

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1519 OF 2017

Nagesh s/o.Madhavrao Bhale,
Age : 35 years, Occupation : Trader,
Resident of House No.4-9-47,
Bhale Nivas, Behind Kids Kingdom
Readymade Shop, Tilka Path,
Aurangabad.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through the Commissioner of Police,
Aurangabad.
2. The Police Station Officer,
Jawahar Nagar Police Station,
Aurangabad.
3. Almatin Mohd. Sharif,
Age : 35 years, Occupation : Private
service, Resident of Somwar Peth,
Maharana Pratap Chowk,
Kolhapur.

RESPONDENTS

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Mr.Kshitij Surve, Advocate for the applicant
Mr.P.G.Borade, APP for Respondent / State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Date: 13.04.2017

ORDER: (Per S.S.Shinde, J.):

1. This Application is filed with a prayer to quash and set aside the First Information Report bearing Crime No.0296 of 2016, registered with Jawahar Colony Police Station, Aurangabad, for the offences punishable under Section 420 of the Indian Penal Code, Sections 63 and 65 of the Copyrights Act, 1860 and Sections 103 and 104 of the Trade Marks Act, 1994.

2. Heard. The learned counsel appearing for the applicant submits that, even if the allegations in the FIR are taken at its face value and read in its entirety, an alleged offences have not been disclosed. He further submits that, even before registering the FIR, the shop of the applicant was raided, which is impermissible. It is submitted that, the delegate of the original company i.e. HUNDAI, cannot depute any agent to inspect

the products in the market. The alleged imputation of usage of brand could not lead to a criminal prosecution, even under the Copyright Act or the Trade Marks Act. Therefore, he submits that, the application may be allowed.

3. On the other hand, the learned APP appearing for respondent-State invites our attention to the allegations in the FIR and the investigation papers and submits that, the Investigating Officer has recorded the statement of the witnesses, and also seized incriminating material from the shop, which shows *prima facie* involvement of the applicant in the alleged offences.

4. We have considered the submissions of the learned counsel appearing for the applicants, and the learned APP appearing for the respondent-State. With their able assistance, perused the grounds taken in the

application, annexures thereto, the contents of the FIR, and also the investigation papers. *Prima facie*, the allegations made in the FIR disclose that, the applicants by affixing sticker of HUNDAI company on spare parts is pretending / giving impression that, the said spare parts are of HUNDAI Company. It further appears that, the applicant, by preparing forged symbol of HUNDAI Company, is selling the spare parts and also said symbol. At the stage of considering the prayer for quashing the FIR, this Court has to find out from the allegations in the FIR whether an alleged offences have been disclosed or otherwise. In the present case, *prima facie*, an alleged offences have been disclosed and needs further investigation. Hence this Application stands rejected.

5. The observations made hereinabove are *prima facie* in nature and are restricted for adjudication of the present application.

This order will not preclude the applicant from availing of an appropriate remedy as available in law in case the Investigating Officer files the report under Section 173 [8] of the Criminal Procedure Code.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

DDC