Vishwa Mitter vs. O. P. Poddar and Others,

Competency of a complainant to file a criminal complaint under Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958 read with Section 420 IPC, and whether a Magistrate can refuse to take cognizance on the ground that the complainant is not the

Date of Order: September 30, 1983
Case Law No: GIB-SC-1983-01
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CASE DESCRIPTION / SUMMARY

The appellant, Vishwa Mitter, was a dealer in beedies and the constituted attorney of Mangalore Ganesh Beedies Works, the registered owner of certain trademarks. He filed a criminal complaint before the Sub-Divisional Magistrate alleging that the respondents had infringed registered trademarks by selling inferior quality beedies in deceptively similar wrappers, thereby committing offences under Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958 and Section 420 IPC.

Initially, the Magistrate issued process after preliminary inquiry. However, on revision, the High Court quashed the order on a technical ground and remanded the matter for fresh consideration. Upon rehearing, the Magistrate dismissed the complaint holding that the complainant, being only a dealer and not the registered trademark owner, was not competent to file the complaint. The revision petition filed against this dismissal was rejected in limine by the High Court. The matter then reached the Supreme Court by way of special leave.

The principal question before the Supreme Court was whether a Magistrate can decline to take cognizance of an offence on the sole ground that the complainant is not the registered owner of the trademark, and whether any statutory provision restricted the right to file such complaint only to the registered proprietor.

Court Observations and Decision

The Supreme Court examined Sections 4 and 190 of the Code of Criminal Procedure, 1973. It observed that Section 190 empowers a Magistrate to take cognizance of any offence upon receiving a complaint of facts constituting such offence, without prescribing any qualification for the complainant. The Court held that, generally, anyone can set the criminal law in motion unless there is a specific statutory provision to the contrary.

The Court further noted that under Section 4(2) CrPC, offences under other laws are to be dealt with according to the CrPC unless a special statute provides otherwise. It examined Section 89 of the Trade and Merchandise Marks Act, 1958, which restricts cognizance for offences under Sections 81, 82, and 83 to complaints made by the Registrar or authorized officer. However, no such restriction exists for offences under Sections 78 and 79. Therefore, there was no statutory bar preventing the appellant from filing the complaint.

The Court also observed that even in the absence of specific statutory qualification, a person having a subsisting interest in the protection of a registered trademark cannot be said to lack standing. The appellant, being both a dealer in the concerned products and a constituted attorney of the registered proprietor, had sufficient interest.

The Supreme Court held that the Magistrate erred in dismissing the complaint solely on the ground of lack of competency and that the High Court was also wrong in dismissing the revision petition in limine.

The appeal was allowed. The orders of the Magistrate dated 20 February 1980 and of the High Court dated 4 November 1980 were set aside. The matter was remanded to the Magistrate to proceed further in accordance with law in light of the Court's observations.

Cases Referred

The judgment does not record reliance on any specific prior decided cases. The Court referred to statutory provisions including:

- Code of Criminal Procedure, 1973 – Sections 4, 190, 195, 198, 199
- Trade and Merchandise Marks Act, 1958 – Sections 78, 79, 81, 82, 83, 89
- Prevention of Food Adulteration Act, 1954 – Section 20
- Companies Act, 1956 – Section 621

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