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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 428/2010

MAJA HEALTHCARE DIVISION Petitioner
Through : Mr. Neeraj Grover, Advocate.

versus

STATE Respondent
Through : Mr. Sunil Sharma, APP for the State
with ASI Gajender Tyagi, PS Timarpur

CORAM:
JUSTICE SHIV NARAYAN DHINGRA

% **ORDER**
08.12.2010

This petition has been filed by the petitioner assailing order dated 4th May, 2010 passed by learned ACMM whereby an application of the petitioner seeking exemption from compliance of Section 115 (4) of the Trade Marks Act, 1999 was dismissed and it was observed that Section 115 (4) was the safeguard against any complaint that may cause the traders other than complainant's goods seized by way of search or seizure. The learned ACMM considered that Section 115(4) was applicable even in those cases where search warrants were issued by a Court of MM under Section 93 Cr.P.C.

This issue was considered by this Court in Sanyo Electric Company through its Constituted Attorney Pankaj Gupta vs. State decided on 30th August, 2010 in Crl. Rev. Petition No. 154/2010 and this Court made legal position clear in paragraph 12 which reads as under:

"12. Section 115(4) of the TM Act does not override and obliterate the power of the court to issue a search

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warrant under Section 93 of the Code. Learned ACMM has in fact exercised the power under Section 93 of the Code and entertained the application. In other words, learned ACMM has held that an application under Section 93 of the Code would be maintainable and the court can issue a search warrant in spite of the power given to the police under Section 115(4) of the TM Act to conduct search without warrant. It has been accordingly held, and in my opinion rightly, that the two provisions operate independently as one relates to searches pursuant to warrants issued by the courts and the other relates to searches by police officers without a Court warrant. The pre-requisite or pre-conditions for a search by a police officer without warrant under the proviso to Section 115(4) of the TM Act cannot be read into and made a pre-condition before a search warrant issued by a court under Section 93 of the Code is executed. Otherwise, a judicial order of the court issuing warrant of search will be a paper order and unexecutable unless the Registrar gives a positive opinion. It makes a judicial order of a court ineffective till an opinion is given by the Registrar, who has right to overwrite the judicial decision. This is not warranted by the language of the proviso or the legislative intent behind the proviso. The object and purpose is to control searches without warrants by the police and not impose a post decision precondition before warrants issued by the court are executed. If the proviso is to apply to Section 93 of the Code, the language would have been different and more specific. There can be cases where immediate searches are required under the TM Act. Searches under Section 115(4) of the TM Act may be counterproductive or self defeating in case the time consuming process in view of the proviso to section 115(4) of the TM Act is followed. In such cases, searches under Section 93 of the Code after a judicial order may be more appropriate and necessary. The legislative intent behind empowering a police officer to conduct a search only pursuant to an opinion of the Registrar under Section 115(4) is clearly to protect the right to privacy and to ensure that the power of search and seizure under Section 115(4) is not misused/abused. A judicial order serves the same purpose and protects against misuse of the power of search."

Thus, the present petition is allowed in view of the aforesaid judgment passed by this Court. The order dated 4th May, 2010 passed by learned ACMM is hereby set aside.

The ACMM is directed to dispose of the application of the petitioner in the light of above judgment.

The petitioner is directed to appear before learned ACMM on 23rd December, 2010.

DECEMBER 08, 2010

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SHIV NARAYAN DHINGRA, J