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Crl.R.C.No.1629 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.1629 of 2022

The Indian Association of Physiotherapists,
(A Society Registered under the Societies
Registration Act, 1860).

6/4 Co.Work, 7th & 8th Floor,
Times Square Building,
Western Express Highway, Andheri East,
Mumbai, Mharastra 69
through its Joint Secretary
Dr.Joji M John

.. Petitioner

/versus/

Dr.Umashankar Mohanty

.. Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w Section 401 of Cr.P.C., to set aside the order dated 18.07.2022 passed by the learned Judicial Magistrate (JM-1), Alandur in Crl.M.P.No.3325 of 2021 by allowing this Criminal Revision.

For petitioner

...Mr.B.Kumar, Senior counsel for
Mr.G.Mani Prabhu



ORDER

WEB COPY This Criminal Revision Case is filed against the impugned order passed by the learned Judicial Magistrate No.1, Alandur in Crl.M.P.No.3325 of 2021, dated 18.07.2022.

2. The learned counsel appearing for the petitioner submitted that the complainant is the Indian Association of Physiotherapists registered under Societies Registration Act, 1860 bearing Reg.No.3376 of 1955-56. One Mr.Joji M.John is the Joint Secretary of the Central Executive Committee. The accused/respondent was a Member of the complainant's Association from 1999. He fraudulently filed an application No.4497465 dated 08.05.2020 for registration of the trade mark "The Indian Association of Physiotherapists" with device under the Trade Marks Act, 1999 before the Registrar of Trade Marks, Intellectual Property Building, GST Road, Guindy, Chennai. The said device is identical with the trade mark. The said identical trademark of the complainant as claimed by the accused as his own for its registration under the Trade Marks Act, 1999 was already adopted and used by the complainant from 1955-56.



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3. The accused was being member of the petitioner Association and the President of Central Executive Committee had known the facts about the certificate of registration of trademark by the Association. Therefore, he fraudulently filed an application No.4497465 before the Registrar of Trade marks, Chennai. Further, by his own affidavit, he admitted that using the trade mark prior with device from 2008 to 2020, which is violated the provisions under Sections 102 and 103 of the Trade Marks Act, 1999 and also committed the offence punishable under Sections 191, 192 and 193 of IPC. Therefore, the complainant filed a private complaint. The learned Judge has dismissed the complaint on the ground that the accused withdrew his application, which was filed by him before the Registrar of Trade Mark. Further, the trial Court has misconceived the provisions of Sections 191 to 193 of IPC and Sections 102 and 103 of the Trademarks Act, since the application has been withdrawn by the accused, the offence is not made out. But, contrary to the facts, the accused himself admitted that he had used the name of the Association and earned money. The trial Court failed to consider the above said statement of the accused, which was filed before the Registration Authority. In his affidavit, para Nos.3 to 10 reveals that he gained name and money by using the trade mark “Indian Association of Physiotherapists”. Hence, he violated the trademark provisions and he is



attracted under Sections 102 and 103 of the Trade Marks Act, besides for the offence punishable under Sections 191 to 193 of IPC. He further submitted that the Court below, without sending process under Section 203 of Cr.P.C., only after recording sworn statement of the complainant, has dismissed the complaint.

4. I have considered the submissions made on the side of the petitioner and perused the documents available on record.

5. On perusal of the records, it reveals that the private complaint filed by the petitioner has been dismissed without sending process under Section 203 of Cr.P.C. Hence, this Court has not ordered notice before deciding this revision.

6. The accused himself in the supportive affidavit filed in Doc.No.1 at para Nos.3 and 7 has stated as follows:-

“3. I am engaged as service of Physiotherapy (Physical therapy) (hereinafter referred to as “said Goods/services”), which are provided under the said Trademark “THE INDIAN ASSOCIATION OF PHYSIOTHERAPISTS (With Device)”.

7.I have affected considerable sales/business under the said Trade mark and from the date of commencement



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of the use of the said mark, sales have amounted to approximately Rs.6,00,000.”

7. This affidavit of the accused shows that he had used the name of the Indian Association of Physiotherapists as trademark for service and sales. Therefore, prima facie, the offence is made out to be taken for violation of Sections 102 and 103 of the Trademarks Act and Sections 191 to 193 of IPC. Therefore, just withdrawing his application for registration of trademark under the Trade Mark Act, 1999, will not absolve the statement of accused and there is a prima facie cognizable offence made out for issuing process.

8. The allegation in the complaint besides the affidavit filed by the accused before the Trade Mark Registrar may sufficient ground for proceeding against the accused for the alleged offence under Sections 102, 103 of the Trade Marks Act along with Sections 191 to 193 of IPC. Hence, The order impugned is liable to be set aside. Accordingly, this Criminal Revision Case is allowed with a direction to the Judicial Magistrate No.1, Alandur for taking cognizance of the complaint and issue process to the accused and to dispose of on merits and in accordance with law.

21.12.2022

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Index:yes/no



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To:
The Judicial Magistrate (JM-1), Alandur

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V.SIVAGNANAM, J.



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