IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI
MISC. CRIMINAL CASE No. 43601 of 2022

GOPAL SABU AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Veer Kumar Jain – Senior Advocate with Shri Ayush Jain – Advocate for applicants.

Shri Vishal Sanothiya – Govt. Advocate for the respondents No.1 and 2 / State.

Shri Mukesh Kumawat – Advocate for respondent No.3.

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Reserved on : 24/07/2024

Pronounced on : 29/07/2024

O R D E R

The applicants by way of this petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred as, 'Cr.P.C.') prayed for quashment of FIR No.1347/2022 dated 30/08/2022 registered under Section 102(2)(a), 103 and 104 of the Trade Marks Act, 1999 (hereinafter referred as, 'the Act') at Police Station Lasudia, Indore and all other subsequent proceedings arising therefrom.

02. The facts relevant for disposal of this petition as emerged from the impugned FIR are that the respondent No.3 Rajkumar Sabu, Proprietor of M/s. Shiv Trading Company, 53/2, Kalali Mohalla, Chhawani, Indore (M.P.) filed a written complaint to Superintendent of Police, Indore (M.P.) that he runs his firm dealing in Sabudana and other edible items under registered trade mark 'SACHAMOTI' is registered under number 1169858 and 1421804 under Class-30 of the Act. His firm has filed a civil suit bearing number CS (COMM) 761/2016 against the Sabu Trade Pvt. Ltd. through its Directors Gopal Sabu (applicant No.1), Kaushalya Devi Sabu (wife of applicant No.1), Vikas Sabu (applicant No.2) and Vishal Sabu (applicant No.3), 114, Narasimman Road, Shevapet, Salem (Tamilnadu), which is pending before the Delhi High Court. The above civil suit is under consideration with another civil suit CS (COMM) 97/2020 filed by the applicants.

03. In civil suit number CS (COMM) 761/2016 an I.A.No.7683/2020 was filed that Company Sabu Trade Pvt. Ltd. has launched packets of edible items in the name of 'SACHAMOTI' similar to that of his trade mark, whereas Sabu Trade Pvt. Ltd. has no authority to use the trade mark registered in the name of complainant.

04. Delhi High Court *vide* order dated 05/10/2020 has restrained Sabu

Trade Pvt. Ltd. from packaging the products with the symbol 'SACHAMOTI' and also to deposit copy of new label without symbol. Sabu Trade Pvt. Ltd. also filed an I.A.No.10104/2020 and submitted that with 'SACHAMOTI' symbol 31,54,600 packets are in their possession. The Company was praying for use of sticker on trade mark, but *vide* order dated 05/11/2020 the same was rejected. Company Sabu Trade Pvt. Ltd. is selling Sabudana and other products in Indore through its dealers and distributors in the name of 'SACHAMOTI', which is fraud with the complainant and also contempt of the order of the High Court. It was also requested to take appropriate action on this complaint by alleging that by such acts of the applicants prestige of the complainant Company and its business is being adversely affected.

05. On the above complaint, Superintendent of Police, Indore Ashutosh Bagri wrote a letter to the Trade Mark Registry, Mumbai and obtained opinion through letter No.TMR/Police 115(4)/2021/37 dated 05/10/2021, whereunder it was intimated by the Trademark authorities that complainant Rajkumar Sabu, Proprietor of Shiv Trading Company is the original registered owner of the Trade Mark of 'SACHAMOTI' and unauthorized use of the Trade Mark is punishable under Section 102(2)(a), 103 and 104 of the Act.

06. In pursuance of order dated 17/08/2022 given on I.A.No.12815/2022 in CS (COMM)/761/2016 filed by the complainant, Local Commissioner was appointed by Delhi High Court to conduct a raid on the premises of Sabu Trade Pvt. Ltd. and distributor of Sabu Sons United Compound, Lasudia Mori on 18/08/2022 and prepared an inventory of unauthorized goods having 'SACHAMOTI' mark. Sabu Trade Pvt. Ltd., Salem and Sabu Sons United Compound, Lasudia Mori through their dealers and distributors are continuing to sell 'SACHAMOTI' registered edible items illegally by storing and selling in the nearby areas at Indore.

07. On the above complaint, raid was conducted in the compound of Sabu Sons, Indore situated at 53, United Compound, Dewas Naka, where Prakash Sahu S/o Gangaram Sahu, Manager of Sabu Sons, and other employees Mahesh Chouhan and Ishant Sabu were found present and produced registration certificate of establishment Sabu Sons, wherein Gopal Sabu S/o Sitaram Sabu (owner) and partners Vikas S/o Gopal Sabu and Vishal S/o Gopal Sabu were mentioned as partners. These persons were not present in the premises. Manager Prakash Sahu was apprised that without having trade mark 'SACHAMOTI' they are selling Sachamoti Sabudana and Sachamoti Poha by way of packaging it from the premises.

08. On 30/08/2022, Sabudana in packaging of 1 Kg and 500 Grams, 378

bags and 432 bags were seized and sealed with purchase bill 22-23-11081 dated 26/08/2022. In absence of any document relating to use of the trade mark and finding that it is an offence under Sections 102(2)(a), 103 and 104 of the Act, the above goods were seized in the presence of witnesses and again given on *Supurdagi* to the applicants due to the non-availability of space in the police station for storing the seized items.

09. Learned counsel for the applicants submits that applicant No.1 in the year 1984 conceived the trade mark 'SACHAMOTI' and 'CHAKRA' for the goods Sabudana and in the year 1984 it was adopted by the firm M/s. Sabu Traders, sole proprietorship of Mrs. Kaushalya Devi Sabu. On 05/05/1993, Sabu Export Salem Pvt. Ltd. was incorporated to continue the business of 'SACHAMOTI' Sabudana manufacturing, distribution and networking. On 19/07/1993, Agmark Certificate was issued to Sabu Traders for goods Sago under the trade marks 'SACHAMOTI' and 'CHAKRA'.

10. Respondent No.3 (complainant) was appointed as Distributor of Sabu Salem Export Pvt. Ltd. for the region of Madhya Pradesh for sale of goods under the above trade marks. Respondent No.3 was acting in dual capacity as Company's Director as well as agent of Sachamoti Sabudana. Being the Director of the Company the respondent No.3 filed an application on 28/01/2003 for registration of trade mark 'SACHAMOTI' label without

disclosing that he is Director of the Company and got registered the application in Class-30 of number 1169859 for goods being SAGO (SABUDANA) PREPARATIONS.

11. The Company's name was changed from 'Sabu Salem Export Pvt. Ltd.' to 'Sabu Trade Pvt. Ltd.' (STPL) on 09/08/2006. This Company on 23/02/2010 filed an application for registration of trade mark 'SACHAMOTI' under number 1926631 in Class-30. The application was abandoned due to non-prosecution. On 31/10/2011, another application for trade mark 'SACHAMOTI' under number 2226836 in Class-30 was filed and was opposed by respondent No.3 *vide* notice of opposition dated 21/04/2017, which is pending for adjudication.

12. Respondent No.3 fraudulently and behind the back of STPL obtained a Copyright Registration under Registration No.A-103337/2013 applied in 2013 with the author as Rajkumar Sabu. The complainant on 14/08/2015 resigned from the directorship of the Company. Learned counsel further submits that the Company STPL initiated the proceeding seeking cancellation / rectification of trade mark registration illegally and fraudulently obtained by respondent No.3 during his tenure as Director / Dealer of the Company.

13. He further submits that Company STPL on 04/06/2016 filed a civil

suit against respondent No.3 in District Court, Salem registered as OS 148 of 2016. Respondent No.3 as a counterblast of that suit and Rectification Petition filed a civil suit being CS (COMM) 761 of 2016 titled as Rajkumar Sabu Vs. Kaushalya Devi Sabu before Delhi High Court and obtained an *ex parte* injunction restraining the STPL from using trade mark 'SACHAMOTI'. On 15/08/2018, a transfer petition was filed by the complainant / respondent No.3 seeking transfer of suit No. (C) 1328 of 2018 from Salem to Delhi High Court. The above suit filed by STPL was transferred from Salem to Delhi High and consolidated with the suit filed by the complainant.

14. On 22/01/2020 in analogous hearing in both the suits, Delhi High Court as under as under:

> ***"8.*** *Till further orders, neither the plaintiff nor the defendant to, in their respective advertisements, claim themselves to be the true owner of the mark 'SACHAMOTI', though would be entitled to advertise their products.***"**

The aforesaid order is still in existence.

15. On application filed by respondent No.3 in Delhi suit alleging that petitioner are using suffix ® in their packaging of goods with the mark 'SACHAMOTI' which is violation of the order dated 22/01/2020. Local Commissioners were appointed and directed to seize the goods of

applicants Company bearing ® symbol. Further respondent No.3 taking unlawful aid of Delhi High Court gets order dated 22/01/2020 and in connivance with local police authorities raided the premises of applicant's Company subsidiary 'Sabu Sons' and seized the goods under the trade mark 'SACHAMOTI' and also empty packaging of goods Poha under the trade mark 'SACHAMOTI'.

16. Learned counsel further submits that seizure was in complete defiance of the law, the impugned FIR was registered against the applicants, which is misuse of process of law. This illegal action by the police taken at the behest of the complainant prompted applicants to file instant M.Cr.C.No.43601/2022 for quashment of FIR and proceedings subsequent thereto.

17. Learned counsel for the applicants have challenged the impugned FIR mainly on the following grounds:-

> ***"****(i) Civil suits (Lis) pending in Delhi High Court for ownership of the mark 'SACHAMOTI' is still in contention.*
>
> *(ii) Mandate given in sub-section (4) of Section 115 of the Act has not been complied with.*
>
> *(iii) Civil dispute has been given a garb of criminality.****"***

18. Learned counsel for the applicants have placed reliance on paras 15 to 19 of the of the order by the co-ordinate Bench of this Court in the case of

Kasim Ali and Anr. Vs. State of M.P. And Anr. reported in **I.L.R. [2016] M.P. 2624**. Relevant paras of the aforesaid order as extracted herein below:

> ***"15.*** *There is allegation in the FIR that the applicants were using the same trade mark or a deceptively similar trade mark to goods or package containing goods, which is registered in the name of Vertex Manufacturing Co. There by they have committed the offence defined under Section 102 which is punishable under Section 103 of the Act, 1999. Section 115 (3) of the Act, 1999 provides that the offences under Section 103, Section 104 and Section 105 shall be cognizable. Sub-section (4) of Section 115 provides that any police officer not below the rank of Deputy Superintendent of Police, if he is satisfied that an offence under Section 103 or 104 or 105 has been committed or is likely to be committed, may search and seize goods, die, block, machine etc. without warrant. It is also provided that before making any serach and seizure, he 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.*
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> ***16.*** ***In the present case, no such opinion has been obtained from the Registrar*** *and search and seizure has been conducted by the Sub Inspector. Thus, the mandatory provisions of the Act, 1999 have not been complied with. When statutes, which create an offence provide for a procedure the Court or the authorities cannot ignore the same. In the present case, the procedure provided under Section 115 of the Act, 1999 has not been complied with, therefore, the Court is not competent to take cognizance of the offence under Section 103 of the Act, 1999.*
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> ***17.*** *Now I have considered whether the offence under Section 420 of IPC is made out against the applicant. There is no complaint from any person or consumers that they have been cheated by the purchase of any electric goods which is said to be manufactured by the applicant No.1 and which contained deceptively similar*

> *trade mark as of M/s Vertex Company. From the facts, the offence under Section 420 of IPC has not been made out.*
>
> ***18.*** *With the aforesaid, it is clear that the Court has wrongly taken the cognizance for the offence under Section 63 of the Act, 1957 and under Section 420 of IPC and from the facts the applicants may be prosecuted for the offence under Section 102 read with Section 103 of the Act, 1999. However, the mandatory procedure provided under Section 115 of the Act, 1999 has not been complied with. Hence, applicants cannot be prosecuted for offence under Trade Marks Act, 1999. Therefore, to continue such proceedings is misuse of process of law.*
>
> ***19.*** *Accordingly, this petition is allowed. The FIR registered at Police Station Sadar Bazar, Indore at Crime No.12/2014 for the offence under Section 420 of IPC and under Section 63 of the Copyright Act, 1957 is hereby quashed and further proceedings in Criminal Case No.19746/2014 pending before JMFC, Indore against the applicants are also quashed.**"***

19. Learned counsel for the applicants further relied upon the paras 8 to 13 of the judgment passed by High Court of Gujarat on 31/07/2023 in **Mihir Surendrabhai Shah Vs. State of Gujarat and two Others** (R/Special Criminal Application No.694 of 2014). Relevant para are extracted herein below:

> ***"8.*** *At the outset, if we read FIR, it indicates that complainant claims himself as Officer of IPR (Vigilance) and further claims that he has authority to lodge complaint on behalf of IPR (Vigilance) for lodging offence of selling duplicate auto parts. Perusal of the FIR along with charge sheet papers, nothing discloses to indicate that complainant was authorized to file*

complaint on behalf of Hyundai Motor Company or on behalf of IPR (Vigilance). Investigation does not disclose that there was contract between IPR (Vigilance) and Hyundai Motor Company which permits complainant to search for selling of duplicate auto parts and lodging complaint. In absence of appropriate authorization, FIR must fail.

9. *On the submission that first informant has no authority to file FIR on behalf of Hyduai Motor Company, learned advocate for the complainant as well as learned APP have no say. The charge sheet papers does not disclose that the first informant was authorized to file complaint under the provisions of the Act. It was sought to be submitted that in view of bar contained in section 115(4) of the Act read with Rule 110 of the Trade Mark Rules, would not permit registration of FIR for the offence punishable under sections 103 to 105 of the Act without obtaining opinion from the Registrar for infringement of Trade Mark. Charge sheet papers does not disclose that such opinion has been obtained by the first informant / complainant. It does not disclose that Registrar for infringement of Trade Mark has opined that spare parts which are sold at shop of the accused were infringing provision of sections 103 to 105 of the Act. In simple words, opinion which is mandatory is missing. Further it is sought to be submitted that provision of the Act, more particularly, section 115 of the Act mandates that investigation of the offence has to be carried out by the officer of rank of DSP or officer of equivalent rank. It is submitted that investigation has been carried out by PSI who is below rank of DSP. In that way, statutory provision is breached and benefit of such breach should be given to the accused. Perusal of section 101 and 102 of the Act describes meaning of applying trade marks and trade descriptions of some other or falsifying and falsely applying trade marks of some other. Sections 103 to 105 of the Act describes penalty for such offences. Since it is submitted that in view of bar contained in section 115(4) of the Act, in*

absence of opinion obtained from Registrar for infringement of trade mark, no FIR can be lodged and no search or seizure can be made. Let refer section 115 of the Act, which is as under:-

> *"115. Cognizance of certain offences and the powers of police officer for search and seizure:-*
>
> *(1) No Court shall take cognizance of an offence under Section 107 or Section 108 or Section 109 except on complaint in writing made by the Registrar or any officer authorized by him in writing*
>
> *Provided that in relation to clause (c) of subsection (1) of Section 107, a Court shall take cognizance of an offence on the basis of a certificate issued by the Registrar in respect of any goods or services in respect of which it is not in fact registered.*
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> *(2) No court inferior to that of Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.*
>
> *(3) The offences under Section 103 or Section 104 or Section 105 shall be cognizable.*
>
> *(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 subsection (3) has been, is being, or is likely to be, committed, search and seize without warrants of 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 trademark and shall abide by the opinion so obtained.*

(5) Any person having any interest in any article seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first Class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the applicant and the prosecution, shall make such order on the application as he may deem fit."

10. *Rule 110 of the Trade Mark Rules is in relation with section 115 of the Trade Mark Act. Rule 110 of the Trade Mark Act reads as under:-*

"110. Opinion of the Registrar under section 115(4):-

(1) Where a matter has been referred to the Registrar for his opinion under proviso to sub-section (4) of section 115 such opinion shall be forwarded under a sealed cover within seven working days of the receipt of such written intimation to the referring authority and the Registrar shall ensure complete confidentiality in the matter so referred.

(2) The opinion under this rule shall be given by the Registrar or an officer specially authorised for this purpose under sub-section (2) of section 3 and the name of the designated officer shall be published in the journal."

11. *Provisio to section 115(4) of the Act is clear and unambiguous. Undeniably, the police officer who on the complaint has searched that accused is applying trade mark and trade description of complaint or falsifying and falsely apply trade mark of the complaint is required to take opinion of the Registrar for infringement of Trade Mark prior to search and seizure. Rule 110 also spells the same. In the present case, FIR does not disclose obtaining opinion of the Registrar.*

12. *Learned APP or learned advocate for the complainant are not in position to explain lacuna. It is*

> *clear case that mandatory provisions are breached in registering FIR. The complainant has failed to establish that he has authority to file complaint. He cannot give opinion that accused is applying trade mark / trade description or falsifying and falsely applying trade mark of complaint without taking opinion of the Registrar for infringement of trade mark. The circumstances, spells that there is clear breach of statutory provision.*
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> ***13.*** *Another submission in the case is that it is only police officer not below the rank of DSP or equivalent can investigate the offence. Charge sheet papers in the present case indicates that investigation has been carried by Mr. J.P.Agarvat, PSI, Naranpura Police Station, Ahmedabad. Once again statutory provision of law is breached. Thus such submission also merits.**"***

20. Further reliance is placed on para 7 to 10 in the case of **Satpal and Another Vs. State of Punjab and Others** reported in **2010 SCC OnLine P&H 10179**. For ready reference, relevant paras are extracted herein below:

> ***"7.*** *As per sub-clause (4) of Section 115 of the Trademarks Act, 1999, no police officer below the rank of Deputy Superintendent of Police can search and seize for goods regarding offence under Sections 103, 104 and 105. Secondly, as per the proviso, the said police officer will have to obtain opinion of the Registrar on facts involved in the offence relating to Trademarks Act, 1999 and shall abide by the opinion before such search and seizure is carried out,* ***whereas, in the present case, admittedly the search and seizure had been done by the Sub Inspector without taking any opinion from the Registrar****. The proceedings are, therefore, vitiated. The word "shall" in the proviso is indication of the fact that the provision is indeed mandatory. Moreover, the said offences could have only been investigated by the Officer not below the rank of Deputy Superintendent of Police.*

8. Learned counsel for the respondent-State, however, tried to justify the same on the ground that subsequently the approval of Deputy Superintendent of Police was obtained. The patent illegality cannot be rectified by a subsequent approval. No provision has been brought to the notice of this Court which may allow the Deputy Superintendent of Police to delegate the said power. Thus, the said argument carries no merit.

9. *Learned counsel for the petitioners has relied on the judgment of Hon'ble the Apex Court rendered in the case of R.P. Kapur vs. State of Punjab reported as AIR 1960 SC 866 to state that the present case fell in one of the categories of cases summarized, where the inherent power can be exercised.*

> *"6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under S. 561-A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under S. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried*

under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an

offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point."

10. *Thus, there being a legal bar, the proceedings are liable to be quashed. In the case of Baijnath Jha vs. Sita Ram and another reported as 2008(8) SCC 77, Hon'ble the Supreme Court while relying on the judgment of R.P. Kapur (supra), as well as, the case of State of Haryana vs. Bhajan Lal reported as 1992 Supp(1) SCC 335 quashed the proceedings after arriving at the conclusion that the proceedings instituted were mala fide, based on vague assertions and were initiated with mala fide intents and constitute sheet abuse of process of law. Thus, even in the earlier judgment of R.P. Kapur (supra) and thereafter, in the case of State of Haryana (supra), two of the various categories of cases, in which, the power under Section 482 Cr.P.C. should be exercised, are as under :-*

(i) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(ii) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Therefore, applying the test in the facts of the present case, the same falls in both of the above categories. Admittedly, the present case does not fall under the Copyright Act, 1957. The proceedings are, therefore, patently illegal. The mandatory provisions of the Trademark Act, 1999 while registering the FIR have not been complied with resulting in legal bar to the registration of the FIR. When statutes, which create an offence provide for a procedure, the courts or the authorities cannot ignore the same.

Faced with the above situation, learned counsel for the respondent submitted that since Section 420 IPC had also been incorporated in the FIR, the same could not be quashed on the ground that the provisions of said Act were not complied with.

Learned counsel for the petitioner, on the other hand, raised a specific plea that respondent No.3 was upset with the fact that the petitioner had left the job and started his own manufacturing company. Accordingly, initiating the present proceedings, which are a patent misuse of process of law to settle business scores and result of business rivalry fall under the above category as laid down in the case of R.P. Kapur (supra) and

therefore, deserves to be quashed.

Section 420 IPC reads as under :-

> *"420. Cheating and dishonestly inducing delivery of property Whoever cheats and thereby dishonestly induces the person deceived any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

There is no complaint from any person or consumer that they have been cheated by the purchase of any such drugs. The allegations are covered under the Trademarks Act, 1999. Thus, the offence, if at all, under the said Act cannot be given the colour of cheating by adding Section 420 IPC.

In view of the above, the present petition is allowed and the FIR No.29 dated 17.02.2009 registered at Police Station Salem Tabri, Ludhiana under Sections 51, 52, 63 and 64 of the Copyright Act, 1957 read with Section 420 IPC and all subsequent proceedings arising therefrom are, hereby, quashed."

21. Further reliance is placed on the order dated 07/03/2024 passed by the Apex Court in the case of **Dr. Sonia Verma & Anr. Vs. The State of Haryana & Anr.** in Criminal Appeal No.1433 of 2024. Paras 15 to 17 of the aforesaid order are extracted herein below:-

> *"15. A closer examination of the surrounding facts and circumstances fortifies the conclusion that an attempt has been made by the Respondent No. 2 to shroud a civil dispute with a cloak of criminality. The following aspects of the case are pertinent to note: (i) Respondent No. 2 registered the Subject FIR subsequent to the filing*

of the Civil Suit and the filing of FIR No. 372/2022 by the Appellants; (ii) the chain of sale deeds produced by the Appellants contain identical descriptions of the Suit Property and yet Respondent No. 2 has pursued criminal action only against the Appellants and Sher Singh and not against Babu Lal and her husband; (iii) Respondent No. 2 has failed to contest the present matter before this Court; (iv) the admitted position that the Appellants were bonafide in their payment of rent before their alleged purchase of the Suit Property.

16. This Court in Paramjeet Batra v. State of Uttarakhand & Ors.1 has expounded on the scope of exercise of power under Section 482 CrPC whilst dealing with similar matters:

> *"7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."*

17. Therefore, when the High Court was apprised of such a matter wherein the substance of the criminal complaint served only to cast doubt on the validity of a commercial transaction (in this case, a sale deed for the transfer of property), and the appropriate civil remedy was already being pursued, the High Court ought to

*have quashed the criminal proceedings.***"**

22. Learned counsel has also placed reliance upon the judgment by the Apex Court in the case of **G. Sagar Suri and Another Vs. State of U. P. and Others** reported in **(2000) 2 SCC 636**. Relevant para 8 and 9 of the aforesaid judgment are reproduced herein below:

> ***"8.*** *Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code, Jurisdiction- under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.*
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> ***9.*** *In State of Karnataka v. L. Muniswamy and Others, AIR (1977) SC 1489 = [1977] 3 SCR 113, this Court said that in the exercise of the wholesome power under Section 482 of the Code High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings are to be quashed."*

23. Lastly, learned counsel for the applicants has placed reliance upon the judgment by the Apex Court in the case of **Ram Nath Vs. State of Uttar Pradesh and Others** reported in **2024 SCC OnLine SC 177**. Pars 27 and

28 of the aforesaid judgment are extracted herein below:

> ***"27.*** *The decision of this Court in the case of Swami Achyutanand Tirth [(2014) 13 SCC 314] does not deal with this contingency at all. In the case of the State of Maharashtra [(2019) 18 SCC 145], the question of the effect of Section 97 of the FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.*
>
> *28. Accordingly, Criminal Appeal No. 472 of 2012, Criminal Appeal No.479 of 2012 and Criminal Appeal arising out of SLP (Crl.) No. 1379 of 2011 succeed, and we set aside the impugned orders. The offences, subject matter of these appeals, are hereby quashed and set aside with liberty to the authorities to initiate appropriate proceedings in accordance with the law if not already initiated. Therefore, the concerned authorities are free to act in accordance with the FSSA for offences punishable under Section 59 of the FSSA. Criminal Appeal Nos. 476478 of 2012 are dismissed."*

24. Sounding contra note, learned counsel for the respondent No.3 submits that in compliance of the order dated 17/08/2022, I.A.No.12815/2022 was filed by respondent No.3 / complainant. The Delhi High Court was pleased to allow it and appoint local Commissioner to seize the goods of applicants' Company bearing symbol ®. The report of

Commissioner was filed before the Delhi High Court and Delhi High Court is seized of the said controversy between the parties. Learned counsel submits that in contravention of the order, the applicants are misusing the trade mark of 'SACHAMOTI' for their business purposes to the prejudice of the complainant. A written complaint was filed before the Superintendent of Police, Indore (East). Superintendent of Police Ashutosh Bagri in compliance of the provisions as enshrined in Section 115 of the Act sought an opinion from the Trade Marks Registry, Mumbai and opinion was given *vide* letter No.TMR/Police 115(4)/2021/37 dated 05/10/2021. After receipt of this information, impugned FIR was registered. There is no violation of its mandate as contained in Section 115(4) of the Act. To bolster his submissions learned counsel for the respondent No.3 has relied upon paras 4.5 and 5.3 to 5.12 of the order dated 08/07/2024 passed by High Court of Karnataka in **Sri. Manjunatha M.S. Vs. State of Arisikere Town Police and Another [Criminal Petition No.1620 of 2017 (482)]**. For ready reference, relevant paras are extracted herein below:

> ***"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.

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* ***Crl.Misc.P.No.596/2005*** *in the case of* ***Shivlal Vs. State of Rajasthan [(2013) 3 Cri.LR (Raj)]****, 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 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, 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 [(2010) ILR 6 Delhi 738]** 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 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 others [Crl. Original Petition No.21772/2013 & M.P.No.1/2013]****, 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.*

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.***"**

To bolster his submission, learned counsel submits that Section 155 of the Act is not mandatory and and it is mere irregularity. Mere violation of this provision cannot be a ground to set aside the prosecution case.

25. Learned counsel has further relied upon the judgment by the Apex Court in the case of **R.A.H. Siguran Vs. Shankare Gowda Alias**

Shankara and Another reported in **(2017) 16 SCC 126** to bolster his submission that incompetency of the Investigation Officer to conduct the investigation will not vitiate trial unless prejudice is shown.

26. Learned counsel has further relied upon para 4 and 5 of the judgment by the Apex Court in the case of **M. Krishnan Vs. Vijay Singh and Another** reported in **(2001) 8 SCC 645** to buttress his point that mere pendency of the civil suit cannot be a ground for quashing the criminal proceedings against the accused.

27. To buttress this point, learned counsel further submits that there is no bar in prosecuting a criminal case even in the civil litigation, for which he has placed reliance on para 27 of the judgment by the Apex Court in the case of **Rashida Kamaluddin Syed and Another Vs. ShaikhSaheblal Mardan (Dead) Through LRs and Another** reported in **(2007) 3 SCC 548**. Para 27 of the aforesaid judgment is extracted herein below:-

> ***"27.*** *Finally, the contention that a civil suit is filed by the complainant and is pending has also not impressed us. If a civil suit is pending, an appropriate order will be passed by the competent Court. That, however, does not mean that if the accused have committed any offence, jurisdiction of criminal court would be ousted. Both the proceedings are separate, independent and one cannot abate or defeat the other."*

28. Learned counsel further submits that FIR itself discloses cognizable

offences committed by the applicants. Investigation has been conducted and ample evidence has been collected to corroborate the charges levelled against the applicants. Placing reliance upon the three Judges Bench by the Apex Court in the case of **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others** reported in **2021 SCC OnLine SC 315**, learned counsel further submits that Hon'ble the Apex Court ruminating all the earlier authorities with regard to use of inherent powers provided under Section 482 of Cr.P.C. has summarized the legal position indicating that Courts cannot through out any investigation into the cognizable offence by using inherent powers.

29. He further submits that it has also been observed that in the aforesaid judgment while examining the FIR / complaint, quashment of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences. On the above grounds, learned counsel for the respondent No.2 urge the Court to dismiss the petition as being *sans* merits.

30. Learned counsel for the State supporting the respondent No.3 and

also supporting the registration of FIR against the applicants submit that before registration of FIR, opinion from the Registrar of Trade Marks has been obtained and when it was found that cognizable offences under Section 102, 103 and 104 of the Act has been committed by the applicants, after lodging the impugned FIR investigation has been carried out, which has culminated in challan No.1375 dated 30/12/2022. Inviting attention of this Court towards seizure memo, photographs of the seized packets and statements of witnesses learned counsel submits that trade mark 'SACHAMOTI' registered in the name of respondent No.3 has been misused by the applicants. On the above contentions, learned counsel urges the Court for dismissing the instant petition.

31. Learned counsel for the State also emphasizes that on the face of FIR, it cannot said that no offence has been committed. While using the powers under Section 482 of Cr.P.C. the Court cannot supersede the role of police officer to investigate the matter and in such circumstances relying upon the judgment by the Apex Court in **Supriya Jain Vs. State of Haryana & Anr.** [SLP No.3662/2023, dated 04/07/2021], **Govind Purviya Vs. State of M. P. & Anr.** [M.Cr.C.No.9877/2019, dated 16/12/2019] and **Iqbal Singh Marwah (Supra)** submits that inherent power under Section 482 of Cr.P.C. can not be invoked to quash the FIR and subsequent proceedings.

32. Heard learned counsel for the parties and perused the case diary.

33. The main grounds raised on behalf of the applicants for quashment of FIR No.1347/2022 dated 30/08/2022 registered under Section 102(2)(a), 103 and 104 of the Act at Police Station Lasudia, Indore at the behest of respondent No.3 / complainant Rajkumar Sabu are as under:

(i) Civil suit (*lis*) pending in the Delhi High Court for ownership of mark 'SACHAMOTI' is still in contention, therefore, FIR against the applicants on the same ground is not maintainable;

(ii) Legal mandate of Section 115(4) of the Act has not been complied with; and

(iii) This is a civil dispute given a garb of criminality.

34. It is not in dispute that civil suit filed on behalf of the complainant and civil suit filed by the applicants both are pending before the Delhi High Court regarding ownership of the trade mark 'SACHAMOTI'. It is also admitted that Delhi High Court has passed an order on 22/01/2020 directing that neither the plaintiff nor the defendants to, in their respective advertisements, claim themselves to be the true owner of mark 'SACHAMOTI', though would be entitled to advertise their products.

35. It is also not in dispute that on 17/08/2022, on I.A. filed by the respondent No.3 before the Delhi High Court in the pending civil suits, it

was alleged that applicants are using suffix ® in their packaging of goods with mark 'SACHAMOTI', which allegedly tantamount to the violation of Delhi High Court's order dated 22/01/2020. This I.A. No.12815/2022 was allowed and Local Commissioners were appointed to seize the goods of the applicants' Company bearing symbol ®. Report of Commissioner was also filed before the Delhi High Court. The controversy is still pending before the Delhi High Court.

36. Applicants have relied upon the judgment by the Apex Court in **Dr. Sonia Verma (Supra)**. The facts in the this case were that appellants were doctors, who were running the Surendra Maternity and Trauma Hospital, located in Village Suthani, Tehsil Bawal, Rewari, Haryana and they were paying rent to respondent No.2's son at the rate of Rs.25,000/- per month for the Hospital property until August, 2022 and the original owner of the land upon which the Hospital stands was Kaptan Singh i.e. husband of respondent No.2. Fearing dispossession from the suit property, the appellants filed a Civil Suit No.294/2022 on 27/09/2022. On 29/10/2022, FIR No.372/2022 was registered against three persons including Kaptan Singh and son of respondent No.2 for offences under Section 506 and 120-B of IPC on the ground that accused persons had fraudulently collected rent from them for a prolonged period, despite lacking ownership over the suit

property and were continuously threatening the appellants to vacate the suit property.

37. In these peculiar facts when challenged, the Apex Court was of the view that when appropriate civil remedy was already being perused, the High Court ought to have quash the criminal proceedings and with this observation FIR was quashed, but in the instant case, despite pendency of civil suit before the Delhi High Court, the applicants have been found misusing the trade mark registered in the name of respondent No.3 / complainant. In this petition, Local Commissioners were appointed and they have seized the goods stored with the applicants with a trade mark 'SACHAMOTI'. A complaint was made before the Superintendent of Police (East), Indore and after obtaining opinion from the Trade Mark Registry got registered the instant FIR. It is not a legal position that in any circumstance after filing of civil suit, criminal case cannot be registered.

38. In the case of **M. Krishnan (Supra)** it has been held that mere pendency of the civil suit cannot be a ground for quashing the criminal proceeding against the accused, if permitted, such practice would be an easy way out for accused to avoid criminal proceedings.

39. In light of the aforesaid discussion, this Court does not find any substance in the contentions raised on behalf of the applicants. The

contentions are hereby repelled.

40. The next contention raised on behalf of the applicants is that legal mandate of Section 115(4) of the Act has not been complied with. It has been contended that it is mandatory that search and seizure under the Act can only be done by the person not below the rank of Deputy Superintendent of Police. In this case, search and seizure has been conducted by the Sub-Inspector of Police, which is violation of above mandatory provisions. It has also been contended that proper opinion under Section 115(4) of the Act is required to be sought from the Registrar of Trade Marks before registration of FIR and investigation in the matter and in this matter police authorities have not obtained proper opinion relating to dispute pertaining to mark 'SACHAMOTI' and have formed opinion on the baseless findings and opinions. A proper opinion is a *sine-qua-non* before proceeding under the provisions of the Act. To bolster his submission, learned counsel placed reliance in the cases of **Kasim Ali (Supra)**, **Mihir Surendrabhai Shah (Supra)** and **Satpal (Supra)**.

41. The above contentions have been controverted by learned counsel for the respondent No.3 / complainant by placing reliance on the order in the case of **Sri. Manjunatha M.S. (Supra)** and **R.A.H. Siguran (Supra)**.

42. In order to consider the rival contentions, it is apposite to extract the

provisions as contained in Section 115 of the Trade Marks Act, 1999 as follows:

> ***"115. Cognizance of certain offences and the powers of police officer for search and seizure.—****(1) No court shall take cognizance of an offence under section 107 or section 108 or section 109 except on complaint in writing made by the Registrar or any officer authorised by him in writing:*
>
> *Provided that in relation to clause (c) of sub-section (1) of section 107, a court shall take cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered trade mark has been represented as registered in respect of any goods or services in respect of which it is not in fact registered.*
>
> *(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.*
>
> *(3) The offences under section 103 or section 104 or section 105 shall be cognizable. (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.*
>
> *(5) Any person having an interest in any article seized under sub-section (4), may, within fifteen days of*

> *such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the applicant and the prosecution, shall make such order on the application as he may deem fit.*"

43. From perusal of the record, it is manifest that before registering the FIR on the complaint of the complainant on 05/10/2021 *vide* letter dated TMR/Police 115(4)/2021/37 opinion from Trade Marks Authority has been received, wherein it has been clearly mentioned that mark 'SACHAMOTI' under number 1169859 is in the name of complainant Rajkumar Sabu, 3/2, Kalali Mohalla, Chhawani, Indore (M.P.).

44. In view of the above report, contention raised on behalf of the applicants regarding non-obtaining opinion from the Trade Marks Authority under Section 115(4) of the Act is baseless and against the record, therefore, not sustainable. It is apparent from the record that a written complaint by the complainant Rajkumar Sabu was given to Deputy Superintendent of Police, Zone-II, Indore, which was inquired and after obtaining opinion from the Trade Marks Authority as mentioned herein above, impugned FIR (Annex.-P/3) has been registered and investigation ensued.

45. It is true that search and seizure has been conducted by the Sub-Inspector Bharat Singh Kushwaha, but it cannot be said that he has

undertaken this action on his own or without authority of Deputy Superintendent of Police, Zone-II, Indore.

46. In the case of **Sri. Manjunatha M.S. (Supra)**, which has been extracted herein before referring Section 156 of the Cr.P.C., ith as been held that defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance for trial. Same view has been taken in **R.A.H. Siguran (Supra)** also. In view of the above, the contention as advanced on behalf of the applicants cannot be sustained with regard to non-compliance of Section 115(4) of the Act defect of competence of investigation officer.

47. The third and last important contention raised on behalf of the applicant is that respondent No.3 / complainant through registration of this FIR has given a criminal angle to what is a pure civil dispute between the parties. It is also in defiance of various orders passed by the Apex Court and Delhi High Court relating to civil dispute pertaining to the mark 'SACHAMOTI' pending between the parties at multiple forums. To bolster this submission, reliance has been placed by the applicants in the case of **Dr. Sonia Verma (Supra)** on paras 15 to 17 and **G. Sagar Suri (Supra)** para 8 and 9, which have been extracted herein above for ready reference.

48. Learned counsel for the complainant to controvert the contention has

relied upon the judgment in the case of **M. Krishnan (Supra)**, wherein it has been held that mere pendency of the civil suit cannot be a ground for quashing the criminal proceedings against the accused. In the case of **Rashida Kamaluddin Syed (Supra)** in para 27 it has been held that if a civil suit is pending, an appropriate order will be passed by the competent Court. That, however, it does not mean that if the accused have committed any offence, jurisdiction of criminal court would be ousted. Both the proceedings are separate, independent and one cannot abate or defeat the other.

49. In view of the above observations by the Apex Court, in the considered opinion of this Court, above contentions as raised on behalf of the applicants are of no avail to the applicants.

50. In the case of **R. P. Kapur (Supra)**, it has been held that if criminal proceeding in question is in respect of offence alleged to have been committed by an accused person and it manifestly appears that there is legal bar against the institution or continuance of the said proceeding, if there is absence of requisite sanction and if there is no legal evidence adduced in support of the case or evidence clearly or manifestly failed to prove charge, only then the provision under Section 482 of Cr.P.C. can be invoked, but in the instant case as mentioned herein above, it cannot said that *prima facie*

there is no evidence against the applicant or no case of commission of offence is *prima facie* made out.

51. In the case of **Supriya Jain (Supra)** it has been held that while exercising powers under Section 482 of Cr.P.C., the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution. The Court should apply the test as to whether uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can even reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

52. In the aforesaid case, the Apex Court has also observed that at the stage of exercising inherent power, the Court cannot examine the facts, evidence and materials available on record to determine whether there is sufficient material on to convict the accused; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of Court leading to

injustice. It is not required of the Courts to invoke inherent powers to hold a full fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

53. It has also been held in the **Supriya Jain's (Supra)** that allegations which give rise to civil claim also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintainable.

54. Resultantly, this petition being *sans* merits fails and hereby dismissed.

Certified copy as per rules.

(BINOD KUMAR DWIVEDI)
JUDGE

Tej