



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 496 OF 2023

Mahendra Dattu Gore.

..Applicant.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. Rameshwar Totla, Mr. Rahul Totla i/b Mr. Ashwin Poojari for the Applicant.

Ms. Sangeeta D. Shinde, APP for the respondent-State.

Mr. Aniket Nikam i/b Mr. Aashish Satpute for respondent No. 2.

**CORAM : Sharmila U. Deshmukh &
Arif S. Doctor, JJ.**

**Date : May 17, 2023.
[Vacation Court]**

P.C.:

1. The petition is circulated seeking urgent relief of de-sealing of the factory premises alleged to have been sealed pursuant to the FIR bearing No.0432 of 2023 registered with Chakan Police Station, District : Pimpri Chinchwad, for the offences punishable under sections 420 of the Indian Penal Code, 1860 and sections 103, 104 and 105 of the Trade Marks Act, 1999.

2. Heard Mr. Totla, learned counsel appearing for the petitioner, Ms. Sangeeta D. Shinde, learned APP for the respondent-State and Mr.

Aniket Nikam, learned counsel appearing for respondent No.2. Learned counsel for the petitioner submits that the provisions of section 115 of the Trade Marks Act, 1999 do not empower the police officer to seal the factory premises. He has pointed out the provisions of sub-section (4) of section 115 of the Trade Marks Act, 1999 and submitted that the police has the authority to seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence. He would submit that under the provisions of section 115 of the Trade Marks Act, 1999 the sealing of the factory premises is not permissible.

3. Learned counsel for Respondent No.2—original complainant and learned APP would submit that machinery being huge, it was not possible for the police officer to seize the same as envisaged under sub-section (4) of section 115 of the Trade Marks Act, 1999 and, as such, to secure the machinery and to ensure that the same is not used in the commission of offence, the factory premises have been sealed. Learned counsel for Respondent No.2 would further submit that the petitioner has an alternate remedy before the Judicial Magistrate, First Class where the seized articles are required to be produced and all objections in that regard can be raised before the Magistrate.

4. Considered the rival submissions. A perusal of the provisions of section 115 of the Trade Marks Act, 1999 reveals that there is no power vested in the police to seal the factory premises where the incriminating articles are situated. The provisions of sub-section (4) of section 115 of the Trade Marks Act, 1999 permits the police officer to seize without warrant the articles / items which are enumerated in the said sub-section. It is not disputed that there is no power vested with the police to seal the factory premises.

5. As regards the submission that there is an alternate remedy before the Judicial Magistrate, the provisions indicate that whenever there is seizure of the articles, the same are required to be produced before the Magistrate. However, in the present case there is no seizure of the articles and all that has been done is to seal the factory premises, which is not permissible as is evident from the perusal of provisions of section 115 of the Trade Marks Act, 1999.

6. In the light of above, we are of the opinion that the petitioner has made out a *prima facie* case for grant of ad-interim relief in terms of prayer clause (b), which reads thus :

“B. By way of interim relief respondent No.1 be directed to open

the seal of the factory premises immediately.”

7. It is open for the police to seize the incriminating articles in accordance with the provisions of sub-section (4) of section 115 of the Trade Marks Act, 1999.

8. Learned APP, on instructions of Mr. Amol Dere, PSI Chakan Police Station, states that the de-sealing of the factory premises of the petitioner will be done tomorrow at 11.00 a.m.. She further submits that at the same time, the seizure of the incriminating articles will be done in accordance with the provisions of law.

9. Stand over to **9th June 2023.**

[Arif S. Doctor, J.]

[Sharmila U. Deshmukh, J.]