

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 77 OF 2025

Khaza Shakiroddin Javsoddin Inamdar,
Age: 24 years, Occu. Business,
R/o. Near Aayesha Masjid, Sayeednagar,
Dist. Nanded.

..Applicant

VERSUS

1) The State of Maharashtra
Through Police Inspector Bhokar,
Tal. Bhokar, Dist. Nanded.

2) Subhash Rajaram Bari,
Age: 61 years, Occu: Private Service,
R/o. Vyankatesh Nagar,
Harivitthal Nagar Road, Jalgaon,
Tal. and Dist. Jalgaon.

..Respondents

...
Mr. A.R. Dhore, Advocate for Applicant.
Mr. S.N. Kendre, APP for Respondent/State.
Mr. U.S. Patil, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : APRIL 20, 2026

PRONOUNCED ON : APRIL 30, 2026

FINAL ORDER :-

1. The applicant seeks quashment of FIR No.448 of 2021 dated 29.11.2021 registered with Bhokar Police Station, District Nanded for offences punishable under Section 420, 465 of Indian Penal Code and Sections 51, 52 of Copy Right Act, 1957 and consequential proceeding in R.C.C. No.65 of 2022 pending with Judicial Magistrate First Class at Bhokar, District Nanded for offences

punishable under Sections 420, 465 and 482 of Indian Penal Code and Sections 103, 104 of Trade Marks Act, 1999.

2. The investigation was set in motion on the basis of information given by respondent no.2 alleging that he is working as sales manager with V.H. Patil and Company, which is engaged in manufacturing and processing 'Suryachhap Tota'. He received information that duplicate product is being marketed at Bhokar. On 28.11.2021, he arrived at Bhokar and met with Mr. Babulal Agrawal, who is distributor of company. Mr. Babulal informed him that one Shakir Inamdar (present applicant) is engaged in selling duplicate goods in the name of their brand. Mr. Babulal took him to Sayeednagar area near water tank, where a person was found selling duplicate tobacco pouches. On seeing respondent no.2 and Babulal, said person fled away leaving two plastic bags containing tobacco pouches. Respondent no.2 and Babulal took goods in their possession and called police at spot. They took plastic bags to police station. The police received possession of bags in presence of panchas. A panchnama was drawn.

3. Eventually, FIR came to be registered against applicant for offences punishable under Section 51 and 52 of Copyright Act, 1957 and Sections 420 and 465 of Indian Penal Code. On completion of investigation, charge sheet came to be filed in Court of Judicial Magistrate First Class at Bhokar for offence punishable under Sections

103, 104 of Trade Marks Act, 1999 and Section 420, 465 and 482 of Indian Penal Code.

4. Mr. A.R. Dhore, learned advocate appearing for applicant would submit that initially offence was registered under Copyright Act. Subsequently, on completion of investigation, charge sheet is filed for offences under Trade Marks Act and Indian Penal Code. The Section 115 of Trade Marks Act prescribes procedure for taking cognizance of certain offences and powers of police officer for search and seizure. Although sub-section (3) of Section 115 prescribes that offence under section 103 to 105 are cognizable, Sub-section (4) of Section 115 prescribes that any police officer not below the rank of Deputy Superintendent of Police or equivalent, on his satisfaction regarding commission of offence under Section 103 to 105 may search and seize incriminating material involved in commission of offence and needs to be produce before Judicial Magistrate as soon as practicable. Even, before making search or seizure, opinion of Registrar on facts involved in offence relating to trade mark needs to be obtained.

5. By inviting attention of this Court to material in charge sheet, Mr. Dhore would submit that in present case, investigation is carried out by Mr. Anil Kamble, who is Police Sub Inspector at Bhokar. However, there is nothing on record to show that opinion of Registrar was obtained as mandate under sub-section (4) of Section 115 of

Trade Marks Act, 1999. In aforesaid background, investigation and charge sheet is not worthy cognizance. The entire proceeding is liable to be quashed and set aside in exercise of inherent powers. In support of his contention, he relies upon observations of Division Bench of this Court in case of *Anant Tukaram Teke Vs. State of Maharashtra and Others* reported in *2019 All M.R. (Cri.) 1327* and another judgment in case of *Shrenik Shantilal Dhadiwal Vs. State of Maharashtra and Others* reported in *2018 (6) Mh.L.J. (Cri.) 288*.

6. Per contra, Mr. S.N. Kendre, learned APP and Mr. Ujwal Patil, learned advocate appearing for respondent no.2 submits that apart from offences under Trade Marks Act, charge sheet is filed for offences under section 420, 465 and 482 of Indian Penal Code. Therefore, there is no reason to exercise inherent powers or entertain present application for quashing of FIR and proceeding. There is sufficient material to relegate applicant for trial.

7. Having considered submissions advanced by learned advocates appearing for respective parties and on consideration of averments in FIR and material in charge sheet, it is discernible that respondent no.2, who is sales manager of tobacco company lodged FIR. In nutshell, alleging that applicant/accused was found selling duplicate goods with brand name of his company. He ran away leaving behind goods on the spot. From contents of FIR, it is discernible that informant's company holds registered trade mark in

particular name. Pertinently, goods were not seized from the spot, but informant along with his companion had been to police station, where panchnama is drawn. Except statement of informant, who is employee/marketing officer of tobacco company and their authorized dealer, there is nothing to show that applicant/accused was found selling goods at spot. The property seizure panchnama is drawn under Section 156 of Criminal Procedure Code at police station. The spot panchnama shows that nothing was recovered from spot. There is no opinion of Registrar on facts involved in offence relating to trade mark. Admittedly, investigation is carried by officer of the rank of Police Sub Inspector and not a higher officer like Deputy Superintendent of Police. At this stage, it is apposite to refer to Section 115 of Trade Marks Act, which reads thus :

“115. Cognizance of certain offences and the powers of police officer for search and seizure. - (1) No Court shall take cognizance of an offence under section 107 or section 108 or section 109 except on complaint in writing made by the Registrar or any officer authorised by him in writing :

Provided that in relation to clause (c) of sub-section (1) of section 107, a Court shall take cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered trade mark has been represented as registered in respect of any goods or services in respect of which it is not in fact registered.

(2) No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.

(3) The offences under section 103 or section 104 or section 105 shall be cognizable.

(4) Any police officer not below the rank of Deputy Superintendent of Police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been,

is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the applicant and the prosecution, shall make such order on the application as he may deem fit.”

8. The careful analysis of Section 115, it can be observed that Sub-section (3) contemplates that offence under Section 103 to 105 are cognizable. Procedure for search and seizure is contemplated under sub-section (4), which requires that police officer, before making search and seizure shall obtain opinion of Registrar on facts involved in offence relating to trade mark. Apart from that, opinion as to commission of offence must be formed by police officer not below the rank of Deputy Superintendent of police or equivalent, and he shall seize articles and produce it before Judicial Magistrate as soon as practicable. In present case, procedure contemplated under Section 115, sub-section (3) and (4) has not been followed. At least there is nothing in charge sheet to demonstrate compliance.

9. Mr. A.R. Dhore, learned advocate appearing for applicant has rightly relied upon observations of this Court in case of ***Shrenik Shantilal Dhadiwal (supra)***, particularly para 11 which reads thus :

“11. On perusal of papers of investigation it appears in the present matter that the investigation was carried by Assistant Police Inspector, Local Crime Branch, Ahmednagar. Furthermore, no opinion of the Registrar is taken before carrying the investigation. At the initial stage matter requires to be examined by the expert i.e, the Registrar. Therefore, the investigating officer has to act upon the opinion given by the Registrar. Herein the present case no such opinion of the Registrar was taken by the investigating officer, nor the alleged offence is investigated by the officer not below the rank of Deputy Superintendent of Police. So the above two facts are in contravention of provisions of Section 115 sub-clause 4 and it's proviso clause. So basically the investigating officer was not authorized to carry the investigation and due to such irregularity committed by the investigating officer he was not authorized to investigate the matter and file the charge-sheet.”

10. This Court finds that aforesaid observations squarely applies in facts of case. In that view of matter, this Court holds that investigation carried out by Police Sub Inspector for offence under Trade Marks Act was without authority.

11. Although charge is for offence punishable under section 420, 465, 482 of Indian Penal Code particularly in deference to allegations emerging from rights under Trade Marks Act, this Court finds that none of offences can be attributed against applicant. There is nothing on record to show that applicant had actually sold goods to anyone or he himself was responsible for manufacturing duplicate goods. The charge sheet contains merely two police statements. Both

statements are of employees of the company. No offence can be made out from these statements particularly when investigation was done by incompetent officer.

12. In result, application is allowed in terms of prayer clause (B-1) and (C).

(S.G. CHAPALGAONKAR, J.)