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Date: 30/10/2025

Bureau of Indian Standars Vs Vijay Singh and another

C.R.R. No. 2254 of 2008

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 29, 2011

Acts Referred:
Bureau of Indian Standards Act, 1986 â€" Section 11, 33#Criminal Procedure Code, 1973 (CrPC) â€" Section 397, 401, 482

Citation: (2011) 2 ILR (P&H) 614 : (2011) 3 RCR(Criminal) 269

Hon'ble Judges: Nirmaljit Kaur, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Nirmaljit Kaur, J.
This is a petition u/s 401 read with Section 482 Cr.P.C for setting aside the impugned judgment dated 11.07.2008 (P3)

passed by the learned Additional Sessions Judge, Faridabad and impugned order dated 22.07.2008 (P4) passed by the learned Chief Judicial

Magistrate, Faridabad.

2. Facts of the case, in brief, are that the petitioner-Bureau filed a complaint u/s 11 read with Section 33 for prosecuting and punishing the accused

respondents for violation of the provisions of Bureau of Indian Standards Act, 1986 on the ground that the report dated 11.07.2007 was received

to the effect that the accused are misusing the "ISI" Mark and also doing illegal manufacturing and sale of packaged drinking water. On the basis of

the report dated 11.07.2007, search and seizure operation was conducted in the premises of the respondents accused on 12.07.07. At the time of

search and seizure operation, the seizure memo dated 12.07.2007 was prepared by the team leader which was duly signed by the accused and

other employees of the accused as well as all other team members of the complaint. It was therefore, alleged that the accused-respondents were

using stickers with ISI mark and CM/L- 9321469 along with their own address on 20 liters jars of packaged drinking water and these stickers

were pasted on the jars. The accused was using stickers on these jars with ISI mark without having licence of ISI from the complainant.

Accordingly, the Chief Judicial Magistrate, Faridabad, vide its order dated 31.08.2007 summoned the accused u/s 11 read with Section 33 of the

Bureau of Indian Standards Act, 1986. Aggrieved by the above mentioned summoning order dated 31.08.2007, the respondents filed a criminal

revision u/s 397 of Code of Criminal Procedure before the learned Additional Sessions Judge, Faridabad, claiming therein, that no offence u/s 11

read with Section 33 of the Act is made out against the accused. Accordingly, the complaint was dismissed vide order dated 22.07.2008 passed

by the Chief Judicial Magistrate, Faridabad.

3. Hence, the judgment dated 11.07.2008 passed by the Additional Sessions Judge, Faridabad as well as the judgment dated 22.07.2008 passed

by the Chief Judicial Magistrate, Faridabad are being challenged by way of present revision petition.

4. While challenging the impugned order and judgment passed by the Court below, learned counsel for the petitioner submitted that the Additional

Sessions Judge has not properly considered the provisions of Section 11 of the Bureau of Indian Standards Act, 1986, wherein, all persons have

been prohibited from use in relation to any trade mark of design in standard mark without licence. In the present case, at the time of search and

seizure on 12.07.2007, the respondents were found not only manufacturing their product but also using ISI mark with the licence which was not

renewed and which was under suspension with effect from 10.11.2006. The raiding party has found bottle packaged drinking water 20 litre Jars

with the brand New Life having ISI Mark with IS 14543 CM/L 9321469 manufactured by New Age Aqua (P) Limited, Badkhal Faridabad.

Along with the same, empty bottles of packaged drinking water 20 litre jars with ISI mark mentioning the licence number which was not in

existence on that day were found.

5. Reliance was placed on the judgment rendered by the Apex Court in the case of State of Kerala v. Orison J. Francis and Anr., reported as

2011(3) R.A.J. 395: AIR 2009 Supreme Court 500 to argue that the complaint of manufacturing drugs without licence cannot be quashed on the

ground that the application for grant of licence is pending as well as on the judgment rendered by the Apex Court in the case of Lakhwant Singh v.

Jasbir Singh and others, reported as 2008(4) RCR (Criminal) 545 to argue that a legitimate prosecution cannot be quashed by exercising the

powers under Sections 482 Cr.P.C.

6. Learned counsel for the respondent, on the other hand, while opposing the revision, submitted that a mere preparation is not punishable under

the provisions of law. Secondly, the Jars recovered were empty and therefore, do not attract the provisions of Section 11 of Bureau of Indian

Standards Act, 1986 and even otherwise, the petitioner had already received a sum of Rs. 90,802/-, vide demand drafts numbers No. 610433

and 610380 dated 09.02.2007 and 21.02.2007, respectively towards the licence No. CMI-9321469 for the period from 01.03.2007 to

29.02.2008, whereas, the alleged search took place on 12.07.2007.

Heard.

7. After hearing the learned counsel for the parties as well as from the perusal of the pleadings on record, the following facts emerge :-

a) The respondents were holding licence bearing No. CM/L 932169 as per IS 14543 of 2004 for preparing the articles which they used to sell

with BIS mark of New Life. The said licence expired on 28.02.2007.

b) A sum of Rs. 90,802/-, vide demand drafts numbers No. 610433 and 610380 dated 09.02.2007 and 21.02.2007, respectively towards the

licence No. CML-9321469 was duly sent by the respondents and received by the petitioner for renewal of the licence for the period from

01.03.2007 to 29.02.2008;

c) The expiry of the said licence was communicated to the petitioner only on 13.04.2007.

d) In pursuance to the search and seizure, the team seized only the following material from the premises of the respondents :-

i) 2 number of 20 liter empty jars with BIS standard mark of New life Branch as indicated at serial No. 1 of the seizure memo with IS 14543;

CM/L 9321469

ii) 8 No. of 20 liter empty jar with BIS Standard mark of New Life brand empty as indicated at serial No. 2 of seizure memo.

The articles which are mentioned in para 4(ii) were sealed and kept at the factory of the accused.

8. The above articles which were seized vide seizure memo were duly packed and sealed with BIS Brass seal which was duly signed by the team

leader. It is, therefore, apparent that the recovered 20 liter jars were empty. As such, the allegation that the accused respondents were using

stickers with ISI mark and CM/L 9321469 along with their own address on 20 jars of packed drinking water and these stickers were pasted on

the jars is neither substantiated nor is made out.

9. The relevant provisions of Section 11 of the Bureau of Indian Standards Act, 1986 t reads as under:-

Section 11 :- Prohibition of use of certain norms etc.

(1) No person shall use, in relation to any article or process, or in the title of any patent, or in any trade mark of design, the standard mark or any

colourable imitation thereof, except under a licence.

(2) No person shall, notwithstanding that he has been granted a licence, use in relation to any article or process the standard mark or any

colourable imitation thereof unless such article or process conforms to the Indian Standard.

10. A perusal of Section 11 of the Act makes it clear that the offence of misusing the ISI mark without licence is attracted only in case, the same is

used to manufacture; make or sell the articles. The article in the present case is supposed to be "drinking water", whereas, the only recovery is

empty jars of 20 liter.

11. There is no dispute that the argument raised by the learned counsel for the petitioner as well as the well settled proposition of law laid down by

the Hon"ble Apex Court in the case of State of Kerala v. Orison J Francis and Anr., reported as AIR 2009 Supreme Court 500 wherein, it is held

that the complaint cannot be quashed on the ground that the application for the licence has already been filed. However, the facts in the present

case, as discussed above, are different and moreover do not constitute the offence in itself.

12. In the present case, it is admitted that the respondents had a valid licence which stood expired. However, before expiry of the same, the

respondents had already applied afresh for its renewal. In the present case, it is not the case of the prosecution that the respondent firm has applied

for the licence for the first time. Thus, it was a running business. The respondent-firm was waiting for the renewal to come through. As such, the

empty Jars with stickers of ISI standard mark in itself cannot be an offence u/s 11 of the, said Act as the said empty Jars with sticker of ISI mark

may either be left over of the last consignment/order or for a subsequent consignment/order which is yet to be offered or accepted by the

respondents after the expected renewal of the licence/There may have been some substance in the complaint in case the said sealed Jars were

recovered" having drinking water, whereas, admittedly as per the search and seizure memo, the only recovery affected from the premises is (i) 2

number of 20 liter empty jars with BIS standard mark of New life Branch as indicated at serial No. 1 of the seizure memo with IS 14543; CM/L

9321469; and (ii) 8 No. of 20 liter empty jar with BIS Standard mark of New Life brand empty as indicated at serial No. 2 of seizure memo.

13. Thus, the allegation and facts of the present case is squarely covered under category 1 of the list of the cases as laid down by the Apex Court

in the case of State of Haryana v. Bhajan Lal, 1991(1) RCR (Crl) 383 which can be quashed while exercising power u/s 482 of the Code of

Criminal Procedure. The same reads as follows :-

(1) Where the allegations made in the first information report or the complaint even if they are taken at their face value and accepted in their

entirety do not prime facie constitute any offence or make out a case against the accused.

In view of the above discussion, there is no ground to interfere in the well reasoned order dated 11.07.2008 (P3) passed by the Additional

Sessions Judge, Faridabad and order dated 22.07.2008 (P4) passed by the Chief Judicial Magistrate, whereby, the complaint has been dismissed.

In view of the above, the present revision petition is dismissed being devoid of merit.