



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 1541 OF 2025

1. Sandip S/o. Ramashankar Dube,
Aged about 39 years, Occ. Nil,
R/o. Mukute Galli No. 9, Lashkari Bag,
Nagpur.
2. Sushant S/o. Bhaskarji Gandhamwar,
Aged about 31 years, Occ. Nil,
R/o. Flat No. 403, Royal Dream City
Apartments, Besa, District Nagpur.

. . . APPLICANTS

// VERSUS //

1. State of Maharashtra through
Police Station Officer, Police Station
Kotwali, District Nagpur.
2. Iyan Deman Goms,
Aged about 30 years, Occ. Field Officer,
Netrika Consulty India Private Ltd.
Off. At N-161, Sayara Towers,
Ground Floor, Gautam Nagar,
Near Metro Park Station,
New Delhi-110049.

Complainant address: Gomes House,
Manoli, Koliwada, Deval Galli,
Malad (West), Mumbai.

. . . NON-APPLICANTS

Ms. Payal Kaware, Advocate for appellent.
Mrs H. N. Prabhu, AGP for non-applicant no. 1/State.
None for non-applicant no. 2.

CORAM :- M. W. CHANDWANI, J.

DATED :- 12.06.2026

ORAL JUDGMENT :-

Though, non-applicant no. 2 is served but, none appeared on his behalf.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsels for the parties.

3. The application seeks quashing of Regular Criminal Case No. 1158/2025 pending on the file of Judicial Magistrate First Class, Nagpur and the Charge-sheet No. 48/2025 arising out of First Information Report No. 250/2024 registered with Police Station Kotwali, Nagpur City for the offences punishable under Sections 51 and 63 of the Copyright Act, 1957.

4. Heard the learned counsel for the respective parties.

5. Perusal of the charge-sheet reveals that the allegations against the applicants are that they are found in possession of following items:-

- i) 16 pieces of shirts by Zara Company;
- ii) 144 pieces of cotton trousers by Zara Company;
- iii) 9 pieces of half pants by Zara Company;
- iv) 11 pieces of T-shirts by Zara Company; and
- v) 3 pieces of half pants by Calvin Kelin Company

6. The specific allegations against the applicants is that they were indulged in selling counterfeit goods of the Companies named above. The complainant namely Iyan Deman Goms, the Field Officer of Netrika Consulting India Pvt. Ltd., is authorized by the Companies like Zara and Calvin Klein to ensure protection of their proprietary rights, and to take action with assistance of Police officials against such vendors/persons who manufactures, sells counterfeit products of such companies. Therefore, on findings the applicants selling counterfeit products, as recorded above, a complaint was lodged under the provisions of the Copyright Act and the aforesaid offences came to be registered against the applicants.

7. I have gone through the relevant provisions, it is needless to mention that as per Section 13(1) of the Copyright Act, the copyright can be claimed only on the following classes of works namely:-

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recording

8. Further, Section 13(2) of the Copyright Act is also required to be reproduced here, which reads as under:-

“13(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of Section 40 or Section 41, apply, unless-

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than a work of architecture, the author is at the date of making of the work a citizen of India or domiciled in India; and

(iii) in the case of a work of architecture, the work is located in India.”

9. In light of the above-said discussion, it is evident that Copyright cannot be claimed for the goods and services as recorded above, at least not under the provisions for which the FIR is registered.

10. Rather is not the case of the prosecution that the applicants are claiming any copyright in the goods found in his possession or that he has been manufacturing shirts or pants containing the Brand names Zara and Calvin Klein. The specific case of the prosecution is that he was found selling counterfeit goods containing the labels of different brands. These facts do not amount to infringement of copyrights within the meaning of Copyright Act. From the facts averred in the FIR, the applicants are seen to have committed the offences punishable under Section 104 of Trade Marks Act, 1999 (for short, “the Act of 1999”) and not under sections 51 and 63 of the Copyright Act as alleged in the FIR.

11. Section 104 of the Act of 1999 provides for penalty for selling goods bearing trade marks. Section 104 of Act of 1999 reads as under:-

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;

(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.”

12. Section 115 of the Act of 1999 provides for the procedure for taking cognizance of the offences committed in relation to the trade marks. Sub-sections (3) and (4) of Section 115 of the Act of 1999, which are relevant for our purpose read as under:-

“115. Cognizance of certain offences and the powers of police officer for search and seizure.

.....

(3) The offences under section 103 or section 104 or section 105 shall be cognizable.

(4) Any police officer not below the rank of Deputy Superintendent of Police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, dye, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.”

From the above provision it is clear that only the police officer not below the rank of Deputy Superintendent of Police, if he is satisfied that an offence under Sections 103 or 104 or 105 of the Act of 1999 has been committed or is likely to be committed, he may search and seize goods, dye, block, machine, plate etc., without warrant. In the instant case, the search and seizure has been conducted by the Police Sub-Inspector contrary to the mandate. Thus the mandatory provisions of the Act of 1999 have not been complied with. Therefore, registration of the FIR and consequent investigation thereon is vitiated.

13. Even with regard to the offence under Section 420 of the Indian Penal Code (IPC) is concerned, there is no complaint from any person or consumers that they have been cheated by the purchase of

pants and shirts from the applicants. Therefore, from the facts averred in the complaint, even the ingredients of Section 420 of the IPC are not made out. Consequently, registration of the FIR and the consequent investigation against the applicants for the alleged offences cannot be sustained.

14. Sofaras, the submission of learned APP appearing for the State that charge is already framed in the matter and the case is listed for evidence is concerned, that cannot be an impediment in quashing the charge-sheet if the allegations made, even if at their face value, do not constitute alleged offence. Therefore, there is no substance in the argument of the learned APP for the State.

15. In view of the above, a case is made out for quashing the FIR and subsequent proceedings. Hence, the following order:-

- i) The application is allowed.
- ii) First Information Report No. 250/2024 registered with Police Station Kotwali, Nagpur City for the offence punishable under Sections 51 and 63 of the Copyright Act, 1957 and consequent Charge-sheet bearing No. 48/2025 and Regular Criminal Case No. 1158/2025

pending on the file of Judicial Magistrate First Class, Nagpur are hereby quashed and set aside against the applicants.

iii) Rule is made absolute in the above terms.

(M. W. CHANDWANI, J.)

RR Jaiswal