

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 251 OF 2016
IN
L.A.C. NO. 294 of 2006

Mr. Firoz Ismail Khan	Applicant
V/s.	
The State of Maharashtra	Respondent

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Mr. D.P. Jaiswal, Advocate for the applicant.

Mrs. A.S. Pai, Additional Public Prosecutor for the
respondent, State.

CORAM :-	R.M. SAVANT &
	SANDEEP K. SHINDE, JJ.
DATE :-	14TH SEPTEMBER, 2017.

P.C. :-

1. Rule. Considering the challenge raised in the
petition, taken up forthwith and heard.

2. By the above application, the applicant seeks
quashing of the complaint being L.A.C. No. 294 of 2006
registered with Oshiwara Police Station for the offences

punishable under Sections 63, 63(B) of the Copy Rights Act, 1955. The said complaint was lodged by the respondent no.2 herein at the behest of Asian Paints and in the capacity of being their Power of Attorneys.

3. The gravamen of the allegations was that, the applicant herein was misusing the logo and artistic work of the said Asian Paints which was found during the search of the applicant's premises conducted by the respondent no.2. It was further alleged that, when the applicant was asked for clarification as regards the authorisation for such use of the logo, the applicant had failed to give any satisfactory answer to the respondent no.2. The said facts were communicated to the Oshiwara Police Station by the respondent no.2 upon which the officials of the Police Station visited the site and carried out the same preliminary investigation and registered the complaint as LAC No. 294 of 2006 for offences under Sections 63 and 63(B) of the Copy Rights

Act.

4. The above application had come up before the Division Bench of this Court on 28th June, 2016 on which day, the statement made by the Learned APP was recorded that the investigation was not complete. It is required to be noted that the FIR was registered in the year 2006 and even as on 28th June, 2016 the investigation was not complete.

5. The Learned APP, Mrs. Pai, has today submitted a report bearing Outward No.10306 of 2017 dated 13th September, 2017 of the Senior Inspector of Police, Oshiwara Police Station. In the third last paragraph of the said report, it is stated that, though a search was taken of the cupboard of the then Investigation Officer, who has now retired, no papers could be found relating to the case. It is further stated that, contact was tried to be established to the then,

Investigation Officer. However, on account of the fact that, the then Investigation Officer had suffered a paralytic stroke, he is not in a position to recollect and give any information as regards the investigation or the filing of the chargesheet.

6. The Learned Counsel for the petitioner, draws our attention to the fact that, an application was made by the petitioner for obtaining a certified copy of the chargesheet in the concerned Metropolitan Magistrate's Court. However, the applicant was furnished with only the remand application filed by the police. The Learned APP, on instructions from PI, Shashikant Bhosale, who is personally present states that, the said Officer is also not in a position to throw any light, insofar as, filing of the chargesheet is concerned. Hence, the conceptus of the facts as above, disclose that before a Division Bench of this Court, in its order dated 28th June, 2016 recorded that, though the FIR was registered in the year 2006, the

investigation was not complete, even as of June, 2016. The said fact coupled with the report submitted today through the Senior Inspector of Police, therefore makes it clear that, no chargesheet has been filed and that the papers are also not available with the Oshiwara Police Station. The delay in completing the investigation, as also, prosecuting the petitioner, impinges upon the right of the applicant to a speedy trial. Reference could be made to the judgment of the Apex Court in **Pankaj Kumar v. State of Maharashtra & Ors. reported in AIR 2008 Supreme Court 3077**, and especially para-17 thereof, which is reproduced hereunder :

17. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal persecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances,

enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial.”

7. Hence, the interference of this Court in its jurisdiction under Section 482 is warranted for. The above application would have to be accordingly allowed and is allowed in terms of prayer clause (b). The application to accordingly stand disposed of. The report bearing Outward No. 10306 of 2017 dated 13th September, 2017 of the Senior Inspector of Police, Oshiwara Police Station is taken on record and marked 'X' for identification.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)