

**IN THE COURT OF SHRI YASHWANT KUMAR:
PRINCIPAL DISTRICT & SESSIONS JUDGE (NORTH-
WEST), ROHINI COURTS: DELHI**

**Crl. Appeal No. 219/2022
CNR No.DLNW01-012130-2022**

Rajni Jain

Sole Proprietor of M/s Piyush Industries
W/o Sh. Praveen Jain
R/o House No. 17, Pocket D-8
Sector-6, Rohini, Delhi-110085

.....Appellant

Versus

State (Govt. of NCT of Delhi)

....Respondent

Date of filing : 09.02.2022

Date of arguments : 12.01.2023

Date of Order : 18.01.2023

JUDGMENT

1. The appellant has filed this criminal appeal under 71 of the Copyright Act, 1957 against the order dt. 19.11.2022 (hereinafter referred as “impugned order”) passed by Ld. CMM, North-West District, Rohini Courts, Delhi in case FIR No. 452/2022 PS Budh Vihar titled 'State V. Rajni Jain & Anr.', whereby the application u/s 64(2) of the Copyright Act, 1957 filed on behalf of appellant-herein/applicant-therein for release of goods and machines to its authorised owner/applicant/appellant-herein namely Mrs. Rajni Jain was dismissed.

2. The brief facts, as set out in the present appeal, are that appellant Mrs. Rajni Jain is the sole proprietor of

M/s Piyush Industries who has been arrayed as an accused in case FIR No. 0452/2022 u/s 63 and 65 of the Copyright Act, 1957 PS Budh Vihar, Delhi. It is the case of the appellant-herein that in the said case FIR, goods and machines of the appellant were seized by the police officials on false complaint made by the complainant Sh. Puneet Chhabra s/o Sh. Ashok Chhabra under the provisions of the Copyright Act, 1957. The said goods and machines seized by the police officials are prone to rust and if not maintained properly they will be of no use. The value of the goods and machines will be depreciated to the great extent and cannot be sold/used if rusted. The appellant filed an application u/s 64(2) of the Copyright Act, 1957 for release of her goods and machines which was dismissed vide the impugned order dt. 19.11.2022.

3. Aggrieved by the said impugned order, the appellant has preferred the present appeal on the grounds among others that Ld. Trial Court has acted in hasty and in arbitrary manner and the impugned order suffers from legal infirmities. Ld. Trial Court has acted in a biased and prejudicious manner and has not given thoughtful consideration to the facts and circumstances of the case and has not applied its judicious mind while passing the impugned order. Ld. Trial Court erred in relying on the report of the Investigating Officer from the PS Budh Vihar. The Investigation Officer had no power to seize the said goods and machines and thus the goods and machines cannot be considered to be as case property. Sub-Section (1) of Section 64 of the Copyright Act is in relation to the power of police and the items which could have been seized by police in exercise of those powers and the said

provision is very clear and unambiguous. Even, if there is any anomaly, the Ld. Trial Court cannot overreach the statutory prescriptions. It is for the legislature to fill up the lacuna and get over the anomalous situation. In this regard, the appellant, in the present appeal, has referred judgments in the cases of Cinemaster Vs. State of Gujarat 2010 SCC OnLine Guj 4517 and Surajmal Jain V. State of Orissa, 1989 Criminal Law Journal 1960. The appellant has prayed to set aside the impugned order dt. 19.11.2022 and to direct the concerned police officials to release the aforesaid goods (with or without boxes/packing) and the machines so seized by them to the present appellant/her agent in the interest of justice.

4. No reply filed by the Ld. Chief PP for the State/respondent. However, it has been opposed by the Ld. Chief PP for the State.
5. I have heard the Ld. Counsel for the appellant and Ld. Chief Public Prosecutor for the State / respondent and also perused the judgments relied upon by the Ld. Counsel for the appellant, impugned order as well as materials on record.
6. Ld. Counsel for the appellant argued that appellant is 59 years old lady. The police officials seized the goods along with the machines. The appellant had already applied for registration of the Trademark of particular logo under The Trademark Act, 1999 in the year 2010. Section 64 of the Copyright Act permits only to seize the infringing copies and plates and does not empower the police authorities to seize the apparatus. Machines were used only for placing the goods in boxes. They are not the case property. As per Section 64 of the Copyright Act, the police official has no power to seize the

goods and machines, which are not the case property. It is not the logo. Goods / strings also cannot be seized. Section 64(2) of the Copyright Act provides for making an application for such copies/plates being restored to him. The appellant has not committed any offence under the Copyright Act. In support of his arguments, Ld. Counsel for the appellant has relied upon the judgments in the cases of Rajesh Masrani Versus Tahiliani Design Pvt. Ltd. 2009 (107) DRJ 484 (DB) and Cinemaster (A Division of Asiavision Entertainment Pvt. Ltd.) Versus State of Gujarat 2010 SCC OnLine Guj 4517.

7. Ld. Chief PP for the State/respondent argued that charge-sheet has not been filed. Mechanical inspection of the machines and goods which are case property has not been conducted so far. The appellant was infringing the copy of the product of the complainant. The goods and machines seized can not be released at this stage. If case comes for trial and case property is exhibited then it may be considered. In case the machines and goods are released, he may sold the same. Therefore, this appeal is not maintainable and the same may be dismissed.
8. Perusal of record reveals that there are allegations against the appellant /accused that she sells the iron spring wire by using the brand of the complainant without his consent or permission. The accused has not been engaged in the business of selling the boxes but she earns by selling the wires in the boxes after putting the brand name of complainant on the said boxes. The boxes are used by the accused/appellant, hence, the boxes were also seized. The machines were stated to be used to make spring from the iron wire and for filling springs in

boxes.

9. Section 66 of Copyright Act provides that the Court trying any offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered upto the owner of the copyright [or may make such order as it may deem fit regarding the disposal of such copies or plates].
10. In view of the above facts & circumstances, the report filed by the IO, the impugned order dt. 19.11.2022 and the said provisions under the Copyright Act, I am of the considered opinion that the investigation in case FIR No. 452/2022 u/s 63 and 65 of the Copyright Act PS Budh Vihar is at the initial stage and still pending and the inspection of the goods and machines have not been conducted. The appellant has admitted that her Trade Mark Application No. 2231904 in Class 6 was deemed to be abandoned. Therefore, the aforesaid machines and goods cannot be de-sealed and handed over to the appellant-herein. The judgments relied upon by the Ld. Counsel for the appellant are distinguishable from the facts and circumstances of the present case. Accordingly, this appeal is devoid of merits and the same is dismissed. TCR along with copy of this order be sent back and thereafter this appeal file be consigned to Record Room.

**Announced in the open court
today on 18th January 2023**

**(YASHWANT KUMAR)
Principal District & Sessions Judge
North-West, Rohini Courts, Delhi**