedure shall apply

in respect of such offences and they shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure. One such provision in the Code of Criminal Procedure is Section 190 which empowers any Magistrate of the class specified therein to take cognizance of any offence upon receiving a complaint of facts which constitutes such offence. If after taking cognizance of an offence it is permissible under Section 192, such Magistrate may make over the case to other Magistrate therein specified. Therefore, from a combined reading of Section 4(2) with Section 190 of the Code of Criminal Procedure, it transpires that upon a complaint filed by a person setting out facts therein which constitutes the offence before a Magistrate specified in Section 190, the Magistrate will be competent to take cognizance of the offence irrespective of the qualifications or eligibility of the complainant to file the complaint. It must, however, be conceded that where a provision to the contrary is made in any statute, which may indicate the qualification or eligibility of a complainant to file the complaint, the Magistrate before taking cognizance is entitled and has power to inquire whether the complainant satisfies the eligibility criteria. One illustration would indicate what can be a provision to the contrary as contemplated by sub-section (2) of Section 4 of the Code of Criminal Procedure. Section 195(1) provides that no court shall take cognizance of any offence set out therein except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Similarly sub-section (2) of Section 195 provides that no court shall take cognizance of any of the offences specified therein except on the complaint in writing to that court, or to some other court to which that court is subordinate. Section 198 provides that no court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code, except upon a complaint made by some person aggrieved by the offence. Section 199 provides that no court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code, except upon a complaint made by some person aggrieved by the offence. Section 20 of the Prevention of Food Adulteration Act, 1954 provides that no prosecution for an offence under the Act, not being an offence under Section 14 or Section 14-A, shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government. Section 621 of the Companies Act, 1956 provides that no court shall take cognizance of any offence against the Act (other than an offence with respect to which proceedings are instituted under Section 545), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf. It is not necessary to multiply the illustration.

5. It is thus crystal clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance under Section 190 and unless any statutory provision prescribes any special qualification or eligibility criteria for putting the criminal law in motion, no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. Section 190 of the Code of Criminal Procedure clearly indicated that the qualification of the complainant to file a complaint is not relevant. But where any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. Even with regard to offences under the Indian Penal Code, ordinarily, anyone can set the criminal law in motion but the various provisions in Chapter XIV prescribe the qualification of the complainant which would enable him or her to file a complaint in respect of specified offences and no court can take cognizance of such offence unless the complainant satisfies the eligibility criterion, but in the absence of any such specification, no court can throw out the complaint or decline to take the

cognizance on the sole ground that the complainant was not competent to file the complaint.

6. Section 89 of the Act provides that no court shall take cognizance of an offence under Section 81, Section 82 or Section 83 except on a complaint in writing made by the registrar or any officer authorised by him in writing. This provision manifests the legislative intention that in respect of the three specified offences punishable under Sections 81, 82 and 83, the registrar alone is competent to file the complaint. This would simultaneously show that in respect of the other offences under the Act, the provision contained in Section 190 of the Code of Criminal Procedure read with sub-section (2) of Section 4 would permit anyone to file the complaint. The indication to the contrary as envisaged by sub-section (2) of Section 4 of the Code of Criminal Procedure is to be found in Section 89 and that section does not prescribe any particular eligibility criterion or qualification for filing a complaint for contravention of Sections 78 and 79 of the Act. Therefore, the learned Magistrate was in error in rejecting the complaint on the sole ground that the complainant was not entitled to file the complaint.

7. Even otherwise in the absence of a specific qualification, if the person complaining has a subsisting interest in the protection of the registered trade mark, his complaint cannot be rejected on the ground that he had no cause of action nor sufficient subsisting interest to file the complaint. M/s Mangalore Ganesh Beedies Works, a partnership firm is the registered owner of trade marks, falsification and infringement of which is complained by the present complainant, who is not only a dealer in these beedies manufactured and sold by the registered owner of the trade marks but he is also the constituted attorney of the owners of the registered trade mark. To say that the owner of the registered trade mark can alone file the complaint is contrary to the provisions of the statute and commonsense and reason. Therefore, the order of the learned Magistrate dismissing the complaint at the threshold on the ground that the present appellant has no cause of action to file the complaint is utterly unsustainable and must be quashed and set aside. Surprisingly, the High Court dismissed the revision petition of the complainant in limine which order is equally unsustainable and must be set aside.

8. This appeal is accordingly allowed and order of the learned Magistrate dismissing the complaint and refusing to issue process dated February 20, 1980 and the order of the High Court rejecting the revision petition in limine dated November 4, 1980 are set aside and the matter is remanded to the learned Magistrate to proceed further according to law in the light of the observations made in this judgment.

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