

ITEM NO.28

COURT NO.3

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 4309/2011

(Arising out of impugned final judgment and order dated 30/04/2009 in CRLOP No. 23456/2007 passed by the High Court Of Madras At Madurai)

R.RAVISHANKAR

Petitioner(s)

VERSUS

K MANI & ORS.

Respondent(s)

(with appln. (s) for c/delay in filing SLP and c/delay in refiling slp and exemption from filing O.T. and office report)

Date : 29/08/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. S.Hariharan, Adv.
Mr. Vikash Singh ,Adv.

For Respondent(s) Mr. M. Yogesh Kanna ,Adv.
Mr. A.Santha Kumaran, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed
order.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master

(The Signed Order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1888 OF 2014
(Arising out of SLP(Crl.) No. 4309 of 2011)

R.RAVISHANKAR .. Appellant(s)
.

Versus

K.MANI AND ORS. .. Respondent(s)
.

O R D E R

Leave granted.

High Court of Judicature at Madras has allowed Crl. O.P. No. 23456 of 2007 and quashed criminal proceedings initiated against respondents no. 1 to 3 for an offence punishable under Section 107 (1((C) read with 107(2) of the Trade Marks Act, 1999. The High Court appears to have taken the view that cognizance taken by the Magistrate was contrary to Section 115 of the Trade Marks Act, 1999 inasmuch as Section 115 postulates that no court shall take cognizance of offences under Sections 107, 108 or 109 except on a complaint in writing made to the Registrar or any officer authorised

by him in writing. In terms of the proviso to Section 115(1) for an offence punishable under Section 107(1)(C) the Court can take cognizance only 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 goods or services in respect of which it is not in fact registered. The High Court held that since the proviso to Section 115(1) was not complied with inasmuch the complaint was not supported by a certificate as required by proviso to Section 115(1), the proceedings pending before the Magistrate were liable to be quashed.

We have heard learned counsel for the appellant and learned counsel appearing for the State of Tamil Nadu. The remaining respondents have not chosen to appear to contest the matter. On behalf of the appellant it was contended that the High Court was in error in quashing the criminal proceedings initiated at the instance of the appellant without ensuring that the appellant was impleaded as a party to CrI. O.P. No. 23456 of 2007 and afforded an opportunity of being heard in the matter. It was alternatively submitted that the High Court had overlooked the fact that the Registrar of Trade Marks had issued a certificate in terms of proviso to Section 115(1) that substantially if not

fully complied with the requirement of the said provision. It was urged that although certificate in question was not enclosed with the private complaint filed by the appellant, the same was a part of the final report submitted by the police to the Magistrate concerned and was very much available on record for the perusal of the Magistrate and so also the High Court.

We do not consider it necessary to examine whether or not the certificate referred to by the learned counsel for the appellant was a sufficient compliance with the requirement of the proviso to Section 115(1). We say so because this petition must in our opinion succeed on the first ground of challenge mounted by the appellant. It is common ground that the complaint in question had been filed by the appellant which was quashed by the High Court without the complainant-appellant herein being impleaded as a party respondent to Crl. O.P. No.23456 of 2007. The High Court appears to have overlooked the fact that the appellant was entitled to be heard in the matter as the proceedings were initiated by him in a private complaint which could be quashed only if the appellant was also impleaded as a party to the proceedings. The order passed by the High Court is on the plain facts of this case ex-parte which in our opinion cannot be

sustained.

We accordingly allow the appeal, set aside the order passed by the High Court and remit the matter back to the High out for a fresh hearing and disposal in accordance with law. We further direct that this addition of the appellant herein as a party respondent in the said petition. We leave all other questions open including the question open whether the opinion expressed by the Assistant registrar of Trade Marks in his reference dated 12.10.2004 to the Deputy Superintendent of police Criminal Bench would constitute a certificate within the meaning of Section 115 of the Act.

.....J.
(T.S.THAKUR)

.....J.
(R.BANUMATHI)

New Delhi,
August 29th, 2014.