

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

CRIMINAL APPLICATION NO. 1289 OF 2007

Shrenik Shantilal Dhadiwal,
Age 48 years, Occ. Business,
R/o. Khatod market, Shivaji Road,
Shrirampur, Dist. Ahmednagar.

... **Applicant**
(Ori. Accused No. 1)

VERSUS

1. The State of Maharashtra.
2. Panditrao Santuji Thorat,
r/o. "SUDARSHAN" Bansilal
Nagar, Aurangabad, Dist.
Aurangabad.

... **Respondents**
(Respondent No. 2 is
original informant)

...

Advocate for Applicant : Mr. Joydeep Chatterji.
APP for respondent No. 1/State : Mrs. V.S. Choudhary.
Advocate for Respondent No. 2 : Mr. M.R. Andhale.

**CORAM : T.V. NALAWADE &
K. L. WADANE, JJ.**

RESERVED ON : 2nd JULY, 2018

**PRONOUNCED : 1st AUGUST, 2018.
ON**

JUDGMENT (PER K.L. WADANE, J.) :

1. Rule. Rule made returnable forthwith. With the consent of the parties, this application is taken up for final disposal.

2. This application is filed by the applicant under the provisions of section 482 of the Code of Criminal Procedure for relief of quashing of first information report No. 97/2003 registered with Shrirampur City Police Station under section 78 and 79 of the Trade and Merchandise Marks Act and under section 420, 486 read with section 34 of the Indian Penal Code and consequent Criminal Case No. RTC No. 135/2003 pending before Judicial Magistrate First Class, Shrirampur.

3. On 07.05.2003 the respondent No. 2 herein lodged the first information report against the applicant and a firm namely Sunil Kumar @ Pappu Lakhmichand Vijandas of which the applicant is a proprietor. On the basis of the first information report lodged by the respondent No. 2 offence came to be registered, as referred above.

4. We have heard the arguments of Mr. Chatterji, learned counsel for applicant, Mrs. Choudhary, learned APP for the respondent No. 1/State and Mr. Andhale, learned counsel for respondent No. 2.

5. From the contents of the first information report it appears that it is alleged that the respondent no. 2 is owner/proprietor of Datta Soap Industries, Aurangabad. It has been manufacturing bathing soap and detergent from last 32 years and manufacturing soap under the

trading “GEETA” from last 23 years. The trade mark “GEETA” is exclusively used by respondent No. 2 from 1980 and it is popular throughout the State. It is further alleged that the respondent No. 2 applied for registration of the Trade Mark “GETTA” before the authority concerned and the proceeding is pending.

6. On 04.05.2003 when the respondent No. 2 visited his distributors in Shrirampur market at that time it was informed that another soap namely “GEET” had entered in the market and same is looked identical to “GETTA” soap. According to respondent No. 2, the goods namely “GEET” manufactured by the applicant is deceptively similar with the product of the respondent No. 2. Therefore, he lodged the complaint as referred above. After registration of the crime the investigating officer has carried out the investigation and submitted the charge-sheet bearing RTC No. 135/2003.

7. Initially, it is to be noted that date of offence is 04.05.2003 and the first information report was registered on 07.05.2003. The crime was registered for the offences punishable under section 78 and 79 of the Trade and Merchandise Act, 1958. However, looking to the allegations in the first information report itself it appears that the alleged offence was committed on 04.05.2003, therefore, obviously, it is covered under

the Trade Marks Act, 1999. Furthermore, by the Act of 1999 the proviso of Section 79 is omitted and looking to the proviso of Section 78 which relates to the rights conferred by registration of certification of the trade marks. However, that issue is not involved in the present matter.

8. Considering the allegations in the complaint it appears that the complaint is lodged with the accusation that the applicant has manufacturing, selling the goods i.e. soap under the brand name “GEET” which is visually and phonetically similar with the product of respondent No. 2 namely “GETTA”. Therefore, the offence falls under the provision of section 102 punishable under section 103 and under section 104 of the Trade Marks Act. Section 101 correspondence to the section 77 of the Trade and Merchandise Act, 1958. This section defines as to when a person shall be deemed to falsify a trade mark or lately apply to goods a trade mark. It will be a falsification of a trade mark if without the consent of the proprietor, a person makes a trade mark or a deceptively similar mark. It will also be falsification where a person falsifies a genuine trade mark. It may be by alteration, addition, effacement or otherwise. Under sub section (2) a person shall be deemed to falsely apply to goods a trade mark when, without the consent of the proprietor, he applies it or a deceptively similar mark to

goods or to any package containing goods, or uses any package bearing a mark identical with or deceptively similar to the trade mark of the proprietor, for the purpose of packing, filling, or wrapping therein any goods other than the proprietors' genuine goods.

9. So looking to the entire contention in the first information report the offence squarely covered under the provisions of section 102 of the Trade Marks Act. Under the provision of section 115 of the Trade Marks Act certain restrictions are put for taking the cognizance for the offence under section 107, 108 or 109. The Court shall not take the cognizance of the complaint except the complaint in writing made by the Registrar or any officer authorized him by writing. The offences punishable under section 103 or 104 or 105 are cognizable and police not below the rank of Deputy Superintendent of Police is authorized to search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence. Such police officer before making any search or seizure shall obtain the opinion of Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.

10. The relevant provision of section 115 reads as follows :

“115. *Cognizance of certain offences and the powers of police officer for search and seizure.* –

(1) No court shall take cognizance of an offence under section 107 or section 108 or section 109 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Provided that in relation to clause (c) of sub-section (1) of section 107, a Court shall take cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered trade mark has been represented as registered in respect of any goods or services in respect of which it is not in fact registered.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate or Judicial Magistrate of first class shall try an offence under this Act.

(3) The offences under section 103 or section 104 or section 105 shall be cognizable.

(4) Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial

Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being resorted to him and the Magistrate, after hearing the applicant and the prosecution, shall make such order on the application as he may deem fit.”

11. On perusal of papers of investigation it appears in the present matter that the investigation was carried by Assistant Police Inspector, Local Crime Branch, Ahmednagar. Furthermore, no opinion of the Registrar is taken before carrying the investigation. At the initial stage matter requires to be examined by the expert i.e. the Registrar. Therefore, the investigating officer has to act upon the opinion given by the Registrar. Herein the present case no such opinion of the Registrar was taken by the investigating officer, nor the alleged offence is investigated by the officer not below the rank of Deputy Superintendent of Police. So the above two facts are in contravention of provisions of

section 115 sub-clause 4 and it's proviso clause. So basically the investigating officer was not authorized to carry the investigation and due to such irregularity committed by the investigating officer he was not authorized to investigate the matter and file the charge-sheet.

12. In view of the above, if the investigation is carried out without authority, in such circumstances, the first information report and the criminal case instituted against the applicant is liable to be set aside.

Hence, following order :

ORDER

1. The application is allowed.
2. Relief is granted in terms of prayer clause 'C'.
3. Rule is made absolute in above terms.

13. Criminal Application is disposed of.

(K. L. WADANE, J.)

(T.V.NALAWADE, J.)

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