

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 3427 of 2015

Krishnendu Ghosh

Vs.

The State of West Bengal & Anr.

For the Petitioner :Mr. Dhrubajoyti Ghosh, Adv.
Mr. Saibal Mondal, Adv.

For the State :Mr. Debasish Roy, Ld. P.P.
Mr. Anand Keshari, Adv.

Heard on : 26.06.2023, 26.07.2023, 22.08.2023,
29.08.2023, 20.11.2023, 07.12.2023,
11.01.2024, 25.01.2024, 06.03.2024,

Judgment on : 19th March, 2024

Bibhas Ranjan De, J.

1. Quashing the proceeding of G.R. Case No. 484 of 2012 under
Section 63 of the Copyright Act, 1957 pending in the Court of

Ld. Chief Judicial Magistrate, Hooghly, is sought for in this application.

Background:-

2. The F.I.R. was lodged on 26.03.2012 by the opposite party no. 2, Ranjeet Sah, Manager Operation, EIPR (I) Ltd. It is alleged that during market survey petitioner was found processing and selling counterfeit Diageo products viz. Johnnie Walker whiskey from his F.L.On Shop at Barrack Road, Chinsurah, Hooghly, without permission and thereby infringed the trademark and trade description of the original brand name of Diageo product.
3. After receiving the aforesaid complaint at Chinsurah Police Station the same was registered as Chinsurah P.S. Case No. 157/12 dated 26.03.2012 under Section 63 of the Copyright Act, 1957. Investigation was conducted and charge sheet was also filed under Section 63 of the Copyright Act.

Argument pressed on:-

4. Ld. Counsel on behalf of the petitioner, Mr. Dhrubajoyti Ghosh, has contended that the contents of the complaint do not move closer to definition of "Copyright" depicted in Section

2 (y) of the Copyright Act. Therefore, according to Mr. Ghosh, the proceedings involved in this case is liable to be quashed.

5. Opposing the argument adduced on behalf of the petitioner, Mr. Anand Keshari, Ld. Counsel on behalf of the State, has tried to nose around a new interpretation of Section 2 (y) of the Copyright Act and submitted that the contents of the complaint attracts “artistic work” of Section 2(y) of the Copyright Act.

Analysis:-

6. I am dealing with a complaint addressed to Officer-in-Charge of Chinsurah Police Station involving allegation of Processing and Selling counterfeit Diageo products viz. Johnnie Walker whiskey from the F.L.On Shop owned by the accused/petitioner herein, without obtaining permission from appropriate authority. It is also alleged that the complainant used **trademark** & trade description of original brand of Diageo Product.
7. After receiving complaint, police registered the case for the offence Under Section 63 of the Copyright Act, for the reason best known to the recording officer attached to Chinsurah Police Station in spite of specific infringement of trademark.

- 8.** Mr. Ghosh has tried to create a dent in the prosecution case by referring to the Provision of Copyright Act which is totally unmatched with the allegation made in the complaint addressed to the Police.
- 9.** Mr. Keshari also advanced esoteric issue by interpreting the word “artistic” in Section 2(y) of the Copyright Act. Mr. Keshari has tried to make an impression on this Court that allegation made in the complaint falls within the meaning of phrase “artistic work” in Section 2(y) of the Copyright Act.
- 10.** Without searching a needle in a haystack, I propose to highlight the meaning of “Trademark” and “Copyright” i.e. two types of intellectual property rights, defined in the respective Acts.
- 11.** Trademarks are registered to protect brand names, slogans, business names etc. and thereby trademark intends to protect the public from getting confused with similar products in market. A trademark secures brand authenticity and helps to protect oneness of the brand in the market.
- 12.** Whereas, Copyright is a right afforded to the creators of musical, literary, artistic and dramatic works and the producers of sound recording and cinematograph films. In

other words, Copyright protects the creativity of individuals or original work of individuals and nobody is allowed to imitate without permission.

13. Aforesaid discussions in terms of definition of “Trademark” and “Copyright”, boils down to the position that a trademark protects a brand, name, logo, slogan used to sell products and services. Whereas a Copyright protects original creative expressions such as artistic, literary and dramatic works.

14. It is trite law that to exercise the extra-ordinary power under Article 226 of the Indian Constitution or the inherent powers under Section 482 of the Code of Criminal Procedure, seven (7) parameters have been identified, among them the first parameter prohibits the Court to exercise power of quashing while FIR/complaint discloses a cognizable offence.

15. Having given my careful thought to entire case at hand vis-a-vis the FIR/complaint involved herein and the relevant statutory provision, I am of the opinion that FIR/Complaint clearly discloses an offence under the Trademark Act, which is cognizable. Therefore, I am of the view that wrong mentioning of Section by the recording officer of Police Station at the time

of registering FIR/complaint does not make any difference to the contents of the complaint. On the other hand Ld. Magistrate is also not bound to take cognizance of the offence only on Sections either put in the formal F.I.R or in the charge sheet without going through the contents of the complaint together with the evidence collected during investigation of a case or police report.

16. Thus, I am unable to quash the proceeding in exercise of inherent jurisdiction under Section 482 of the Cr.P.C.

17. In the result, the instant revision application being registered as CRR 3427 of 2015, stands dismissed with a request to Ld. Trial Court to proceed with this case keeping an eye on the observation of this Court but without being influenced otherwise on merit and is also requested to dispose of the case, if possible, within six (6) months from date of receipt of the order of this Court and also without affording any unnecessary adjournment to either of the parties as this case has been languishing since 2015.

18. Interim order, if there be any, stands vacated.

19. Pending applications, if there be any, stands dismissed.

20. Case diary be returned.

- 21.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 22.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]