

Binjrajka Steel Tubes Ltd., ... vs State By Inspector Of Police And G. ... on 8 November, 2004

ORDER

S. Sardar Zackria Hussain, J.

1. This Petition is filed to quash the criminal proceedings initiated in Crime No. 771 of 2003 pending investigation on the file of the Circle Inspector of Police, Town Police Station, Vaniyambadi.

2. The second petitioner/second accused in Crime No. 771 of 2003 on the file of the Circle Inspector of Police, Town Police Station, Vaniyambadi, is the Managing Director of the first petitioner/first accused company which was incorporated under the Companies Act in 1981. The company is engaged in manufacturing the pipes for more than 21 years. The company has been manufacturing the pipes dia with the specifications of "Bureau of Indian Standards (BIS)" and Industrial Licence was also issued by the Government of India on 4.4.1986. The patent Copy Right is not applicable to the manufacturing of the pipes. The Steel Pipes manufactured by the first petitioner company are supplied to the customers of the State of Karnataka, Tamil Nadu and other States and which are used for heavy water project, Mechanical and General Engineering purpose and Gas chambers, etc., for about 20 years. One Mr. G.Kesavalu Naidu alias Kesavan of Mottur village of Vaniyambadi Taluk, viz., the second respondent, lodged a private complaint before the District Munsif-cum-Judicial Magistrate, Vaniyambadi for the offence under Sections 420, 468 and 471 I.P.C. read with Section 63 of the Copy Right Act on 25.8.2003 and on forwarding the said complaint by the Judicial Magistrate, Vaniyambadi, the Vaniyambadi Town Police Station has registered the case in Crime No. 771 of 2003 and investigation is pending. The complaint does not disclose any criminal act against the first petitioner company or the Directors. In the complaint, it is stated that the complainant/second respondent is having business at Bangalore and invented "Mild Steel Tubes" used for drilling of bore-wells having specific diameters and adopting specific engineering method. The complainant is using mild tube with outer diameter of 170 mm to 193.6 mm and he filed application on 2.1.2003 to obtain the Copy Right and another application for Trade Mark Registration for their Logo "GKT". It is claimed by the complainant that the accused are manufacturing the spurious pipes similar to the pipes manufactured and marketed by the complainant, because of which, many dealers are cheated resulting lesser sales of the product of the complainant and loss in business. It is also stated in the complainant that the dealers and Rig Owners, who are cheated, informed the complainant that they are getting supply of such duplicate and forged pipes similar to the product of the complainant without the Logo "GKT". The petitioners are manufacturing the Steel Pipes for more than 21 years as per the Indian Standard Specification for Steel Tubes for mechanical and General Engineering purposes IS - 3601 - 1984 having the dimension of the pipe ranging from 21.3 mm outer diameter to 406.4 mm outer diameter. The patent right and trade mark have not been obtained by the complainant and only applications are pending with Patent and Trade Mark Registration Offices and as such, there is no violation of

Sections 51 and 62 of Copy Right Act and punishable under Section 63 of the Copy Right Act. The Copy Right Act can be invoked only in the case of the complainant having Registered Patent Right and Trade Mark Right and for violation of the same, Copy Right Act can be attracted.

3. The offences alleged under Sections 420, 468 and 471 I.P.C. are not applicable to the facts of this case. Section 63 of the Copy Right Act is also not attracted within the meaning of Section 2 Sub Clause (C) of the Act, as per which artistic work is defined. As per Section 24 of the Patents Act, 1970 and during the pendency of the application for Patent Right, the applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed. The Circle Inspector of Police, Vaniyambadi Town Police Station along with 2 Sub Inspectors and 12 Police Constables, accompanied by the complainant and his henchmen nearly about 30 persons on 16.10.2003 came to the factory of the petitioners at Kothur village, Shad Nagar Taluk, Magaboob Nagar District, Andhra Pradesh and by showing the search warrant issued by the District Munsif-cum-Judicial Magistrate, Vaniyambadi conducted search and seized from the factory 90 numbers of Mild Steel tubes, each measuring 6 meters length weighing 47 to 48 kg each length and 3 numbers of the dies/rolls from the machinery totally valued about 2.55 Lakhs. Therefore, the petitioners have filed this petition to quash the criminal proceedings initiated in Crime No. 771 of 2003 pending investigation on the file of the Circle Inspector of Police, Town Police Station, Vaniyambadi.

4. The Intervener, who has come on record as second respondent, as per order dated 11.12.2003 and made in Crl.M.P. No. 12122 of 2003 and who preferred the complaint in Crime No. 771 of 2003 pending investigation on the file of the Circle Inspector of Police, Town Police Station, Vaniyambadi, has filed counter as follows:- The petition to quash the criminal proceedings in Crime No. 771 of 2003 is not maintainable and is premature. Several questions of fact averred in the petition cannot be gone into in this petition and can be decided only after trial before the Judicial Magistrate. The second respondent/Intervener after several attempts invented the new and peculiar size, viz., 175 MM outer dia and 169 MM inner dia with 1 MM variation between 168 MM outer dia and 193.6 MM outer dia and the engineering drawings of the mild steel tube is an artistic work and the second respondent is the owner of the copyright with regard to the said engineering drawing and as such, no one without the licence, permission or consent from the second respondent can produce any product imitating the one created by the second respondent. The petitioners never manufactured during the period of 21 years, mild steel tubes of the specifications which have been invented and created by the second respondent and only after the invention of the said pipes by the second respondent and manufacturing and sale of the same in the market for a specific end use of improvement of bore-wells, the petitioners have imitated the sizes as per the drawings created by the second respondent in violating of the copyright owned by him attracting the offences under Section 61 of the Copyright Act and as per which Act, registration is not compulsory and is only discretionary. Further, since the second respondent is the owner of the copyright in respect of the engineering drawing on the basis of which the mild steel tubes of new and peculiar sizes are manufactured and sold, the mandatory registration is not required. The creation and invention forming the basis of the production of mild steel tubes is an artistic work within the meaning of Section 2(c) of the Copyright Act and the infringement of the same would come within the meaning of Sections 51 and 52 of the Copyright Act. The second respondent have Sales-tax registration and Income-tax assessment and for the purpose of manufacturing mild steel tubes as per the creation

and invention by the second respondent, he entered into an agreement with M/s.Calcutta Steel Tubes (India) Ltd., and have given licence to them to manufacture as per his copyright and the product manufactured by them is extensively marketed and distributed by the second respondent in the State of Tamil Nadu, Karnataka, Maharashtra, Madhya Pradesh, Chattisgar, Rajasthan and other States. Mild Steel Tubes have been invented by the second respondent for the specific purpose of the Bore-well Industry. It is denied that the second respondent along with rowdy elements armed with weapons intimidated the petitioners and the persons in the factory. There are sufficient materials and averments in the complaint warranting investigation and therefore, the criminal proceedings in Crime No. 771 of 2003 pending investigation on the file of the Circle Inspector of Police, Town Police Station, Vaniyambadi, cannot be quashed without investigation and prosecution and leading evidence, which would result in the miscarriage of justice.

5. The learned counsel appearing for the petitioners submitted that it is claimed by the intervener/second respondent that he invented Mild Steel Tubes used for drilling of bore-wells having specific diameter, viz., 175 mm outer dia, 180 mm outer dia, 185 mm outer dia and 193 mm outer dia and the applications for registration of the said pipes are pending consideration. In this regard, the learned counsel submitted that for manufacturing the steel pipes, no copyright available and the claim of the second respondent/complainant that he has invented the tubes is not attracted within the meaning of Patent Act and which Act is applicable only to industrial products like manufacturing of steel tubes. The learned counsel also contended that no criminal proceeding will lie under the Patent Act and as such, the investigation by the Circle Inspector, Town Police Station, Vaniyambadi in Crime No. 771 of 2003 on the basis of the complaint forwarded by the Judicial Magistrate, Vaniyambadi being not proper is to be quashed.

6. The learned Government Advocate(Criminal Side) appearing first respondent contended that private complaint had been preferred by the second respondent for infringement of his copyright in respect of the mild steel tubes invented by him and there is no allegation that the petitioners are committed the offence under the Patent Act. As regards the copyright in respect of the manufacture of steel tubes, the learned Government Advocate by relying on the Sections 2(c), 13, 14, 44, 45, 51 and 63 of the Copyright Act that second respondent's copyright has been infringed, submitted that there has been infringement of his copyright with regard to the manufacturing of steel products within the meaning of copyright and more particularly relating to the engineering drawing in respect of the peculiar sizes of mild steel tubes created by the second respondent being an artistic work within the meaning of Section 2(c) of the Copyright Act and which has been duly registered as per Sections 44 and 45 of the Copyright Act on 9.12.2003 by the Registrar of Copyrights pursuant to the application filed on 2.1.2003 by the second respondent. The Registration Certificate has also been issued with the newly invented mild steel tube diagram. During the pendency of the copyright application, since there was an infringement, the complaint was preferred on 28.8.2003. The learned Government Advocate further contended that as per Sections 44 and 45 of the Copyright Act, the registration is not mandatory and even in the absence of registration, if it is established that the complainant is the owner of the copyright, and there have been infringement, the complaint lodged is maintainable for such infringement. It is also pointed out that the pipes manufactured by the second respondent and as approved by the Bureau of Indian Standards with regard to the steel pipes relate to outer diameter 168.03 MM or 193.7 MM, but there is no pipe in between and it is the

second respondent, who created the artistic work, viz., the engineering drawing for peculiar sizes for the peculiar purpose of bore-wells which has been recognised as an artistic work by the copyrights authorities and duly registered on 9.12.2003. It is further submitted that the complaint is only at the F.I.R. Stage and pending investigation and preventing to proceed the investigation at this stage is not contemplated under the Criminal Procedure Code. In support of the contention that registration is not a condition precedent for acquiring copyrighting works and non registration does bar to take action for infringement, the learned Government Advocate has relied on the following decisions:-

(1) Satsang - v. - Kiron Chandra , (2) M.C. Production - v. - A.Sundaresh reported in A.I.R. 1976 Madras 22 (Division Bench), (3) Nav Sahitya Prakash - v. - Anand Kumar and (4) R.Madhavan - v. - S.K.Nayar All the said four decisions are rendered pursuant to the civil proceedings.

7. The learned counsel appearing for the second respondent/intervener argued reiterating the stand taken in the counter and supporting the contentions made by the learned Government Advocate(Criminal Side) and relied on the decision in Kamaladevi Agarwal - v. - State of West Bengal and others reported in (2002) M.L.J.(Criminal) 272, in which the Apex Court in paragraph 7 has ruled:-

"The revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the F.I.R. even if taken at face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and contraversal facts cannot be made the basis for the exercise of jurisdiction."

It is further held in paragraph 17:-

"Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a Civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

In that case, the private complaint was preferred for the offence under Sections 465, 467, 468, 471 and 120-B of the Indian Penal Code. The other decision relied on by the learned counsel for the second respondent is S.A.Nanjundewara - v. - M/s.Varlak Agrotech Pvt. Ltd., reported in 2001 (3) C.T.C. 378, in which the Apex Court in paragraph 5 has ruled that "criminal proceedings" can be quashed by the High Court under Section 482 Cr.P.C. only if it comes to conclusion that even statement made by the complainant taken on face value do not make out offence and that standard is to be applied before quashing the criminal proceedings. The said decision arises under the private complaint preferred under Section 138 of the Negotiable Instruments Act.

8. In the complaint preferred by the second respondent and registered as per the F.I.R. in Crime No. 771 of 2003 of Vaniyambadi Town Police Station, it is stated in paragraph 3 thus:-

"(3) The complainant further submits that he is the renowned manufacturers of mild steel Tubes (M.S. Tubes) used in drilling of bore wells having specific diameters. Totally three applications have been filed for registering the patent for these inventions which have been taken on record by the patent office, Chennai, which are numbered and notified in the Gazette of India. The inventions are (i) Patent applications No. 411/MAS/13.4.1999; mild steel Tube with outset diameter of 170 mm to 193.6 mm (Black), (ii) Patent Application No. 836/MAS/04.10.2000; mild steel Tube with outset diameter of 170 mm to 193.6 mm (Galvanized), (iii) Patent Application No. 97/MAS/05.02.2001; mild steel Tube with outer diameter of 175 mm to 193.6 mm."

It is further claimed by the complainant that he found the new sizes of M.S. Tubes by which method wastage of metals has been minimized and the second respondent is the exclusive proprietary rights over the invention and also the copyright owner in the Engineering Drawings filed along with the patent applications, because of its specific "Artistic Work". The pipes so manufactured used to have the Logo as "GKT" and submitted to the Government of India Trade Mark Registry, Chennai-90. It is further narrated in the complaint that he has come to know that M.S. Tubes with such specifications have been spuriously manufactured by the petitioners and as such, cheating many dealers in pipes resulting lesser sales of product of the second respondent causing loss in the business. As such, according to the second respondent, the petitioners have violated the provisions of Sections 51 and 52 of the Copyright Act punishable under Section 63 of the Copyright Act causing loss to the second respondent to the tune of Rs. 10/- Lakhs.

9. The "Artistic Work" is defined under Section 2(c) of the Copyright Act, 1957 thus:-

"(c)"artistic work" means-

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;"

The artistic work is included as infringement of copy within the meaning of Section 2(m) of the Copyright Act. As per Section 13(1)(a) of the Copyright Act, copyright means in respect of artistic works. Under Section 14(c) of the Copyright Act, copyright means in the case of an artistic work to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work.

10. As per Sections 44 and 45 of the Copyright Act, the owner or the other person interested in the copyright may make an application to the Registrar of Copyrights for entering particulars of the work in the register of copyrights.

11. As per Section 51 of the Copyright Act, copyright shall be deemed to be infringed if any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under the said Act does anything against the owner of the copyright, the exclusive right which has been conferred by the Act. The offence of infringement of copyright is punishable under Section 63 of the said Act

with imprisonment for a term which shall not be less than six months, but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and for adequate and special reasons provided lesser punishment.

12. It appears, the licence was granted to the petitioners on 25.1.1994 to use the standard mark set out in the first column of the first schedule in respect of the article set out in the second column of the said schedule manufactured in accordance with the Indian Standards referred to in the third column of the said schedule from time to time amended or revised. The said schedules are not enclosed with the type set. The petitioners were granted permission as per letter dated 17.3.1994 by the Director of Bureau of Indian Standard for producing steel tubes for mechanical and general engineering purposes of the type and grade WT 200, sizes 21.3 mm to 101.6 mm dia.

13. The artistic work in respect of the newly invented mild steel tubes of 175 mm outer dia has been registered on 9.12.1993 on the application of the second respondent dated 2.1.2003 made to the Registrar, Copyrights. Relating to the drawing for such pipe is being the artistic work within the meaning of 2(c) of the Copyright Act and for infringement of such copyright, the offence under the said Act is attracted. The facts as to whether M.S. Tubes which is claimed to be manufactured by the petitioners resemble to the engineering drawings with certain specifications and which claims to have been invented by the second respondent, all will be revealed only in the investigation of police concerned as per the complaint made by the second respondent. Therefore, at this stage, no direction can be issued from proceeding further with such investigation, as held in (2002) M.L.J.(Criminal) 272(cited supra). In that view of the matter, the relief sought for by the petitioners that the proceedings are to be quashed cannot be ordered.

14. In the light of the discussions made above, this petition is dismissed. The Circle Inspector, Vaniyambadi Town Police Station, Vaniyambadi is directed to complete the investigation within the time and drop further actions or file final report as the case may be in accordance with law. Consequently, the petition in Crl.M.P. No. 10724 of 2003 is closed.