

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.O.P.No.2139 of 2013

and

M.P.No.1 of 2013

P.Manikam

S/o.Palaniappa Mudaliar Petitioner/Accused No.1

Vs.

State represented by
Assistant Commissioner of Police,
Video Piracy and Copyrights,
Central Crime Branch,
Egmore, Chennai - 600 008. Respondent/Complainant

Criminal Original Petition filed u/s.482 of the Code of the Criminal Procedure praying to call for records in C.C.No.5714 of 2009 on the file of learned III Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.V.Chandrababhu
for Mr.M.Venkateswaran

For Respondent : Mr.B.Ramesh Babu
Government Advocate [Crl.side]

सत्यमेव जयते
O R D E R

Petitioner seeks quash of proceedings in C.C.No.5714 of 2009 on the file of learned III Metropolitan Magistrate, George Town, Chennai.

2. Pursuant to investigation in case registered in Crime No.15 of 2007 on the file of respondent, a charge sheet was filed informing commission of offences u/s.103 and 104 of the Trade Marks Act, 1999 and 420 r/w 34 IPC. The prosecution case is that the de facto complainant company has manufactured and sold beedies under the name and style 'Syed Beedi'. Petitioner and another sold duplicate beedies under the said name. They used deceptively similar labels as that of the de facto

complainant and thereby caused damage to its reputation and also cheated the general public. Sections 103 and 104 of the Trade Marks Act, 1999 read as follows:

"103. Penalty for applying false trade marks, trade descriptions, etc.— Any person who—
(a) falsifies any trade mark; or
(b) falsely applies to goods or services any trade mark; or
(c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or
(d) applies any false trade description to goods or services; or
(e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or
(f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or
(g) causes any of the things above-mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

104. Penalty for selling goods or providing services to which false trade mark or false trade description is applied.—Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided, as the case may be, are without the indications so required, shall, unless he proves,—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence had been committed in respect of the goods or services; or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or

(c) that otherwise he had acted innocently, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees."

3. Section 115 of the Trade Marks Act, 1999, deals with cognizance of certain offences and the powers of police to effect search and seizure. While sub-section 3 thereof makes offences under sections 103 and 104 as also 105 cognizable, sub-section 4 requires investigation be that of any police officer not below the rank of Deputy Superintendent of Police or equivalent and makes provision for search and seizure. The proviso places the requirement of the investigating officer obtaining opinion of the Registrar on facts involved in the offence relating to trade mark and his abiding with the opinion obtained, before making any search and seizure.

4. Learned counsel for petitioner submits that the requirement of the proviso to sub-section 4 of Section 115 of the Trade Marks Act, 1999, is mandatory and the same was not complied with. Learned counsel referred to the judgment of Punjab and Haryana High Court in Satpal and another v. State of Punjab and others [2010 SCC Online P& H 10179], wherein the following observations are to be found:

"7. As per sub-clause (4) of Section 115 of the Trademarks Act, 1999, no police officer below the rank of Deputy Superintendent of Police can search and seize for goods regarding offence under sections 103, 104 and 105. Secondly, as per the proviso, the said police officer will have to obtain opinion of the Registrar on facts involved in the offence relating to Trademarks Act, 1999 and shall abide by the opinion before such search and seizure is carried out, whereas, in the present case, admittedly the search

and seizure had been done by the Sub Inspector without taking any opinion from the Registrar. The proceedings are, therefore, vitiated. The word "shall" in the proviso is indication of the fact that the provision is indeed mandatory. Moreover, the said offences could have only been investigated by the Officer not below the rank of Deputy Superintendent of Police.

5. Heard learned Government Advocate [CrI.side] on the above submissions.

6. This Court finds itself in full agreement with the observations of Punjab and Haryana High Court in the decision above referred to. Concurring with the view that the proviso requiring the investigating officer to obtain the opinion of the Registrar regards the facts involved in the offence relating to trade mark is mandatory in nature, particularly since the proviso places a further requirement on the investigating officer abiding with the opinion so obtained, this Court finds that the prosecution for offences u/s.103 and 104 of the Trade Marks Act, 1999, stands launched without following due procedure. Offences u/s.420 r/w 34 IPC that are alleged against petitioner being incidental to offences u/s.103 and 104 of the Trade Marks Act, 1999, the same would also fail.

For the aforesaid reasons, the Criminal Original Petition is allowed. Though, the other accused is not before this Court, this Court would extend the benefit of this order also to him. The proceedings in C.C.No.5714 of 2009 on the file of learned III Metropolitan Magistrate, George Town, Chennai, is quashed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

gm

To

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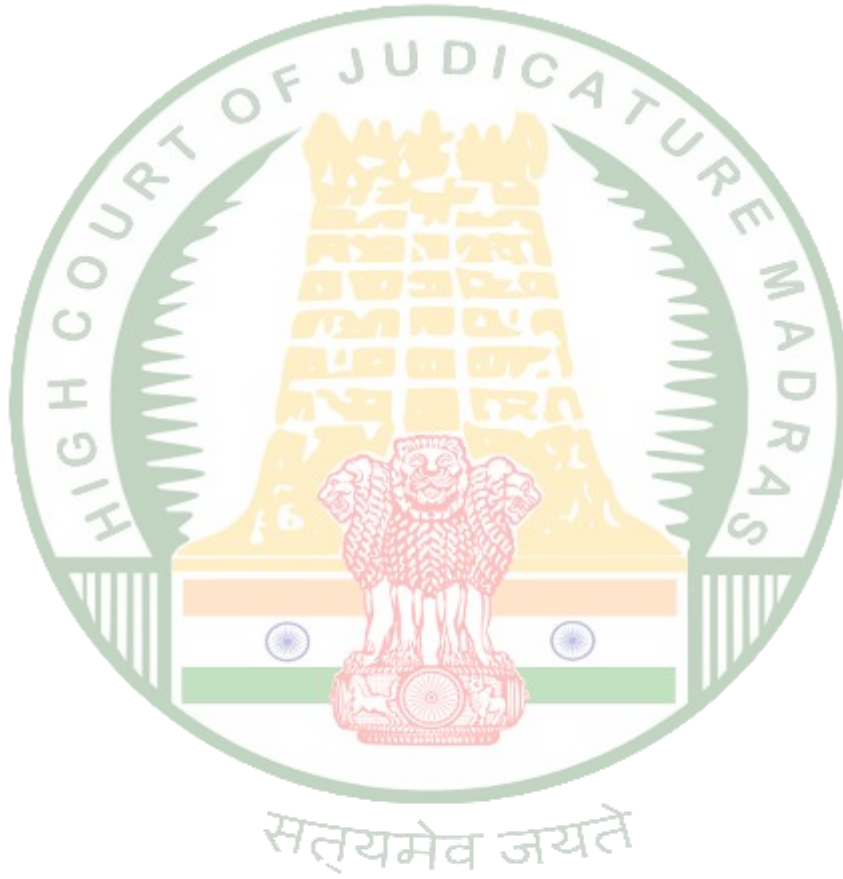
1. The III Metropolitan Magistrate,
George Town, Chennai.
2. The Assistant Commissioner of Police,
Video Piracy and Copyrights,
Central Crime Branch,
Egmore, Chennai - 600 008.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Venkateswaran, Advocate, S.R.No.42363

Cr1.O.P.No.2139 of 2013

GJ II(CO)
CA(10/08/2017)



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