

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: February 26, 2019

+ CRL.REV.P. 809/2018

COURT ON ITS OWN MOTION

..... Petitioner

Through: Nemo.

Versus

STATE

..... Respondent

Through: Ms. Richa Kapoor, Additional
Standing Counsel for State with
Ms. Ayushi Rajput, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL)

1. The legality and propriety of order of 22nd December, 2017 is under scrutiny in this petition.
2. Vide aforesaid order of 22nd December, 2017, the court concerned had returned the application under Section 115(4) of *Trade Mark Act* to the concerned Additional Chief Metropolitan Magistrate (*hereinafter referred to as 'ACMM'*) with observation that the concerned court was not the link court in the chain provided in the link roster and that there is no binding Circular whereby concerned ACMM could mark the application of his own court pending investigation, even when the link MM of concerned ACMM-01 was available.
3. The background which led to passing of the aforesaid order of 22nd December, 2017 is referred to in this very order. The concerned Chief

Metropolitan Magistrate (*hereinafter referred to as 'CMM'*) vide order of 7th December, 2017 had concluded that even if there is no binding Circular authorizing ACMM-01 to mark the applications, still he may exercise supervisory and administrative powers over the MM *qua* distribution of work by virtue of Section 19 of Cr.P.C..

4. Order of 22nd December, 2017 quotes Section 19 of Cr.P.C. and proceeds on the basis that the concerned CMM makes rules regarding distribution of work in respect of the ACMMs besides other MMs. Order of 22nd December, 2017 observes that Section 19 of Cr.P.C. does not provide that ACMM exercises same power of allocating work even when CMM is present and working and in the presence of CMM, the ACMM cannot assign work except as per the Rules. While referring to the link roster, impugned order of 22nd December, 2017 proceeds on the basis that ACMM exercises power of CMM only when CMM is on leave or is occupied with other urgent official work and that the ACMM is also bound by link roster, like other MMs. Order of 22nd December, 2017 concludes that when link MM of ACMM is present, then ACMM himself cannot allocate work to other MMs without sanction of the CMM. It is stated in the order of 22nd December, 2017 that if the interpretation given by the CMM is accepted, then three ACMMs can mark cases independently and that would nullify the purpose of Section 19 of Cr.P.C. and will have a tendency to disturb court work of the court concerned, which is loaded with ten years and five years old cases. It is also stated in the order of 22nd December, 2017 that Section 19 of Cr.P.C. is an administrative provision for the CMM, but still an outstretched

interpretation inconsistent with literal interpretation cannot be given as the object of Section 19 of Cr.P.C. is to achieve equal distribution in work and not to dis-balance court work by random distribution of work by ACMM. It is noted in the order in question that aforesaid observations are made not with the intention to belittle and disgrace the office of CMM.

5. Ms. Richa Kapoor, learned Additional Standing Counsel, points out that the application under Section 115(4) of *Trade Mark Act* assigned to the Court in question was on judicial side as the said application was put up by the Investigating Officer before the concerned ACMM in a case which was pending before the learned ACMM and so, the assignment was not administrative work, but of judicial work. Attention of this Court has been drawn to Note-06A of the then prevalent Link Roster (*Annexure-A*) to point out that work of the Court of ACMM in question was to be looked after by Shri Harvinder Singh, MM if the concerned ACMM is not available, being on leave or otherwise busy, and if the aforesaid MM is not available, then by his first link MM, who was Ms. Shilpi Jain, and not by the Court concerned. So, it is submitted that the Court concerned was justified in returning the application to concerned ACMM. It is pointed out that after the return of the said application by the concerned Court to the concerned ACMM, it was put up before the learned CMM, who had assigned the said application to the concerned Court, who had decided this application.

6. Upon hearing and on perusal of the order of 22nd December, 2017, I find substance in the stand taken by learned Additional Standing Counsel for the State. The then prevalent Link Roster (*Annexure-A*)

clearly provides that the work of the ACMM has to be dealt with by his link i.e. Mr. Harvinder Singh MM. Assignment of application under Section 115(4) of *Trade Mark Act* was not an administrative work, but was a judicial work, as this application arose out of the proceedings pending before the concerned ACMM, therefore, the concerned ACMM was not justified in marking this application on the administrative side to the concerned Court.

7. Upon a careful scrutiny of order of 22nd December, 2017 it becomes evident that the concerned court has only given an interpretation to Section 19 of Cr.P.C. and the then prevalent Link Roster (*Annexure-A*) and has taken care to observe that what is stated in the order in question is not intended to disrespect or undermine the authority of the CMM and the observations made in the order in question by concerned court, are with all humility at his command. It appears that the concerned court was constrained to deal with this aspect on judicial side, as the marking of an application pending on judicial side cannot be assigned by an administrative order.

8. What had persuaded the concerned court to pass a detailed order of 22nd December, 2017 is that the said court is burdened with ten years and five years old cases. Randomly marking of applications on judicial side by ACMMs, when the CMM is present and working cannot be justified. Order of 22nd December, 2017 concludes with the observation that the interpretation given in this order is not with the intention to belittle or disgrace the office of CMM. So, the order of 22nd December, 2017 cannot be taken to be an act of subordination and is otherwise justified in

the light of the then prevalent Link Roster (*Annexure-A*).

9. The Reference made is accordingly answered.

(SUNIL GAUR)
JUDGE

FEBRUARY 26, 2019

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