

(2016) 01 SC CK 0013

SUPREME COURT OF INDIA

Case No: Civil Appeal No. 233 of 2016 (Arising out of SLP(C) No. 37703 of 2012)

Sergi Transformer Explosion
Prevention Technologies Pvt.
Ltd.& Anr.

APPELLANT

Vs

CTR Manufacturing Industries
Ltd. and Anr.

RESPONDENT

Date of Decision: Jan. 13, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195(1)(b), 340

Citation: (2016) 3 Scale 179 : (2016) 12 SCC 713

Hon'ble Judges: T.S. Thakur, CJI.; A.K. Sikri; R. Banumathi, JJ.

Bench: Full Bench

Advocate: Amit Sibal, Sr. Adv, Hemant Sharma, Amit Jajoo, Sushmita Gandhi, Vinay Tripathy, Shailesh Gupta, Vibhor Gupta and Shivaji M. Jadhav, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Leave granted.

2. This appeal arises out of an order, dated 30.10.2012 passed by the High Court of Judicature at Bombay whereby the High Court has while allowing an application under Section 340 of the Criminal Procedure Code (for short, "the Cr.P.C.") directed the filing of a criminal complaint against the appellants for their prosecution for offences mentioned in Section 195 (1)(b) Cr.P.C.

3. The controversy arises in the following backdrop :

The respondent CTR Manufacturing Industries Ltd. filed an injunction suit before the District Court, Thane against Appellant No. 1-herein. By an ex parte ad interim order

passed by the Trial Court in the said suit, appellant No. 1 herein was restrained from selling its products to Delhi Transco Ltd. (for short, "the DTL") under a specified tender notice issued by the latter. A second and further injunction order was passed by the said Court on 09.12.2010 by which the appellant No.1-herein was restrained from taking any steps towards complying with the purchase order, dated 01.12.2010 issued by the DTL in its favour.

4. Aggrieved by the said order, the appellant-company preferred Appeal No. 1446 of 2010 before the High Court of Bombay which came to be dismissed by an order dated 24.12.2010. The case of the plaintiff-respondent No. 1-herein is that despite the orders of injunction mentioned above, the appellant submitted its drawings to DTL, in terms of the purchase order issued in its favour, on 24.12.2010. After doing so, the appellant-company appears to have made an application on 27.12.2010 before the District Court seeking modification of the second ad interim order, dated 09.12.2010. That application for modification was dismissed by the District Court by its order, dated 28.12.2010 against which appellant No. 1 preferred an appeal before the High Court (A.O. No. 102 of 2011) on 30.12.2010. The High Court eventually allowed the said appeal by order dated, 11.01.2011 and directed the filing of the drawings before the DTL. It was in the above background that respondent No. 1 filed Civil Application No. 1282 of 2011 under Section 340 Cr.P.C. accusing the appellants-herein of perjury inasmuch they had while filing an application for permission to submit the drawings suppressed the fact that the drawings already stood filed. The High Court issued notice in the said application; heard counsel for the parties and eventually came to the conclusion that a case for directing prosecution of the appellants for the offences mentioned above was indeed made out. The High Court has accordingly directed the Registrar (Judicial) attached to the High Court to file an appropriate complaint before the competent Court for prosecuting the appellants. The present appeal assails the correctness of the said direction.

5. We have heard learned counsel for the parties at considerable length who have taken us through the injunction orders passed by the Trial Court; the order passed by the Trial Court declining the permission to the appellants to file the drawings before the DTL as also the order by which the High Court eventually allowed such drawings to be filed. We have also been taken through the order passed by the High Court by which the High Court has examined the explanation offered by the appellants and come to the conclusion that the same was not prima facie acceptable. The material facts, in our view, are not in dispute. It is not in dispute that in terms of the second order of injunction passed by the Trial Court on 09.12.2010, the appellant-company was restrained from taking any steps towards complying with the purchase order dated 02.12.2010 issued by the DTL for supply of fire protection systems. It is also not in dispute that filing of drawings was one of the requirements under the purchase orders to be accomplished within the period stipulated thereunder. That necessary drawings had been submitted by one of the

officials of the appellants on 24.12.2010 is also not in dispute. The fact that an application for permission to submit the drawings was made before the Trial Court which application was rejected by the said court and allowed by the High Court in appeal by order dated 11.01.2011 is also admitted. The only question in the above context is whether the appellants had any criminal intent to withhold from the Trial Court as also the High Court the information regarding the filing of the drawings before the DTL on 24.12.2010. The explanation offered by the appellants before the High Court is that on receipt of the purchase order from DTL, instructions were issued to the officials of the appellants to take immediate steps for compliance of the purchase order. In Para 8.5 of the reply filed before the High Court, the appellants have explained the steps taken pursuant to the purchase order in the following manner :

"8.5. Upon receiving the Purchase Order, I issued necessary oral orders to various departments to meet the Purchase Order requirements, but to stop short of "selling" Sergi products to DTL. While issuing these orders, I was aware of the legal opinion given to Sergi by its lawyers in the context of the 15th of February, 2010 Order. Annexed herewith and marked ANNEXURE A and B are copies of the said opinion and the said injunction order".

6. The explanation further asserts that on the day the appellants approached the District Court at Thane for permission to file drawings before the DTL, appellant No. 2 was not aware of the fact that such drawings had already been submitted to DTL on 24.12.2010.

7. In paragraph 9.4 of the reply the appellant-company has explained the circumstances in which the drawings had been submitted to DTL in the following words :

"9.4 Thereafter the internal inquiry revealed as follows. I say that one Mr. Rahul Chauhan, Sergi's sales officer, acting under instructions as stated in para 8.5 herein-above, submitted drawings to DTL. Mr. Chauhan, acted under instructions given to him prior to the receipt of the second injunction order by Sergi, which unfortunately was not communicated to him in the circumstances as described herein."

8. The appellants have claimed that submission of the drawings on 24.12.2010 was an inadvertent mistake arising from the failure to communicate order dated 09.12.2010 "down the line" to the operational personnel. What is important is that in Paragraph 12 of the response filed on behalf of the appellants, the appellants have tendered an unconditional and sincere apology to the court for an inadvertent and unintentional submission of drawings by SERGI on 24.12.2010 in the following words :

"I say that I, Sergi's Managing Director and Respondent No. 2, hereby tender an unconditional and sincere apology to the Courts for the inadvertent and

unintentional submission of drawings by Sergi on the 24th of December, 2010. I say that there was no intention on the part of the Respondents to subvert the rule of law. I say that Sergi and I have the highest respect for the laws of India and ask for forgiveness for the inadvertent and unintentional mistake. I assure the Courts that Respondent No. 1 has now put in place a vibrant and effective system to ensure that mistakes such as these do not recur."

9. The High Court while considering the matter has in our opinion, failed to appreciate the defence that had been set up by the appellants. The explanation offered by the appellants was a plausible one which ought to have been kept in mind by the High Court while examining whether the present was a fit case for prosecution of the appellants. At any rate, the High Court has not adverted to the question whether it was expedient "in the interest of Justice" to launch prosecution against the appellants for the mistake which according to the respondents was deliberate but unintentional according to the appellants. According to the appellants the mistake occurred out of a certain communication gap between the higher officers of the company and the operational staff. That Prosecution cannot be launched just at the asking of a party is well established. A long line of decisions of this Court have examined the circumstances in which the court ought to invoke that power. The High Court has, while considering the question of launching prosecution for perjury, to examine whether it is expedient in the interest of justice to do so, having regard to the totality of the circumstances. Inasmuch the High Court has failed to advert to that aspect and record a finding that it is expedient in the interest of justice to direct prosecution, the order passed by the High Court falls short of the legal requirements.

10. Equally important is the fact that the High Court had by order dated 11.01.2011 examined the question whether the appellants could be allowed to file their drawings before DTL. The High Court had while examining that aspect of the matter clearly observed as under :

"As already stated herein-above, it is not as if that the product of the appellant is not patented. On the contrary, it is to be noted that the product of the appellant is patented as way back as in 2002 whereas the product of the plaintiff-respondent is patented only in 2006. Though it is the contention of the plaintiff that the product of the appellant is not in conformity with the standards required by DTL, in my view, it will be for the DTL to decide whether the products are in conformity with the standards or not. At this stage, it is only word against word. It is the contention of the plaintiff that the product of the appellant is not in conformity with the requirements, whereas, it is the contention of the appellant that it is in conformity with the required standards. The application of the plaintiff under Rule 39 Order 1 and 2 is yet to be decided. The contention of the plaintiff that the defendant-appellant is dishonestly using the product of the plaintiff as its own product is not considered even at the stage of grant of injunction after hearing the

parties. All orders passed are at ad interim ex-parte stage. In that view of the matter, I find that the learned District Judge has erred in rejecting the application. It is to be noted from paragraph 22 of the Purchase Order that in the event the appellant fails to submit the drawings within the stipulated period, the appellant would be required to face the penal liability. As against this, no prejudice would be caused to the plaintiff inasmuch as the appellant has given clear undertaking reproduced herein above, wherein, it has categorically stated that it shall not claim any equities on account of submission of drawings. Appellant has further undertaken that the drawings to be submitted to DTL shall be in accordance with its patent i.e. Patent No. 189089. It is thus clear that if the appellant fails to submit the drawings, every day's delay would add to the penal charges that would be required to pay. As against this, no prejudice would be caused to the plaintiff merely by submission of the drawings. The question as to whether the appellant is dishonestly using the plaintiff's product is yet to be gone into even at a prima facie stage"

11. In the totality of the above facts, we are of the view that the High Court has taken a hyper technical view of the matter in directing launch of prosecution against the appellants. From the defence set up by the appellants and the explanation offered by them it appears to us that there was no intention on the part of the appellants to defy the orders by which they have been restrained from taking further steps towards compliance of the purchase order, dated 02.12.2010 issued by DTL, for otherwise, there was no need for the appellants to approach the District Court and the High court for permission to do so.

12. In the circumstances, we are of the view that the present is not a fit case in which the High Court should have directed the institution of criminal proceedings against the appellants.

13. In the result, this appeal succeeds and is hereby allowed; the order passed by the High court set aside and the Civil application No. 1282 of 2011 filed under Section 340 of the Cr.P.C. dismissed.

14. There shall be no order as to costs.