

ORDER BELOW EXH.11 IN R.C.C.NO. 658/2020
(State of Maharashtra V/s Sunil Athanikar)

1] The applicant/ accused submitted that in this present case charge-sheet is filed u/s 51, 63 of the Copy Right Act on the basis of the statement made by one Ashish Sharadrao Patil P/p Shayadri Copy Right Protection Firm, Tirupati Park, Morewadi, Kolhapur, who has the authority for prosecuting people, firm, company for using brand name of said company illegally and for finding whether anyone is preparing the duplicate product of Eureka Forbes. The complainant learnt that in Mahatma Gandhi Gruh Nirman Society on plot no. 2044/80, one person is sold some product of Eureka Forbes and he is also selling the same. The complainant gave information about it to police. Then after the complainant along-with police raided on said place on 24/11/2020 and they found there MLT Candles which are required to be used for water supply. According to complainant there are 103 boxes each having 100 multilayer candles worth Rs.48,92,500/-. The police on basis of said complaint have seized the candles which are belonging to accused and they have also shown recovery of said from spot. Police seized 3 yarn winding stitching machines, 3 clothes winding machine, one heater machine and 1 compressor belonging to the applicant.

2] The applicant has further submit that the candles are belonging to applicants there is no patent of Eureka Forbes which could banned such candles. Complainant does not have right to file complaint on behalf of Eureka Forbes, Mumbai because the brand name Aqua Filter is not registered with Eureka Forbes, Mumbai. The said candles are being used for water supply. The documents which is produced along-with this application shows that the company Eureka Forbes had given authority to

said company to use name and registering the name Aqua Filter for the products which come under class 11, said application given by said company was not allowed and it was objected by the concern authority. Under such circumstances complaint is false. Applicant is owner of those candles, he has put effort and money for its preparation. Candles are kept in PS without using, those will be damaged and applicant will bear heavy economic loss. There was no allegation that those candles belonging to other than applicant. Moreover the applicant/ accused is a small scale businessman. He has not illegal thing. Moreover police seized machinery of applicant of because of which he can not do his business and applicant has no other source of income. Therefore applicant prays for release of those candles to him on appropriate bond and for directions to MIDC police station to unseal the above machinery and permit the applicant to work on those machine.

3] APP filed say at backside of Exh.11 and stated that applicant has not filed sufficient documents that he is legally owner of seized property. Accused is not discharged or acquitted therefore he is not entitled to return seized property. In "*Kasturi Lal Ralia Ram Jain V/s State of U.P., AIR 1965 SC 1039*," Hon'ble Supreme Court held that, "If a person from whom the property was seized as charged with an offence or is suspected of having committed an offence. Then, he can't be entitled to possession unless accused is discharged or acquitted."

4] Ld. Adv. For accused/ applicant argue about the maintainability of the complaint at length. For this purpose she also read over documents produced by her at exh. 14, but maintainability of the complaint is not the main issue of this application. The only disputable issue is whether the seized muddemal can be released to accused or not?

If yes, on what conditions? Ld. APP for state also argues that after releasing those articles, it is quite possibility of using those articles again by infringing Copy Right Act.

5] Read application, say. Heard both parties, perused document filed at exh. 15 sr. no. 1 to 6. Also perused charge-sheet and seizure panchnama.

6] After going through the contents of the charge-sheet, seizure panchnama dt. 24/11/2020 which is produced at sr.no. 4 of along-with charge-sheet. It seems that admittedly all the articles were seized from the possession of the accused/ applicant.

7] In this present case charge-sheet is filed, investigation is completed. Now the case is for inquiry and trial. In this situation application can be treated section 451 of Cr.P.C. which is reads as under -

451 Cr.P.C.- Order for custody and disposal of property pending trial in certain cases. ---- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

8] U/s 451 it is not actually disposal of property only an arrangement for proper custody pending conclusion of inquiry or trial. It is not settled the title or even right to possession. What is made u/s 451 is only an interim arrangement for the up keep of the property for which the

court entrusts a person with custody, to act according to further direction from the court, binding the person to certain conditions by bond or otherwise. Custody continue to be that of court and the person who is given custody continues to be bound to obey conditions and orders from court. Until final disposal of property made u/s 452 of Cr.P.C. after conclusion of inquiry or trial if continues to be only representative of court holding the property on behalf of court.

9] Admittedly muddemal is seized from the custody of accused. Ownership of those muddemal is not disputed, if muddemal remained unused or misappropriated then the owner of it would suffer the loss. Court or police would not be required to keep the article in safe custody. Under these circumstances as per the guidelines issued by Hon'ble Supreme Court in *Sundarbhai Ambalal Desai V/s State of Gujarat ((2002)10 SCC 263)*, it would be proper to deliver possession of seized muddemal to applicant on certain conditions after preparing proper panchnama, which can be used in evidence before court during trial. Hence the order.

ORDER

- 1] Application is allowed.
- 2] I.O. is directed to deliver Muddemal seized on 24/11/2020 worth of Rs.48,92,500/- including 103 box of MLT candles and 502 water filter cartridge be released to the accused/ applicant subject to execution of indemnity bond of Rs.48,92,500/- (Rs. Forty Eight Lakh Ninety Two Thousand Five Hundred only) after preparing a proper panchnama in that regard.

- 3] Applicant/ accused is directed as not to sale those muddemal by using the name of complainant's company or in the name of any other brand which will amount to infringement of the Copy Right Act. Applicant is directed to file an affidavit in that regard.
- 4] Applicant is directed not to alienate, mortgage, alter or dispose of the muddemal property until the disposal of case.
- 5] Applicant is directed to produce muddemal property as and when directed by the court.
- 6] I.O. is also directed to unseal the 3 yarn winding stitching machines, 3 clothes winding machine, one heater machine and 1 compressor.
- 7] I.O. is directed to prepare delivery panchnama and photographs of muddemal and attached the same along-with the charge-sheet-

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Miraj.

Date: 30.01.2021

(U. P. Koli)

Judicial Magistrate,F.C., Miraj.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer : K. U. Nadaf
Court : IInd Jt. C.J.J.D. & J.M.F.C., Miraj.
Judgment/Order signed by
the Presiding Officer on : 01/02/2021
Judgment/Order uploaded on : 02/02/2021