

Karnataka High Court

M/S Mangalore New Sultan Beedi ... vs State Of Karnataka on 31 May, 2023

Bench: Krishna S.Dixitpresided Byksdj

- 1 -

WP No. 10870 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2023
BEFORE

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THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 10870 OF 2023 (GM-POLICE)

BETWEEN:

M/S MANGALORE NEW SULTAN BEEDI WORKS,
A PARTNERSHIP FIRM REGISTERED UNDER THE
PROVISIONS OF THE PARTNERSHIP ACT 1932 AND
HAVNG ITS HEAD OFFICE AT
D NO 2-22, KODAJE BANTWAL TALUK,
DAKSHINA KANNADA DISTRICT-574 253
REPRESENTED BY ITS MANAGING PARTNER
MR MOHAMMED RAFEEQ BUDOLI
AGED 43 YEARS
S/O LATE HAAJI B HUSSAIN
R/AT D NO 2-15/KODAJE HOUSE, MANI
BANTWAL TALUK
D.K DISTRICT-574 253

...PETITIONER

Digitally (BY SRI. P.P. HEGDE, SR. COUNSEL FOR
signed by SRI. VENKATESH SOMAREDDI, ADVOCATE)
SHARADA
VANI B

AND:

Location:
HIGH
COURT OF
KARNATAKA

1. STATE OF KARNATAKA
THROUGH THE INSPECTOR OF POLICE
NARASIMHARAJA POLICE STATION
MYSORE-570 001
2. INSPECTOR OF POLICE
NARASIMHARAJA POLICE STATION
MYSORE-570 001
3. THE COMMISSIONER OF POLICE
MYSORE CITY POLICE
MYSORE-570 001

4. THE SUPERINTENDENT OF POLICE
MYSORE DISTRICT
MYSORE-570 001
5. THE SUPERINTENDENT OF POLICE
DAKSHINA KANNADA DISTRICT
MANGALORE-575 001
6. THE SUPERINTENDENT OF POLICE
KODAGU DISTRICT
MADIKERI-571 201
7. THE SUPERINTENDENT OF POLICE
MANDYA DISTRICT
MANDYA-571 401
8. THE SUPERINTENDENT OF POLICE
CHARAMAJANAGAR DISTRICT
CHAMARAJANAGAR-571 313

...RESPONDENTS

(BY SRI. B.V. KRISHNA, AGA)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE INSPECTOR OF POLICE, NARASIMHARAJA POLICE STATION, MYSORE/R2 IN CRIME NO.23/2023 OF NARASIMHARAJA POLICE STATION, MYSORE PENDING ON THE FILE OF III ADDL. CIVIL JUDGE AND JMFC COURT, MYSORE, WHICH IS PRODUCED AS ANNEXURE-E, TO CONDUCT SPEEDY AND FAIR INVESTIGATION BY CONCLUDING THE INVESTIGATION WITHIN THE TIME THAT MAY BE FIXED BY THIS HONBLE COURT AND SUBMIT COMPLIANCE REPORT TO THIS HONBLE COURT AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner, a beedi making partnership firm is invoking the writ jurisdiction of this Court about its WP No. 10870 of 2023 FIR/complaint in Crime No. 23/2023 allegedly being kept in a cold storage presumably because of pendency of its Com.O.S. NO.478/2022, wherein an order of Temporary Injunction has been secured against the accused. Learned Sr. Advocate appearing for the Petitioner argues that the charging provisions of the Copyright Act, 1957 more particularly Section 63 are structured in such a way that the same fact matrix may give raise to a cause of action for civil suit and for a criminal proceeding; that being the position, he submits, the jurisdictional police have to

undertake & accomplish the investigation on a war footing, brooking delay in matters like this not being desirable.

2. Learned AGA on request appearing for the official Respondents opposes the Petition contending that ordinarily where there is a civil dispute, the police advisedly keep away from interference and this is consistent with a catena of decisions of this Court and of the Apex Court. He also in all fairness submits, if this Court is of the contra indication, there will be no difficulty WP No. 10870 of 2023 for his clients to undertake investigation, notwithstanding the pendency of the civil suit.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter broadly agreeing with the submission made on behalf of the Petitioner-Firm as under and for the following reasons:

a) Chapter XI of the 1957 Act comprising of Sections 51 to 53A provides for civil remedies by way of injunction, damages, accounts or otherwise in the case of infringement of copy rights. The substantive part of Section 55 being very relevant is reproduced:

"(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right".

For the alleged infraction of registered Copyrights, Petitioner's civil suit is pending and an order of Temporary WP No. 10870 of 2023 Injunction has been granted by the Civil Court, is vouched by the material placed on record. Chapter XIII comprising of Sections 63 to 70 mentions about the offences relating to copyright infringements. Section 63 being one of the charging provisions has the following text:

"Any person who knowingly infringes or abets the infringement of:

(a) the copyright in a work, or

(b) any other right conferred by this Act except the right conferred by section 53A, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees".

(Other parts not being relevant, are not reproduced) In other words, the Act provides for both civil remedy and criminal prosecution, in the case of such an infringement. The outcome of one does not depend upon the outcome of another, subject to all just exceptions. Petitioner has already filed an FIR which has been duly registered by the jurisdictional police.

b) The infringement of a copyright gives rise to a cause of action on which a civil proceeding like an Injunctive Suit WP No. 10870 of 2023 can be structured; it also can give rise to a cause of action for

the institution of a criminal proceeding; in the former, it is preventive, remedial, compensatory or otherwise, whereas, in the latter, it is primarily punitive. The object, nature & outcome of these proceedings, thus are not the same. That is how the statutory scheme is enacted by the Parliament. Merely because a civil dispute is being fought between the parties, the criminal proceedings cannot be halted, per se, on that ground. This view gains support from the Hon'ble Delhi High Court decision in JAY PRAKASH v. STATE, 2008 Cr.L.J.(NOC)

637. Del. In the said case, civil litigation as to use of "V" has pending and there was no agreement between the parties either by way of an interim arrangement nor was there any interim order of the court, held, that mere withholding of mention of such litigation would not preclude Trial Court from framing of charges under Section 63 of the 1957 Act. There may be cases where the processing of one proceeding is kept at a bay, because of the likely adverse consequences that follow on a WP No. 10870 of 2023 particular party involved in the other proceeding, both having been structured on the same set of facts. However, this is a different aspect of the matter.

c) Learned Sr. Advocate appearing for the Petitioner is right in contending that the same fact matrix may give rise to a cause of action in tort, in contract & in crime; unless, law interdicts a particular action inter alia in criminal law, the police cannot keep the complaint pending on the ground that, parties are fighting a civil proceeding on the same fact matrix. In Kenny's OUTLINES OF CRIMINAL LAW, 18th Edition, 1962, Cambridge University at Page 1 it is said as under:

"Writers on English legal history have often mentioned that in early law there was no clear distinction between criminal and civil offences. The two have been called a 'viscous intermixture' and it has been explained that the affinity between tort and crime is not in the least surprising when we remember how late in the history of law there emerged any clear conception of a difference between them...."

Similarly, in 'CRIMINAL LAW' by Smith and Hogan, 7th Edition, ELBS at page 19 it is written "...most torts are WP No. 10870 of 2023 crimes as well, though some torts are not crimes and some crimes are not torts. It is not in the nature of act, but in the nature of the proceedings that the distinction consists; and both types of proceeding may follow where an act is both a crime and a tort...." In view of this clarity obtaining in criminal jurisprudence, the reluctance of the police to process the complaint may not be correct.

In the above circumstances, this writ petition succeeds; a Writ of Mandamus issues to the respondent- police to undertake & accomplish the investigation in the subject offence within an outer limit of three months. Delay if brooked may result into an adverse entry being made in the Service Records of the concerned police official.

Now, no costs.

Sd/-

JUDGE DS