

04.10.2024
Court No.3
Item No.23
Ali

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

CRR 404 of 2024

In Re: An application under Section 528 of the Bharatiya Nagarik
Suraksha Sanhita, 2023;

And

In the matter of: **Saurabha Agarwal**

.Petitioner.

Ms. Supriya Singh,
Mr. Swarup Das

... for the petitioner.

This is an application for quashing a criminal proceeding being
Dhupguri Police Station Case No. 389 of 2024 dated 29th September,
2024 under Section 318 (3) of Bharatiya Nagarik Suraksha Sanhita,
read with Section 103, 104 of the Trademarks Act, 1999,
corresponding to GR Case No. 4859 of 2024 pending before the
learned Chief Judicial Magistrate, Jalpaiguri.

It is the submissions of the learned counsel for the petitioner
that the petitioner is running a business under jurisdiction of this
Court and it has been alleged that the present petitioner is using the
Trademarks, namely, “M/s. MADANLAL BRIJMOHAN”. It is the case of
the present petitioner that he is one of the family members of
Madanlal Agarwal and he is authorized to carry on the business. The
de-facto complainant suppressing of the facts has filed the written
complaint with the police. He further submits that it is the statutory

dictums upon the police authority to verify the facts of alleged complaint from the concerned Registrar of Trademarks before registration of FIR. He submits that in the present case, the police authority has automatically registered the FIR on receiving written complaint. He submits the conduct of the police authority is apparently illegal in the eye of law. He prayed for quashing of the FIR.

Heard the learned advocate perused the written complaint it appears that it has been alleged in the FIR that the petitioner is running in a business by using the Brand name “M/s. MADANLAL BRIJMOHAN”. It further alleged in the FIR that the present petitioner is outsider of the business. The learned counsel for the petitioner has referred the provision of law under Section 115 of Trademarks Act as well as Section 23 of the said Act, 1999. He also referred me the decision of Hon’ble Co-ordinate Bench of ***Punjab and Haryana High Court*** reported in ***2010 SCC OnLine P&H 10179***.

Having heard the learned counsel for the petitioner also perusing the certified copy of FIR it appears to me that the present petitioner has not received any process of the learned Magistrate. It tantamount that the actual criminal liability against the present petitioner has not been initiated by a Court of law. At this juncture, the petitioner apprehended that his business may be hampered due to the pendency of the instant criminal proceeding. It appears that the statutory provision of the Trademarks Act, 1999 might have not been followed properly by the police authority in registering the FIR. Thus, I find justification to entertain the instant CRR. Accordingly, the instant CRR be admitted.

The petitioner is directed to serve the copy of CRR along with annexures thereof to the opposite parties and file an affidavit-of-service to the Court.

Considering the present facts and circumstances of this case and considering the submissions of the learned advocate for the petitioner. The investigation of police may proceed in its natural course according to the law, but during the pendency of the said criminal proceeding the investigating agency shall not take coercive action against the present petitioner without the leave of this Court so that the smooth functioning of business may not be hampered.

Let the matter go out of list.

Parties are at liberty to mention.

(Subhendu Samanta, J.)