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

+ **CRL.REV. P. 678/2022 and CRL.M.A. 20884/2022**

SUPREME KNITTING & GENERAL MILLS
REGD. OFFICE AT KHASRA NUMBER 1059,
MAHAVIR MARG, OPPOSITE GANDHI MARKET,
NEAR AMBEDKAR CHOWK,
HANSI, DISTRICT HISAR,
HARYANA-125033

THROUGH
RISHABH JAIN
H. NO. 6477, STREET NUMBER 2,
BLOCK NUMBER 8, GURU NANAK MARG
DEV NAGAR, KAROL BAGH
CENTRAL DELHI
INDIA-110005

..... REVISIONIST

Through: Mr. B. B. Badrinath and Mr. Karan
Ahuja, Advocates.

versus

STATE (GOVT. OF NCT, DELHI,
THROUGH CHIEF SECRETRAIT
GOVERNMENT OF NCT OF DELHI,
CHAMBER NO. 437, DELHI HIGH COURT,
NEW DELHI-110003

..... RESPONDENT NO. 1

M/S DIAMOND CYCLE PVT. LTD.
REGD. OFFICE AT
265, AGGARWAL CITY PLAZA
DISTRICT CENTRE
SECTOR 3, ROHINI
DELHI – 110085

..... RESPONDENT NO. 2

Through: Mr. Amit Ahlawat, APP for the State.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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31.10.2022

1. This Revision under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C") is filed challenging impugned order dated 25.06.2022, passed by Ld. Chief Metropolitan Magistrate (CMM), Rohini Courts, Delhi, in CC No. 9848/2021, dismissing the Protest Petition filed by the revisionist under Section 173(8) Cr.P.C and accepting closure report filed by the Investigating officer in FIR No. 254/2021, for offence under Section 63, 65 of the Copyright Act, 1957 (in short "Copyright Act") and under Section 103, 104 of the Trade Mark Act, 1999 (in short "Trade Mark Act") registered at Police Station South Rohini, Delhi.

2. Learned counsel appearing on behalf of the revisionist submits that the impugned order is arbitrary, unreasonable, and against the settled principles of law. The Ld. CMM did not take into account that the matter requires police investigation as the evidence relating to the present case is beyond the control of the revisionist and can only be unearthed by the police authorities. He further submits that the police have not done a proper investigation and, without collecting the relevant evidence, have wrongly filed the closure report. The facts and documents clearly show that respondent No. 2 has committed numerous offences under the Copyright Act, Trade Marks Act, and the Indian Penal Code, 1860 (in short "IPC") and that the Ld. CMM has erred by relying on the police report while dismissing the protest petition. Ld. Counsel for the revisionist has further

placed reliance on the decision in the matter of *State of UP v. Ram Nath, Partner, M/S Panna Lal Durga Prasad, Kanpur*¹ and *Hariprasad v. Nanookhan*².

3. I have heard the learned counsels and perused the records

4. The facts of the case are that the revisionist claims to have been selling the cycle rubber solutions and rubber patches under various trade marks, including ZAX, DOMA, DEMAND, DIAMOND etc., since 1961 with unique artistic style. The complainant is also the registered owner of artistic work vide certain registration numbers under the provisions of the Copyright Act. It is further mentioned in the complaint that the subject matter of the instant complaint is the recent civil suit, Civil Suit No. TM/59/2019 dated 07.03.2019, which, the accused persons have preferred against the complainant and against various other persons. It is stated that 'DIAMOND' is not the registered trade mark of the accused persons and, therefore, they are liable to be prosecuted for the offence under Section 107 of the Trade Mark Act. On 30.01.2020, the revisionist filed a police complaint against respondent No.2 for falsification of the trade mark. However, the same was not registered by the police. Being aggrieved by non-registration of the FIR, the revisionist filed an application under Section 200 read with 190 and 156(3) of the Cr.P.C. before the Ld. Metropolitan Magistrate for registration of FIR. The said application was rejected by the Ld. MM on 04.01.2021.

¹(1972) 1 SCC 130

²(1968) SCC OnLine MP 25

5. The revisionist, thereafter, filed a revision petition before Ld. Additional Session Judge against the order of Ld. MM, wherein, Ld. ASJ, vide order dated 19.06.2021, directed the concerned SHO to register the FIR. On 25.06.2021, FIR No. 254/2021 under Section 63/65 of the Copyright Act and Section 103/104 of the Trade Mark Act, 1999 was registered against respondent No. 2 at police station South Rohini, Delhi. On 29.10.2021, the Investigating Officer (IO) filed a closure report in the aforesaid FIR. The Revisionist, being aggrieved by the aforesaid report, filed a Protest Petition under Section 178(8) of the Cr.P.C before Ld. CMM (North-West District), Rohini Courts, Delhi. Ld. CMM dismissed the Protest Petition, vide order dated 25.06.2022, assailing the same this revision has been filed.

6. It is not disputed that respondent No. 2 has filed a Civil Suit bearing TM/59/2019 before Ld. ADJ, Central 1, Tis Hazari Courts, Delhi, wherein on 25.11.2019, Ld. ADJ passed an order restraining the present revisionist from using the trade mark DAIMOND or DIAMOND or any other mark similar to the registered mark of respondent No. 2 and observed that the trade mark DIAMOND, which was assigned to respondent No. 2 in 2005, was renewed in the year 2015 and is still in force.

7. Further, Ld. CMM vide its order dated 25.06.2022 has observed that as per the investigation conducted it is clear that DIAMOND is the registered trade mark of the accused company/respondent No.2. The accused company has already been granted interim injunction against the complainant/revisionist qua the use of the word DIAMOND and, therefore,

the reasoning given by the learned MM appears to be correct. Extract of the concluding paragraph of the order impugned is reproduced as under:-

“Therefore, the only grievance as clear from the complaint is that the accused is using DIAMOND as registered trade mark illegally but as per the investigation conducted so far and as discussed above it is clear that the DIAMOND is the registered trade mark of the accused company and, therefore, there is no question of any violation of Trade Mark Act. Further, various objections have been taken by the complainant in his protest petition basically on the ground that the accused company is not entitled for the use of the word DIAMOND as its registered trade mark as the same belongs to the complainant company. Further, the complainant has raised the issue of complaint by Ms. Sandhya Enterprises against the accused persons which is not related to the present case. Further, the complainant has also made some bald allegations against the IO of the case. But in the complaint only issue raised was qua the use of word DIAMOND and as discussed above the same is found to be registered trade mark in the name of the accused company and, moreover the accused company has also taken interim injunction against the complainant qua the use of word DIAMOND as discussed above and, therefore it is clear that the present complaint has been filed by the complainant just to harass the accused company.

Therefore, the protest petition filed by the complainant is meritless and, accordingly, in view of the above-mentioned facts and circumstances the protest petition filed by the complainant is dismissed. Cancellation report is accepted.

File be consigned to record room.”

8. Hon'ble Supreme Court, in para 8 in the matter of **G. Sagar Suri v. the State of UP**,³ has held that if the matter, which is essentially of a civil nature, has been given a cloak of a criminal offence, criminal proceedings are not a short-cut to other remedies available in law, the same are factors to

³(2000) 2 SCC 636

be considered while exercising power under Section 482 of the Cr.P.C. Further, the same principle has been reiterated in the matter of *Indian Oil Corporation v. NEPC India Ltd*⁴. and *Md. Ibrahim & Ors v. State of Bihar & Anr*⁵.

9. The decisions relied upon by the learned counsel for the revisionist are not applicable on facts.

10. Having considered the entire material available on record, this court is of the opinion that the order dated 25.06.2022 passed by the Ld. CMM is a well-reasoned order, no interference is called for. Hence, the instant revision petition stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 31, 2022

⁴(2006) 6 SCC 736

⁵(2009) 8 SCC 751