

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Cr. M.P. No. 1493 of 2019**

1. Chetan Adesera, aged about 47 years
2. Piyush Adesera, aged about 40 years.  
Both sons of Prafull Chhaganlal Adesera, resident of House No. 10, Road No.- 4, Contractors Area, Bistupur, Sakchi, P.O. Sakchi, P.S. Sakchi, Town Jamshedpur, East Singhbhum.
3. Manish Adesera, aged about 45 years, son of Late Shashikant Adesera.
4. Mrs. Pasam Adesera, aged about 70 years, wife of Late Shashi Kant Adesera, Resident of House No. 10, Road No.- 4, Contractors Area, Bistupur, Sakchi, P.O. & P.S. Sakchi, Jamshedpur, East Singhbhum.  
Both residents of House No. 10. Road No. 4, Contractors Area, Bistupur, Sakchi, P.O. and P.S. Sakchi, Jamshedpur, East Singhbhum  
All partners of “Chhaganlal Dayaljee”, a partnership firm, having its office and showroom at N. Road, Diagonal Road, Bistupur, P.O. & P.S. Bistupur, East Singhbhum, Jamshedpur, (Jharkhand)

... .. **Petitioners**

Versus

1. The State of Jharkhand
2. Mrs. Rita Verma, wife of Santosh Verma, sole proprietor of Chaganlal Madanlal & Sons Jewellers, having its office and Showroom at Dhannasing Building, New Purulia Road, Mango Chowk, P.O. & P.S. Mango, District- East Singhbhum, Jamshedpur (Jharkhand).

... .. **Opposite Parties**

---

**CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

---

For the Petitioners : Mr. Indrajit Sinha, Advocate  
For the Opp. Party No .2 : Mr. Deepankar Roy, Advocate  
For the Opp. Party-State : Mr. Santosh Kumar Shukla, Advocate

---

**Through Video Conferencing**

---

**08/04.05.2022**

Heard Mr. Indrajit Sinha, learned counsel appearing on behalf of the petitioners.

2. Heard Mr. Deepankar Roy, learned counsel appearing on behalf of Opposite Party No.2.

3. Heard Mr. Santosh Kumar Shukla, learned counsel appearing on behalf of Opposite Party-State.

4. This Criminal Miscellaneous Petition has been filed for the following reliefs:

*“For quashing the entire criminal proceeding in connection with C1 Case No. 2410 of 2017 (Arising out of G.R. Case No. 1102 of*

*2017) filed by opposite party no.2 for offence u/s 193, 195, 196, 209, 211, 420, 467, 468, 469, 471, 482 & 500 of Indian Penal Code & Section 78 of Trade and Merchandise Act including order dated 06.04.2019 passed by Sr. M.M. Pradhan, Learned Judicial Magistrate, 1<sup>st</sup> Class, Jamshedpur, whereby and where under cognizance has been taken for the offences under section 417, 465, 471, 482 and 500 of the Indian Penal Code, and further summons have been issued against the petitioners, and the said case is now pending in the court of Sri M.M. Pradhan, Learned Judicial Magistrate, 1<sup>st</sup> Class, Jamshedpur.”*

**Arguments of the petitioners**

5. Learned counsel for the petitioners submits that the entire criminal proceedings including order taking cognizance in the present case is an abuse of the process of law. He submits that the complainant is the wife of Santosh Verma who is admittedly an accused in another case being Complaint Case No. 19/2016, which was sent for investigation by police. The learned counsel submits that it has been mentioned in the present complaint itself that the said complaint case was filed and the allegation in the present case is that forged documents were filed in the earlier complaint case being Complaint Case No. 19/2016. He submits that the complainant had filed Complaint Case No. 592/2017 making identical allegation and the same was sent for investigation by police and the present case arises out of protest petition filed by the complainant against final Report No. 131/2017 dated 30.05.2017.

6. The learned counsel submits that there is also allegation of infringement of trade mark and a suit was instituted by the accused of the present case against the husband of the complainant being Original Suit No. 07/2016, wherein a decree was passed in favour of the accused of the present case under the provisions of Trade Marks Act, 1999 and the defendants of the suit i.e., the husband of the complainant of the present case, has been permanently enjoined and directed to deliver and destroy all packets having the plaintiff's registered trade mark being either 'CHHAGANLAL' OR 'CHHAGANLAL DAYALJEE' and permanently restraining them from using the trade mark, namely, 'CHHAGANLAL' OR

‘CHHAGANLAL DAYALJEE’. The learned counsel submits that the matter regarding trade mark dispute in the name and style of ‘CHHAGANLAL’ OR ‘CHHAGANLAL DAYALJEE’ has been decreed in favour of the present accused persons in the original Suit No. 07/2016 and accordingly, the present case is an abuse of the process of law. He submits that the entire proceedings is fit to be set-aside.

7. The learned counsel has further referred to the impugned order taking cognizance and submits that cognizance has been taken under Sections 417, 465, 471, 482 and 500 of the Indian Penal Code and submits that the perusal of the order taking cognizance dated 06.04.2019 reflects non-application of judicial mind as no satisfaction as such has been recorded.

8. The learned counsel for the petitioners has referred to the judgment passed by the Hon’ble Supreme Court reported in **(2021) 5 SCC 435 (Krishna Lal Chawla and Others vs. State of Uttar Pradesh and Another)**, para-16 onwards, to submit that the Hon’ble Supreme Court has elaborately dealt with the duty of the court while issuing process. He has also referred to another judgment passed by Hon’ble Supreme Court in **Cri. Appeal No. 1288/2021** dated 29.11.2021 to submit that in a complaint case, the order taking cognizance has to be speaking order. The learned counsel for the petitioners has further referred to a judgment passed by this Court in **Cr.M.P. No. 2744/2013** dated 27.11.2019 reported in **2020 (1) JLJR 199** to submit that the mechanical order taking cognizance has been deprecated by this Court. He has also referred to the judgment reported in **(2017) 2 SCC 18 (Sharat Babu Digumarti Vs. Government (NCT of Delhi))** to submit that in the matter of violation of special law i.e. the Trade Mark Law in the present case, special procedure has been prescribed and the case for offences under the provisions of Indian Penal Code is not maintainable. The learned counsel has further referred to a judgment passed by the Hon’ble Supreme Court reported in **(2015) 12 SCC 781 (Sharad Kumar Sanghi Vs. Sangita Rane)** to submit that the allegation of trade mark is *qua* the partnership firm and in absence of partnership firm having been made accused in the present case, there cannot be any vicarious liability of the acts and omissions of the

firm against the partners of the firm. The learned counsel has also referred to a judgment passed in the case reported in *(2009) 9 SCC 682 (M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another)* para 21 to 23, 25 & 26 to submit that the Magistrate has to look into the case more closely when the case is that of a counter blast. He also submits that there is no document produced before the court to allege forgery and therefore no offence under Sections 417, 465, 471, 482 and 500 of the Indian Penal Code is made out against the petitioners.

**Arguments on behalf of Opposite Party No.2**

9. Learned counsel for the opposite party No.2, on the other hand, has opposed the prayer and submitted that the allegation in the present complaint case is that the petitioners had used forged documents while filing the complaint case being Complaint Case No. 19/2016 though the complaint case was filed against the husband of the complainant of the present case. He has also submitted that the impugned order taking cognizance refers to enquiry witnesses, namely, Santosh Verma and Grish Chandra Mohanty and also refers to the fact that the documents were also filed by the complainant, but none of them have been brought on record by the petitioners. He has submitted that only the complaint and the solemn affirmation of the complainant is on record. The learned counsel submits that there was enough material for the learned court below to take cognizance of the alleged offence and disputes the allegation of the learned counsel for the petitioners that the order taking cognizance does not reflect any application of judicial mind. The learned counsel has also submitted that the learned court below has not taken cognizance with regard to violation of any of the provisions of the Trade Marks Act and no interference is called for in the present case.

**Findings of this Court**

10. From the records of this case, it appears that the opposite party no. 2 initially filed complaint case no. 592 of 2017 against the petitioners alleging commission of offence under Sections 193, 195, 196, 209, 211, 420, 467, 468, 469, 471, 482, 500 of Indian Penal Code and Section 78 of Trade and Merchandise Act. The said complaint was sent for investigation to the police under Section 156(3) of the Code of Criminal Procedure. Consequently, First Information Report

was registered as Mango P.S. Case No. 128 of 2017 dated 19.04.2017 corresponding to G.R. Case No. 1102 of 2017.

**11.** Upon investigation, final form dated 30.05.2017 was submitted stating that no offence is made against the petitioners and further stating that the case against the petitioners is false. Consequently, the opposite party no. 2 filed protest-cum-complaint petition being C/1 Case No. 2410 of 2017 against the petitioners for alleged offence under the aforesaid sections. The learned court below conducted an inquiry in the said protest-cum-complaint case and vide impugned order dated 06.04.2019, took cognizance of offence under Section 417, 465, 471, 482 and 500 of the Indian Penal Code and directed issuance of summons against the petitioners.

**12.** In the protest-cum-complaint case, it was *inter alia* alleged that G.R. Case No. 1102 of 2017 was not properly investigated against the accused persons and the statements of the complainant and the witnesses were not recorded under Section 161 Cr.P.C. which consequently led to submission of final form by the investigating officer.

**13.** As per the complaint case, the complainant is the sole proprietor of her jewellery shop in the name and style of “Chaganlal Madanlal & Sons Jewellers” and “Chaganlal Santosh Jee Silver” and they were in business of jewellery for about 20 years. Further case of the complainant is that in the year 2015, the complainant entered into rent agreement with owner of the shop to run aforesaid business and spent amount for advertisement and applied for registration of the jewellery business under Shops and Establishment Act and she was also issued provisional trade license in the name of City Gold Silver Jewellery which was subsequently changed by the complainant in the name of “Chaganlal Santosh Jee Silver”. The complainant also applied for registration before the Commercial Taxes department. It is further case of the complainant that the complainant was initially running her business as Mrs. Rita Soni, wife of Santosh Prasad Soni since 1998 and in the year 2011-12 the complainant got their surname changed to Verma. The complainant and her father-in-law were used to be called by the name of Chaganlal and her father’s name being Madanlal, the complainant started business of jewellery in the name and style of

“Chaganlal Madanlal & Sons Jewellers” and applied for trademark in the office of Registrar of the Trade Mark.

**14.** The further case of the complainant is that she was shocked to know that summons were issued in the name of her husband in criminal case instituted by the accused persons for infringement of registered trade mark of the accused in the name of Chhaganlal Dayaljee and it was alleged by the complainant that the accused while projecting the display of Chhaganlal Dayaljee as their trade mark deliberately fabricated the evidence to misrepresent and misdirect the judicial proceedings and further to cause injury to the complainant. It has been alleged that the accused are misleading public by displaying on the board as Chhaganlal Dayaljee which has hampered the reputation of the complainant.

**15.** In paragraph nos. 16 to 22, following allegations have been made in the complaint petition:

*“16. The complainant has been shocked to find from the text of the complaint case No. 19/2016 and the documents submitted in the court that the accused has while projecting the display of Chhaganlal Dayaljee Jewellers as their mark, are deliberately and corruptly fabricated the evidence to misrepresent and misdirect the judicial proceeding, with intent to procure conviction of the stated offence by the accused in the case and dishonestly made false claim against the proprietorship of the complainant herein.*

*17. The complainant humbly submits that the accused has instituted the criminal proceedings against the proprietorship of the complainant being Chaganlal Madanlal & Sons Jewellers with intention to cause injury to the complainant knowingly that there is no just or lawful ground for such proceedings.*

*18. The complainant submits it has recently come to the knowledge of the complainant that the accused have, while in their running a separate shop/showroom using the unregistered trade mark Chhaganlal Dayal Jee Silver have maliciously copied the trade mark set in public by the complainant for which she has applied also for a registration and that the accused have passed of the goods and items of the complainant’s as their’s. it is only when the complainant checked to verify the basis of the false allegations made in the said complaint and enquired that the complainant realized the effect of the maliciously copied use of the trade mark of the complainant by the accused leaving it still unquantified as to*

*the loss and damages the complainant has had to suffer for such act of the accused.*

*19. The complainant has found out that the accused have neatly and deliberately with knowledge have crafted false documents to support the false claim in the complaint and caused irreparable and immeasurable loss and damages to the complainant.*

*20. The complainant submits the accused have deliberately defamed the complainant in her honest approach in trade and have placed false facts with no basis at all.*

*21. Further the complainant submits that the accused in their trade mark display board of Chhaganlal Dayaljee Silver deliberately misleads the public also in their logo in projecting that the said enterprise exists there since 1918 which is false to the ground and an act of unfair trade and practice by all means apart from the criminal offences punishable in law.*

*22. The complainant's business and entrepreneurship has been harmed to an immeasurable extent as it has become glaringly evident through their own approach with deliberate untruth and malicious forgery of documents and other acts of omission and commission to the court of law, therefore loosing no time at all the complainant straightaway submits the present complaint before this Hon'ble court."*

**16.** The solemn affirmation of the complainant was recorded wherein the complainant has fully supported the case. The specific case of the complainant is that the accused persons have fabricated documents on the basis of which case has been lodged against her husband causing loss to her business and that the complainant was in a position to deposit the legal documents and license etc. of the firm to the court. Thus, it appears that the case of the complainant is that the accused persons have lodged a false case on the basis of forged and fabricated documents although the genuine documents are with the complainant.

**17.** The order taking cognizance dated 06.04.2019 indicates that apart from the complainant, two more inquiry witnesses were examined namely, Santosh Verma and Grish Chandra Mohanty. It has also been recorded in the order taking cognizance that the complainant filed certain documents and the inquiry witnesses have supported the prosecution story. Upon perusal of the order taking cognizance, this Court is of the considered view that the same reflects application of judicial mind on the materials produced before the court and those

materials have not been placed before this court for consideration. In the present case record, as pointed out by the learned counsel for the opposite party no. 2, the petitioners have filed only the complaint petition and the solemn affirmation of the complainant, but have not brought on record the statements of the inquiry witnesses namely, Santosh Verma and Grish Chandra Mohanty.

**18.** It is further not in dispute that there was also a suit by the accused against the husband of the complainant being Original Suit No. 07 of 2016 and the petitioners in the criminal miscellaneous petition have brought on record the plaint of the title suit no. 07 of 2016, but during the course of argument, it has been stated by the learned counsel for the petitioners that in the title suit, decree was passed in favour of the present petitioners under the provisions of Trade Mark Act, 1999 and the defendants of the suit i.e. the husband of the complainant of the present case was permanently enjoined and directed to deliver and destroy all packets having the name 'Chhaganlal' or 'Chhaganlal Dayaljee' and was permanently restrained from using the aforesaid trade mark. Consequently, the case of the petitioners before this Court is that the point regarding trade mark has already been decided in favour of the present petitioners in the suit and accordingly the present case is an abuse of the process of law calling for interference under Section 482 of Cr.P.C.

**19.** This Court finds that in the present case, the trade mark involved is 'Chaganlal Madanlal & Sons Jewellers' and 'Chaganlal Santosh Jee Silver' and not 'Chhaganlal' or 'Chhaganlal Dayaljee'. The complainant of the present case claims to be sole proprietor of Chaganlal Madanlal & Sons Jewellers and also the sole proprietor of Chaganlal Santosh Jee Silver. It further appears that though there is case and counter case between the parties, inasmuch as, the accused persons have also filed a case against the husband of the complainant, but in the present case, it has been alleged by the complainant that the accused persons have fabricated and used certain documents against her husband in the criminal case and the petitioners have misused the name and style of the shop in which she is the sole proprietor. In the aforesaid background, it cannot be said that no criminal case at all is made out against the present petitioners.



20. This Court is of the considered view that merely because there is case and counter case between the parties or merely because there has been title suit amongst the parties, the same by itself is not sufficient to quash any criminal proceedings. The foundational principle to interfere in the criminal proceedings under Section 482 of Cr.P.C. has been laid down by the Hon'ble Supreme Court in the judgement reported in *1992 Suppl. (1) SCC 335 (State of Haryana and Ors. Vs. Bhajan Lal and Ors.) wherein*, it has been held in para 102 and 103 of the aforesaid judgement as follows:

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no*

*prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

*103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”*

**21.** This Court is of the considered view that the present case does not satisfy any of the aforesaid required conditions. This Court is also of the considered view that if any forged document is used in a case, then the allegation of forgery is required to be established by instituting a specific case for the purpose. It further appears from the impugned order that two inquiry witnesses were examined and the learned court below had also examined certain documents which were produced, but the petitioners have not annexed the statement made by the inquiry witnesses, nor any statement has been made in the present petition regarding the inquiry witnesses much less their statements during inquiry. It further appears from the impugned order that certain documents were examined before passing order taking cognizance, but those documents are also not on record before this Court for perusal and examination.

**22.** Thus, the evidences brought on record at the stage of inquiry, have not been completely produced before this Court and upon perusal of the complaint petition and the solemn affirmation of the complainant, this Court is of the considered view that the order finding *prima facie* case for the alleged offence under the aforesaid

Sections of Indian Penal Code, under which cognizance has been taken against the petitioners, is sustainable in the eyes of law.

**23.** It is also important to note that the case and counter case is between the accused and the husband of the complainant. Further, the title suit is also between the accused and the husband of the complainant and the complainant is neither a party in the criminal case, nor a party in the civil dispute wherein infringement of trade mark has been alleged.

**24.** This Court also finds that the impugned order of taking cognizance is sufficiently reasoned order, although no specific details have been mentioned regarding the documents which were produced and regarding the statement of the inquiry witnesses, but the same by itself is not fatal to the prosecution case. The satisfaction of the learned court below, while taking cognizance of offence, is reflected from the impugned order dated 06.04.2019 which is sufficient to sustain the order taking cognizance.

**25.** So far as the judgment which has been relied upon by the petitioners reported in *(2021) 5 SCC 436* (Supra) (para 16) as well as judgement passed by the Hon'ble Supreme Court in *Cr. Appeal No. 1288 of 2021* (Supra) is concerned, this Court is of the considered view that the same judgements do not help the petitioners in any manner as the impugned order taking cognizance reflects sufficient application of mind and the same cannot be said to be a mechanical order.

**26.** This Court further finds that the argument of the petitioners that the Trade Mark Law is a special law and has special procedure, has no bearing in the present case in view of the fact that cognizance has not been taken under the Trade Mark Law, but has been taken under the general law i.e. Indian Penal Code. The cognizance having been taken under Sections 417, 465, 471, 482 and 500 of Indian Penal Code and there is sufficient material on record to support the order taking cognizance and consequently, the same does not call for any interference.

**27.** In the totality of facts and circumstances of this case, this Court is of the considered view that no interference is called for against

order taking cognizance and accordingly, the present Criminal Miscellaneous Petition is hereby dismissed.

**28.** However, it will be open to the petitioners to raise all points before the learned court below at appropriate stage and dismissal of this petition will not prejudice the case of the either party before the learned court below.

**29.** Interim order, if any, stands vacated.

**30.** Pending interlocutory application, if any, is closed.

**31.** Let a copy of this order be communicated to the learned court below through 'FAX/Email'.

**(Anubha Rawat Choudhary, J.)**

*Mukul/Pankaj*