

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 8581 of 2022**

With

**CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2022
In R/CRIMINAL MISC.APPLICATION NO. 8581 of 2022**

=====

MAHESHBHAI @ KANBHAI HARIBHAI SOJITRA

Versus

STATE OF GUJARAT

=====

Appearance:

MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MR PRANAV TRIVEDI, APP for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 14/09/2022

ORAL ORDER

ORDER IN CR.M.A.8581/2022

1. Draft Amendment is allowed. Necessary amendment to be carried out forthwith.

2. Ms.Rushvi Shah, learned advocate states that she has instructions to appear on behalf of respondent no.2. She will file her Vakalatnama on behalf of the complainant. The Registry to accept the same.

3. Heard Mr.Pratik Y. Jasani, learned advocate for the applicant, Mr.Pranav Trivedi, learned APP for respondent no.1 – State and Ms.Rushvi Shah, learned advocate for respondent no.2.

4. Mr.Jasani, learned advocate for the applicant, at the outset, submitted that present impugned FIR is nothing, but a sheer abuse of process of law. He further submitted that the impugned FIR is filed by respondent no.2 with a view to see that the applicant is ousted from the business. To substantiate its contentions, Mr.Jasani, learned advocate has heavily relied upon the certificates of registration of copyright issued by the Registrars of Copyright, from Page Nos.24 to 32. Mr.Jasani, learned advocate, thereafter, relied upon Section 51 of the Copyright Act, 1957 (hereinafter referred to as “the said Act” for short) and submitted that if any person without a licence granted by the owner of the copyright or the Registrar of Copyright under the said Act does anything, then it would amount to infringement. Relying upon the said section, Mr.Jasani, learned advocate submitted that the applicant is having certificates issued by the Registrar of Copyright, and therefore, according to him, they cannot be said to have committed any infringement. Mr.Jasani, learned advocate further submitted that respondent no.2-complainant has chosen to lodge the criminal proceedings prior to filing of any civil litigation only with a view to create a pressure on the

applicant. Mr.Jasani, learned advocate further submitted that the FIR itself is nothing, but a sheer non-application of mind, whereby Section 64 of the said Act invoked in the FIR which is not forming any offence, but under which, the Police Officer/Investigating Officer granted power to seize the material in case if he records its subjective satisfaction that there is an infringement of any copyright.

5. *Per contra*, Ms.Shah, learned advocate for respondent no.2 has vehemently opposed present application by referring to various sections i.e. Sections 44, 45, 51, 63 and 64 the said Act, coupled with the judgments of various High Courts and Supreme Court. She has relied upon the following judgments:

- (i) M/s. Knit Pro International Vs. the State of NCT of Delhi and another reported in 2022 LiveLaw (SC) 505;**
- (ii) Sirajudheen Vs. the State of Kerala (Criminal MC.No.6577 of 2018, vide order dated 19.11.2020);**
- (iii) Asian Paints (I) Ltd. Vs. Jaikishan Paints and allied Products (Notice of Motion Nos.2884 of 2001, 309, 315 and 316 of 2002 in Suit No.3963 of 2001, decided on 12.09.2002);**

(iv) K.C. Bokadia and others Vs. Dinesh Chandra Dubey (M. Cri. Case No.3798 of 1991, decided on 06.09.1995).

6. Having heard learned advocates for the respective parties, the matter requires consideration. However, while granting interim relief, this Court would record its *prima facie* reasons as under:

(i) A bare perusal of Section 51 of the said Act says that if any person uses without the permission of the licence owner or from the Registrar, any product would amount to infringement of copyright. However, in the present case, the applicant is a holder of certificate issued by the Registrar of Copyright.

(ii) In view of the aforesaid, in my considered opinion, *prima facie* ingredients of Section 51 of the said Act are not satisfied. Further, this Court would note the fact that invocation of Section 64 of the said Act by the police in the FIR is nothing, but a sheer non-application of mind by the police. I say so because Section 64 of the said Act is not an offence, but the power envisaged to the police or Investigating Officer to seize the material, if any

infringement is found for which, there cannot be any FIR.

(iii) Hence, **Rule**, returnable on **17.10.2022**. Mr.Pranav Trivedi, learned APP waives service of notice for and on behalf of or respondent no.1 – State and Ms.Rushvi Shah, learned advocate waives service of notice of Rule for and on behalf of respondent no.2.

(iv) In the meantime, there shall be interim relief in terms of Paragraph-9(BB).

(NIRAL R. MEHTA,J)

ORDER IN CR.M.A.1/2022

Learned advocate for the applicant seeks permission to withdraw this application as having become infructuous.

Permission, as sought for, is hereby granted.

Present application stands disposed of as withdrawn as having become infructuous.

(NIRAL R. MEHTA,J)

rakesh/