



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2024

BEFORE

R

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 1620 OF 2017 (482)

BETWEEN

SRI. MANJUNATHA M.S.
S/O LATE SATYANARAYANA SHETTY
AGED ABOUT 65 YEARS,
PROPRIETOR,
SRI SATHYA SAI BABA OIL MILL,
SHIVANANDA COLONY,
ARSIKERE TOWN,
HASSAN DISTRICT-573103.

...PETITIONER

(BY SRI: PRAVEEN KUMAR G.R, ADVOCATE)

AND

1. STATE BY ARSIKERE TOWN POLICE,
ARSIKERE CITY, ARSIKERE TALUK,
HASSAN DISTRICT,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA
2. SRI. K.R. NAGENDRA,
AGED ABOUT 53 YEARS,
S/O K.P. RAMASWAMY,
PROPRIETOR, SHANKAR INDUSTRIES,
HULIYUR ROAD, ARSIKERE CITY.
(CAUSE TITLE AMENDED AND R2 IS IMPEADED
AS PER COURT ORDER DATED 03.01.2023)

...RESPONDENTS





(BY SRI. R. RANGASWAMY, HCGP FOR R1;
SRI. SHIVARAMAN VAIDYANATHAN., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE PRAYING TO SET ASIDE THE ORDER DATED 26.12.2016 IN CRIMINAL REVISION PETITION NO. 108/2016 PASSED BY THE IIIRD ADDITIONAL DISTRICT AND SESSIONS JUDGE AT HASSAN VIDE ANNEXURE-A AND THE ORDER DATED 10.05.2016 PASSED IN C.C.NO.338/2014 BY THE LEARNED SENIOR CIVIL JUDGE, ARASIKERE VIDE ANNEXURE-B AND FOR THE OFFENCES PUNISHABLE UNDER SECTION 482, 483, 420 OF IPC R/W 102, 103, 104 OF TRADE MARK ACT 1999 IN C.C.NO.338/2014 (CRIME NO.297/2013) IN THE INTEREST AND EQUITY.

THIS CRIMINAL PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 28.05.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking the following reliefs.

"To set aside the order dated 26.12.2016 in Criminal Revision Petition no.108/2016 passed by the IIIrd Additional District and Sessions Judge at Hassan vide Annexure -A and the order dated 10/05/2016 passed in C.C.No.338/2014 by the learned Senior Civil Judge, Arsikere vide Annexure -B and for the offences punishable under Section 482, 483, 420 of IPC r/w 102, 103, 104 of Trade Mark Act 1999 in C.C.No.338/2014 (Crime No.297/2013) in the interest of justice and equity."

2. The petitioner claims to be in the business of the sale of gram flour under the name and style of "MRS Ganapathi" brand. Respondent No.2 lodged a



complaint on 04.10.2013 with respondent No.1 - Police for the offences punishable under Section 63 of the Copyright Act, 1967 and Sections 482, 483 and 420 of Indian Penal Code, 1860 (hereinafter referred to as IPC for short) which came to be registered as Crime No.297/2013 by Arasikere Town Police Station.

3. In pursuance of the said registration of the FIR, a search of the premises of the petitioner was conducted. The Police seized certain bags of gram flour and other items. Investigation was completed, and a charge sheet was laid for the offences punishable under Sections 482, 483 and 420 of the IPC read with Sections 102, 103 and 104 of the Trade Mark Act, 1999 (for short TM Act). It is challenging the same the petitioner is before this Court.
4. Sri. Praveen Kumar G.R., learned counsel for the petitioner, would submit that;



- 4.1. Initially, the complaint was lodged for the offence punishable under Section 63 of the Copyright Act and Sections 482, 483 and 420 of IPC. The chargesheet has been laid for the offences punishable under Sections 482, 483 and 420 of the IPC read with Sections 102, 103 and 104 of the TM Act. The said offences under Sections 102, 103, 104 of the TM Act replaced the earlier allegation of the offence punishable under Section 63 of the Copyright Act.
- 4.2. His submission being that the complaint was purposefully wrongly registered under Section 63 of the Copyright Act, thereafter a search and seizure was conducted at the premises of the petitioner to by-pass the requisite requirements under Sections 102, 103, and 104 of the TM Act, 1999 and it is on account of the same an abuse of the process of law has been committed by both the complainant and the Investigating Officer and subsequently the



chargesheet was laid for offences under Sections 102, 103 and 104 of the TM Act without complying with the requisites of Subsection (4) of Section 115 of the TM Act.

4.3. In terms of proviso to Subsection (4) of Section 115 of the TM Act, no Police Officer below the rank of Deputy Superintendent of Police can issue instructions to conduct any search or seizure unless he obtains the opinion of the Registrar of Trade Marks and he shall abide by such opinion.

4.4. In the present case, to obviate the requirements of this proviso to sub-section (4) of Section 115 of the TM Act the complaint has been registered under Section 63 of the Copyright Act. If at all a complaint had been registered under Sections 102, 103 and 104 of TM Act, the requirements of the proviso would have been clear to the Investigating Officer which would have entailed the Investigating



Officer obtaining the necessary opinion from the Registrar of Trade Marks.

4.5. Thus, he submits that the entire criminal process, which has been set in motion by way of the complaint being registered by respondent No.2 – complainant, under a wrong provision of law and obtaining the benefit thereof by way of search and seizure and subsequently substituting the provisions of Sections 102, 103 and 104 of the TM Act which required compliance of the proviso to Subsection (4) of Section 115 of the TM Act is completely misconceived and an abuse of the process of law and Court and is as such required to be quashed.

4.6. In the chargesheet filed, offences under Section 63 of the Copyright Act are, in fact deleted. No allegation of such violation of the Copyright Act has been made in the chargesheet which would further establish that the complaint was



wrongly filed. On the basis of all the above, he submits that the above petition requires to be allowed and the prayer as sought to be granted.

5. Shri. Shivaram Vaidyanathan, learned counsel appearing for respondent No.2 - complainant, would submit that;

5.1. No such abuse of process of law is committed by the respondent. The respondent had rightly filed the complaint, which was registered by the jurisdictional Police in a wrong manner by showing a violation under Section 63 of the Copyright Act.

5.2. The complainant has only tried to protect his interest from the infringement of trademark as committed by the petitioner with respect to the trademark owned and registered by the complainant.



5.3. Even if there is a violation of the proviso to Subsection (4) of Section 115 of the TM Act, it is not material; at the most, it could be said to be an irregularity which would not result in a miscarriage of justice and as such he submits that the non-compliance of the requirements of the proviso to sub-section (4) of Section 115 of the TM Act would not require this Court to quash the proceedings.

5.4. He relies upon the decision of the Hon'ble High Court of Rajasthan in **Cri.Misc.P.No.596/2005** in the case of **Shivlal Vs. State of Rajasthan¹**, more particularly paragraph No.2 at page No.3 therein, which is reproduced hereunder for easy reference:

"The trial court passed the order dated 25.02.2003 for framing the charges against the petitioner for the offences punishable under section 420 IPC read with sections 103 and 104 of the Act of 1999. Being aggrieved with the

¹ (2013) 3 Cri.LR (Raj)



order dated 25.02.2003, the petitioner preferred a revision petition before the Sessions Court, Jodhpur and the same was transferred to the revisional Court. However, the revisional Court, vide order dated 22.11.2004, dismissed the revision petition filed by the petitioner."

5.5. Unnumbered paragraph No.4 on page 5, which is reproduced hereunder for easy reference:

"As per sub-section (3) of section 115 of the Act of 1999, the offences punishable under section 103 or section 104 of the Act of 1999 are cognizable. Section 154 of the Code of Criminal Procedure authorises an officer-in-charge of police station to receive information relating to the commission of cognizable offences. Section 156 of the CrPC empowers the police officer to investigate the cognizable case. Sections 154 and 156 of CrPC are reproduced hereunder:

"154. Information in cognizable cases.-- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.
(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send



the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

156. Police officer's power to investigate cognizable case.-- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2). No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.

5.6. Unnumbered paragraph No.1 on page 7 which is reproduced hereunder for easy reference:

"In the case in hand, the police officer had received an information from the respondent No.3 regarding commission of offences punishable under sections 103 and 104 of the Act of 1999, which are cognizable, then no fault can be found in the action of the said police officer in raiding the premises of the petitioner and seizing the bags of fake



cement. When he had received an information regarding the commission of cognizable offence, section 154 of the CrPC authorises him to receive any such information and section 156 CrPC empowers him to investigate into the case involving an cognizable offence."

5.7. Placing reliance on the decision in **Shivlal's case** (*supra*), his submission is that when the allegations are made in a complaint as regards offences under Sections 102, 103 and 104 of the TM Act 1999, the police officer would be required to raid the premises and seize any incriminating material and that there can be no fault found in such a procedure adopted.

5.8. He relies on the decision of the Hon'ble Delhi High Court in the case of **Sanyo Electric Company Vs. State**² in **Criminal Revision Petition No.154/2010**, more particularly Paragraph Nos. 4, 5, 6 and 11 thereof which are reproduced hereunder for easy reference:

"4. TM Act is a special Act relating to trade marks. Chapter XII of the said Act in Sections 101 - 121 prescribes offences, penalties and procedure in

² (2010) ILR 6 Delhi 738



relation to offences etc., Section 115(4) of the TM Act is a part of the fascicle of the said chapter. Sub-Section 3 to Section 115 of the TM Act states that offences under Sections 103, 104 and 105 of the TM Act shall be cognizable i.e. the Police can register an FIR and start investigation without seeking approval or permission of the Court. The provisions of the Code relating to cognizable offences are applicable except to the extent a special procedure, restriction or prohibition to the contrary is prescribed in the TM Act.

5. Under Sections 165 and 166 of the Code, search and seizure can be conducted by a police officer subject to the conditions stipulated being satisfied. Similarly, under Section 102 of the Code, police officer has power to seize any property, which is alleged or suspected to have been stolen or found under circumstances which create suspicion of commission of any offence. Under Sections 102, 165 and 166 of the Code, post a search and seizure operation, the matter has to be informed and brought to the notice of the Magistrate. Prior approval of the Magistrate is not required and necessary. Under the said Sections, a prior warrant of the Court which is mandated under Section 93 of the code is not required.

6. Section 115(4) of the TM Act states that a police officer not below the rank of Deputy Superintendent or equivalent can conduct search and seizure operations without warrant in respect of offences under the TM Act. This empowerment or power is similar and analogous to the general power of search and seizure of a police officer under Sections 102, 165 and 166 of the Code. However, to protect the right to privacy and to ensure that the power of search and seizure is not misused and abused, proviso to Section 115(4) of the TM Act stipulates and requires that the police officer should take opinion of the Registrar of the Trade Marks on facts involved in the offence of trade mark and the police officer shall abide by that opinion. In other words, opinion of the Registrar is binding on the police officer. Right to privacy being a constitutional right, guaranteed to the citizens of India, cannot be infringed except for valid, good and justified reasons. Right to search is an exception to right to privacy, honour and reputation and can be denied when an important counter veiling interest is shown to be superior See, District Registrar and Collector v. Canara Bank, MANU/SC/0935/2004:



(2005) 1 SCC 496. The provisions of Section 115(4) of the TM Act including the proviso will override the general provisions of the Code under Sections 102, 165 and 166, which relate to general power of search and seizure by the Police.

11. Looking at the language of Section 115(4) of the TM Act, object and purpose behind the proviso to the said Section and Section 93 of the Code, the proviso in the present case does not warrant a wider application beyond the substantive Section 115(4) i.e. all searches by the Police without warrant. Legislative intent behind the proviso can be gathered from the explicit language and words used in 115(4) of the TM Act. The Section is confined to searches without warrants and prevents misuse of the power of search by the Police. There is no indication in the language that the proviso is intended to apply as a proviso to Section 93 of the Code."

5.9. Relying on the above, he submits that the object of search and seizure being in order to seize any incriminating material, such search and seizure would not amount to a violation of the privacy of the accused. The search and seizure made by the Police Officer, not below the rank of Deputy Superintendent of Police, being in terms of the powers provided under the Act, would not infringe the requirement of the proviso. He relies upon the decision of the **Madras High Court in K. Vasudevan Vs.**



State and others³, more particularly paragraph No.6 thereof, which is reproduced hereunder for easy reference:

"6. On reading the F.I.R., chare sheet and also the complaint, a prima facie is made out as against the present petitioner/A3. The learned Judicial Magistrate has also taken cognizance of the charge sheet and also framed the charges and now the trial has also been commenced. On reading of the statement recorded under Section 161 Cr.P.C., it reveals that there are specific allegations as against this petitioner. Further, the contention raised by the learned counsel for the petitioner that the Inspector of Police has no power to conduct the search and seizure is not acceptable since the F.I.R., is registered for the offence punishable under Section 102(i)(a)(b) r/w. 103(a) of the Trade Marks Act 1999. On further reading of the entire materials, a prima facie has been made out as against the petitioner. Therefore, this Court is not inclined to invoke Section 482 Cr.P.C., to quash the proceedings in C.C.No.268 of 2012. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed."

5.10. By relying on **K. Vasudevan case** (*supra*) he submits that when a *prima facie* case is made out as regards an offence punishable under Sections 102, 103 and 104 of the TM Act, this Court ought not to exercise powers under Section 482 of the Cr.P.C.

³ Crl.Original Petition No.21772/2013 & M.P.No.1/2013



5.11. He relies upon the decision of the High Court of Madhya Pradesh in ***Priya Srivastava Vs. State of Madhya Pradesh and others in MCRC - 12998/2018***, more particularly paragraph No. 3, 9, 10, 13, 15 and 17 thereof which are reproduced hereunder:

"3. The necessary facts for disposal of the present application in short are that on the written complaint of the complainant/respondent no.3, F.I.R. No.69/2018 has been registered under Sections 103, 104 of Trade Marks Act, 1999 (In short Act, 1999). The allegations are that the petitioner is indulged in manufacturing putti which resembles with Birla White Putti. The Police has seized several material, machines, electric equipments etc.

9. It is submitted that the Police, before carrying out the search has not obtained the opinion of the Registrar on facts involved and therefore, the prosecution of the applicant is bad in law and thus, liable to be quashed.

10. Section 115(1) of Act, 1999 provides that no Court shall take cognizance of offence under Section 107, 108 or 109 except on complaint in writing made by the Registrar or any officer authorized by him in writing.

13. The only argument which ahs been advanced by the applicant is that since, the Police had not obtained opinion from the Registrar, therefore, the F.I.R. was bad.

15. The Supreme Court in the case of H.N. Rishbud Vs. Union of India, reported in MANU/SC/0049/1954 : AIR 1955 SC 196 has held as under:

"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This



is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality, vitiating the proceedings or a mere irregularity arises.

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190, Cr.P.C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance, Section 190, Cr.P.C. is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e., Sections 193 and 195 to 199.

These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b). of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537, Cr.P.C. which is in the following terms is attracted:

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court



of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice."

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in -'Prabhu v. Emperor', MANU/PR/0035/1944 : AIR 1944 PC 73 (C) and. - 'Lumbhardar Zutshi v. The King', MANU/PR/0163/1949: AIR 1950 PC 26(D).

These no doubt relate to the illegality of arrest in the course of investigation which we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

17. Thus, if the Police has carried out the search without obtaining the opinion of the Registrar, then at the best, it can be said to be an irregularity. Further, it appears that there is a direct conflict



between Section 115(4) and its proviso. Section 115(3) of Act, 1999 provides that the offence under Sections 103, 104, 105 shall be cognizable and Section 115(4) of Act, 1999 provides that if a police officer not below the rank of Dy. S.P. is satisfied that any of the offences referred to in sub-section (3) has been, is being or is likely to be committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, where as proviso to Section 115(4) of Act, 1999 provides that before making any search and seizure, the police officer shall obtain the opinion of the Registrar. If the provisions are read as they are, then it would appear that before making search and seizure, the police officer, is required to obtain opinion of the Registrar, whereas as per Section 115(4) of Act, 1999, the police officer can seize and search if he is satisfied that any of the offences referred in Section 115(3) of Act, 1999 has been, is being, or is likely to be committed. Without effecting the seizure, the police officer, cannot send any article to the Registrar for its opinion and if proviso to Section 115(4) of Act, 1999 is given effect, then the Police cannot make seizure without the opinion of the Registrar. Therefore, if plain interpretation is given to Section 115(4) and its proviso, then there appears to be "head on collision" between two provisions. It is well established principle of law that any interpretation which lead to "head on collision" should be avoided."

5.12. By relying on the decision in **Priya Srivastava case** (supra) he submits that non-following of the requirements of the proviso to sub-section (4) of Section 115 is only an irregularity. In the present case, no harm, injury or harassment has been caused to the accused and as such, merely because the requirement to the proviso



of sub-section (4) of Section 115 is not complied, this Court ought not to intercede in this matter. Lastly, he submits that the contention now taken up before this Court as regards non-compliance with the requirement of proviso to sub-section (4) of Section 115 was not raised in the discharge application.

5.13. Though several other decisions have been filed on 02.04.2024 he does not rely on those decisions but only relies on those indicated above. On the basis of the above submissions, he submits that the above petition is required to be dismissed.

6. The learned HCGP also adopts the submission made by the learned counsel for respondent No.2 and he further submits that the complaint has been rightly registered by the Investigating Officer and there is no such mischief as alleged by the accused played by the Investigating Officer. On the basis of the above,



submission is made that the petition as filed by the petitioner may be dismissed.

7. Heard Sri. Praveen Kumar G.R., learned counsel for petitioner, Sri. R.Rangaswamy, learned HCGP for respondent No.1, Sri. Shivaraman Vidyanathan, learned counsel for respondent No.2 and perused the papers.
8. On the basis of the submission made by the learned counsel for the parties, the points that would arise for consideration are:
 1. **Whether a complaint filed under Section 63 of the Copy Right Act, 1957, read with Sections 482, 483 and 420 of the IPC, can subsequently be converted into and a chargesheet laid for offences under Sections 102, 103 and 104 of the Trade Marks Act, 1999 giving up the offence under Section 63 of the Copy Right Act, 1957?**
 2. **Is the non-compliance of the requirement to the proviso of sub-section (4) to Section 115 an irregularity or does it go to the root of the investigation requiring this Court to intercede by exercising powers under Section 482 of the CR. P.C?**



3. **Whether, in the present case, this Court is required to exercise powers under Section 482 of the Cr.P.C?**
4. **What order?**

9. I answer the above points as under

10. **ANSWER TO POINT NO.1: Whether a complaint filed under Section 63 of the Copy Right Act, 1957, read with Sections 482, 483 and 420 of the IPC, can subsequently be converted into and a chargesheet laid for offences under Sections 102, 103 and 104 of the Trade Marks Act, 1999 giving up the offence under Section 63 of the Copy Right Act, 1957?**

10.1 Normally when a First Information Report/Complaint is filed, it is registered for the offences alleged therein. If Sections of the concerned penal statutes are mentioned, they would be reflected in the Crime Number registered. Even if the provisions are not mentioned, then while registering the FIR on the basis of the allegations made, relevant provisions would be quoted and noted in the



FIR by the concerned police officer registering the First Information.

10.2 In certain circumstances, the complainant whether legally literate or illiterate or not, could have quoted a wrong provision, that would not mean that the concerned Police Authorities are bound to reproduce the provisions cited by the complainant, as it is. In those circumstances, the concerned Authorities could, while registering the FIR, incorporate the appropriate provision.

10.3 In certain circumstances, ex-facie reading of the complaint may indicate that offences under particular provisions are committed, however, during the course of investigation, it may come to light that those offences are not committed and or offences under different enactments or different provisions of the same enactment have been committed.



10.4 In the event of offences as alleged not being committed and no further offences being committed, a B-report would be filed. In the event of offences as alleged in the complaint are committed, a chargesheet for the offences alleged would be filed. If offences other than the offences alleged are committed, then the Investigating Officer would always have the discretion and authority to substitute the provisions regarding which offences are alleged in the FIR, with those that have actually occurred while a chargesheet is filed.

10.5 In the present case, initially an FIR came to be registered for offences under Section 63 of the Copy Right Act, 1957, read with Sections 482, 483 of the IPC, the said provisions are reproduced hereunder for easy reference:

Section 63 of the Copyright Act reads as under:

63. Offences of infringement of copyright or other rights conferred by this Act. 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:

Provided that where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation.-- Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

Section 482 and 483 of the IPC reads as under:

482. Punishment for using a false property mark.—Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Counterfeiting a property mark used by another.—Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

10.6 A perusal of Section 63 of the Copyright Act would indicate that the same relates to offences of infringement of Copyright or other rights



conferred by the Act of 1957 and shall be punishable with imprisonment for a term not less than six months which may extend up to 3 years and with fine which shall not be less than Rs.50,000/- which may extend to Rs.2 lakhs. There being a proviso thereto which makes use for other than commercial purposes punishable with a lesser sentence.

10.7 A perusal of Section 482 of the IPC would indicate that the same relates to using a false property mark, Section 483 relates to counterfeiting of a property mark, and Section 420 relates to cheating and dishonestly inducing delivery of property. When the complainant had filed the complaint, it was alleged that the trademark of the complainant had been copied and using such trademark, the goods of the respondent were sold in the bags of the complainant and on this basis, it was alleged that losses were caused to the



government, as also general public and action was requested to be taken.

10.8 Though the complainant had indicated that the trademark of the complainant had been copied and there was no reference made to any violation of copyright, the police authorities registered the complaint for an offence under Section 63 of the Copyright Act 1957, Section 482, 483 and 420 of the IPC. The Authorities/the Station House Officer ought to have appreciated the nature of the complaint, verified the nature of the offence and registered a complaint in relation thereto. More so, when there is a specific allegation made that a trademark had been copied, offences under the Trademark Act, 1999 ought to have been registered which has not been done.

10.9 During the investigation, the Investigating Officer concluded that offences under Sections 102, 103 and 104 of the TM Act were



committed, the chargesheet was laid for those offences, by deleting the offence under Section 63 of the Copyright Act. Sections 102, 103 and 104 of the TM Act are reproduced hereunder for easy reference:

102. Falsifying and falsely applying trade marks.—

(1) A person shall be deemed to falsify a trade mark who, either,—

(a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark; or

(b) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

(2) A person shall be deemed to falsely apply to goods or services a trade mark who, without the assent of the proprietor of the trade mark,—

(a) applies such trade mark or a deceptively similar mark to goods or services or any package containing goods;

(b) uses any package bearing a mark which is identical with or deceptively similar to the trade mark of such proprietor, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the proprietor of the trade mark.

(3) Any trade mark falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false trade mark.

(4) In any prosecution for falsifying a trade mark or falsely applying a trade mark to goods or services, the burden of proving the assent of the proprietor shall lie on the accused.

103. Penalty for applying false trade marks, trade descriptions, etc.—Any person who—

(a) falsifies any trade mark; or

(b) falsely applies to goods or services any trade mark; or



(c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or

(d) applies any false trade description to goods or services; or

(e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or

(f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or

(g) causes any of the things above mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud, 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:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

104. Penalty for selling goods or providing services to which false trade mark or false trade description is applied.—Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided, as the case may be, are without the indications so required, shall, unless he proves,—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade



description or that any offence had been committed in respect of the goods or services; or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or

(c) that otherwise he had acted innocently,

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:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

10.10 A perusal of the above would indicate that Section 102 relates to falsifying and falsely applying the trademarks, without accent of the proprietor of the trademark. Section 103 relates to penalty for applying a false trademark, trade descriptions, falsification of trademark etc. Section 104 relates to penalty for selling goods or providing services to which a false trademark or false trade description is applied.

10.11 The offences under Sections 102, 103 and 104 of the TMAct ought to have been included in the



FIR when registered since a bare reading of the complaint would indicate that it is those offences as against which a complaint was filed. The registration of an FIR for offences under Section 63 of the Copyright Act and Sections 482, 483 and 420 of the IPC *ex facie* was not a proper one and it is apparently for this reason that subsequently, on the investigation being completed, chargesheet has been laid for the offences under Sections 102, 103 and 104 of the T.M. Act read with Sections 482, 483 and 420 of the IPC. This *ex facie* cannot be faulted with. However, what would have to be examined is whether this was an unintentional mistake or was an intentional error so as to not to comply with the mandatory requirement of the proviso to Subsection (4) of Section 115 of the T.M. Act which would be dealt with in answer to next point.



10.12 For consideration of the present point for determination, *exfacie* there would be no embargo for a chargesheet to be laid for offences under Section 102, 103 and 104 of the T.M. Act read with Sections 482, 483 and 420 of the IPC even though the initial complaint in the FIR had been registered for offences under Section 63 of the Copyright Act read with section 482, 483 and 420 of the IPC.

10.13 However, if there is a wanton and calculated move on part of the complainant and the Investigating Officer to register such a complaint under Section 63 of the Copyright Act 1957, only to try and get over the requirement of proviso to Subsection (4) of Section 115, then the same would amount to abuse of the process of law both by the complainant and the police officers who are registering the complaint. In the event of it being established by the complainant that this was wantonly done



and/or purposely done for the above purposes, then this Court exercising powers under Section 482 of the Cr.P.C. could always quash the proceedings which have been initiated on account of abuse of the process of law.

10.14 Thus, I answer point No.1 by holding that there is no embargo for a chargesheet to be laid for offences under Sections 102, 103 and 104 of the T.M. Act read with Sections 482, 483 and 420 of the IPC even though the complaint as filed and the FIR registered were for offences under Section 63 of the Copyright Act, 1957 read with Sections 482, 483 and 420 of IPC subject to however the caveat that if the registration of the complaint was malafide and was so registered under the wrong provisions purposely, then this Court in exercise of its powers under Section 482 of IPC could intercede in the matter.



11. **ANSWER TO POINT NO.2: Is the non-compliance of the requirement to the proviso to sub-section (4) to Section 115 an irregularity or does it go to the root of the investigation requiring this Court to intercede by exercising powers under Section 482 of the CR.P.C?**

11.1. The submission of the learned counsel for the petitioner is that the complaint which has been filed by the respondent has been purposely registered for offences under Section 63 of the Copyright Act, 1957 only to try and get over the requirement of the proviso to Subsection (4) of Section 115. Subsection (4) of Section 115 and its proviso is reproduced hereunder for easy reference:

115. Cognizance of certain offences and the powers of police officer for search and seizure.

(1) XXX

(2) XXX

(3) xxx

(4) *Any police officer not below the rank of deputy superintendent of Police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be*



produced before a Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.

11.2. A perusal of Subsection (4) of Section 115 of the T.M. Act would indicate that any police officer not below the rank of Deputy Superintendent of Police or equivalent may, if satisfied that any offence referred to under Subsection (3) of Section 115 thereof which relates to offences under Section 103 or Section 104 or Section 105 which are cognizable, has been, is being or is likely to be committed can search and seize without warrant, goods, die, block machine, plates, etc. which shall be produced before the Judicial Magistrate -I class as soon as practical.

11.3. The proviso to Subsection (4) of Section 115 of the T.M. Act makes it clear that the Police Officer before making any search and seizure



shall obtain the opinion of the Registrar on the facts involved in the offence relating to trademark and shall abide by the opinion so obtained. The Registrar referred to in the proviso is as defined in Subsection (y) of Section 2 of the TM Act. Wherein the 'Registrar' means, the Registrar of Trademark referred to in Section 3. Thus, under the proviso to Subsection (4) of Section 115 of the TM Act, it is required for the Police officer to obtain an opinion of the Registrar before making any search and seizure.

11.4. In the event of the Registrar indicating that there is an offence committed, then the Police officer shall carry out search and seizure. In the event of the Registrar indicating that there is no offence committed, then no search or seizure can be carried out since the Police officer shall have to abide by the opinion so given and obtained.



11.5. *Exfacie* the proviso to Subsection (4) of Section 115 of the T.M. Act makes it mandatory for the Police officer to obtain the opinion of Registrar and act in accordance with such opinion since he is bound by it. This aspect has, however, been interpreted by various courts differently. In **Shivlal's** case the Hon'ble Rajasthan High Court has come to a conclusion that once a Police officer receives information from a Complainant regarding commission of offences punishable under Sections 103 and 104 of the TM Act, no fault can be found in the action of the Police officer in raiding the premises and seizing the bags situated therein even though the opinion of the Trademark Registrar is not obtained and in this regard, reliance was placed on Section 154 and 156 of the Cr.PC. Section 154 relating to the information received of the commission of a cognizable offence and Section 156 dealing with the powers of such Police



Officer on receipt of information relating to a cognizable offence being empowered to, without the order of a Magistrate investigate any cognizable case and in terms of Subsection (2) of Section 156, no proceeding of Police officer in any such case shall at any stage be called in question on the ground that the case was one in which such officer was not empowered under the Section to investigate. It is on that basis that the Hon'ble Rajasthan High Court came to the conclusion that offences under Section 103, 104 and 105 being cognizable in terms of Subsection (3) of Section 115 of TM Act, the Police officer having received information of a cognizable offence could carry out investigation, raid the premises and seize incriminating articles during course of such investigation.



11.6. The Hon'ble Madras High Court in **K Vasudevan's** case taking into consideration that the FIR was registered for offences punishable under Section 102 (1)(a)(b) read with Section 103(A) of the T.M. Act, came to the conclusion that on the entire reading of the material, a prima facie case has been made out against the accused therein and therefore, the Court was not inclined to invoke Section 482 of the Cr.P.C. despite no opinion having been sought for and obtained from the Registrar of Trademarks.

11.7. The Hon'ble Madhya Pradesh High Court has dealt with this issue in more detail and based on the decision of the Hon'ble Apex Court in **H.N. Rishbud's case** which is extracted hereinabove, the Hon'ble Madhya Pradesh High Court by referring to the decision of the Hon'ble Supreme Court has come to a conclusion that



even if an opinion from the Registrar of Trademarks is not obtained, the same would not amount to a defect or illegality in the investigation and has no direct bearing on the competence and the procedure relating to cognizance or trial.

11.8. The Hon'ble Apex Court held that Section 190 of the Cr.PC does not regulate the competence of the Court and/or bar its jurisdiction nor does it make cognizance on an invalid police report a nullity. Cognizance if any taken in any such case, could only be an error in the proceeding antecedent to the trial. Therefore, unless such error, omission or irregularity has occasioned a failure of justice, the same is not a ground for exercising jurisdiction under Section 482 of Cr.PC.

11.9. The Hon'ble Madhya Pradesh High Court further went on to hold that if the Police had carried



out a search without obtaining the opinion of the Registrar, the same, at best, can be said to be an irregularity which has to be established to have occasioned failure of justice during the course of trial by the accused. It was further opined that for the purposes of obtaining an opinion from the Registrar of Trademark, the articles belonging to the accused had to be sent to the Registrar which are said to have infringed and resulted an offence under Sections 103, 104 and 105 of T.M. Act. Such articles would not be available to the Police officer without a seizure, and therefore it was held that there appears to be a head-on collision between the proviso to Subsection (4) of Section 115 and Subsection (4) of Section 115 of the TM Act requiring a harmonious interpretation.



11.10. In all the above decisions, it is clear that the obtaining of the opinion from the Registrar of Trademarks as required under the proviso to Subsection (4) of Section 115 of the TM Act have been held not to be mandatory and further, a violation thereof has been held to be an irregularity which cannot be set aside unless a failure of justice has been occasioned which would have to be established during the course of trial.

11.11. In the present case a complaint having been registered under Section 63 of the Copyright Act 1957, read with Section 482, 483 and 420 of the IPC, the Police officer who is not below the rank of the Deputy Superintendent of Police visited the premises of the accused, carried out a search and seized the incriminating articles which are the subject matter of trial before the trial court.



11.12. Though the seizure has occurred without obtaining an opinion from the Registrar of Trademarks since, the complaint itself was registered under section 63 of the Copyright Act, I am of the considered opinion that it was not mandatory for the concerned Police officer at that stage to comply with the proviso to Subsection (4) of Section 115 of the TM Act. It is only during the course of investigation when the items were seized that it came to light that offences under Sections 103, 104 and 105 of the T.M. Act had been complied with. By that time the raid being in progress, search and seizure being effected could not be stopped and opinion from the Registrar of Trademark sought for to comply the requirement of proviso to Subsection (4) of Section 115 of the TM Act. Thus, I am also of the opinion that the non-obtainment of the opinion from the Registrar of Trademarks is only an irregularity which does



not go to the root of the investigation but, shall however, be subject to the accused establishing during the course of trial that such irregularity has occasioned failure of justice and in such an event, the trial court would be well within its power to dismiss the complaint.

11.13. In the present case, the accused petitioner has sought to contend that the complaint was wrongly registered under Section 63 of the Copyright Act 1957 in order to fulfil the requirement of proviso to Subsection (4) of Section 115 of the TM Act. This allegation is also one which is a matter of trial. If the petitioner- accused were to establish the said fact, then again the complaint would be liable to be dismissed. At this stage, I am not able to come to a conclusion that a complaint was wrongly registered under Section 63 of the Copyright Act, 1957 to get over the



requirement of proviso Subsection (4) of Section 115 of T.M. Act.

11.14.Hence, I answer point No. 2 by holding that non-compliance of the requirement of the proviso to Subsection (4) of section 115 of T.M. Act is an irregularity which would not require this Court to exercise its powers under Section 482 of the Cr.PC. The trial can go on. In the event of the accused being able to establish during trial that due to such irregularity, there is a failure of justice, then in that event, the trial court could dismiss the complaint on that ground.

12. **ANSWER TO POINT NO.3: Whether, in the present case, this Court is required to exercise powers under Section 482 of the Cr.P.C?**

12.1. In view of my answer to Points No.1 and 2 above, having come to a conclusion that the non-compliance with the requirement of proviso



to Subsection (4) of Section 115 of the TM Act is an irregularity and any failure of justice would have to be established during the course of trial, I am of the considered opinion that in the present facts, this Court is not required to exercise its powers under Section 482 of Cr.P.C.

13. **ANSWER TO POINT No.3: What Order?**

13.1. For all the reasons above mentioned, the petition stands **dismissed**.

**Sd/-
JUDGE**

BVK,PRS,LN
List No.: 3 SI No.: 1