Invoking the Criminal Jurisdiction under the Intellectual Property Act no 36 Of 2003 and the Companies Act no 7 of 2007

Nalinda Indatissa PC

Generally Criminal	Jurisdiction car	n be invoked in	two ways.

- (a) By lodging a complaint with the police
- (b) By filing a private plaint under Section 136 (1) (a)

(a) Complaint to police / CID – Section 136 (1) (a)

In this case the investigation would be conducted by the police under chapter XI of Code of Criminal Procedure Act no 15 of 1979.

Therefore, a complaint containing all the information necessary to conduct a proper investigation should be made to the police. Attorney-at-Law can guide the client on the preparation of the complaint and on the applicable law. In the case of offences under the Intellectual Property Act there is a special division in the Criminal Investigation Department to deal with complaints under the said Act.

(b) Filing of a private plaint

- (i) In the case of a private plaint an attorney should be mindful of certain salient provisions of the Code of Criminal Procedure Act.
- (ii) A private plaint is filed under section 136 (1) (a) of the Code of Criminal Procedure Act. It should be signed by the complainant and countersigned by the pleader (an attorney).

- (iii) The Code of Criminal Procedure Act does not state the manner in which a private plaint should be drawn up. But the general practice adopted by court is that along with the private plaint the following are filed;
 - a) An affidavit containing a narration of facts relating to the offence alleged, with annexures if any.
 - b) A charge sheet This is the document which will be signed by the Magistrate and read out to the accused at the commencement of the trial.

Drafting of the Charge sheet or Charge

In drafting a charge, the following sections of the CCPA should be kept in mind.

(i)Section 164: The charge must state that the offence alleged against the accused very clearly so as to give sufficient notice to the accused of the allegations against him. The penal section should also be mentioned in the charge.

Section 165: Particulars as to time, date, place and the person against whom the offence was committed should be stated in the charge.

The period of the charge should not exceed one year.

Joinder of charges

- Section 173: There should be a separate charge for every distinct offence except in instances mentioned in sections 174, 175, 176 and 180.
- Section 174: When more offences than one of the same kind are committed within a period of one year, three of such similar offences can be included in one charge sheet.

"Similar offences" mean offences punishable with same amount of punishment under the same section.

- Section 175 (1): Several offences committed in the same transaction can be charged and tried together.
- Section 175 (2): Offences falling within two definitions can be included and tried together.
- Section 175 (3): Acts constituting one offence but constituting another offence when combined can be charged and tried together.
- Section 176: When it is doubtful what offence is committed accused may be charged with one or more offences.
- Section 180: When more persons have jointly committed / attempted to commit/ abetted the commission of an offence or offences they all can be charged and tried together.
- Once a private plaint is filed what are the provisions/ case law that should be borne in mind?
 - (i) Section 139 deals with issuance of summons on the accused. When the magistrate is of the opinion that there are sufficient grounds to proceed against a person, he should issue summons based on the material pleaded in the affidavit.
 - (ii) If the offence is one in respect of which a magistrate can issue a warrant in the first instance, he may issue a warrant. But, before issuing a warrant he should examine the complainant or some material witness on oath.

Cases

a) Malini Gunaratne (1994) 3 SLR 196

Sufficient grounds mentioned in section 139(1) of the C.C.P. Act embrace both the ingredients of the offence and evidence of it's commission.

b) Leo Fernando v AG (1985) 2 SLR 341 at 349

Before issuing a <u>warrant in the first instance</u> it is imperative that the magistrate examines the complainant on oath in order to prevent a false, frivolous and a vexatious complaint being made to harass the accused.

c) Derek Kelly and another V Yasasiri Kasthuriarachchi

CA (PHC) Appl 57/2008 decided on 07.09.2012

What is sufficient grounds to issue process?

The magistrate need not give detailed reasons for his decision to issue a summons/ warrant.

Offences under the Intellectual Property Act no 36 of 2003

- o Section 157: Offences Relating to Layout Designs and Integrated Circuits
- Section 160 (8) (a) read with 160 (6) (e): Offences relating to Undisclosed Information
- Section 177: Falsification of entry in any register kept under the Intellectual Property
 Act, or producing and tendering of any such false entry

Copyright Offences

Section 178 (1): Willful infringement of any of the Copy Right protected under the part II
of the Act

0	Section 178 (2): Selling, displaying for sale, having in possession for sale or rental Copy Right protected items Section 178 (3): Using a computer program for commercial gains in violation of Copy Right
•	Offences relating to Industrial Designs
0	Section 179: Infringement of rights of a registered owner of any Industrial Design.
0	Section 180 (1): Making false representations regarding Industrial Designs.
•	Offences Relating to Patents
0	Section 181; Infringement of the Rights of a registered owner, assignee or a licensee of a Patent.
0	Section 182 (1): Making false representations regarding Patents.
0	Section 183: Unlawful disclosure of information relating to Patents.
•	Trade Mark Offences
0	Section 184: Infringing the rights of a registered owner, assignee or licensee of a trademark.
0	Section 185: Making false representations regarding marks for industrial or commercial purposes.

0	Section 186 (1) (a): Forging a mark
0	Section 186 (1) (b): Appling a mark so nearly resembling a registered mark in order to mislead.
0	Section 186 (1) (c): Making a die, seal block, machine or other instrument for the purpose of forging a mark.
0	Section 186 (1) (d): Applying a false trade description to goods.
0	Section 186 (1) (e) Having in position any die, seal, block, machine or other instrument for the purpose of forging a mark.
0	Section 186 (2): Any person who sells exposes for sale or has in his position for sale any goods or things which any forged mark or false trade description.
	Limitation of prosecution under this Act
-	Elimitation of prosecution under this Act
0	Section 202 - No prosecution can be commenced three years after the commission of the offence charged.
0	Section 202 - No prosecution can be commenced three years after the commission of the offence charged.
0	Section 202 - No prosecution can be commenced three years after the commission of the offence charged. Search warrant
•	Section 202 - No prosecution can be commenced three years after the commission of the offence charged.
•	Section 202 - No prosecution can be commenced three years after the commission of the offence charged. Search warrant Section 197 - A search warrant can be obtained to search the premises upon satisfying
•	Section 202 - No prosecution can be commenced three years after the commission of the offence charged. Search warrant Section 197 - A search warrant can be obtained to search the premises upon satisfying
•	Section 202 - No prosecution can be commenced three years after the commission of the offence charged. Search warrant Section 197 - A search warrant can be obtained to search the premises upon satisfying
•	Section 202 - No prosecution can be commenced three years after the commission of the offence charged. Search warrant Section 197 - A search warrant can be obtained to search the premises upon satisfying

- Offences by Body Corporates
- Section 187: Where offence is committed by a Body Corporate, every person who at the time of the offence is a director, general manager, secretary or other similar officer, should be guilty of such offences.
- Offences Under the Companies Act No.7 of 2007
- Offences relating to the use of company name and company number Section 8, Section
 9, Section 10, Section 11 and Section 12.
- Offences relating to articles of association Section 15 and Section 18.
- Offences relating to prospectus Section 37, Section 38, Section 40 and Section 42.
- Offences relating to issuing of shares Section 55, Section 56, Section 59 and Section 63.
- Offences relating to financial assistance given in connection with purchasing of shares Section 70, Section 78 and Section 81.
- Offences relating to registration of charges Section 102, Section 104, Section 106 and Section 111.
- Offences relating to management and administration of a company Section 115, Section 116, Section 117, Section 119, Section 120, Section 122, Section 123, Section 124, Section 126 and Section 128.
- Offences relating to annual returns Section 131.
- Offences relating to meetings and proceedings conducted at a company Section 133,
 Section 137, Section 139, Section 142 and Section 144.

- Offences relating to minutes and records of proceedings Section 147, Section 148,
 Section 149 and Section 152.
- Offences relating to appointment of auditors Section 154, Section 161, Section 164 and Section 165.
- o Offences regarding annual reports of the company Section 166 and Section 167.
- Offences relating to information provided to persons interested in company shares and debentures - Section 181.
- Offences relating to imposition of restrictions on shares and debentures Section 182.
- o Offences pertaining to disclosure of interest by directors Section 192.
- o Offences relating to the retirement age of directors Section 212.
- Offences relating to disqualification of directors -Section 213 and Section 2014.
- Offences relating to restrictions on loans to directors and serious loss of capital- Section 217 and Section 220.
- o Offences relating to maintenance of a register of directors and secretaries Section 223.
- Offences relating to alteration of the articles of association and termination and modification of agreements of a company - Section 229 and Section 231.
- Offences relating to amalgamations Section 242.
- Offences relating to approval of arrangements, amalgamations and compromises by court - Section 256 and Section 257.

- Offences relating to the liquidation of a company Section 316, Section 329, Section 330 and Section 331.
- Offences relating to creditors voluntary winding up Section 334, Section 340, Section 341 and Section 346.
- o Offences relating to proof and ranking of claims Section 357 and Section 358.
- Offences relating to malpractice in winding up of a company Section 374, Section 375,
 Section 380, Section 381, Section 383, Section 386, Section 389 and Section 390.
- Offences relating to receiver Section 441, Section 442, Section 456, Section 458, Section 460 and Section 461.
- Miscellaneous Offences Section 480, Section 482, Section 484, Section 493, Section 498.
 Section 503, Section 511 and Section 513.

චෝදුනා පතුය

චූදිතයන්

01)

02)

03)

- - 03) ඉහත කී පලමු චෝදනාවෙහි සඳහන් කාලයේදී ස්ථානයේදී හා කියාකලාපයේදීම ඉහත නම සඳහන් පලවන හා දෙවන විත්තිකරුවන් වන යුෂ්මතුන් වරදක් චනම් කොලඹ 12------යන ස්ථානයේ ස්වකීය ලියාපදිංචි කාර්යාලය පිහිටුවා ඇති

නමැති සමාගම, 2007 අංක 07 දරණ සමාගම් පණතේ කාර්යන් සඳහා සකස් කරන ලද ලේඛනයක් වන එකී සමාගමෙහි 2017 මාර්තු 31 න් අවසන් වසර සඳහා වන වාර්ශික වාර්තාවේ මූලූ පකාශවල " වැඩ අවසාන භාන්ඩ (Finished Goods Inventory)" වල අගය රුපියල් 320, 447, 228/- ක් නොවන බව දැන දැනම එකී අගය රුපියල් 320, 447, 228/- බවට අසතු පකාශ කර

ඇති බවද චබැවින් එකී යුෂ්මතුන් 2007 අංක 07 දරණ සමාගම් පණතේ 511 වගන්තිය පුකරව දඩුවමක් ලද හැකි වරදක් කල ඇති බවද,

- 06) ඉහත කී පලමු චෝදනාවෙහි සඳහන් කාලයේදී හා ස්ථානයේදීම ඉහත නම සඳහන් පලවන දෙවන හා තෙවන විත්තිකරුවන් වන යුෂ්මතුන් පැමිණිල්ල නොදත් අන් අය සමග වරදක් එනම් කොලඹ 12, ---- අයත් රුපියල් මිලියන 158 ක් වටිනා භාන්ඩ තොග වලට සතස වශයෙන්ම සිදුවුවේ කුමක්ද යන්න සගවා අධෘක්ෂක මණ්ඩලය සහා සමාගමෙහි කොටස් හිමියන් රැවටීමේ අදහසින් එකී සමාගම සතු ගිණුම් වාර්තාවක්/ ලේඛනයක් වන එකී සමාගමෙහි 2017 මාර්තු 31 න් අවසන් වසර සඳහා වන වාර්ශික වාර්තාවේ මූලස පුකාශවල "බාන්ඩවල පිරිවැය (Cost of Goods Sold) වැඩ අවසාන භාන්ඩ (Finished Goods Inventory) අවසාන තොගය (Closing Stock) හා අදායම (Revenue) යන කාරණා විශයෙහි වතර සටහන් ඇතුලත් කිරීම සඳහා හෝ කිරීමේදී හෝ එසේ කිරීමට අනුබල දීමේදී හෝ අනුබල දීම සඳහා පොදු අරමුණක් සහිතව කලින් සම්මතයක් හෝ පිලියෙල වීමක් ඇතිව හෝ නැතිව කියා කිරීමට එකගවීමෙන් කුමන්තුණය කර ඇති බවද එබැවින් එකී යුෂ්මතුන් ලංකා දණ්ඩ නීති සංගුහයේ 113 (ආ) සමග වගන්තිය වගන්තිය සමග කියවිය යුතු 2007 අංක 07 දරණ සමාගම් පණතේ 512 (ආ) වගන්තිය පුකාරව දඩුවමක් ලද හැකි වරදක් කල ඇති බවද,

සගවා අධනක්ෂක මණ්ඩලය සහා සමාගමෙහි කොටස් හිමියන් රැවටීමේ අදහසින් විකී සමාගම සතු ගිණුම් වාර්තාවක්/ ලේඛනයක් වන එකී සමාගමෙහි 2017 මාර්තු 31 න් අවසන් වසර සඳහා වන වාර්ශික වාර්තාවේ මූලන පකාශවල "බාන්ඩවල පිටිවැය (Cost of Goods Sold) අගය රුපියල් 3, 989, 795, 743/- ක් බවට වනජ සටහන් ඇතුලත් කර ඇති බවද විබැවින් එකී විත්තිකරුවන් වන යුෂ්මතුන් 2007 අංක 07 දරණ සමාගම් පණතේ 512 1 (ආ) වගන්තිය පකරව දඬුවමක් ලද හැකි වරදක් කල ඇති බවද

- 09) එඛී කාලවෙලාවේදී ස්ථානයේදී හා ඛ්යාකලාපයේදීම ඉහත නම සඳහන් පලවන හා දෙවන විත්තිකරුවන් වන යුෂ්මතුන් වරදක් එනම් කොලඹ 12, ------ යන ස්ථානයේ ස්වකීය ලියාපදිංචි කාර්යාලය පිහිටුවා ඇති

අයත් රුපියල් මිලියන 158 ක් වටිනා භාන්ඩ තොග වලට සතන වශයෙන්ම සිදුවූවේ කුමක්ද යන්න සගවා අධාක්ෂක මණ්ඩලය සභා සමාගමෙහි කොටස් හිමියන් රැවටීමේ අදහසින් විකී සමාගම සතු ගිණුම් වාර්තාවක්/ ලේඛනයක් වන එකී සමාගමෙහි 2017 මාර්තු 31 න් අවසන් වසර සඳහා වන වාර්ශික වාර්තාවේ මූලන පකාශවල " අවසාන තොගයේ (Closing Stock)" අගය ටොන් 11,015/-ක් බවට වනජ සටහන් ඇතුලත් කර ඇති බවද එබැවින් එකී විත්තිකරුවන් වන යුෂ්මතුන් 2007 අංක 07 දරණ සමාගම් පණතේ 512 1 (ආ) වගන්තිය පකරව දඩුවමක් ලද හැකි වරදක් කල ඇති බවද

 සමාගම් පණතේ 512 1 (ආ) වගන්තිය පුකරව දඩුවමක් ලද හැකි වරදක් කල ඇති බවද මෙයින් චෝදනා කරනු ලැබේ.

> ගරු මහේස්තාත් කොලඹ මහේස්තාත් අධිකරනයේදීය

ව**ර්**ෂ 2019 ක්වූ

මස දින කොලඹ දීය