

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2929 OF 2021

Sony Pictures Network India Pvt. Ltd. ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

ALONG WITH
CRIMINAL WRIT PETITION NO. 2874 OF 2021

Sameer Chandran Nair & Anr., ...Petitioners

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. Shirish Gupte, Senior Advocate a/w. Mr. Sanjay Kumar, Mr. Abhishek Kumar Singh, Mr. Chaitanya A. Malgaonkar, Mr. Dharmesh Shah, Ms. Supriya Kak, Mr. Saurabh Kumar, Ms. Khushali Padalia i/by. Malegaonkar Shah & Co. for the petitioner in WP No. 2929/2021.

Mr. Amit Desai, Senior Advocate, a/w. Mr. Vaibhav Bhure, Ms. Hemangi Abhyankar, Ms. Viveka Truman, Mr. Navankur Pathak i/by. Viveka Truman for Petitioner in WP No. 2874/2021.

Mr. J.P. Yagnik, APP for State in WP No. 2929/2021.

Mr. V.B. Konde-Deshmukh, APP for State in WP No. 2874/2021.

Mr. Shekhar Jagtap i/by. J. Shekhar & Co. for Respondent No. 2.

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**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

DATE : 23rd AUGUST, 2021.

P.C.:

1. Heard Mr. Gupte, the learned Senior Advocate appearing for the Petitioner in Writ Petition No. 2929 of 2021 and Mr. Desai, the learned Senior Advocate for Petitioner in Writ Petition No. 2874 of 2021.

2. Mr. Gupte, the learned Senior Advocate submits that the provisions of Sub Section 4 of Section 115 of the Trade Marks Act, 1999, provide for investigation by the officer not below the rank of Deputy Superintendent of Police or equivalent. However, C.R. No. 171 of 2021 dated 04.07.2021 registered at Sahakar Nagar Police Station, Pune City for offences punishable under Section 500 of IPC and Sections 102 and 107 of the Trade Marks Act, and Sections 66C and 43(b) of the Information Technology Act, is being investigated by the police inspector. He submits that it is apparent from the notice under Section 41A of the Cr.P.C. that the aforesaid crime is being investigated by the officer of inspector rank. He further submits that even the alleged offence under Section 500 of IPC which is non-cognizable cannot be investigated by police on the basis of FIR.

3. Mr. Desai, the learned Senior Advocate appearing for the Petitioner in Writ Petition No. 2874 of 2021 submits that the particular web series does not come within scope of Trade Marks Act, 1999. He placed reliance upon the judgment of this Court (Coram: S.S. Shinde & Manish

Pitale, JJ.) in the case of Prateek Chandragupt Goyal Vs. The State of Maharashtra & Anr. (Writ Petition No. 62 of 2021, decided on 20.04.2021).

4. Mr. Desai, the learned Senior Advocate further submits that no offence punishable under the Trade Marks Act, 1999, is made out.

5. Mr. J.P. Yagnik, the learned APP appearing for State in Writ Petition No. 2929/2021 and Mr. V.B. Konde-Deshmukh, the learned APP for State in Writ Petition No. 2874/2021 submit that they will reflect over the submissions made by the learned Senior Advocate for the petitioners and grounds taken in the petition and will take instructions.

6. Mr. Jagtap, the learned counsel for Respondent No. 2 prays for time, so as to enable him to file reply in both the petitions.

7. Sub Section 4 of Section 115 of the Trade Marks Act, 1999 reads as under:-

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

(1) -----

(2) -----

(3) -----

(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, die, 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.

8. We prima facie find force in the submissions of Mr. Gupte, the learned Senior Advocate for the Petitioner in Writ Petition No. 2929/2021 that the bar for investigation into offences punishable under Trade Marks Act, 1999 by inferior officer may operate in this case and the offence under Section 500 of IPC cannot be investigated by the police.

9. At this stage it is not necessary to elaborate the reasons. Suffice it to say that the investigation of aforesaid crime cannot be carried out further by the investigating officer. In that view of the matter, the further investigation in C.R. No. 171 of 2021 dated 04.07.2021 registered at Sahakar Nagar Police Station, Pune City for offences punishable under Section 500 of IPC and Sections 102 and 107 of the Trade Marks Act, and Sections 66C and 43(b) of the Information Technology Act, shall remain stayed, till the next date.

10. List on 17th September, 2021, through video conferencing.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)