

(2012) 03 JH CK 0093
In the Jharkhand High Court
Case No : Criminal Revision No. 697 of 2010

Hansraj Jain

APPELLANT

Vs

The State of Jharkhand and Prakash Chandra Agarwal

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Merchente Act, 1958 — Section 79
Penal Code, 1860 (IPC) — Section 482, 483, 486
Trade Marks Act, 1999 — Section 79

Citation : (2012) 03 JH CK 0093

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Judgement

Prashant Kumar

1. This application is directed against part of the order dated 5.7.2010 passed by Additional Chief Judicial Magistrate, Seraikella in G.R. Case No. 467 of 2004, whereby he concluded that prima-facie offence under Sections 482,483 and 486 of the Indian Penal Code and Section 79 of the Merchente Act is made out against petitioner. It is submitted by Sri Shankar Lal Agarwal, learned counsel for the petitioner that there is distinction between trademark and property mark, thus learned court below committed serious error by using trademark as property mark. He further submits that Section 79 of Trade Mark Act deals with textile materials, thus question of framing of charge against petitioner under the said provisions does not arise.

2. Having heard the submissions, I have gone through the record of the case. From perusal of penultimate paragraph of the impugned order I find that court below after considering the materials available in the case diary had concluded that petitioner/accused had used false property mark for the sale of plaster of paris and accordingly court below concluded that offence under Sections 482,483 and 486 of the Indian Penal Code are made out. Thus, aforesaid contention of learned counsel of the petitioner appears to be misconceived.

3. So far offence u/s 79 of the Trade Mark Act is concerned, I find substance in the submission of learned counsel for the petitioner. Trades and Merchandise Mark Act 1958 has been repealed by Trade Marks Act 1999. It further appears that Section 79 of the Trade Marks Act deals with the textile goods. Admittedly, in this case, alleged goods are not textile goods, thus Section 79 of the Trademarks Act has no application. Under the said circumstance, in my view, no offence u/s 79 of the Trademarks Act is made out. In view of the discussions made above, impugned order is modified to the aforesaid extent. Accordingly, this application is disposed of.