

M/S.Malur Tubes Private Limited vs The State Of Tamil Nadu on 2 December, 2022

Crl.O.P.Nos.5457 & 54

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM :

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.Nos.5457 & 5438 of 2016
and
Crl.M.P.Nos.2798 & 2888 of 2016

Crl.O.P.No.5457 of 2016
1.M/s.Malur Tubes Private Limited
Represented by its Director
Mr.Nallin Gupta.

2.Mr.Nallin Gupta,
Director,

Both having registered office at
M/s.Malur Tubes Private Limited,
Malur Industrial Estate,
Malur,
Kollar District,
Karnataka State.

... Petitioners

Vs

1.The State of Tamil Nadu,
rep., by the Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District.

2.K.Boopathi,
Mottur Village, Thirammampet ppost,
Vaniyambadi Taluk,
Vellore District – 635 801.

<https://www.mhc.tn.gov.in/judis>
1/19

Crl.O.P.Nos.54

(R2 impleaded as per order dated 18.07.2022 in
Crl.M.P.No.9561 of 2022 in Crl.O.P.No.5457 of 2016)

PRAYER : Criminal Original Petition filed under Section 482 of the

Criminal Procedure Code seeking the relief to quash the First Information Report in Crime No.140/2005 dated 28.01.2005 on the file of the Inspector of Police, Vaniyambadi Town Police Station, Vellore District registered for offences under Sections 420, 468 & 471 of IPC r/w 63 Copy Right Act, 1957.

For Petitioners : Mr.A.Ramesh, Senior Counsel for
Mr.C.Arunkumar.

For Respondents : Mr.S.Balaji, Government
Advocate (Crl.Side) for R1.

Crl.O.P.No.5438 of 2015
1.Shri Lakshmi Metal Udyog Ltd.,
Represented by its Director,
Mr.Vinod Kumar Singhal.

2.Mr.Vinod Kumar Singhal,
Director,

Office at
Shri Lakshmi Metal Udhog Ltd.,
9-11, KIADB Industrial Area,
Balagaranahalli Village,
Anekal Taluk, Atibele,
Bangalore – 562 107.

... Petitioners

Vs

1.The State of Tamil Nadu,
<https://www.mhc.tn.gov.in/judis>
2/19

Crl.O.P.Nos.54

rep. By the Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District.

2.K.Boopathi,
Mottur Village, Thirammampet post,
Vaniyambadi Taluk,
Vellore District – 635 801.

(R2 impleaded as per order dated 18.07.2022 in
Crl.M.P.No.9559 of 2022 in Crl.O.P.No.5438 of 2016)

...

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking the relief to quash the First Information Report in Crime No.139/2005 dated 28.01.2005 on the file of the Inspector of Police, Vaniyambadi Town Police Station, Vellore District registered for offences under Sections 420, 468 & 471 of IPC r/w 63

Copy Right Act, 1957.

For Petitioners : Mr.A.Ramesh, Senior Counsel for
Mr.C.Arunkumar.

For Respondents : Mr.S.Balaji, Government
Advocate (Crl.Side) for R1.

R2 – No appearance.

COMMON ORDER

The Criminal Original Petition in Crl.O.P.No.5457 of 2016 has been filed seeking to quash the First Information Report in Crime No.140 <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 of 2005 and the Criminal Original Petition in Crl.O.P.No.5438 of 2016 has been filed seeking to quash the First Information Report in Crime No.139 of 2005. The Petitioners in both the Petitions are facing similar complaints filed by one G.Kesavalu Naidu @ Kesavan and hence, both these Petitions are disposed of by this common order.

2.In both the complaints, the said G.Kesavalu Naidu @ Kesavan had stated that he was carrying on the business of manufacturing and selling of mild steel tubes which were invented by him, for drilling of bore-wells, for industrial and for agricultural purposes. He had invented the mild steel tubes used for drilling of bore-wells, having specific diameter of 168.4 mm to 193.6 mm and specific engineering method for production of the same. As the sole inventor and owner in respect of the above inventions, the said G.Kesavalu Naidu @ Kesavan had filed application for Registration of Patents. In January 2000, the Copy Right Registration Authority had processed the applications and after necessary formalities, had issued two certificates of Registration of Copy Right to him as per the numbers viz., A-65629/2003 and A-65630/2003. He had alleged that he came to know that the tubes, according to the specifications invented by him, were spuriously manufactured by certain <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 other companies and were sold in the market at Coimbatore, Hosur, Vellore and Vaniyambadi. Some of the rig owners at Vellore and Vaniyambadi were cheated and they had purchased such spurious and bogus pipes from various dealers, though the trade mark “GKT” was not found. The pipes were very similar to the pipes manufactured by the said G.Kesavalu Naidu @ Kesavan. He later came to know that the Petitioners manufactured the spurious pipes similar to the pipes manufactured by him and had cheated many dealers. As a result of the acts committed by the Petitioners, there was lesser sales of the product of the G.Kesavalu Naidu @ Kesavan.

3.It appears that the said G.Kesavalu Naidu @ Kesavan died on 15.10.2014 subsequent to the filing of the First Information Reports. Hence, the second respondent herein who is the son of the said G.Kesavalu Naidu @ Kesavan was sought to be impleaded, pursuant to the orders of this Court in Crl.M.P.Nos.9559 & 9561 of 2022 in Crl.O.P.Nos.5457 & 5438 of 2016 dated 18.07.2022. He had been impleaded in similar quash petitions after the death of his father. However, due to an error in

the prayer made in the Miscellaenous Petitions, the deceased G.Kesavalu Naidu @ Kesavan was shown as <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 second respondent. This was subsequently corrected by the order dated 25.11.2022 by this Court. Meanwhile, the petitioners had sent private notice to the said Boopathy. The private notice sent to him has been returned with an endorsement 'refused'. Therefore, this Court, on 25.11.2022 directed the Registry to print the name of the second respondent in the cause list. There was no appearance for the second respondent, when the matter was called on 01.12.2022. The matter was again called today and there is no appearance for the second respondent. The learned counsel submitted that the second respondent has knowledge of the proceedings as he had participated in the quash petitions filed by the accused in the other similar First Information Reports.

4.The Petitioners had earlier filed Crl.O.P.Nos.17500 & 17503 of 2008 praying for quashing of the very same First Information Reports. This Court by a common order dated 28.10.2014 dismissed the quash Petitions by making the following observations;

“13.Now the question is whether the ingredients of Section 415 of IPC are satisfied. From the averments found in the F.I.R., I see that the averments <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 do satisfy the requirements of Section 415 of I.P.C. Under Section 415 of I.P.C. Essentially there should have been deception played by the accused and secondly the person so deceived should have been induced either fraudulently or dishonestly to part with his property. Here in this case, the persons deceived are the consumers and they were all induced by the petitioners fraudulently that the materials manufactured by the petitioners are that of the defacto complainant and acting on such inducement the consumers have purchased it. These are all matters which requires through investigation.

14.So far as the copyright Act is concerned, the matter also needs to be thoroughly investigated. I only say that it is not a case where absolutely there is no material so as to quash the F.I.R. By applying the principles stated in State of Haryana Vs.Bhajan Lal reported in 1992 Supp (1) SCC 335.” The Petitioners have now preferred the above quash Petitions, due to the change in circumstances and also bringing to the notice of this Court certain facts which were not brought before this Court, when the earlier quash petitions were decided.

5 (a).Mr.A.Ramesh, Learned Senior Counsel for the Petitioners <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 would submit that subsequent to the dismissal of the earlier quash petitions, the petitioners came to know that the Copy Right Board at Delhi, on the application of Federation of Industries of India had expunged the two entries pertaining to the Copy Right certificate issued to the said G.Kesavalu Naidu @ Kesavan. The Copy Right Board had passed the following order on 04.07.2008.

“Accordingly we hold that the Registrar shall expunge the entries relating to registration certificates bearing number A-65629/2003 dated 9.12.2003 and A-

65630/2003 dated 9.12.2003. No orders as costs.” 5 (b).The Learned Senior Counsel also pointed out that simultaneously the Federation of Industries of India filed a Suit before the Delhi High Court

in C.S.(OS)No.596 of 2007 praying for a declaration against G.Kesavalu Naidu @ Kesavan that the copyright does not subsist in the Registration of the companies under entry Nos. A-65629/2003 and A-65630/2003. In the said Suit, the Delhi High Court passed a decree as prayed for and also held that the Federation of Industries of India are entitled for punitive damages to the tune of Rs.2 lakhs from the defendant.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 5(c).The Learned Senior Counsel further submitted that this Court had quashed similar complaints filed by the said G.Kesavalu Naidu @ Kesavan based on the orders passed by the Copy Right Board and the Judgment of the Delhi High Court in Crl.O.P.No.22493 & 23891 of 2015. The relevant portion of the said order reads as follows;

“18.In this case, the defacto complainant has preferred the complaint based on the copyright alleged to be granted to his father. The Federation of Industries of India through its General Secretary had filed Case No.2 of 2006, before the Copyright Board at Delhi for expunging the entries in the Copyright Register and the Copyright Board, Delhi by an order dated 04.07.2008 had expunged the entries relating to registration granted to the defacto complainant's father. Against that order, the father of the defacto complainant had preferred C.M.A.No.2859 of 2008 which came to be dismissed later. Further, the Federation of Industries of India and another have also filed a Civil Suit before the High Court of Delhi in CS (OS) No.596 of 2007, seeking to declare that copyright does not subsist in the drawings entered in the Register of Copyrights under entry Nos.A- 65629/2003 and A-65630/2003 or in any other similar <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 drawings that may be in the possession of defacto complainants father and the suit came to be allowed in favour of the Federation of Industries of India by order dated 18.11.2011, declaring that the copyright does not subsist in favour of the defacto complainants father and further the defacto complainant's father was also directed to pay punitive damages to the tune of Rs.2 Lakhs to the Federation of Industries of India for making a false claim. The fact remains that, as on date, no copyright subsists either in favour of the father of the defacto complainant or the defacto complainant who claims through his father. When such being so, when there is no copyright, the question of infringement will not arise as held by the Hon'ble Apex Court in Krishika Lulla v.Shyam Vithalrao Devkatta stated supra and thereby, the complaint cannot be maintained. However, the pendency of the FIR is nothing but an abuse of process of law.” 5(d).The Learned Senior Counsel therefore submitted that in view of the subsequent developments and the fact that orders of the Company Law Board and the Judgment of the Delhi High Court, were not brought to the notice of this Court in the earlier quash Petitions, the present quash petitions are maintainable. Further, the Defacto complainant, then, who <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 was party to the two proceedings mentioned above, also suppressed the said fact before this Court.

6.The learned Government Advocate (Criminal Side) appearing for the First Respondent submitted that this Court in the earlier quash petitions had gone into all the allegations and found that there was prima facie, case and held that it required investigation and hence, dismissed the Petitions. Further, the first respondent had conducted investigation and had filed a final report before the jurisdictional magistrate nearly one and half years ago. The Learned Government Advocate (Criminal Side) also fairly submitted that though the final report was filed, the learned Magistrate

had not taken the said final report on file for want of certain documents. However, the first respondent was unable to produce those documents, since the second respondent herein did not co-operate with them and hence, the final report is yet to be taken on file.

7. Heard the Learned Counsels on either side and perused the pleadings, oral and documentary evidence and materials on record.

8. Before we proceed on merits, the question to be decided is <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 whether these second quash petitions are maintainable. The earlier order passed by this Court proceeded on the premise that the defacto complainant / G.Kesavalu Naidu @ Kesavan had a valid copyright under the copyright act. In such view of the matter, this Court held that the question as to whether the Petitioners violated the copyright of the defacto complainant had to be investigated. Based on the said premise, the learned Judge also held that if the petitioners had manufactured tubes similar to the tubes invented by the defacto complainant and sold it in the market, that would satisfy the requirements of Section 415 of I.P.C., as the consumers, were all induced by the Petitioners to believe that the materials manufactured by the Petitioners are that of the defacto complainant / G.Kesavalu Naidu @ Kesavan. In the light of the subsequent events, namely that this Court had quashed similar complaints based on the two additional facts which are now placed before this Court, this Court is of the view that in view of the change in circumstances, the above quash petitions are maintainable.

9. The Hon'ble Apex Court in Supt. and Remembrancer of Legal Affairs vs. Mohan Singh reported in (1975) 3 SCC 706, held that a successive application under Section 482 Cr.P.C. under changed <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 circumstances was maintainable and the dismissal of the earlier application was no bar to the same. The Hon'ble Apex Court observed as follows:-

“2. ... Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561-A of the Code of Criminal Procedure to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and a half years without any progress at all and it was in these circumstances that Respondents 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances, it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents

1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of Respondents 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and half years.”

10.The above observation was quoted with approval in the decision of the Hon'ble Apex Court in Anil Khadkiwala vs. State and another reported in (2019) 17 SCC 294 in the facts of that case and observed as follows;

“7. The complaint filed by Respondent 2 alleges issuance of the cheques by the appellant as Director on 15- <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 2-2001 and 28-2-2001. The appellant in his reply dated 31- 8-2001, to the statutory notice, had denied answerability in view of his resignation on 20-1-2001. This fact does not find mention in the complaint. There is no allegation in the complaint that the cheques were post-dated. Even otherwise, the appellant had taken a specific objection in his earlier application under Section 482 CrPC that he had resigned from the Company on 20-1-2001 and which had been accepted. From the tenor of the order of the High Court on the earlier occasion it does not appear that Form 32 issued by the Registrar of Companies was brought on record in support of the resignation. The High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques and the effect thereof in the facts and circumstances of the case. The High Court in the fresh application under Section 482 CrPC initially was therefore satisfied to issue notice in the matter after noticing the Form 32 certificate. Naturally there was a difference between the earlier application and the subsequent one, inasmuch as the statutory Form 32 did not fall for consideration by the Court earlier. The factum of resignation is not in dispute between the parties. The subsequent application, strictly speaking, therefore cannot <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 be said to a repeat application squarely on the same facts and circumstances.“

11.This Court has quashed the proceedings as against two other companies, who were similarly placed, based on the orders passed by the Copy Right Board and the Judgment of the Delhi High Court. The relevant portion of the order has already been extracted. The said observations are squarely applicable to the facts of the instant case. We have also extracted the orders passed by the Copy Right Board and that of the Delhi High Court in the earlier part of this Judgment. Both the orders would show that the defacto complainant has no Copy Right over the products, which he claims, were manufactured by the petitioners. Since, there is no subsisting Copy Right in favour of the second respondent's father and the fact that the Delhi High Court had imposed punitive damages on him, the continuation of the complaint would be nothing but an abuse of process of law. We also notice that when the earlier quash petitions were decided, the defacto complainant was aware of the order of the Copy Right Board and of the Delhi High Court, since he participated in

those proceedings. However, he had not brought the same to the notice of this Court.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016

12.Though the Learned Government Advocate (Criminal Side) submitted that since they have already filed final report, Petitions to quash the First Information Report are not maintainable, he fairly submitted that the final report were not taken on file, for nearly one and half years since the second respondent did not co-operate with the investigation officer in collecting certain documents sought for by the learned Magistrate. The learned Senior Counsel submitted that the facts of final Report would not alter the situation in any manner. Had they filed the final report and if the learned Magistrate had taken cognizance, they would have filed petition for amendment seeking to incorporate the prayer for quashing of charge sheet. However in this case, admittedly, the final report was filed one and half years ago and the learned Magistrate is yet to take cognizance, in view of certain defects in the final report. Hence, they could not file a petition challenging the final report or amend the prayer in the instant quash petitions.

13.We accept the submission of the learned Senior Counsel that notwithstanding the fact that a final report is ready, this Court can quash the First Information Report since the very foundation and the basis for <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 registering the First Information Reports, no longer exist. That apart, we have noted that final report is yet to be taken on file on account of the fact that the second respondent had not produced certain documents. Thus, as on date there is no final report on record. Further even before this Court, the second respondent had not shown any interest to appear and defend the First Information Reports. He had already suffered an order by this Court wherein this Court had quashed a similar First Information Report.

14.Therefore, for all the above reasons, this Court is of the view that the instant First Information Reports deserves to be quashed, to serve the ends of justice.

15.Accordingly, Crl.O.P.Nos.5457 & 5438 of 2016 are allowed by quashing the First Information Reports in Crime Nos.139 & 140 of 2005 dated 28.01.2005. Consequently, connected Miscellaneous Petitions are closed.

02.12.2022 ay <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.5457 & 5438 of 2016 Index: Yes/No
SUNDER MOHAN, J.

ay To The State of Tamil Nadu, rep., by the Inspector of Police, Vaniyambadi Town Police Station, Vellore District.

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