

(2006) 08 P&H CK 0547

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Miscellaneous No. 34010-M of 2003

M/s Bikaner Steel Mills

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 11, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Trade and Merchandise Marks Act, 1958 - Section 79

Citation: (2007) 1 RCR(Criminal) 773**Hon'ble Judges:** Tej Pratap Singh Mann, J**Bench:** Single Bench**Advocate:** Gaurav Chopra, for the Appellant; G.P.S. Gill, AAG, for the Respondent

Judgement

T.P.S Mann, J.

By filing the present petition u/s 482 Cr.P.C. the petitioner is seeking quashing of FIR No. 132 dated 7.7.2003, registered under Sections 420 IPC, 63 and 64 of the Copyright Act, 1957 and 79 of the Trade and Merchandise Marks Act, 1958 at Police Station Sadar, Khanna.

2. An application/complaint was submitted by Suhail Mohmad Qureshi, Central Coordinator Brand Protection, TATA Steels to the Director General of Police, Punjab stating therein that the Tata Iron Steel Company Limited, manufactures and sells a range of steel products.. Reinforcement bars bearing marking "TATA TISCON" is one of its products which are produced by using TMT technology and made out of the finest steel. For quite sometime, TATA Steel had been receiving complaints from its various authorized dealers/distributors that M/s Bikaner Steel Mills, located at GT Road, Mandi Gobindgarh was manufacturing and embossing TA-TA TMT bars and also passing of this product in the market as original TATA product. Since the spurious material is embossed as TATA, it is misleading for the customers, who were not always in a position to identify the original TATA TISCON from counterfeit. Said

Suhail Mohmad Qureshi also acquired one such bar made by M/s Bikaner Steel Mills with TA-TA embossed on it, which he presented along with an original TATA TISCON sample as evidence. Accordingly, an FIR was registered on the basis of the aforementioned complaint.

3. While challenging the complaint (Annexure P-1), the petitioner submitted that no offence u/s 420 IPC was made out as there was no allegation as to whom the petitioner had sold the alleged counterfeit steel bars. Further that no offence under Sections 63 and 64 of Copyright Act was made out as no copyright subsisted in the steel bars produced by TATA TISCON by using TMT technology. Besides, the offence under the Trade and Merchandise Marks Act, was not cognizable in nature and the police could not register an FIR and investigate the same. Learned counsel for the petitioner relied upon *Piyara Singh and others v. The State of Haryana*, 2002(3) RCR(Cri) 290 (P&H), wherein it was held that after the coming into force of the Trade and Merchandise Marks Act, it would be unreasonable to add Section 420 IPC as well for the same very allegations, which were covered by the aforementioned Act.

4. On behalf of the respondent, it was submitted that a perusal of the FIR fulfilled the ingredients of Section 420 IPC, besides those of the Trade and Merchandise Marks Act and the Copyright Act and thus, no case was made out for quashing of the FIR in question.

5. The ratio of *Piyara Singh* (supra) is sufficient indication that in the trial of offence u/s 79 of the Trade and Merchandise Marks Act, it would be improper to use Section 420 IPC. Moreover, the allegations for committing offence u/s 420 IPC, as stated in the FIR, are vague in nature. No where, it is mentioned as to whether any private person had been cheated on account of the mis-representation allegedly made by the petitioner.

6. As per Section 13 of the Copyright Act, copyright could subsist in original literary, dramatic, musical and artistic works, cinematograph films and sound record. There could be thus no copyright in the steel bars produced by TATA TISCON by using TMT Technology

7. In view of the above, no offence u/s 420 IPC and also under Sections 63 and 64 of the Copyright Act was made out. The offence u/s 79 of the Trade and Merchandise Marks Act is non-cognizable in nature and no FIR could be registered. The complainant will be at liberty to file a criminal complaint in the concerned Court, if so advised, so as to initiate criminal proceedings against the present petitioner.