
2010 eGLR_HC 10005589

Before the Hon'ble MR AKIL KURESHI, JUSTICE

SUN TEXTILE ENGINEERS Vs. STATE OF GUAJRAT AND 1 - RESPONDENT(S)

CRIMINAL MISC. APPLICATION No: 3105 of 2002 , Decided On: 20/10/2010

Rushvi N.Shah, Gita Dave, Rajesh H.Acharya, Bharat D.Shukla, Kartik Pandya, Nanavati Associates

MR.JUSTICE AKIL KURESHI

Petitioners are the original accused. They seek quashing of complaint bearing inquiry case No.3 of 2002 pending before JMFC, Surat on the ground that the complaint does not disclose any of the offences mentioned in the complaint.

In the impugned complaint, offences mentioned against the petitioners are those punishable under section 101 to 104 of the Trade Marks Act, 1999 (hereinafter to be referred to as "the Act of 1999"), under section 63 of the Copyright Act, 1957 and under section 420 of the Indian Penal Code. The complainant has alleged, inter alia, that the complainant company is manufacturer of bulk transporters with air slide discharge system with trade name "ACC - ShimMaywa" and sells such products throughout India. Such bulk transporters are specially designed for transporting large quantities of powdery material such as cement, fly-ash, etc. and delivering such materials in a short time with the aid of compressed air. Such machines ensure that the material is transported in closed container protected against weather conditions. The complainant-Company is the owner and proprietor of the said trade mark ACC - ShinMaywa Bulk Transporter with the above features. The customers and purchasers of such machines associate the product with such trade mark.

It is further alleged that the accused in order to deceive and defraud the customers of the complainant Company copied such trade mark and trade description deceptively and are using the trade mark and trade description. They have copied the same and essential features printed in the catalogue of the Companys product. On the above grounds, it is alleged that the petitioners committed offence punishable under section 101 to 104 of the Act of 1999. They also committed offence under section 63 of the Copyright Act and section 420 of the Indian Penal Code.

I have heard the learned counsel for the petitioners. No one appeared for the original complainant though the matter was heard for a span of two days.

Counsel for the petitioners submitted that the complaint was lodged in the year 2002 for the alleged offence punishable under the Act of 1999 which was actually brought into effect from 15th September 2003. She further submitted that there is no infringement of the Copyright Act since copyright can be claimed only for limited things. She further submitted that the product of the petitioners is called Sun Bulk Transporter. Trade Mark ACC ShinMaywa is in no way copied. She submitted that the purchasers and customers are educated persons engaged in construction or other related business. Therefore, no case for cheating is made out.

I have also heard the learned APP for the State.

Having heard the learned advocates and having perused the documents on record, it clearly emerges that the impugned complaint filed in the year 2002, offences alleged are under the Act of 1999 which has been brought into force with effect from 15th September 2003. Obviously, there cannot be retrospective operation of criminal provisions. No case for proceeding further under section 101 to 104 of the Act 1999 is therefore made out.

With respect to the allegations of offence under section 63 of the Copyright Act, it is clear from section 13 of the said Act that copyright can be claimed only for the works of (a) original literary, dramatic, musical and artistic works; (b) cinematograph films and (c) sound recording.

Admittedly, the present case does not fall in any of the above categories.

With respect to section 420 of the Indian Penal Code, no clear averments are made in the complaint how the customers are cheated. I have perused the brochure of the complainant Company for selling the said machine as well as that of the petitioner Company. There is no apparent similarity by which the educated customers could be misled. Therefore, no case for cheating is also made out.

In the result, the impugned complaint being Inquiry Case No.3 of 2002 of the court of JMFC, Surat is quashed. Rule is made absolute accordingly.

Order accordingly

