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

% *Date of Judgment: 22nd September, 2020*

+ **W.P.(CRL) 1506/2020**

VINOD KUMAR PROPRIETOR OF KUNAL
TRADING CORPORATION

..... Petitioner

Through: Mr Suwarn Rajan Chauhan,
Advocate.

versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Through: Ms Nandita Rao, ASC for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, impugning the FIR No.154/2020 under Sections 103 and 104 of the Trade Marks Act, 1999 (hereafter 'the Trade Marks Act') registered with PS Kamla Market.

2. The said FIR was registered at the instance of respondent no.4. The controversy in the preset petition relates to use of the Trademark –



(hereafter 'the Trademark') in relation to manufacture and trade of bearing, bearing brackets, ball rings for bearing, parts and fittings for use in motor vehicle and automobiles. The petitioner claims that the petitioner has been using the Trademark since 2009.

The petitioner applied vide application no.1989336 for registration of the said the Trademark in Class 7 in relation to bearing, bearing brackets, ball rings for bearing on 06.07.2010. Subsequently, the petitioner also filed another application (application bearing no.3318333) for registration of the Trademark in class 12 in relation to parts and fittings for use in motor land vehicles and automobiles. The petitioner claims that, thereafter on 10.12.2019, he also secured the Copyright Registration of artistic work of the Trademark.

3. On 14.03.2020, the petitioner filed a rectification petition (petition no.268248 in application no.1329050) seeking rectification of the registration of the Trademark in favour of respondent no.4. Respondent no.4 is contesting the said rectification application and the said matter is pending. Thereafter, on 03.07.2020, respondent no.4 also filed a rectification petitions (ORA/108/2020/TM/DEL and ORA/117/2020/TM/DEL) along with miscellaneous application (MP 78/2020 in ORA/108/2020/TM/DEL and MP 79/2020 in ORA/117/2020/TM/DEL) for stay of operation of the registration of the Trademark granted in favour of the petitioner.

4. By an order dated 10.07.2020, the Intellectual Property Appellate Board has stayed the operation of the registration of the Trademark under application no.1989336 in class 7 and 3318333 in class 12 in favour of petitioner.

5. In the context of the aforesaid disputes, respondent no.4 lodged a FIR, which was registered on 23.07.2020.

6. Mr Chauhan, the learned counsel appearing for the petitioner

states that the petitioner is the proprietor of the Trademark in question, therefore, a complaint under Sections 103 and 104 of the Trade Marks Act is not maintainable. He submits that the said complaint can be made only in case of falsification of the Trademark and in cases where any person uses the Trademark without permission and consent of proprietor. He submits that in the present case, the petitioner is claiming to be the proprietor of the Trademark in question and, therefore, the provision of Sections 103 and 104 of the Trade Marks Act are wholly inapplicable.

7. Next, he submits that since, the petitioner has filed a rectification application regarding the registration of the Trademark in favour of respondent no.4, a complaint under Section 103 and 104 of the Act cannot be maintained unless the said rectification application is disposed of. He also relies on the provision of Sections 113 of the Trade Marks Act, 1999, in support of his contention.

8. Insofar as the petitioner's claim that he is a proprietor of the Trademark is concerned, the petitioner cannot claim himself to be the registered proprietor of the Trademark in view of the order passed by the Intellectual Property Promotion Board staying the registration of the Trademark in his favour.

9. It is well settled that a FIR cannot be quashed except in very limited cases where it is established that the complaint is even *malafide* or the allegations made in the complaint do not disclose commission of any offence. Considering the restricted grounds on which a FIR can be quashed, the relief prayed by the petitioner cannot

be acceded to.

10. The contention that the FIR is not maintainable in view of Section 113 of the Trade Marks Act is also unpersuasive. Section 113 of the Trade Marks Act reads as under:-

“113. Procedure where invalidity of registration is pleaded by the accused—

(1) Where the offence charged under section 103 or section 104 or section 105 is in relation to a registered trade mark and the accused pleads that the registration of the trade mark is invalid, the following procedure shall be followed:—

- (a) If the court is satisfied that such defence is *prima facie* tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid.
- (b) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.
- (c) If within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the

Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were valid.

(2) Where before the institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the register concerning the trade mark in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his mark.”

11. In terms of sub Section (2) of Section 113 of the Trade Marks Act, the court required to stay the further proceedings in the prosecution pending the disposal of the application for rectification, if such an application has been filed prior to institution of the complaint alleging offence under Sections 103 and 104 of the Trade Marks Act.

12. Since, the petitioner claims that he has filed an application for rectification of the Trademark registered in favour of respondent no.4 prior to institution of the complaint, it would be open for the petitioner to apply to the concerned court and seek appropriate orders regarding stay of further proceedings. Needless to state that if any such application is made, the concerned court shall consider the same on its merits in accordance with law.

13. Insofar as the present petition seeking quashing of the FIR is concerned, the same is not maintainable and required to be dismissed.

14. The petition is, accordingly, dismissed. The pending applications are also disposed of.

SEPTEMBER 22, 2020
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VIBHU BAKHRU, J

