

CASE NO.:
Appeal (crl.) 693 of 2008

PETITIONER:
P.D. Lakhani & Anr

RESPONDENT:
State of Punjab & Anr

DATE OF JUDGMENT: 22/04/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
REPORTABLE

CRIMINAL APPEAL NO. 693 OF 2008
(Arising out of SLP (Crl.) No.5345 of 2007)

S.B. Sinha, J.

1. Leave granted.
2. Applicability of Section 195(1) of the Code of Criminal Procedure, 1973 (the Code) is in question in this appeal which arises out of a judgment and order dated 17.8.2007 passed by the High Court of Punjab and Haryana in Criminal Miscellaneous No.62858 of 2005.
3. Lakhani Rubber Udyog Ltd. Manufactures Hawaii Chappel. They are registered owners of a trademark. Inter alia, on the premise that M/s. Saraswati Utpadan Pvt. Ltd., Respondent No.2 herein had been marketing inferior goods with the label 'Lakhani' illegally, a complaint was lodged by the second appellant herein to SHO, Police Station Jalandhar. He was asked to approach the Senior Superintendent of Police, Jalandhar.
On or about 18.1.2005, the second appellant approached the Senior Superintendent of Police, Jalandhar with a written complaint, stating :
"The inferior quality goods bearing the falsified trade mark and as are packed infringing labels/cartons are being sold and offered for sale at various places in Faridabad and the purchasing public is being deceived and cheated by such persons. The Government is also being defrauded by huge reveues on account of the illegal trade activities of such persons.
We wish to bring it to your notice that such persons/traders have full knowledge about the legal and vested rights of our company and are not only committing acts of falsification/infringement and are also abetting the infringement of copyright and are committing offence as are cognizable and are punishable under Section 63 of the Copyright Act read with Section 78-79 of the Trade and Merchandise Marks Act, 1958.
We further submit that the said unscrupulous persons have in their power and possession dies, the goods to which false trade marks, false trade description has been applied including the material and with logo, which are used for the purpose of falsifying our company's Trade Mark and Logo.
The said goods are also offered for sale by the said accused.

You are requested to take legal action against the abovesaid parties and oblige."

4. In the body of the said complaint itself, the Senior Superintendent of Police directed one Gian Singh, to comply with the said request of the second appellant and report. When a search was sought to be carried out in the premises of the respondent purported to be on the basis of the said direction, a large number of people objected thereto. They obstructed in the proceeding of search and misbehaved with the raiding party. However, nothing objectionable was found in the factory. A report to the said effect was submitted by the aforementioned Gian Singh, In-charge, Special Cell of the CIA.

5. Another report was filed by the Superintendent of Police (Detective) on 8.4.2005 before the Senior Superintendent of Police, stating :

"On inquiry of aforesaid application, it was found that owner of Lakhani Rubber Udyog, 130, Sector 24, Faridabad had submitted an application No.102-Peshi 16/1/2005 concerning duplicate hawai chappal to the SSP. It was forwarded to Gian Singh, Insp. CIA for necessary action Gian Singh Insp. on 19/1/2005 along with employees and Sh. Munish Arora, Adv. Sh.N.D. Arora, Marketing Advisor, Manohar Juneja and Sanjay Sood, Marketing Manager of Lakhani Rubber Udyog Limited, Faridabad, Haryana, reached at the factory of Saraswati Utpadan, at Dogri Road, for checking and made the search of the factory. During this period for the opposition put by the owners of the factory there was little altercation also took place. During search neither anything in the name Lakhani Chappal nor anything of the like appearance was found and also nothing objectionable thing was found. Therefore, the 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. Whereas the SHO Adampur is being directed to take action against the aforesaid officer of Lakhani Rubber Ltd. U/s 182 IPC. No misbehave with anybody proved on the part of Gian Singh Insp. He has complied with the orders of the senior officers. No further action is required on the application. It is suggested that the application is consigned to record. Report is submitted."

6. The Station House Officer of the Police Station, Adampur thereafter filed a complaint petition on or about 11.5.2005 before the Chief Judicial Magistrate, inter alia, stating :

"During investigation complaint lodged by Lakhani Rubber Udyog Limited, Faridabad was found false. Due to this, reputation of Saraswati Udyog Private Limited, Ahlwalpur got damage. On this a complaint No.66-PLZ dated 14/2/05 given to Sh. SSP Sahib, bahadur, Jalandhar by M/s. Sarswati Udyog Private Limited. It was investigated by Sh. SP-D Sahib, Jalandhar. After investigation they found that complaint filed by Lakhani Rubber Udyog Limited is a false one and they directed to take necessary action U/s 182 IPC against the accused. Kalendera was prepared in accordance with the order of Sh. SP-D Sahib, Jalandhar (letter No.1086-Reader SP-D/P dated

9.4.05 and P.S. No.512-5E dated 9.4.05) and sent to you for necessary action. The under mentioned witnesses will give evidence against the accused and they should be called through summons and accused should be given proper punishment."

7. Legality and/or validity of the said report was questioned by the appellants herein 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.

8. Mr. K.V. Vishwanathan, learned counsel appearing on behalf of the appellant, would submit that having regard to the terminologies used in 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. In any event, the Managing Director of Lakhani being not concerned with the lodging of the earlier complaint, the complaint in question was not maintainable against him.

9. Mr. Gupta, learned counsel appearing on behalf of the respondent, on the other hand, urged as the matter is pending before the Trial Judge, this Court, at this stage, should not interfere with the impugned judgment. It was contended that in effect and substance, the complaint was filed by the appellant No.2 only before the Station House Officer which was referred to Senior Superintendent of Police as the question involved was infringement of the laws governing Intellectual Properties. In any event, as the complaint petition having been filed pursuant to the directions of the Senior Superintendent of Police itself, 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'. 'Contempt of a public servant' has a definite connotation. Such contempt must be provided for by law. It must be found to be false.

The Station House Officer, Jalandhar did not act on the said complaint. He asked the appellant No.2 to bring the same to the notice of the Senior Superintendent of Police, Jalandhar, Complaint Branch, which he did. It was, thus, a complaint to a higher authority.

10. The Senior Superintendent of Police only had asked the Superintendent of Police, Detective Branch to enquire into the matter and report within seven days.

Shri Gian Singh, pursuant thereto was asked to carry out the necessary search of the premises of the second respondent.

11. The report of compliance by Gian Singh was made to the CIA staff. CIA staff, in turn, placed it before the Senior Superintendent of Police. The proceedings, therefore, were, indisputably, initiated by the Senior Superintendent of Police, Jalandhar and not by the Station House Officer,.

12. The Station House Officer would have jurisdiction to investigate into the matter provided a first information report was lodged by him in terms of the complaint made by the appellant No.2. Whatever action was taken in the matter was pursuant to the order of the Senior Superintendent of Police Jalandhar.

The High Court, in our opinion, thus, 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.

13. 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.

We may notice that 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.

14. In *Daulat Ram v. State of Punjab* [(1962) 2 SCR 812], Hidayatullah, J. (as the learned Judge then was), held as under :

"\005 In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in this case."

The said decision was followed by a Division Bench of this Court in *State of U.P. v. Mata Bhikh & Ors.* [(1994) 4 SCC 95], stating

"A cursory reading of Section 195(1)(a) makes out that in case a public servant concerned who has promulgated an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate, i.e., some other public servant who is his official superior and under whose administrative control he works."

The said decisions are squarely applicable to the facts of the present case.

15. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. Appeal is allowed. However, there cannot be any doubt whatsoever that another complaint petition would be maintainable at the instance of the appropriate authority.