Neutral Citation No. - 2024:AHC-LKO:61632

Court No. - 13
Case :- APPLICATION U/S 482 No. - 3112 of 2013
Applicant :- Mohd. Abdul Momin
Opposite Party :- The State Of U.P And Anr.
Counsel for Applicant :- Angrej Nath Shukla
Counsel for Opposite Party :- Govt. Advocate,Vishwas Saraswat,Vivek Kr. Rai

Hon'ble Saurabh Lavania,J.

1. Case called out twice. No one appeared on behalf of the opposite party no. 2 to oppose the present application despite the names of Shri Vishwas Saraswat, Advocate and Shri Vivek Kr. Rai, Advocate have been printed as counsel for the opposite party no. 2 in the cause list.

2. The proof, in terms of earlier order of this Court regarding informing the counsel for the opposite part no.2, placed before this Court by Shri Angrej Nath Shukla learned counsel for the applicant is taken on record.

3. The instant application has been filed with the prayer to quash the charge-sheet no. 147 of 2012 and further proceeding of Criminal Case No. 3089 of 2012 arising out of Case Crime No. 383 of 2012, under Sections 103 of 104 of Trade Mark Act, 1999 (in short "Act of 1999") and 64/65 of Copyright Act, 1957 (in short "Act of 1957"), Police Station Kotwali Nagar, District Gonda, pending in the Court of Chief Judicial Magistrate, Gonda.

4. For the purposes of the relief, quoted above, it is stated that an FIR was lodged as Case Crime No. 103 of 2012 under

Sections 420, 465, 467, 468, 471, 473, 474, 476, 482, 483, 485, 486, 487 IPC, Sections 103, 104 of the Act of 1999 and Sections 64, 65 of the Act of 1957 , at Police Station - Kotwali Nagar, District - Gonda on 16.11.2012. Thereafter, the Investigating Officer carried out the investigation and upon completion of the investigation filed the charge-sheet no. 47/2012 under Sections 103, 104 of the Act of 1999 and Sections 64, 65 of the Act of 1957.

5. It is also stated that the dispute arose on account of name and style of two firms i.e. M/s Prem Mehndi Center registered as Prem Dulhan's Kaveri Mehndi Kone, which belongs to Sri Chatararam Nemaram Gehlot and of which the opposite party no. 1 at relevant point of time was authorised representative and M/s Nazish Dulhan Kaveri Mehndi Cone, which belongs to the applicant.

6. It is also stated that this Court, on 02.11.2023, after considering the dispute between the parties, stayed the further proceedings of Criminal Case No. 3089 of 2012 arising out of Case Crime No. 383 of 2012, quoted above. The order dated 02.11.2023, reads as under:

> *"Case called out. None present for opposite party no. 2 though, the name of counsel for opposite party no. 2 has been shown in the cause list.*
>
> *From perusal of the order sheet, it also transpires that on 12.10.2023 and 26.10.2023, the complainant was accorded opportunity for appearance, but neither the complainant nor his counsel appeared before this Court. In the aforesaid circumstances, the Court is proceeding in the matter.*

Heard Sri Angrej Nath Shukla, learned counsel for the applicant and Shri Aniruddh Kumar Singh, learned counsel for the State.

The instant application has been filed with the prayer to quash the charge-sheet no. 147 of 2012 and further proceeding of Criminal Case No. 3089 of 2012 arising out of Case Crime No. 383 of 2012, under Sections 103 of 104 of the Trade Mark Act and 64/65 of the Copy Right Act, Police Station Kotwali Nagar, District Gonda, pending in the Court of Chief Judicial Magistrate, Gonda.

The learned counsel appearing for the applicant submits that a dispute arose with respect to a trademark and thereafter the matter goes up to several stages and ultimately the parties sat together and have settled their dispute vide the compromise deed dated 27.09.2016. He next added that the First Information Report has been lodged for the same dispute and the matter proceeded, though it has been mentioned in the compromise deed that all the dispute has been put to rest, and the parties will not press their dispute further. He next added that in fact, there is no dispute in between the parties now and the dispute, which was civil in nature has already been settled between the parties and thus, allowing further criminal proceeding against the applicant would be a futile exercise and amount to harassment. Therefore, the submission is that the criminal proceeding against the applicant may be quashed.

On the other hand, the learner AGA as opposed the contention aforesaid and submits that after thorough investigation, the applicant was found involved in committing offence and therefore, the First Information Report was lodged and the chargesheet was filed. He next added that the compromise deed does not mention the present criminal case and therefore, that would have no bearing at all so far as quashing of the instant

criminal proceeding is concerned. He further added that there is no merit in the argument of the learned counsel for the applicant and therefore, the application is liable to be dismissed.

Matter requires consideration.

Let counter affidavit be filed by the opposite party no. 2 within a period of three weeks weeks.

One week thereafter is granted for filing rejoinder affidavit.

List thereafter.

Till then the criminal proceeding of Criminal Case No. 3089 of 2012 against the applicant shall remain stayed."

7. It is also stated regarding the dispute between the parties the Trade Mark Suit No. 2 of 2016 (Prem Mehandi Center through its proprietor Vs. Mohd. Abdul Momin Mohd. Hakeen) was instituted and in this suit a compromise was filed and based upon the terms of the compromise, the said suit was decided on 27.09.2016. The terms of compromise are extracted herein-under:

Compromise between Plaintiff and Defendant is as follows,

"A. Disputes and differences had arisen between the Parties hereto and the Plaintiff filed a Suit bearing number 02 of 2016 "Prem Mehandi Centre Versus Mohd. Abdul Momin Mohd. Hakeem", for Permanent Injunction, Infringement of Trademark and Copyright against the Defendant before the Hon'ble Dist. & Sessions Judge Nashik along with the interim application.

B. That the Defendant appeared in the said Suit and filed his Written Statement before the Hon'ble Court.

C. That the Defendant subsequently approached the Plaintiff for settlement; wherein the Defendant is ready to furnish undertaking before this Hon'ble Court that he will not manufacture, sell, offer for sale or advertise any product identical similar with the Plaintiff's Trademark "KAVERI".

D. The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement.

The following settlement has been arrived at between the Parties hereto:

1. The Defendant acknowledge that the Plaintiff is the proprietor of the registered trademark "KAVERI" bearing, no 1636298 and its associated marks along with the goodwill and reputation in the same due to their extensive and long use.
2. The Defendant acknowledges and do not dispute, nor shall ever dispute in any manner, that the Plaintiff is the owner of the copyright to the artistic work comprised in the packaging of "KAVERI".

3. The Defendant shall not use in any unauthorised manner the "KAVERI" trademark. The Defendant also undertakes not to use trademark "KAVERI" or any mark deceptively and/or confusingly similar to the registered "KAVERI" trademark of the Plaintiff.

4. The Defendant also undertake not to use and apply any trademark identical and/or deceptively similar to the registered trademark of the Plaintiff.

5. The Defendant undertake not to adopt any trademark/ logo/packaging/trade dress/copyright which is identical or deceptively similar for its products to the products bearing one or more of the Plaintiff's trademarks/copyright/packaging/trade dress etc. and other, packaging variants introduced by the Plaintiff over the years with the essential features and get up as

described in the plaint which infringes the Plaintiff's Intellectual Property Rights.

6. The Defendant submit that it will unconditionally withdraw any and all Trademark application before the Registrar of trademarks filed by it similar to the marks of the Plaintiff and has confirmed that it has already taken initiatives for withdrawing the following applications:

Trademark	Application No.	Class	Date of Application
Nazish Kaveri	1927633	03	25/02/2010
Nazish Dulhan Kaberi Mehnadi Cone	2070759	03	20/02/2010

7. That Defendant submits that it will unconditionally withdraw the opposition registered by him on the Plaintiff's application no 2131599 and/or any other application of the Plaintiff. The Defendant further submits that it shall never in future raise any opposition to the Plaintiff's Trademark "KAVERI".

8. The Defendant undertake not to make, sell, offer for sale, advertise or deal directly or indirectly through their officers, servants and agents, any goods in an unauthorised manner under aforesaid marks. That the Defendant also undertake not to use any mark which is phonetically or visually or deceptively similar to the Plaintiffs "KAVERI" trademarks and/or reproduce, print or publish any script, label or packaging which is a colourable imitation or substantial reproduction of the Plaintiff's trademarks, label script, copyright and/or packaging so as to amount to infringement of trademark and/or copyright therein.

9. The Defendant undertake to destroy, in possession all the impugned cartons, finished products, packaging materials and any other material with packaging/ colour scheme, get up, in an environment friendly

manner at his own cost within two weeks and confirm the same to the Plaintiff within 1 week thereafter of the execution of this Agreement. 10. That the suit bearing number 02 of 2016 titled as "Prem Mehandi Centre versus Mohd. Abdul Momin Mohd. Hakeem" shall be decreed of in terms of the present Settlement Agreement.

11. If the Defendant is found to be in breach of the terms of the present Settlement Agreement, the Plaintiff shall have the right to execute other remedies of contempt, and any other remedy as may be permissible by law.

12. All the aforesaid terms of undertakings will be binding henceforth on all the parties, its legal heirs and representatives and assignee in business.

13. By signing this Agreement the parties hereto state that they have no further claims or demands against each other qua the present proceedings and all the disputes and differences in this regard have been amicably resolved by the Parties. The Plaintiff will not claim any damages from Defendant after execution of this present agreement.

14. That the parties undertake before the Hon'ble Court to abide by the terms and conditions set out in the said compromise and not to dispute the same hereinafter in future. Hence Decree be Drawn Accordingly.

8. The fact that suit was decreed based upon the compromise, is apparent from the order on compromise deed dated 27.09.2016, which reads as under:

"Order on Exh-1 Dated- 27/09/2016

In view of Compromise. Pursis Exh-21 matter is settled & disposed off. Compromise decree is drawn accordingly. Hence disposed of.

Date-27/09/2016

Sd/-xxx

(Urmila Joshi-Phalke)

District Judge-1, & Additional Sessions Judge

Nashik."

9. It is further submitted that in the aforesaid circumstances of the case, neither the proprietor of the firm nor the opposite party no. 2/ Jetharam Nemaram Gehlot, who lodged the FIR in capacity of authorized representative of Prem Mehandi Center is/are not interested in contesting this case, therefore, no one has appeared on behalf of the opposite party no. 2 and also no one has put in appearance on behalf of the proprietor of the said firm concerned.

10. It is further stated that in view of aforesaid circumstances of the case as also that the opposite party no. 2 does not want to continue with the proceedings in issue pending in the Court of Chief Judicial Magistrate, Gonda, the impugned proceedings be quashed.

11. Considering the aforesaid including that the commercial/business dispute between the parties has been settled as also the submissions made by learned Counsel for the parties as also the observations made by Apex Court in the case of ***Ramgopal and others Vs. State of Madhya Pradesh, (2022) 14 SCC 531, Gian Singh Vs. State of Punjab [2012 10 SCC 303], Mohd. Ibrahim Vs. State of U.P., 2022 SCC Online ALL 106, Gold Quest International Ltd. Vs. State of Tamilnadu, 2014 (15) SCC 235, B.S. Joshi Vs. State of Haryana, 2003 (4)***

SCC 675, Jitendra Raghuvanshi Vs. Babita Raghuvanshi, 2013(4) SCC 58, Madhavarao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, 1988 1 SCC 692, Nikhil Merchant Vs. C.B.I. and another, 2008(9) SCC 677, Manoj Sharma Vs. State and others, 2008(16) SCC 1, State of M.P. Vs. Laxmi Narayan and others, 2019(5) SCC 688, Narindra Singh and others Vs. State of Punjab and another, (2014) 6 SCC 466, Manoj Kumar and others Vs. State of U.P and others (2008) 8 SCC 781, Union Carbide Corporation and others Vs. Union of India and others (1991) 4 SCC 584, Manohar Lal Sharma Vs. Principal Secretary and others (2014) 2 SCC 532 and Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409 as also the nature of dispute/crime, this Court is of the view that the present application is liable to be allowed as chances of ultimate conviction are extremely bleak and hence no useful purpose would be served by allowing the criminal proceedings to continue. Accordingly, present application is ***allowed***. Consequently, the entire proceedings arising out of *FIR No./Case Crime No.*, quoted above, are hereby quashed qua the applicant.

12. Office/Registry is directed to send the copy of this order to the court concerned through email/fax for necessary compliance.

Order Date :- 6.9.2024
Mohit Singh/-

Digitally signed by :-
MOHIT SINGH
High Court of Judicature at Allahabad,
Lucknow Bench