

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21183 of 2012

Arising Out of PS.Case No. -124 Year- 2011 Thana -null District- BHOJPUR

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1. Manish Chand Jain, s/o Sri Pradeep Chand Jain, residing at Pradeep Radio and Electricals, Jail Road, Ara, P.S. Ara Town, Distt. Bhojpur (Bihar),
 2. Pradeep Chand Jain, s/o Gulab Chand Jain, residing at Pradeep Radio and Electricals, Jail Road, Ara, P.S. Ara Town, Distt. Bhojpur (Bihar).
- Petitioner/s

Versus

1. The State of Bihar.
2. Salil Prasson Jain, s/o Sri Prasoon Chand Jain, Nav Deep Building, Jail Road, Ara, P.S. Ara Town, Distt. Bhojpur (Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar, Advocate
For the Opposite Party/s : Mr. Ajit Kumar, APP
Mr. Madanjeet Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 24-07-2017

1. Learned counsel for the petitioners submits that petitioner No.2, Pradeep Chand Jain, has died during the pendency of this application and seeks permission to withdraw this application in so far as it relates to Petitioner No.2.

2. Accordingly, this application is dismissed as withdrawn in so far as it relates to Petitioner No.2- Pradeep Chand Jain.

3. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 24.02.2012 passed by the Chief Judicial Magistrate, Bhojpur at Ara,



in Ara P.S. Case No.124 of 2011 by which the learned Magistrate has taken cognizance against the petitioner under Sections 419, 420, 467, 468, 471, 120-B Indian Penal Code.

4. Counsel for the petitioner has submitted that the Informant has not been registered with the Trade Mark name “*Pratigya*” and it was under process as will appear from the Counter Affidavit, but still First Information Report has been lodged by stating that Trade Mark of the informant “*Pratigya*” is registered with the Registrar of Trademarks, Government of India, bearing Receipt No.2124047 under Section 18(1) Rule 25(2) of Trade Marks Act, 1999, which provided Proprietor Code No.1252757. Designs of the fan are of the informant and the informant is using aforesaid Trade Mark for last several years. The accused persons have sold fake manufactured fans to several shops as mentioned in the written report. In course of enquiry, the police found those fans to be fake and in this manner, the accused persons were cheating the people by impersonating as “*Pratigya*” fan.

5. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of *K. Narayanan and another Vs. S. Murali* reported in (2008) 10 Supreme Court Cases 479. Hon’ble Supreme Court has held that application for registration does not confer such a right. Such a right will accrue



only after the Trade Marks has been registered. In the instant case, there is no cognizance under the Trade Marks Act.

6. The police after investigation have found case under Section(s) 419,420, 467, 468, 471, 120-B Indian Penal Code against the accused persons. The learned Court below on the basis of charge-sheet and the materials in the case diary took cognizance against the accused persons including the petitioner for the offence under Sections 419, 420, 467, 468, 471, 120-B Indian Penal Code.

7. It is well settled law that the Court is required only to see *prima face* case on the basis of the materials available in the case diary along with charge-sheet at the time of taking cognizance.

8. Since there is no cognizance under the Trade Marks Act, this Court does not feel it necessary to enter into the merit of the submissions made by the petitioner that the informant had just applied for registration and he had no registered Trade Mark.

9. From the written report and the materials available on record, it appears that there is specific allegation against the petitioners of selling fans with fake names and on objection raised by the informant they gave threat of dire consequences.

10. The police have found the case true after investigation and submitted charge-sheet against the accused



persons.

11. Therefore, this Court does not find any illegality in the impugned order. This application is, accordingly, dismissed.

12. Liberty is given to the petitioner to raise all these points, as raised in the present application, at the time of framing of Charge, which shall be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08-08-2017
Transmission Date	08-08-2017

