

In the High Court of Madhya Pradesh

MCRC 13000 of 2018

Priya Shrivastava vs. State of MP & Ors.

Gwalior, dtd. 12/03/2019

Shri Sunil Kumar Jain, Counsel for applicant.

Shri Vikrant Sharma, Public Prosecutor for the respondents No.1 and 2/
State.

Shri Himanshu Yadav, Counsel for respondent No.3/ complainant.

This application under Section 482 of Cr.P.C. has been filed challenging the F.I.R. in Crime No.70/2018 registered at Police Station Girwai, Distt. Gwalior for offence under Sections 51, 63 of Copyright Act as well as the Criminal Proceedings.

The necessary facts for the disposal of the present application in short are that on 16-3-2018, a F.I.R. No.70/2018 was registered against the applicant for offence under Section 51/63 of Copyright Act on the written complaint of the respondent no.3. The allegations which have been made against the applicant are that she is indulged in manufacturing of Paint with a Logo which resembles with the Logo of Asian Paints, produced by the complainant. It is claimed by the applicant, that Pitambra Industries is a registered Firm situated in village Girwai, Gwalior and the applicant is the sole proprietor of the same. The Firm is engaged in the business of manufacturing paint and allied products like dyes, varnish etc. since 2013 and enjoys reputation. The applicant is manufacturing the products in the name and style of "Maha Utsav Wall Paint". The premises of the applicant has been locked by the respondent no.2 on the complaint of the respondent no.3, on the allegations of violation of Copyright and trade mark. Although the applicant has already filed a separate writ petition, challenging the locking of her premises, but by the present application, the F.I.R. has been challenged. It is submitted by the

Counsel for the applicant, that no offence punishable under Section 51/63 of Copyright Act, 1957 is made out. There are material differences in the design of Utsav Asian Paints manufactured by Asian Paints Limited, whereas the applicant is manufacturing and marketing in the name of "Maha Utsav Asian Paints". There are differences in the design of the Logo also. In order to attract criminal liability, *mens rea* has to be assigned to the applicant, whereas there is no *mens rea*. It is further submitted that the design of the Logo cannot be said to be an artistic work. There is nothing on record to suggest that there was any Copyright in favour of the complainant. Even otherwise, the respondent no.3 was not competent to lodge the F.I.R. The offence under the Copyright Act is not cognizable and the complainant has a civil remedy, therefore, the civil case, should not be given a colour of criminal case. It is submitted that the charge sheet has been filed, and no documents have been filed to show that the complainant has a registered Copyright in respect of design and Logo of the produce.

Per contra, it is submitted by the Counsel for the respondent no.3, that being the representative of the Asian Paints (I) Limited, he had lodged a complaint and thus, he is competent to lodge the F.I.R. Furthermore, there is no concept of *locus standi* in criminal proceedings, and anybody can put the criminal agency in motion. It is submitted that the Asian Paints (I) Limited has a registered Logo, having its registration No.A-107636/2013 and the class and description of the work as per the registration is "Artistic". In order to take advantage of the reputation of the Asian Paints (I) Limited, the applicant is manufacturing the paints and allied products in the name and style of "Maha Utsav Wall Paint" and the design of the Logo, resembles with the design of Logo of the Asian Paints (I) Limited. The said act has been done with a *mala fide* intention to encash the reputation of the Asian Paints (I) Limited as well as to cheat the innocent customers. It is submitted that while

considering the question of violation of Copyright, the Court is not required to look for the differences, but it should look for similarities. It is further submitted that the offence under Section 51/63 of Copyright Act is a cognizable offence and it is well-established principle of law that merely because a case involves civil ingredients also, would not be sufficient to quash the legitimate criminal proceedings.

Heard the learned Counsel for the parties.

Sections 2(c), 13, 51 and 63 of Copyright Act, 1957 reads as under :-

Section 2(c) of the Copyright Act, 1957 reads as under :-

"(c) "artistic work" means,—

- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- (ii) a work of architecture; and
- (iii) any other work of artistic craftsmanship"**

Section 13 of the Copyright Act reads as under :-

"13. Works in which copyright subsists.— (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

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

(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.

Explanation.—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist—

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the sound recording is made.

(5) In the case of a work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction."

Section 51 of Copyright Act, 1957 reads as under :-

"51. When copyright infringed.— Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyright under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act —

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person—

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports [* * *] into India,

any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation.—For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy". "

Section 63 of Copyright Act, 1957 reads as under :-

"63. Offence of infringement of copyright or other rights

conferred by this Act.— Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act except the right conferred by Section 53-A,

shall 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 where the infringement has not been made for gain in the course of trade or business 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.

Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section."

Section 63 of Copyright Act, 1957 provides that the maximum sentence may extend to three years.

Schedule 1 (II) of Cr.P.C. provides as under :-

II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or Non-cognizable	Bailable or non-bailable	By what Court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable	Non-bailable	Court of Session
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Ditto	Ditto	Magistrate of the first class
If punishable with imprisonment for less than 3 years or with fine only. Magistrate	Non-cognizable	Bailable	Any

Thus, if the maximum sentence is less than 3 years, then the offence would be non-cognizable offence, but for offence under Section 63 of Copyright Act, 1957, the maximum sentence is up-to 3 years, which means that the said offence is cognizable offence. Accordingly, it is held that the offence under Section 63 of

Copyright Act is a cognizable offence.

So far as the contention of the applicant that, the dispute is of civil in nature and the respondent no.3 has tried to give it a colour of criminal nature is concerned, this Court is of the view that a criminal prosecution cannot be quashed merely on the ground that it involves civil ingredients also.

The Supreme Court in the case of **Amit Kapoor Vs. Ramesh Chander**, reported in **(2012) 9 SCC 460** has held as under :-

“27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts

even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of

continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

The Supreme Court in the case of **Indian Oil Corporation v. NEPC India Ltd.**, reported in **(2006) 6 SCC 736**, held as under :-

“**12.** The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692], *State of Haryana vs. Bhajanlal* [1992 Supp (1) SCC 335], *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill* [(1995) 6 SCC 194], *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*, [(1996) 5 SCC 591], *State of Bihar vs. Rajendra Agrawalla* [(1996) 8 SCC 164], *Rajesh Bajaj v. State NCT of Delhi*, [(1999) 3 SCC 259], *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269], *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168], *M. Krishnan vs Vijay Singh* [(2001) 8 SCC 645], and *Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri vs. State of UP* [(2000) 2 SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to

exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

The Supreme Court in the case of **Vijayander Kumar and Ors. vs. State of Rajasthan and Others**, reported in **2014(1) Crimes 240(SC)** has held as under :-

"**11.** No doubt, the views of the High Court in respect of averments and allegations in the FIR were in the context of a prayer to quash the FIR itself but in the facts of this case those findings and observations are still relevant and they do not support the contentions on behalf of the appellants. At the present stage when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Such materials can be produced by the appellants in their defence in accordance with law for due consideration at appropriate stage.

12. The learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/ complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition is supported by several judgments of this Court as noted in para 16 of the judgment in *Ravindra Kumar Madhanlal Goenka v. Rugmini Ram Raghav Spinners (P) Ltd.*"

The Supreme Court in the case of **Lee Kun Hee Vs. State of U.P.** reported in **AIR 2012 SC 1007** has held as under :-

"**26.**We have given our thoughtful consideration to the last contention advanced at the hands of the learned counsel for the

appellants. We are of the considered view, that in offences of the nature contemplated under the summoning order, there can be civil liability coupled with criminal culpability. What a party has been deprived of by an act of cheating, can be claimed through a civil action. The same deprivation based on denial by way of deception, emerging from an act of cheating, would also attract criminal liability. In the course of criminal prosecution, a complainant cannot seek a reciprocal relief, for the actions of the accused. As in the instant case, the monetary consideration under the bill of exchange dated 1.2.2001, cannot be claimed in the criminal proceedings, for that relief the remedy would be only through a civil suit. It is therefore not possible for us to accept, that since a civil claim has been raised by the complainant-JCE Consultancy, based on the alleged breach of the agreement dated 1.12.2001, it can be prevented from initiating proceedings for penal consequences for the alleged offences committed by the accused under the Indian Penal Code. It would not be appropriate for us, to delve into the culpability of the appellants at the present juncture, on the basis of the factual position projected by the rival parties before us. The culpability (if at all) would emerge only after evidence is adduced by the rival parties before the trial court. The only conclusion that needs to be drawn, at the present juncture is, that even on the basis of the last submission canvassed on behalf of the appellants, it is not possible to quash the summoning order at this stage. In the aforesaid view of the matter, it is left open to the appellants to raise their objections, if they are so advised, before the trial court. The trial court shall, as it ought to, adjudicate upon the same in consonance with law, after allowing the rival parties to lead evidence to substantiate their respective positions."

The Supreme Court in the case of **M/s Suryalakshmi Cotton Mills Ltd. Vs.**

M/s Rajvir Industries Ltd and others, reported in **AIR 2008 SC 1683** has held as

under :-

"18. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal namely to force the accused to pay the amount due to the complainant immediately.

The Courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The Courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

The Supreme Court in the case of **Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others** by judgment dated **12-2-2019** passed in **Cr.A. No. 255 of 2019** has held as under :-

"9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

Thus, it is clear that where the complaint discloses the criminal ingredients also, then the criminal prosecution cannot be quashed only because of the fact that civil dispute is also involved and the transactions are business transactions. Only a case which is predominantly of civil in nature cannot be allowed to be given a colour of criminal nature.

However, in the present case, the violation of Copyright itself is an offence. Therefore, when a party to the litigation can seek compensation for violating the copyright, then at the same time, the act of the offender is punishable under Section 63 of the Copyright Act. Therefore, the prosecution of the applicant cannot be quashed on the ground that although the act of the applicant is punishable under Section 51/63 of Copyright Act, but still the complainant has an alternative remedy

of seeking compensation.

It is next contended by the Counsel for the applicant that although the charge sheet has been filed, but the prosecution has not filed any document to show that the design of the Logo of Asian Paints (I) Ltd. is registered under the Copyright Act.

The complainant has placed the copy of the registration of the design under the Copyright Act. The said registration speaks that the work of the Asian Paints (I) Ltd. is an Artistic work. Further, if the prosecution has not filed the registration certificate along with the charge sheet, then the same can be filed at a later stage. Thus, non-filing of the registration certificate is not a mistake which cannot be corrected at a later stage. Further, the Counsel for the respondent no. 3 has relied upon the Judgment passed by Maharashtra High Court in the case of **Asian Paints (I) Ltd. Vs. M/s Jaikishan Paints and Allied Products**, reported in **2002(4) Mh.L.J. 536** which reads as under :-

"24. Registration under the Copyright Act is optional and not compulsory. Registration is not necessary to claim a copyright. Registration under the Copyright Act merely raises a prima facie presumption in respect of the particulars entered in the Register of Copyright. The presumption is however, not conclusive. Copyright subsists as soon as the work is created and given a material form even if it is not registered. See *Buroughs (I) Ltd. Vs. Uni Soni Ltd.*, 1997(3) Mh.L.J. 914. Thus, even if the plaintiff's work was not registered, the plaintiff having established that it had created the same prior to the defendant, mere registration by the defendant of its work cannot defeat the plaintiff's claim.

24. Moreover, in the present case, the plaintiff's work is also registered under the Copyright Act."

Thus, merely because the prosecution has not filed the registration certificate, along with the charge-sheet would not mean that the prosecution of the applicant is bad.

So far as the competency of the respondent no.3 to file a complaint on behalf

of the Asian Paints (I) Pvt. is concerned, there is no concept of *Locus Standi* in criminal cases. Anybody can put the criminal agency into motion. Further, the respondent no.3 has come up with a specific stand that the power of attorney has been executed by the Asian Paints (I) Ltd. in favour of the respondent no.3 Thus, this contention raised by the applicant is also **rejected**.

It is further submitted by the Counsel for the applicant that by merely using the word "Utsav", would not mean that the applicant has violated the Copyright. To buttress his contentions, the Counsel for the applicant has relied upon the judgment passed by the Supreme Court in the case of **Parakh Vanijya Private Limited Vs. Baroma Agro Product and others**, reported in (2018) 16 SCC 632 and judgment passed by a co-ordinate Bench of this Court in the case of **Kasim Ali and another Vs. State of M.P. and another passed in M.Cr.C. No. 1362/2015**. The submission made by the Counsel for the applicant is misconceived and hence, it is **rejected**. It is not a case of infringement of Copyright only on the allegations of use of the word "Utsav", but it is case of infringement of Copyright of the design of the Logo. Design of the Logo is certainly an Artistic work. Therefore, the judgments relied upon by the Counsel for the applicant in the case of **Parakh Vanijya Private Limited (Supra)** and judgment passed by a co-ordinate Bench of this Court in the case of **Kasim Ali (Supra)** are distinguishable on facts.

It is next contended by the Counsel for the applicant that there are some differences in the design of the Logos of both the companies, therefore, there is no infringement of Copyright. The submissions made by the Counsel for the applicant is misconceived. The Courts are not required to look for the differences, but in such cases, the Court must look for the features, which are deceptively similar. This Court has gone through the design of Asian Paints (I) Ltd. and the design used by the applicant. They are deceptively similar. Therefore, this Court is of the

considered opinion, that there is a *prima facie* material against the applicant, warranting his prosecution. Even otherwise, this Court under Section 482 of Cr.P.C. has limited scope.

The Supreme Court in the case of **Central Bureau of Investigation vs. K.M.Sharan** reported in **(2008) 2 SCC (Cri) 430**. has held as under:-

"24. In Bhajan Lal case (supra), this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. 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 of the Constitution of India or the inherent powers under Section 482 of CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. This court in the said judgment made it clear that 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 to myriad kinds of cases wherein such power should be exercised. According to this judgment, the High Court would be justified in exercising its power in cases of following categories:-

"102. (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."

25. This court in *Janata Dal v. H. S. Chowdhary & Ors.* (1992) 4 SCC 305 observed thus:

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

26. This court in *Roy V.D. v. State of Kerala* (2000) 8 SCC 590 observed thus:-

"18. It is well settled that the power under Section 482Cr.P.C has to be exercised by the High Court, *inter alia*, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are *per se* illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482Cr.P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

27. This court in *Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque & Ar.* (2005) 1 SCC 122 observed thus:-

"8.....it would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that

initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

28. In *Indian Oil Corporation v. NEPC India Ltd. & Ors.* (2006) 6 SCC 736, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that "any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

29. This Court in the case of *Central Bureau of Investigation v. Ravi Shankar Shrivastava, IAS & Anr.* (2006) 7 SCC 188 has reiterated the legal position. The Court observed that the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that the decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

30. Now, the crucial question which arises for our adjudication is whether the case of the respondent falls under any of the categories as enumerated in the celebrated case of *Bhajan Lal* (supra). On the basis of the material available on record and the allegations levelled against the respondent in the FIR and the charge-sheet, it cannot be concluded that no ingredients of offence under section 120 B read with Section 193 IPC are present in the instant case.

31. At this stage, the High Court in its jurisdiction under Section 482 Cr.P.C. was not called upon to embark upon the enquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the concerned court after the entire material is produced before it on a thorough investigation and evidence is led.

32. In the impugned judgment, according to the settled legal position, the High Court ought to have critically examined whether the allegations made in the First Information Report and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the accused (respondent herein)."

The Supreme Court in the case of **Padal Venkata Rama Reddy Vs. Koveuri**

Satyanarayana Reddy reported in **(2011) 12 SCC 437** has held as under:-

“8. Section 482 of the Code deals with inherent power of the High Court. It is under Chapter 37 of the Code titled “Miscellaneous” which reads as under:

“482. *Saving of inherent powers of High Court.*—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

This section^{*} was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent jurisdiction may be exercised, namely:

1. to give effect to any order under CrPC,
2. to prevent abuse of the process of any court,
3. to secure the ends of justice.

9. In *R.P. Kapur v. State of Punjab AIR 1960 SC 866* this Court laid down the following principles:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;
- (iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
- (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

10. In *State of Karnataka v. L. Muniswamy (1977) 2 SCC 699* this Court has held as under: (SCC p. 703, para 7)

“7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court’s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the

very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita v. State* 2000 Cri LJ 315 and *B.S. Joshi v. State of Haryana* (2003) 4 SCC 675). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may

not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi v. R. Prasanna Kumar* 1990 Supp SCC 686; *Ganesh Narayan Hegde v. S. Bangarappa* (1995) 4 SCC 41 and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* (2005) 1 SCC 122.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335, *Janata Dal v. H.S. Chowdhary* (1992) 4 SCC 305, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC 194 and *Indian Oil Corpn. v. NEPC India Ltd.* (2006) 6 SCC 736.

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18. In *State of Orissa v. Saroj Kumar Sahoo* (2005) 13 SCC 540 it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11)

“11. ... It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.”

19. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692 this Court held as under: (SCC p. 695, para 7)

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while

taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692*, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider “special facts”, “special features” and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao case (1988) 1 SCC 692* was reconsidered and explained by this Court in *State of Bihar v. P.P. Sharma 1992 Supp (1) SCC 222* which reads as under: (SCC p. 271, para 70)

“70. *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. ... Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet.”

22. Thus, the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the

proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal”.

The Supreme Court in the case of **State of Orissa v. Ujjal Kumar Burdhan** reported in (2012) 4 SCC 547 has held as under :-

“8. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

9. In *State of W.B. v. Swapan Kumar Guha*, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)

“65. ... *An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. ...*

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... *If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the*

offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.”

(emphasis supplied)

10. On a similar issue under consideration, in *Jeffrey J.*

*Diermeier v. State of W.B.*⁴, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

“20. ... The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.”

The Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora**, reported in **(2013) 10 SCC 581** has held as under :-

“**30.** It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, *prima facie* establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein.”

Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that the prosecution of the applicant cannot be quashed at this stage.

However, before parting with the order, this Court would like to issue a word

of caution to the Trial Court, that the observations in the present case have been made in the light of the limited scope of interference. However, the Trial Court shall decide the matter strictly in accordance with evidence, which would come on record.

Accordingly, this application fails and is hereby **Dismissed**.

(G.S. Ahluwalia)
Judge