

Gujarat High Court

Atulbhai Rasikbhai Dudhwala vs State Of Gujarat on 27 June, 2023

Bench: Sandeep N. Bhatt

R/SCR.A/693/2014

ORDER DATED: 27/06/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 693 of 2014

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ATULBHAI RASIKBHAI DUDHWALA & 1 other(s)
Versus
STATE OF GUJARAT & 2 other(s)
=====

Appearance:

MR SACHIN D VASAVADA(3342) for the petitioners(s) No. 1,2
MR SAMRAT N MEHTA(3949) for the petitioners(s) No. 1,2
MR APURVA A DAVE(3777) for the Respondent(s) No. 2
MR. DHAVAN JAISWAL, APP for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 3
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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 27/06/2023
ORAL ORDER

1. Heard Mr. Sachin D. Vasavada, learned counsel for the petitioners, and Mr. Dhavan Jaiswal, learned Assistant Public Prosecutor for respondent Nos.1 - State as well as learned advocate Mr. Apurva A. Dave for respondent No.1. Though served none appears for respondent No.3.

2. The present petition is filed for seeking following prayers:-

"A. Your Lordships may be pleased to admit and allow the present Petition;

R/SCR.A/693/2014 ORDER DATED: 27/06/2023 B. Your Lordships may be pleased to quash and set aside the FIR registered as Crime Register No. 3042/13 at Annexure A and further be pleased to quash and set aside the Charge sheet dated 30-07-2013 which is filed in pending criminal case no. 305/2013 at court of Metropolitan Magistrate alongwith the Criminal Case no. 305/2013 C. Pending admission and final hearing of the present petition. Your Lordships may be pleased to stay the pending criminal proceedings being Criminal Case no. 305 of 2013 and further be pleased to stay the FIR registered as Crime Register No. 3042/13 dated 27-05- 2013 and further proceedings on the basis of the said FIR.

D. Your Lordships may be pleased to grant ad interim relief, as prayed for, in terms of para 30 (C) during the pendency and final disposal of the present application.

E. Your Lordships may be pleased to grant any other and further relief/s as may be deemed just and proper in the interest of justice and fitness of things."

3. Learned counsel for the petitioners has taken this R/SCR.A/693/2014 ORDER DATED: 27/06/2023 Court to the factual matrix arising out of the application and also taken this Court through the impugned FIR and contended that the allegations leveled in the impugned FIR are on basis of the fact that the complainant himself is an authorized person to carry out all procedure of infringement of any copyright. The allegations against the petitioners are that the petitioners are selling duplicate spare-parts of the Hyundai Company. It is pointed out that even though respondent No.2-First Informant was neither having any authorization under the law nor any assignment in his favour, with the help of police without any warrant ransacked the shop of the petitioners and used abusive language upon the father of the petitioners and took the movable valuables.

4. Learned counsel for the petitioners further contended that on reading the impugned FIR as it is, no evidence as alleged has been made out. He further contended that the Copyright Act and the Trade Marks Act are not applicable in the present case for sale of the automobile goods and the goods in which the petitioners deals with i.e. automobile parts, provisions of the R/SCR.A/693/2014 ORDER DATED: 27/06/2023 Copyright Act are also not attracted at all. Even the provisions of the Trade Marks Act are not applicable in view of the fact that the petitioners has not falsified any trade mark or he has not applied any false goods or services or any other instrument for the purpose of falsifying or of being used for the purpose of falsifying a trade mark. It is further submitted that even provisions of Section 104 of the Trade Marks Act are not applicable in the instance case.

5. Learned counsel for the petitioners further pointed out that respondent No.2-First Informant has not produced anything on record that to show that he is authorized person to file the complaint on behalf of Hyundai Company and therefore, he contended that the First Information Report is an abuse of process of Court and law, and therefore, the same is required to be quashed by exercising inherent jurisdiction under Section 482 of the Code. He further relied upon the judgment of this Court in the case of Binita Rahul Shah Vs. State of Gujarat reported in 2009(3) GLR 2688 and contended that the ratio laid down in the said case squarely applies to the facts of the present case. He further R/SCR.A/693/2014 ORDER DATED: 27/06/2023 pointed out that in a similarly situated case of the facts as well as law, this Court has quashed the complaint as prayed for.

6. Per contra, Mr. Dhavan Jaiswal, learned Assistant Public Prosecutor for respondent Nos.1 and 3, and learned advocate Mr. Apurva A. Dave for respondent No.1 have jointly submitted that the impugned FIR is for the alleged offences punishable under Sections 63 and 65 of the Copyrights Act, 1957 and Sections 103 and 104 of the Trade Marks Act, 1999, however it may be noted that learned APP has not been able to point out that the allegations levelled in the First Information Report relate to any of the items, which are envisaged under the purview and ambit of the Copyright Act, 1957.

Though served, none appears for respondent No.3. No other and further submissions are made by learned counsel for the parties.

7. Considering the aforesaid submissions made by learned counsel for the parties and on perusal of the record, it may be noted that the First Information Report is lodged R/SCR.A/693/2014 ORDER DATED: 27/06/2023 by respondent No.2 in his capacity as Investigating Officer of IPR Vigilance Indian Company. First Information Report does not disclose as to which capacity respondent No.2 has lodged the impugned FIR.

Section 2(c) and (d) of the Copyright Act, 1957 reads as under:-

(c) "Artistic work" means, (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; (ii) a [work of architectural]; and (iii) any other work of artistic craftsmanship; (d) "author" means, (i) in relation to a literary or dramatic work, the author or the work; (ii) in relation to a musical work, the composer; (iii) in relation to an artistic work other than a photograph, the artist; (iv) in relation to a photograph, the person taking the photograph; (v) in relation to a cinematography film or sound recording, the procedure; and (vi) in relation to any literary, dramatic, musical or artistic work which is computer generated, the persons who causes the work to be created".

8. Considering the allegations leveled in the FIR, the R/SCR.A/693/2014 ORDER DATED: 27/06/2023 same relate to the spare-parts of the Hyundai Company and it is nowhere stated about the owner or author and in what capacity respondent No.2 has lodged the FIR. Apart from that, even if, the FIR is taken at its face value, it refers to items, which do not fall within the artistic work as defined under Section 2(c) of the Copyright Act, 1957. It cannot be said that the spare- part is literal work or musical work. It is not disclose that the spare part is an artistic work or any other such work that the provisions of Copyright Act, 1957 would apply. The impugned FIR also does not disclose that if respondent No.2 has acquired any other right conferred under the provisions of the Copyright Act, 1957 and therefore, provisions of Sections 63 and 65 of the Copyright Act, 1957 would not be applicable on bare reading of the allegations leveled in the First Information Report at its face value. Therefore, this Court is of the opinion that prima facie no case is made out under Sections 63 and 65 of the Copyright Act, 1957 and Sections 103 and 104 of the Trade Marks Act, 1999, even if it is taken at its face value. Even at the cost of repetition, it may be noted that respondent No.2 does not disclose his capacity to claim right of the Trade R/SCR.A/693/2014 ORDER DATED: 27/06/2023 Marks Act.

9. The Court in the case of Binita Rahul Shah Vs. State of Gujarat reported in 2009(3) GLR 2688, has observed thus:-

"19. Section 63 of the Copyright Act states that any person who knowingly infringes or abets the infringement of the Copyright in a work shall be punishable with infringement etc. The definition of the term infringing copy as appearing in section

2(m) of the Copyright Act reads as under :

2(m) 'infringing copy' means, -

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in R/SCR.A/693/2014 ORDER DATED: 27/06/2023 which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

20. A plain reading makes it clear that the principal work has to be either a literary, dramatic, musical, or artistic work; or should be a cinematographic film; or a sound recording, or a programme or performance in which a broadcast reproduction right or a performer's right subsists under the provisions of Copyright Act. In the facts of the present case, admittedly the provisions cannot be attracted, much less any ingredient thereof is shown to have been satisfied even prima facie. The Court is not concerned in these proceedings whether any violation has occurred under the Provisions of Designs Act, because that is not even the case of the complainant. The settled legal position cannot be understood to mean laying down a proposition of law that the Court in these proceedings is precluded from even a plain reading of the relevant provisions to prima facie see whether any offence can be said to have been committed or not."

The ratio laid down by this Court in the above R/SCR.A/693/2014 ORDER DATED: 27/06/2023 referred case squarely applies in the present case.

10. The Court has also considered the judgment of the Hon'ble Apex Court in Criminal Misc. Application (FOR Quashing & Set Aside FIR/Order) No. 8903 of 2013 dated 02.12.2023 after considering the similar facts and circumstances of the case.

11. Considering the submissions made by learned counsel for the parties and on perusal of the impugned FIR, prima facie, no case is made out against the petitioners for the alleged offence under Sections 63 and 65 of the Copyright Act, 1957 and Sections 103 and 104 of the Trade Marks Act, 1999 and in view of the ratio laid down by this Court in the case of Binita Rahul Shah (supra), this Court is of the opinion that continuation of criminal proceedings against the petitioners would amount to an abuse of process of law and Court. Hence, to secure the ends of justice, the impugned FIR is required to be quashed and set aside in exercise of inherent power under Section 482 of the

Code.

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12. For the foregoing reasons, the present application is hereby allowed.

13. The impugned FIR registered as Crime Register No. 3042 of 2013 as well as the Charge sheet dated 30-07- 2013 which is filed in pending criminal case no. 305/2013 at court of Metropolitan Magistrate along with the Criminal Case no. 305/2013 as well as all other consequential proceedings arising out of the said FIR are hereby quashed.

Rule is made absolute to the aforesaid extent.

(SANDEEP N. BHATT,J) DIWAKAR SHUKLA