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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(TM) No.74 of 2023
(OA/1/2019/TM/CHN)

S.Datta Shabarish
trading as
M/s.Sri Lakshmi Venkateshwara Rice Industries
Siruguppa, Bellary District ... Appellant

Vs.

1.The Registrar of Trade Marks,
Trademarks Registry
IP Building, GST Road, Guindy
Chennai - 600 032

2.M.Vinayagamoorthy
Nanmai Tharum Vinayagar Rice Mill
Happy Town, Nandaanapatti
Karur Road, Dindigul - 624 001 ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 107 of the Trademarks Act, 1999 to set aside the impugned order dated 16.10.2017 passed by the senior examiner of Trademarks Registry, Chennai under cover letter section 107/016 and quash the same.

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For Appellant : Mr.K.S.Saravanan

For Respondent : Mr.Rajesh Vivekanandan
Dy. Solicitor General of India for R1
Mr.D.Balaguru for R2

JUDGMENT

The present appeal is filed challenging the order of the first respondent dated 16.10.2017, by which it has chosen to launch a criminal prosecution against the appellant for an offence under Section 107(1)(a) of the Trademarks Act. The issue falls within a very narrow compass.

2.The appellant has applied and obtained registration of a label mark with Lord Ayyappa as a device around which is written 'Sri Lakshmivenkateswara Rice Industries.Siruguppa, a place in Karnataka, with letter 'Iyappan Brand' written beneath the device. This is registered in No.899178 in Class 30 and it is being periodically renewed.

3. In the meantime, the appellant has also applied for registration of another label mark with a colour scheme again with Lord Ayyappa as the device in

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Application No.2128275. The various features of the second mentioned label differ from the first mentioned label.

4. It appears that the appellant has laid a civil suit against the second respondent herein in O.S. No.32 of 2012 on the file of District Court, Bellary, Karnataka, for infringement of its trademark, wherein the plaintiff is said to have obtained a decree on 08.11.2013.

5. Be that as it may, the second respondent herein had addressed a communication/complaint to the first respondent dated 11.02.2016, in which it has complained that even though the appellant's label mark to be registered in Application No.2128275 has not yet been registered, it uses the said label as if the same has been registered under the said application number. The Trademarks Registrar, namely the first respondent, then issued a notice to the appellant and went about a probing enquiry into the matter. The appellant was also represented by a counsel before the Trademarks Registrar and has filed his written submission of defence. It appears that, one of the contentions taken out by the appellant before the Trademarks Registrar was that the complaint itself is

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false. This was rejected by the Trademarks Registrar and this is now under challenge.

6. Heard the learned counsel for all the parties and perused the materials available on record.

7. The issue is, whether the appellant herein has committed an offence within the meaning of Section 107 of the Trademarks Act? In that context, whatever complaint which the second respondent has preferred before the first respondent, can only be considered as a piece of information to the first respondent. This is because under Section 115 of the Trademarks Act, a prosecution for any offence under Sections 107 and 108 can be commenced only on a private complaint preferred by the Trademarks Registrar before the concerned Judicial Magistrate. Therefore, all that is required on the part of the Trademarks Registrar is to satisfy himself personally, if grounds exist for him to prefer a private complaint before the Magistrate. The statute does not contemplate holding a probing enquiry on any information that the Trademarks Registrar may receive for taking his decision as to whether he should launch a

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prosecution. In the instant case, the first respondent has done exactly that which is not called for under the scheme of the Trademarks Act. It has an adverse implication in that he has exacted the line of defence from the appellant, which can jeopardise its right to defend the prosecution, if the first respondent chooses to prefer a complaint before the concerned Judicial Magistrate. After all, in our criminal jurisprudence, an accused is entitled to defend an action with his silence and the obligation is on the part of the prosecution or the complainant to prove the guilt of the accused beyond all reasonable doubts. The procedure adopted by the first respondent, very obviously prejudices the interest of the accused.

8. Having stated thus, this court hastens to add that the first respondent's power to launch a criminal prosecution cannot be interfered by this court nor can there be any preemptive orders. Having stated that the present order cannot stand, but that does not take away the statutory authority if not obligation of the first respondent to launch criminal prosecution, if he is satisfied that there are *prima facie* materials for him to launch a prosecution.

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9. Subject to what is stated here-in-above, this appeal is disposed of. However, there is no order as to costs.

26.02.2024

Asr
Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To
The Registrar of Trade Marks,
Trademarks Registry
IP Building, GST Road, Guindy
Chennai - 600 032

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