

TEMPORARY BREATHER AGAINST CRIMINAL PROSECUTION FOR “LAKHANI” FOR FALSE LODGING COMPLAINT UNDER COPYRIGHT AS WELL AS TRADEMARK ACT

Lakhani Rubber Udyog Ltd. Manufactures Hawai Chappel. They are registered owners of a trademark. Lakhani Rubber Udyog Ltd. filed a complaint with the Senior Superintendent of Police, Jalandhar against M/s. Saraswati Utpadan Pvt. Ltd. alleging that they are marketing inferior goods with the label 'Lakhani' illegally and requesting action under Section 63 of the Copyright Act read with Section 78-79 of the Trade and Merchandise Marks Act, 1958. On enquiry the complaint was found to be incorrect as no infringing material was discovered on the said premises belonging to Saraswati Utpadan Pvt. Ltd. as alleged in the complaint.

A complaint was filed by Saraswati Utpadan Pvt. Ltd. against the Lakhani Rubber Udyog and in enquiry report Senior Superintendent of Police, the Superintendent of Police stated that application submitted by the aforesaid Lakhani Rubber Udyog, Faridabad was found to be false after investigation. Due to which the Saraswati Utpadan Pvt. Ltd. had lost its goodwill. Therefore the SHO, Adampur is being directed to take action against the aforesaid officer of Lakhani Rubber Ltd. U/s 182 IPC.

The Station House Officer of the Police Station, Adampur thereafter filed a complaint petition before the Chief Judicial Magistrate against the Managing Director of Lakhani Rubber Ltd. as well as complaints (i.e. Appellants herein).

The Appellant questioned the legality and/or validity of the said report under Section 195(1) of the Code of Criminal Procedure, 1973 and other provisions before the High Court of Punjab and Haryana by filing an application under Section 482 of the Code. By reason of the impugned judgment dated 17.8.2005, the High Court dismissed the said application.

As per the provisions of Section 195(1) of the Code of Criminal Procedure, 1973 the complaint petition could have been filed only by the Senior Superintendent of Police, Jalandhar or any authority higher in rank to him.

It was contended by the Respondents that as the complaint petition having been filed pursuant to the directions of the Senior Superintendent of Police itself by SHO, it is valid in law.

Section 182 of the Indian Penal Code, indisputably, provides for an offence falling under Chapter X of the Indian Penal Code.

Section 195 provides for prosecution for contempt of lawful authority of public servant, for offences against public servant and for offences relating to documents given in evidence. It contains an embargo stating that 'no court shall take cognizance of an offence punishable, inter alia, under the aforementioned provision

except on the complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate'.

Supreme Court in its judgement dated 22/04/2008 held that the High Court, committed a manifest error in so far as it held that the as the complaint was addressed to the SHO, he was the appropriate authority to lodge a complaint in respect of an offence punishable under Section 182 of the Indian Penal Code. The fact that the search was made pursuant to the directions issued by the Senior Superintendent of Police, Jalandhar is not in dispute.

Section 195 contains a bar on the Magistrate to take cognizance of any offence. When a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction. In a case of this nature, representation, if any, for all intent and purport was made before the Senior Superintendent of Police and not before the Station House Officer.

No complaint, therefore, could be lodged before the learned Magistrate by the Station House Officer. Even assuming that the same was done under the directions of Senior Superintendent of Police, Jalandhar, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore, cannot be done by an inferior officer. It does not provide for delegation of the function of the public servant concerned.

In terms of sub-section (3) of Section 340 of the Code, a complaint may be signed by such an officer as the High Court may appoint if the complaint is made by the High Court. But in all other cases, the same is to be done by the presiding officer of the court or by such officer of the court as it may authorize in writing in this behalf. Legislature, thus, wherever thought necessary to empower a court or public servant to delegate his power, made provisions therefor. As the statute does not contemplate delegation of his power by the Senior Superintendent of Police, we cannot assume that there exists such a provision. A power to delegate, when a complete bar is created, must be express; it being not an incidental power.

The Supreme Court relied on the ratio laid down in *Daulat Ram v. State of Punjab* [(1962) 2 SCR 812], by Hidayatullah, J. (Single Judge) as well as decision was followed by a Division Bench of this Court in *State of U.P. v. Mata Bhikh & Ors.* [(1994) 4 SCC 95] and held that said decisions are squarely applicable to the facts of the present case and for the reasons aforementioned, the impugned judgment cannot be sustained and set aside judgement thereby allowing the appeal.

The Supreme Court further held that another complaint petition would be maintainable at the instance of the appropriate authority.