# Legal Issues in 'Trademark Enforcement matters'

# Topic:Whether Registrar's Opinion is Mandatory Before Police Officer Conduct Search and Seizure?

# Relevant Legal Provisions

**Section 115(4), Trade Marks Act, 1999 –**

*"Cognizance of certain offences and the powers of police officer for search and seizure. .....(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…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 may be.* ***Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained."*** *(emphasis supplied)*

# Relevant Legal Provisions

**Section 93, The Code of Criminal Procedure, 1973-**

*"When search-warrant may be issued.–(1) (a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or (b) where such document or thing is not known to the Court to be the possession of any person, or (c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it* ***may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect*** *in accordance therewith and the provisions hereinafter contained." (emphasis supplied)*

# Relevant Legal Provisions

**Section 96, Bharatiya Nagarik Suraksha Sanhita, 2023-**

*"When search-warrant may be issued. (1) Where- (a) any Court has reason to believe that a person to whom a summons order under section 94 or a requisition under sub-section (1) of section 95 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition; or(b) such document or thing is not known to the Court to be in the possession of any person; or(c) the Court considers that the purposes of any inquiry, trial or other proceeding under this Sanhita will be served by a general search or inspection,* ***it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect*** *in accordance therewith and the provisions hereinafter contained." (emphasis supplied)*

# Relevant Judicial Decisions

**Sanyo Electric Co. Thr. Its Constituted Attorney Pankaj Gupta v. State [Crl. Rev. Petition No. 154/2010, Delhi High Court] - Judgment dated August 30, 2010 [Single Judge Bench]**

*"7…Section 115(4) of the TM Act relates to search and seizure by the police without warrant. Section 93 of the Code, on the other hand, deals with power of the Court to authorize search and seizure. The Court can issue a search warrant when conditions mentioned in Section 93 of the Code are satisfied. Search authorized under Section 93 of the Court is not a search without a warrant but a search under a warrant issued by the Court after due application of mind. The words "reason to believe" coupled with clauses (a) to (c) contemplate an objective determination based on judicial deliberation by the Court. The court applies its mind to decide whether or not a request for search and seizure made by a party should be allowed. An order under Section 93 of the Code is a judicial order passed after weighing and examining facts. There should be application of mind which should be discernible from the order under Section 93 of the Code." (emphasis supplied)*

# Relevant Judicial Decisions

**Sanyo Electric Co. Thr. Its Constituted Attorney Pankaj Gupta v. State [Crl. Rev. Petition No. 154/2010, Delhi High Court] - Judgment dated August 30, 2010 [Single Judge Bench]**

*"9. Thus, the power of the police to conduct searches and searches on a warrant issued by a Court under Section 93 of the Code are distinct and separate. It is expected and required that the court would take due notice and will ensure that the right to privacy is not violated except when warranted, required and justified."*

*"11. Looking at the language of Section 115(4) of the TM Act, object and purpose behind the proviso to the said Section and Section 93 of the Code, the proviso in the present case does not warrant a wider application beyond the substantive Section 115(4) i.e. all searches by the police without warrant. Legislative intent behind the proviso can be gathered from the explicit language and words used in 115(4) of the TM Act. The Section is confined to searches without warrants and prevents misuse of the power of search by the police. There is no indication in the language that the proviso is intended to apply as a proviso to Section 93 of the Code." (emphasis supplied)*

# Relevant Judicial Decisions

**Sanyo Electric Co. Thr. Its Constituted Attorney Pankaj Gupta v. State [Crl. Rev. Petition No. 154/2010, Delhi High Court] - Judgment dated August 30, 2010 [Single Judge Bench]**

*"12. Section 115(4) of the TM Act does not override and obliterate the power of the court to issue a search warrant under Section 93 of the Code. It has been accordingly held, and in my opinion rightly, that the two provisions operate independently as one relates to searches pursuant to warrants issued by the courts and the other relates to searches by police officers without a Court warrant. The pre-requisite or pre- conditions for a search by a police officer without warrant under the proviso to Section 115(4) of the TM Act cannot be read into and made a precondition before a search warrant issued by a court under Section 93 of the Code is executed. Otherwise, a judicial order of the court issuing warrant of search will be a paper order and unexecutable unless the Registrar gives a positive opinion. It makes a judicial order of a court ineffective till an opinion is given by the Registrar, who has right to overwrite the judicial decision. This is not warranted by the language of the proviso or the legislative intent behind the proviso." (emphasis supplied)*

# Relevant Judicial Decisions

**Shrenik Shantilal Dhadiwal v. The State of Maharashtra and Ors. [Criminal Appl. No. 1289/07, Bombay High Court] – Judgment dated August 1, 2018 [Division Judge Bench]**

*"9. Under the provision of Section 115 of the Trade Marks Act, 1999, certain restrictions are put for taking the cognizance for the offence under Sections 107, 108 or 109. The Court shall not take the cognizance of a complaint except the complaint in writing made by the Registrar, or any officer authorized by him in writing. The offences punishable under Section 103 or 104 or 105 are cognizable and police not below the rank of Deputy Superintendent of Police is authorized to search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence. Such police officer before making any search or seizure shall obtain the opinion of Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained."* *(emphasis supplied)*

# Relevant Judicial Decisions

**Anant Tukaram Teke & Ors. v. State Of Maharashtra & Anr. [Criminal Appl. No. 1471/13, Bombay High Court]- Judgment dated September 24, 2018 [Division Judge Bench]**

*"18. The provision of Section 115(4) of the Trade Marks Act, 1999 shows that before search and seizure, the Dy. S.P. needs to obtain the opinion of the Registrar on facts involved in the alleged offence. In the present matter, the Dy. S.P. took action first, and then he made correspondence with Registrar for obtaining an opinion. Further, the remaining investigation like search and seizure in respect of more packets and machinery used for preparing and printing packets was made by Police Inspector and not by Dy. S.P. In view of the scheme of the Act and aforesaid specific mention in Section 115(4) of the Act, this Court holds that the provision of Section 115(4) is mandatory in nature." (emphasis supplied)*

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# Relevant Judicial Decisions

**Priya Srivastava Vs. State of Madhya Pradesh and others [MCRC - 12998/2018, MP High Court] Judgment dated December 4, 2019 [Single Judge Bench]**

*" 17. Thus, if the Police has carried out the search without obtaining the opinion of the Registrar, then at the best, it can be said to be an irregularity. Further, it appears that there is a direct conflict between Section 115(4) and its proviso. Section 115(3) of Act, 1999 provides that the offence under Sections 103, 104, 105 shall be cognizable and Section 115(4) of Act, 1999 provides that if a police officer not below the rank of Dy. S.P. 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, where as proviso to Section 115(4) of Act, 1999 provides that before making any search and seizure, the police officer shall obtain the opinion of the Registrar. If the provisions are read as they are, then it would appear that before making search and seizure, the police officer, is required to obtain opinion of the Registrar, whereas as per Section 115(4) of Act, 1999, the police officer can seize and search if he is satisfied that any of the offences referred in Section 115(3) of Act, 1999 has been, is being, or is likely to be committed…."*

# Relevant Judicial Decisions

**Priya Srivastava Vs. State of Madhya Pradesh and others [MCRC - 12998/2018, MP High Court] Judgment dated December 4, 2019 [Single Judge Bench]**

*"... Without effecting the seizure, the police officer, cannot send any article to the Registrar for its opinion and if proviso to Section 115(4) of Act, 1999 is given effect, then the Police cannot make seizure without the opinion of the Registrar. Therefore, if plain interpretation is given to Section 115(4) and its proviso, then there appears to be "head on collision" between two provisions. It is well established principle of law that any interpretation which lead to "head on collision" should be avoided" (emphasis supplied)*

# Relevant Judicial Decisions

**Sri. Manjunatha M.S. Vs State By Arisikere Town Police and Anr. [Criminal Petition No. 1620 OF 2017 (482)]- Judgment dated July 8, 2024 [Single Judge Bench]**

*"11.10…it is clear that the obtaining of the opinion from the Registrar of Trademarks as required under the proviso to Subsection (4) of Section 115 of the TM Act have been held not to be mandatory and further, a violation thereof has been held to be an irregularity which cannot be set aside unless a failure of justice has been occasioned which would have to be established during the course of trial." (emphasis supplied)*

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# Relevant Judicial Decisions

**Sri. Manjunatha M.S. Vs State By Arisikere Town Police and Anr. [Criminal Petition No. 1620 OF 2017 (482)] Judgment dated July 8, 2024 [Single Judge Bench]**

*"11.4 ...Though the seizure has occurred without obtaining an opinion from the Registrar of Trademarks since, the complaint itself was registered under section 63 of the Copyright Act, I am of the considered opinion that it was not mandatory for the concerned Police officer at that stage to comply with the proviso to Subsection (4) of Section 115 of the TM Act. It is only during the course of investigation when the items were seized that it came to light that offences under Sections 103, 104 and 105 of the T.M. Act had been complied with. By that time the raid being in progress, search and seizure being effected could not be stopped and opinion from the Registrar of Trademark sought for to comply the requirement of proviso to Subsection (4) of Section 115 of the TM Act. Thus, I am also of the opinion that the non obtainment of the opinion from the Registrar of Trademarks is only an irregularity which does not go to the root of the investigation but, shall however, be subject to the accused establishing during the course of trial that such irregularity has occasioned failure of justice and in such an event, the trial court would be well within its power to dismiss the complaint." (emphasis supplied)*

# Conclusion

- Courts have differed on whether obtaining the Registrar's opinion under Section 115(4) of the Act is mandatory or merely procedural.
- Some judgments treat the requirement as mandatory, while others view non-compliance as a procedural irregularity that does not vitiate the search.
- The key to resolving this conflict lies in understanding the legislative intent behind the proviso to Section 115(4) of the Act.
- Interpreting the requirement as procedural, not mandatory, maintains a balance between preventing arbitrary action and ensuring practical efficiency in investigations. This balanced approach suggests that the law should be applied in a way that serves its fundamental purpose to secure justice rather than being used to invalidate legitimate searches on mere technical grounds. It upholds the integrity of the process without sacrificing its effectiveness.

# THANK YOU!

# Questions?

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