

05.12.2023

Srimanta

Sl. No. 10

Ct. No. 14

WPA/26874/2023

Saroj Kumar Ghosh

-Vs.-

State of West Bengal & Ors.

Mr. Rajdeep Mazumder,
Mr. Moyukh Mukherjee,
Mr. Kaustav Lal Mukherjee,
Mr. Sayantan Sinha

...for the petitioner.

Ms. Ipsita Banerjee,
Mr. Tarak Karan

...for the State.

Mr. Piush Chaturvedi, Sr. Adv.,
Mr. Suman Basu,
Ms. Debanwita Pramanik

...for the respondent no. 4.

Affidavit-of-service filed on behalf of the
petitioner is taken on record.

Learned Counsel appearing on behalf of the petitioner submits as follows. There are two factions in one Satya-Sandhi Cricket Club, which has voting rights in the CAB. The petitioner is the actual controlling faction. The private respondent who had come into the picture much later tried to disturb the control of the petitioner by filing false criminal cases. Final reports were filed in the same. Now, a similar false case has been foisted by the private respondent under the Trademarks Act. First, Section 103 of the Trademarks Act is not applicable. Secondly, as per Section 115(4), it is the Deputy Superintendent of Police who is to investigate such a case. But, in the instant case only a Sub-Inspector of Police is investigating the matter and has issued notice under Section 41A of the Code to the petitioner. Reliance is placed on an unreported decision of the Gujarat High Court in Mihir Surendrabhai Shah -Vs.- State of

Gujarat & Ors. R/Special Criminal Application No. 694 of 2014 passed on 31.07.2023. In fact, the question of trademark does not even arise in respect of a sports club.

Learned Counsel appearing on behalf of the private respondent submits as follows. The allegations made in the writ petition are denied. It is denied that the petitioner is the controlling group in the said Satya-Sandhi Club. The private respondent would like to file an opposition.

Learned Counsel appearing on behalf of the State submits that Section 115 would not apply in the present case as the same applies only to search and seizure. In any event, an enquiry was made with the Registrar of Companies by the Deputy Commissioner of Police. The State would produce the case diary on the next date and file a report regarding the progress of investigation.

It appears from Section 115 Sub-Section (4) that any police officer not below the rank of Deputy Superintendent of Police or equivalent may if he satisfied that the offence as referred to in Sub-Section (3) has been or is being or is likely to be committed, search and seize relevant articles without warrant. Although the Section does not create a bar of any other officer to investigate the offence, the tenor of the wordings in Sub-Section (4) *prima facie* indicates that necessary elements of investigation like search and seizure are to be carried out at least by a Deputy Superintendent of Police. If only search and seizure are only to be carried out by a Deputy Superintendent of Police, then one wonders what would any other Investigating Officer of a lower rank do.

The matter needs to be heard at length.

Opposition, if any, be filed within a fortnight.
Reply, if any, be filed within a week thereafter.

List this matter appear for hearing under the heading 'For Orders' on 10th January, 2024 at 3 P.M.

Notice issued by the Sub-Inspector of Police presently investigating the case under Section 41A of the Code of Criminal Procedure shall remain stayed till 12th January, 2024.

Urgent certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Jay Sengupta, J.)