

J.Manikandan vs The State on 9 November, 2022

Author: G. Jayachandran

Bench: G.Jayachandran

CRL.O.P.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.No.11308 of 2019

and

CrI.M.P.No.5748 of 2019

1.J.Manikandan

2.Usha Rani

... Peti

Vs.

1.The State

Rep. by its Sub-Inspector of Police,
Central Crime Branch, EDF-1, Team-1,
Vepery, Chennai-07.

2.M/s.Goodwin Pumps India(P) Ltd.,
(Formerly Known as M/s.Goodwin India(P) Ltd.)
No.112/, Chinna Amman Koil Street,
Kalavakkam, Thiruporur,
Kancheepuram District.

Rep. by its Authorised Signatory

... Resp

PRAYER: This Criminal Original Petition is filed under Section 482 Cr.P.C., praying to call for the records and quash the proceeding in C.C.No.3211 of 2015 on the file of Chief Metropolitan Magistrate, E Chennai.

For Petitioners : M/s.D.Prabhu Mukunth Ar

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

CRL.O.

For Respondents : N.S.Suganthan [R1]
Government Advocate (CrI)
Mr.S.Anil Sandeep [R2]

ORDER

This petition is filed to quash the criminal complaint pending on the file of the Chief Metropolitan Magistrate, Egmore, in C.C.No.3211 of 2015.

2.1. The sum and substance of the final report which prima facie attracts Sections 406, 420, 482 read with 120(B) of Indian Penal Code is that the petitioners who are son and mother, arrayed as A1 and A2 are partners of a firm by name "Flowezyy". The allegation against them is that, while the first petitioner who entered into a contract with the defacto complainant Company which was termed as an employment agreement and confidentiality agreement restricts the first petitioner from disclosing the technical know-how's learnt during the course of training and employment and should not be misused by him for his advantage by entering into any contract or manufacturing activity which will be detrimental to the defacto complainant Company. The first petitioner had breached the agreements and with intention to cheat the defacto complainant had started a partnership <https://www.mhc.tn.gov.in/judis> firm with his mother as one of the partners, to manufacture and trade goods which is prohibited as per the agreements.

2.2. The specific clause under the confidentiality agreement regarding this is Clause 5, which reads as under:

"1. That the Employee accepts that the spare manufacture and service business of the Employer which is likely to be effected in future, is being planned and developed at substantial cost and effort by way of development of special tools and technology.

2. That Employee accepts that the Employer has a genuine need to protect the business from piracy failing which the Employer would be put in to a considerable business loss.

3. That Employee accepts that he would never, ever would associate or be a part of any organisation that may manufacture/ sell any abrasive resistant submersible slurry pump of Goodwin Design any where in the world.

4. That Employee will neither be involved in making and or selling and or renting spare parts for pumps of Goodwin design pumps."

2.3. The agreement has been entered into by the first petitioner <https://www.mhc.tn.gov.in/judis> knowing well that spare manufacture and service business of the employer (defacto complainant Company) which is likely to be effected in future is being planned and developed at substantial cost and effort by way of development of special tools and technology and any act of piracy will affect the

business prospect of the defacto complainant company. In the complaint, it is alleged that in spite of making it very clear and having agreed that he will not indulge in any activity which will be detrimental to the interest of the defacto complainant Company, by using the knowledge gained in the course of employment, the first petitioner and his mother/the second petitioner along with one Senthil Kumar had registered their firm with the name "Flowezyy" on 22.01.2009, when the employment agreement and confidential agreement was in subsistence and later converted it into an LLP agreement on 09.01.2014. The LLP agreement was also duly registered. Thereafter, using the domain name and the design learnt, the petitioner started manufacturing spares and selling it to the customers of the defacto complainant company which came to the knowledge of the defacto complainant during the year 2014 and immediately a complaint dated 12.02.2014 was lodged.

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

3. After registration of the complaint, investigation was taken up and final report was filed before the Chief Judicial Magistrate, Egmore. The said final report was challenged on the ground that there was no infringement of the terms of agreement, more particularly, no criminal breach of trust to attract offence under Section 406 of IPC. More so, when the defacto complainant had already initiated a civil proceeding before this Court in C.S.No.633 of 2015 and the same was pending for the very same cause of action. By giving a criminal colour, a complaint has been filed, which culminated in final report without taking note of the fact that the dispute was purely civil in nature.

4. The learned counsel appearing for the petitioners would submit that the products manufactured and marketed by the LLP Flowezyy are only the spare parts for pumps and the said spare parts are manufactured as per the specifications of the purchasers using Reverse Engineering technology. As far as the defacto complainant Company is concerned, they are not holding any copyright, design or patent for their products and their application for <https://www.mhc.tn.gov.in/judis> the same with the European Patent Office was withdrawn on 16.02.2022. Therefore, the defacto complainant cannot seek exclusive right over the design and prevent the petitioner herein from manufacturing identical product.

5. The learned counsel also submitted that the right of the petitioner is well-protected under the Anti-Competitive Clause specified under Section 3(5) of the Competition Act, 2002 , which reads as under:

"3. Anti-competitive agreements:

.....

(5) Nothing contained in this section shall restrict -

i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under -

(a) the Copyright Act, 1957 (14 of 1957);

(b) the Patents Act, 1970 (39 of 1970);

(c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);

(d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);

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(e) the Designs Act, 2000 (16 of 2000);

(f) the Semi-Conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export."

Further, the negative covenant which is claimed by the defacto complainant, found in the confidential agreement and the employment agreement is contrary to Section 27 of the Indian Contracts Act, 1872. While so, there is no ingredient to sustain the complaint for the alleged offences under Sections 406, 420, 482 read with 120(B) IPC and it is a clear case of malicious prosecution. In order to suppress the competitor, criminal colour has been given and hence it is a case of abuse of law.

6. Per contra, the learned counsel appearing for the defacto complainant/ second respondent would submit that the first petitioner herein had agreed not to indulge in any manufacturing or marketing activity akin to <https://www.mhc.tn.gov.in/judis> the product of the defacto complainant which has been designed specifically after good amount of expense on research work. He further submitted that the first petitioner had breached the terms of the agreement with criminal intention even while he was in service till 2011, the first petitioner had flouted a firm by name "Flowezyy" and started selling the products manufactured by him to the very same customers of the defacto complainant Company, under the same name and code number.

7. The defacto complainant Company observed after long time that the turnover was falling down in certain area and some of the regular customers have not turned up for purchase. Thereafter ordered for an enquiry, conducted by the team of officers of the defacto complainant Company and then found that the customers were purchasing products from the first petitioner and the products were supplied carrying the code number, specification and description of the defacto complainant Company. To support his submissions, the learned counsel referred to certain documents such as purchase orders, invoice and communications which were placed before this Court and the same forms part and parcel of the final report filed <https://www.mhc.tn.gov.in/judis> by the investigation

officer.

8. This Court had perused the documents and contents of the complaints. Prima facie, it appears that there is a criminal breach of trust which is seen from the fact that the first petitioner herein had registered a partnership firm in the name "Flowezzy" and indulged in manufacturing and trading using the identical code name and product name to the customers of the defacto complainant Company. The domain used for the trade also resembles the name of the defacto complainant Company, with an intention of misleading others and posing himself the representative of the defacto complainant company been prima facie established, the investigation officer has thought it fit to file the final report against the petitioners for the alleged offences under Sections 406, 420, 482 read with 120(B) of IPC.

9. This Court finds no reason to differ from the view of the investigation officer since there are materials satisfactorily to show that the first petitioner while in service and after service, along with the second <https://www.mhc.tn.gov.in/judis> petitioner and another person were trading in the name of "Flowezzy" the spare parts required for pumps manufactured by the defacto complainant company and those spare parts were sold using the trade name and code of the defacto complainant company's product. Hence, the petition to quash the complaint is vexatious.

10. The above observations regarding the facts, made by this Court based on the apparent analysis of the materials placed and the veracity of the document are all to be subjected to trial and the Trial Court shall not be carried away by any observations made by this Court while disposing the case.

11. With the above observations, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

09.11.2022 Index:Yes/No Speaking Order : Yes / No mka <https://www.mhc.tn.gov.in/judis> To:

1.The Sub-Inspector of Police, Central Crime Branch, EDF-1, Team-1, Vepery, Chennai-07.

2. The Chief Metropolitan Magistrate, Chief Metropolitan Magistrate Court, Egmore, Chennai.

3. The Public Prosecutor, High Court, Madras.

DR.G. JAYACHANDRAN, J.

<https://www.mhc.tn.gov.in/judis> mka and 09.11.2022 <https://www.mhc.tn.gov.in/judis>