



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2692 OF 2022

Mr. Naman S/o Ramsunder Jain,
Age:-22 Occu: Business,
R/o: C/o Viraj Collection, Tilak Road,
Nandurbar, Dist: Nandurbar

...PETITIONER

-VERSUS-

1. The State of Maharashtra
Through Police Inspector,
City Police Station, Nandurbard,
Dist: Nandurbar.
2. Abhay S/o Avinash Pisolkar,
Age:-39 yrs, Occ: Service
Area Sales Manager
R/o. B-302, Vastupuram Society,
Sai Satyam Park, Wagholi, Nagar Road,
Pune

..RESPONDENTS

...
Mr. B. R. Waramaa, Advocate for the Applicant.
Mrs. R. P. Gour, APP for Respondent/State.
Mr. A. D. Sonkawade, Advocate for Respondent No.2.

...
CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.

DATED : 6 JANUARY, 2025

JUDGMENT (PER ROHIT W. JOSHI, J.) :

1. The applicant in the present matter is arrayed as accused No.1 in

FIR No.0231 of 2022 registered on 21/04/2022 with Nandurbar City Police Station, District Nandurbar on complaint lodged by Respondent No.2 for the offence under Sections 63 and 64 of the Copyright Act, 1957 (for short 'the Copyright Act').

2. The informant respondent No.2 claims to be authorised representative and signatory of a company named Mohan Clothing Company Private Limited which according to him proprietor of trademark and copyright of a brand of readymade garments named 'Blackberrys'. The informant has stated in the FIR that he got knowledge about readymade garments being sold in Nandurbar under fake label of 'Blackberrys' and therefore, he lodged complaint in this regard with respondent No.1-Police Station. It is mentioned in the complaint that the said company is proprietor of trademark and copyright named 'Blackberrys' for its clothing products since the year 1991. On the basis of the complaint dated 21.04.2022 aforesaid FIR came to be registered against the present applicant. Respondent No.1 has conducted a search in the shop of the present applicant which is being run under the name and style of Viraj Collections at Tilak Road, Nandurbar. 61 shirts having the label 'Blackberrys' have been seized during the said search from the business premises of the applicant.

3. The applicant has during the course of inquiry made with him stated that he has purchased garments bearing label 'Blackberrys' from one Rohit Multanchand Bothra. Respondent No.1 has recorded statement of said Rohit Bothra under Section 164 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C') wherein, he has stated that he had purchased the said garments from Ananya Enterprises and sold the same to Viraj Collections, Nandurbar, business undertaking of the present applicant. Respondent No.1 has issued notices under Section 41(1)(a) of Cr.P.C. to proprietor of Ananya Enterprises who has not responded to the said notices. After completion of the investigation respondent No.1 has filed final report under Section 173 of the Cr.P.C. on 07.01.2023 vide final report/charge sheet No.02/2022 pursuant to which R.C.C. No.22 of 2023 (wrongly typed as S.T.C. No.22 of 2023 in the application) is registered against the present applicant, Rohit Bothra and Amit Modi.

4. We have hear Mr. B. K. Waramaa, learned Counsel for the applicant who contends that the applicant is a bonafide businessman who has purchased the subject articles in due course of business from accused No.2-Rohit Bothra under a regular tax invoice by making payment of GST. He submits that the transaction is a documented and accounted transaction. The submission is that the products were

purchased under a bonafide impression that the same were genuine products and the applicant had no knowledge that the products purchased by him were not original 'Blackberrys' products.

5. Mr. A. D. Sonkawade, the learned Counsel for respondent No.2 argues that whether the transaction between accused Nos.1 and 2 is a bonafide transaction without having knowledge of the products being fake or genuine cannot be decided at this stage and that it felt be a matter of trial. He therefore submits that the present application should be rejected.

6. Mrs. Gour, the learned APP has also advanced submissions on similar lines.

7. We had posed a query to the learned Counsel for respondent No.2 with respect to applicability of the provisions of Copyright Act, 1957 and definitions of different works for which copyright can be claimed. Learned Counsel for respondent No.2 initially contended that the 'Blackberrys' is infact a copyrighted trademark of the said company. He submits that the word 'Blackberrys' and image of flying bird answers the description of 'artistic works' as defined under Section 2(b) of the Copyright Act. He therefore submits that the trademark 'Blackberrys' is a copyrighted trademark of the said company. Having replied the query

as aforesaid, he turned to his main contention that offence ought to have been registered under the Trade Marks Act, 1999. He submits that the authorized representative of the company/respondent No.1 made a complaint regarding offence under Sections 103 and 104 of the Trade Marks Act, 1999 and Sections 63 and 64 of the Copyright Act, however, Respondent No.1 has erroneously registered the offence only under the provisions of the Copyright Act ignoring the provisions of Trade Marks Act although the same are also not attracted in the facts of the present case. The alternate submission regarding applicability of Trade Marks Act is infact the main contention raised by respondent No.2 which was pressed with vehemence.

8. We have perused label of the 'Blackberrys' photographs whereof are a part of the chargesheet. We find that the word is written in simple regular font in capital letters. The work 'Blackberrys' as it appears in the labels cannot by any stretch of imagination fall within the definition of the term 'artistic work' as defined under Section 2(c) of the Copyright Act, 1957. Same is the case of image of a flying bird which forms a part of logo. The said label does not possess any artistic quality or artistic craftsmanship and it is obviously not a work of architecture. It is obvious that the label does not answer the requirements of a artistic work as defined under Section 2(c) and therefore provisions of

Copyright Act, 1957 will not be attracted. Offence under Section 63 of the Copyright Act is therefore not made out. Respondent No.2 was also not very serious about offence under Copyrights Act. Section 64 of the Copyright Act is power of police to seize infringing copies. It is not an offence defined under the Act.

9. We are however of the considered opinion that the 'Blackberrys' is a trademark and as such the provisions of the Trademarks Act ought to have been invoked by respondent No.1. Respondent No.2 has referred to Sections 103 and 104 of the Trademarks Act. Section 103 provides for penalty for applying false trade mark and Section 104 provides for penalty for selling goods to which false trade mark is applied. The allegation against the applicant is that he was selling 'Blackberrys' products with fake label which is an offence under Section 104 of the Trademarks Act.

10. In the present case, respondent No.2 had initially carried out search and seizure operation in the shop of the present applicant. The applicant produced tax invoice disclosing the source of purchase of the goods. The said source of purchase is verified by respondent No.1 during the course of investigation and the source disclosed is found to be correct. Accordingly, Respondent No.1 could lay hands on Rohit

Bothra who is arrayed as accused No.2. The said Rohit Bothra has given a statement under Section 164 of the Cr.PC on 14.06.2022 before the learned Judicial Magistrate First Class confirming the fact that he has sold the subject goods to the present applicant.

11. In this factual backdrop we referred to Section 104 of the Trademarks Act which provides penalty for selling goods to which false trademark is applied. Section 104 of the Trademark provides that a person who sells or exposes for sale or has goods in possession for sale to which false trademark is applied would be liable for punishment under the said provision unless (a) he proves that he had taken all reasonable precautions against committing offence under this Section and had no reason to suspect the genuineness of the trademark or (b) on demand on behalf of the prosecutor gives all information that he possess regarding name and other details of person from whom he has obtained such goods or (c) proves that he had acted innocently otherwise.

12. In the present case it is clear beyond any doubt that the case of the applicant falls within Section 104(b) of the Trade Marks Act. He has disclosed genuine source of purchase which is confirmed by prosecution during the course of investigation as is apparent from 164 statement of

accused No.2 dated 14.06.2022. Since the case of applicant falls within exception (b) of Section 104 he cannot be prosecuted for punished for offence of selling goods to which false trade marks is applied.

13. The applicant has not manufactured the garments on which fake label of 'Blackberrys' was affixed. Therefore, it can not be said that he has falsely applied the trade mark 'Blackberrys' on the garments or has falsified the said trade mark. Therefore, clause (a) and (b) of Section 103 read with Sections 101 and 102 of the Trade Marks Act will not be applicable. The other clauses are not relevant having regard to the allegations. The offence under Section 103(a) and/or (b) can be attributed only to manufacturer or a seller, who is aware about the trade mark being fake or false. Such are not the allegations against the applicant. Offence under Section 103 is therefore not made out against the applicant.

14. We are therefore in the opinion of that the continuation of prosecution against the applicant will amount to abuse of the legal process as much as provisions of Section 63 of Copyright Act and Sections 103 and 104 of Trade Marks Act are not attracted. Hence we pass the following order:-

ORDER

(i) The application is allowed.

(ii) FIR No.0231/2022 registered with Nandurbar City Police Station, District Nandurbar and R.C.C, No.22/2023 registered pursuant to the said FIR are quashed against the applicant/accused No.1-Naman Ramsunder Jain

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

A.G.Narwade