

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3846 OF 2018

Mohinder Singh Saluja	...	Petitioner
VS.		
The State of Maharashtra	...	Respondent

Mr. M. Najmi i/b. Jasbir Singh Saluja, Advocate for the petitioner.
Mrs. Veera Shinde, APP for the respondent/State.
Mr. Munir Mulla, Assistant Police Inspector Banking-2, EOW,
Mumbai present in the Court.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 13th March, 2019**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission, as short issue is involved in this Petition.

2. This Writ Petition is directed against the order dated 21st February, 2018 passed by the learned Metropolitan Magistrate, 18th Court, Girgaum, Mumbai in Complaint bearing No. 74/PW/2017, so also the order dated 26th April, 2018 passed by the learned Additional Sessions Judge, City Civil Court, Greater Mumbai in Criminal Revision Application No. 326 of 2018.

3. The petitioner is prosecuted for making duplicate part of motorcycle of Royal Enfield make and so he is prosecuted for the offences punishable under sections 51 and 63 of the Copyright Act, 1957. The petitioner has moved the Application for discharge from the offences under Copyright Act. The said Application was rejected by the learned Metropolitan Magistrate. The petitioner challenged the said order by filing Criminal Revision Application No. 326 of 2018. The learned Additional Sessions Judge allowed the Revision Application by holding that Copyright Act is not applicable to the present set of facts, as there is no theft or violation of any creative literary or artistic work to which the Copyright is applicable. The learned Judge held that it is a case falling under Trade Marks Act, 1999. The learned Judge has quashed the order passed by the learned Metropolitan Magistrate. The said order is not challenged by the State before this Court, therefore, as on today, there is no prosecution under sections 51 and 63 of Copyright Act, 1957 as by the order of the learned Sessions Judge, the petitioner is discharge from the offences committed under the Copyright Act.

4. The learned counsel for the petitioner has pointed out Clause

No. 3 of the operative portion of the order dated 26th April, 2018 passed by the learned Additional Sessions Judge while allowing the Criminal Revision Application, which reads as follows:

3. The trial Court is directed to frame new charge considering the material on record after hearing both the parties and it would also consider any application if preferred prior to framing charge as per law."

The learned counsel argued that in paragraph 9 of the said order, the learned Additional Sessions Judge has observed that the offence falls under the Trade Marks Act, 1999 and therefore, it appears that he has indirectly ordered the learned Magistrate to frame charges under the Trade Marks Act. The learned counsel has submitted that even prosecution under the Trade Marks Act is not possible for want of certain compliance under the Act by the prosecution.

5. The learned APP opposed this Petition and submitted that the order passed by the learned Additional Sessions Judge is legal.

6. After going through the complaint, *prima facie* there is a

material to frame charge for the offence, however, under what Act and under what section the charge can be framed is left to the trial Court, that is what exactly the tenure of clause (3) of the operative portion of the impugned order passed by the learned Additional Sessions Judge is to be considered. All the contentions of the accused are kept open at the time of framing of charge. However, the accused is to be informed under what section the charge is to be framed and at the relevant time, he may avail of the Application for discharge, which is to be decided on merits.

7. With this, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)