



CRM-M-54104-2023

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-54104-2023

Date of decision: 25.11.2024

Arun Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Mandeep Singla, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

None on behalf of respondent No.2.

KARAMJIT SINGH, J. (ORAL)

1. The present petition under Section 482 Cr.P.C has been filed by the petitioner seeking quashing of FIR No.281 dated 20.07.2017, registered under Sections 63 and 65 of Copyright Act, 1957 (in short 'Act of 1957'), registered at Police Station Jodhewal, District Ludhiana (Annexure P-1), final report dated 18.02.2018 (Annexure P-2) submitted by the police and order dated 02.09.2023 (Annexure P-4) whereby the learned trial Court framed additional charge, under Sections 103 and 104 of Trade Marks Act 1999 (in short 'Act of 1999'), and all the subsequent proceedings arising therefrom.

2. The brief facts of the case are that complainant Krishan Pal Singh made statement to the police to the effect that he is authorized person on behalf of RNA-IP Attorneys, Sector-65, Gurugram and that petitioner was manufacturing caperies and pajamas under the fake label of Puma and



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used to sell them in the market at much higher price. On the basis of the said statement, FIR (Annexure P-1) was registered and then the police party headed by Inspector Vijay Kumar raided the factory of the petitioner and fake garments having label of Puma were seized by the police from the spot. The said articles were taken into possession by the police vide separate memo. The petitioner was arrested. On completion of investigation, police presented challan against the petitioner under Sections 63 and 65 of the Act of 1957. Charges were framed. Subsequently, during trial, prosecution filed an application under Section 216 Cr.P.C and thereafter, trial Court framed additional charges against the petitioner under Sections 103 and 104 of the Act of 1999, vide order (Annexure P-4).

3. The counsel appearing on behalf of the petitioner *inter alia* submits that the allegations against the petitioner are that fake garments were being manufactured by the petitioner using the label of Puma. The said alleged Act does not attract the offences under Section 63 and 65 of the Act of 1957, as is held by the co-ordinate Bench of this Court in CRM-M-39653-2021 titled as ***Deepak Vs. State of Haryana and others***, decided on 29.03.2023, which was case relating to recovery of spurious pipes being manufactured under the name of M/s Supreme Industries Limited.

4. The counsel for the petitioner further submits that undoubtedly, in the present case, search and seizure was effected by Inspector Vijay Kumar. That as per the provision of Section 115 of the Act of 1999, the raid and the consequential search and seizure had to be conducted by an officer not below the rank of Deputy Superintendent of Police. Thus, the alleged search and seizure was effected in clear violation of Section 115(4) of the



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Act of 1999. It is further submitted that even no opinion of Registrar of the trade marks was obtained by the police official of rank of Deputy Superintendent of Police, prior to initiating the proceedings for search and seizure, as per the proviso to Section 115(4) of the Act of 1999. It is further submitted that it being so, FIR Annexure P-1, challan Annexure P-2 and order Annexure P-4 are not legally tenable and deserve to be quashed. In support of his arguments, the counsel for the petitioner has also referred to judgment of the co-ordinate Bench of this Court in CRM-M-12823-2021 titled as Ashok Kumar Vs. State of Punjab and another, decided on 10.01.2023.

5. Reply filed on behalf of the State by way of an affidavit of Davinder Kumar, Assistant Commissioner of Police (North), Ludhiana was already taken on record.

6. The State counsel while supporting the FIR Annexure P-1, challan Annexure P-2 and order dated 02.09.2023 Annexure P-4 inter alia submits that the authorized representative of Puma, reported to the police that the petitioner was manufacturing fake garments using the label of Puma without having any authority to do so and resultantly, the premises were raided and garments were recovered which were having fake labels of Puma. The petitioner was arrested at the spot by the investigating officer namely Inspector Vijay Kumar. On completion of investigation, the challan was presented under Section 63 and 65 of the Act of 1957 by police and thereafter, charges were framed. On application filed by prosecution under Section 216 Cr.P.C additional charge, under Section 103 and 104 of the Act of 1999 was framed against the petitioner and thereafter, trial has



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commenced. However, the State counsel has not disputed the fact that the matter was not investigated by the police officer of the rank of Deputy Superintendent of Police and that the entire search and seizure was effected under the supervision of the police official of the rank of Inspector.

7. I have considered the submissions made by counsel for the parties.

8. Section 13 of the Act of 1957, reads as follows:-

Section 13. Works in which copyright subsists.

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,--

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) 1[sound recording].

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless--

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than a 2[work of architecture], the author is at the date of making of the work a citizen of India or domiciled in India; and

(iii) in the case of a 2[work of architecture], the work is located in India.

Explanation.--In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any 3[sound recording] made in respect of a literary, dramatic or musical work, if in making the 3[sound recording],



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copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the 3[sound recording] is made.--

(5) In the case of a 3[work of architecture], copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.”

9. As per Section 13 of the Act of 1957, Copyright could subsist with regard to the afore-stated classes of works. There could be thus, no Copyright in manufacture and sale of garments. Thus, prima facie, the prosecution has failed to prove infringement of the provisions of Act of 1957, punishable under Sections 63 and 65 of the said Act. In this regard, reference be made to decision of the co-ordinate Bench of this Court in **Deepak’s case** (supra).

10. Section 115 of the Act of 1999 reads 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-



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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. “

11. In the present case, the mandatory provision provided under Section 115 of the Act of 1999 has not been complied with, as the case was investigated by Inspector Vijay Kumar in violation of the provision of Section 115(4) of the Act of 1999, which provides that in a case relating to infringement of the provisions of Trade Mark Act 1999, the matter is to be investigated by the police officer not below the rank of Deputy Superintendent of Police. Further, in this case, no opinion of Registrar of trade marks on the facts involved in the offences relating to trade mark was obtained by the investigating officer before effecting the search and seizure, as per the mandate of proviso to Section 115(4) of the Act of 1999.

12. In light of the above, the prosecution of the petitioner under the provisions of Section 63 and 65 of the Act of 1957 and under Section 103 and 104 of the Act of 1999 is not legally sustainable.

13. Having regard to the facts and circumstances of the case, the statutory provisions coupled with the judgments referred to herein above, this Court finds merit in the petition.

14. For the foregoing reasons, the present petition is allowed and FIR No.281 dated 20.07.2017, registered under Sections 63 and 65 of Copyright Act, 1957, at Police Station Jodhewal, District Ludhiana (Annexure P-1), final report dated 18.02.2018 (Annexure P-2) and order dated 02.09.2023 (Annexure P-4) whereby the learned trial Court framed additional charge, under Sections 103 and 104 of Trade Marks Act 1999, and all other consequential proceedings arising thereof are hereby quashed.

25.11.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No