IN THE COURT OF SH. ANKUR JAIN-1: ADDITIONAL SESSIONS JUDGE-04, CENTRAL, TIS HAZARI COURTS, DELHI.

CR No. 279/2024
CNR No. : DLCT01-010866-2024

NARENDER KUMAR
Trading as
M/s. Kundan Trading Company (Prop.firm)
53, New Colony, Aman Nagar,
Tanda Road, Jalandhar, Punjab-140004 ...REVISIONIST

VERSUS

1. THE STATE
(NCT OF DELHI)
Delhi Secretariat Complex,
5th Level, B-Wing,
I.P.Estate, New Delhi-110002

2. SANDEEP KUMAR GUPTA
M/s. Bhagwati Hardware & Mill Store
Shop No. 4769, First Floor,
Post Office Building,
Hauz Qazi, Delhi - 110006

3. SANJEEV SURI
M/s. Need International
Plot No. 2373/221, Gopinath Building
Shardhanand Marg, Gopinath Building
New Delhi-110006 ...RESPONDENTS

Date of filing of Revision	:	25.07.2024
Date on Order reserved.	:	21.07.2026
Date on which order pronounced	:	29.09.2026
Final Order	:	Dismissed.

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CRIMINAL REVISION PETITION U/S 397 r/w 399/400 Cr.P.C. FOR SETTING ASIDE THE IMPUGNED ORDER DATED 04.06.2024 PASSED BY LD. ACMM (CENTRAL), TIS HAZARI COURTS DELHI IN CC NO. 6850/2019 TITLED AS 'STATE VS SANDEEP KUMAR GUPTA' WHEREBY THE RESPONDENT/ACCUSED WERE DISCHARGED.

29.09.2026

ORDER:-

1. The present order shall dispose of the revision petition filed by the complainant challenging the order dated 04.06.2024 whereby the accused persons/respondent herein were discharged in FIR No. 03/2019 u/s 103/104 Trade Mark Act PS Kamla Market tilted as State Vs. Sandeep Kumar Gupta.

2. The brief facts as necessary for the disposal of the present revision are that a complaint was made by Arvind Singh Attorney of Kundan Trading Company (Hereinafter referred to as KTC) alleging that his client KTC who specializes in the hand and machine tools is having a registered Trade Mark and some companies within the jurisdiction of Delhi NCR are using the trade mark "KTC". It was further stated that the said mark was adopted for the first time in 1975. The complainant further alleges that M/s. Needs International, M/s. Tolexo Online Rex Industries and M/s. Bhagwati Hardware are using the product of the company. Despite issuance of cease and desist notice M/s. Needs International and M/s. Bhagwati Hardware are considering to use the same. On the basis of his complaint an FIR bearing number 03/2019 PS Kamla Market u/s 103/104 Trade Mark Act was registered.

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3. During the course of investigation search and seizure warrants were obtained in term of the judgment ***Sanyo Electric Company Vs. State 2011 45 PTC 55 Del.*** On 17.01.2019 a raid was carried out and two black colour packet, two orange colour small packets were recovered. The complainant identified that these are counterfeit products and have been manufactured in Japan, the company which manufactures the same is not entitled to sell the products in India. On the very same day, another raid was carried out at M/s. Bhagwati hardware and Mill Store and from the said place 6 packets with the label KTC were recovered. After completing the investigation charge sheet was filed against accused Sandeep Kumar Gupta and Sanjeev Suri for committing on offence punishable u/s 103/104 Trade Marks Act. Vide the impugned order the Ld. Trial Court discharge the accused persons. Hence, the present revision petition has been filed by the complainant.

4. Ld. counsel for the revisionist submits that the complainant is using the trade mark since 1993, the Ld. Trial Court while discharging the accused has relied upon the incorrect provisions of law, the Ld. Trial Court has considered the similarity of the trade marks while discharging the accused and recorded a finding that trade marks are not similar. It is submitted that Ld. Trial Court in doing so acted beyond its jurisdiction. It is thus submitted that the order of the Ld. Trial court is bad in law and needs to be set aside.

5. On the other hand, Ld. counsel for the respondent no. 2 and 3 has argued that KTC is being used by a Japanese Company since 1950, respondent no 3 who is the proprietor of M/s Needs

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International, who has been authorized by KTC, Japan to import their goods. The said goods were being imported since 2016. It is submitted that the person who had lodged the complaint had no authorization in his favour and the order of Ld. ACMM does not suffer from any illegality or perversity, the revision petition is liable to be dismissed.

6. I have heard Ld. Counsels for the parties and perused the record.

7. It may be noted that the accused were charge sheeted for committing an offence punishable u/s 103/104 of the Trademark Act 1999.

8. The provisions of law are reproduced as under:-

> *103. Penalty for applying false trade marks, trade descriptions, etc.—Any person who—*
>
> *(a)falsifies any trade mark; or*
>
> *(b)falsely applies to goods or services any trade mark; or*
>
> *(c)makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or*
>
> *(d)applies any false trade description to goods or services; or*
>
> *(e)applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or*
>
> *(f)tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or*
>
> *(g)causes any of the things above-mentioned in this section to be done,shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less*

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than fifty thousand rupees but which may extend to two lakh rupees:
Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

9. Section 104- Penalty for selling goods or providing services to which false trade mark or false trade description is applied.—

Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided, as the case may be, are without the indications so required, shall, unless he proves,—
(a)that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence had been committed in respect of the goods or services; or
(b)that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or
(c)that otherwise he had acted innocently,
be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:
Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

10. In the present case on 05.01.2019, the seizure memo with respect to the raid carried out at shop no. 2372/234, would reflect that four packet and rynche were recovered at the instance of Tarun Kapila. Raid was also carried out at M/s. Bhagwati Hardware, from where 5 closed packet and one empty closed

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packet were recovered. At M/s Bhagwati Hardware the raiding party had met Sandeep Kumar Gupta and during the search spurious products of KTC, Japan were recovered. None of the seizure memo bears the signatures of either Sandeep Kumar Gupta or Sanjeev Suri who have been arrayed as accused. Statement of Tarun Kapila was recorded who stated that the packets recovered from his shop were given to him by Sanjeev Suri and that is how Mr. Sandeep Gupta and Sanjeev Suri were arrayed as accused in the present case.

11. The complainant was very well aware that goods are bearing the mark of KTC, Japan as the seizure memo itself records this fact "Spurious products of KTC Japan". Secondly, in one of the E-mail dated 08.12.2017 addressed to Tolexo, the complainant has mentioned that goods which are being sold by KTC Japan (Kyoto Tools Company) using brand KTC, does not have any registered trademark and requested to restrain them from marketing or selling the products.

12. It is thus clear that the accused persons were not manufacturing, producing or affixing the mark on the products by themselves. Hence no offence u/s 103 of the Trade Mark Act is said to be made out against both the accused. Neither it is the case of prosecution that any fake trade description was being used as defined u/s 2(i) & 2(za).

13. The purpose of investigation is to find the actual truth and not to simply believe the complaint as a gospel truth and file a charge-sheet accordingly.

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14. On record there is a letter dated 24.01.2019 written by Sanjeev Suri Prop. Of Needs International, one of the accused informing the IO that he is the authorized distributor of Kyoto Tool Company Ltd., Japan. In his letter he had stated that Trade Mark KTC was been used since 1960. It also brought to the notice of the IO that KTC Japan has filed Trade Mark Application no. 3461496 before the Trade Mark Registry and the same is pending registration. It was also brought it to the notice of the IO that complainant company in order to ride upon the goodwill and reputation of KTC Japan had adopted a deceptively similar trade mark and also obtained registration in its own name. The letter further states that complainant has filed the 3rd Trade Mark application 3201677, an opposition to the said application was filed by KTC Japan. The accused had placed on record the Trade Mark Application No. 3461496 as well as the opposition. The perusal of the application shows that it was filed on 19.01.2017 much prior to the filing of the complaint. The opposition to the application number 3206177 was also dated 02.02.2017. Both these were much prior to the filing of the present complaint. It is not possible that complainant was not aware about the opposition to their Trade mark but none of this was mentioned in the complaint made by the authorized representative who was none other than an advocate for the complainant. The IO did not bother to carry out any investigation in this regard, simply took their documents on record and filed the same along with the charge-sheet.

15. It is in this context the Custom's bill filed by the accused along with application seeking discharge can be said to be

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unimpeachable documents. Thus reliance on the judgment of *State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568* cannot said to be perverse.

16. The offence u/s 103/104 Trade Mark Act is cognizable offence so irrespective of the person who had brought it to the notice of the police, the police is duty bound to register the FIR. It was the duty of the IO to investigate the matter. If investigation would have been carried out, the IO would have came to know about the opposition filed by KTC, Japan. The fact that they have applied for registration on 19.01.2017, much prior to the registration of FIR. If they were not filed or were false, the IO would have certainly mentioned in his charge sheet.

17. False Trade mark has not been defined under the Trade Mark Act. However, admittedly, as per the case of prosecution the goods which were recovered were having the trade mark of KTC, Japan which clearly indicated that it is not even the case of prosecution that goods of complainant company were being sold by applying a false trademark. Infringement and falsification of Trademark are two different concept. Falsification of the Trade Mark has been made punishable under the Act and not infringement. Herein the present case, at the hightest, the complainant could have argued that his mark has been infringed, in so far as infringement is concerned the law provides for civil remedies, admittedly civil suits are already pending between the parties.

18. The accused persons cannot be allowed to face trial merely because the trade mark of the complainant was registered and

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that of the company which was selling the goods in India was not registered in India.

19. I find no infirmity or illegality with the order of the Ld. Trial Court.

20. Revision stands dismissed.

21. TCR along with the copy of the order be sent back to the Ld. Trial Court for information.

22. Revision file be consigned to Record Room.

Announced on this
29th day of September, 2026

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(ANKUR JAIN-I)
ASJ-04/Central/Delhi.