

## BALANCING IP ENFORCEMENT WITH PROCEDURAL JUSTICE: INSIGHTS FROM MANJUNATHA M.S. V. STATE

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### Abstract

*Recently, the Karnataka High Court passed a judgement adjudging that the requirement of obtaining the Registrar's opinion before conducting search and seizure operations is only directory and not mandatory, and a failure to do the same is only an 'irregularity' and not a fatal mistake of law. In this case, the complaint was incorrectly registered under Section 63 of the Copyright Act rather than under Section 115(4) of the Trade Marks Act to bypass the procedural requirement. This case comment critically analyses the judgement, and reviews the language and legislative intent behind the provision, highlighting the judge's misinterpretation of the section. Additionally, it examines the judicial interpretation of procedural safeguards in intellectual property enforcement under the Trade Marks Act, 1999. Moreover, the comment entails a discussion of the High Courts' inherent power under Section 482 of the Code of Civil Procedure and the abuse of due process of law. The comment calls for the Hon'ble Supreme Court to address this judicial ambivalence and clarify the mandatory nature of procedural requirements in IP cases. A Supreme Court ruling affirming the Registrar's opinion as essential would not only standardise judicial interpretation across jurisdictions but also reinforce the principles of fairness and due process under Article 21 of the Indian Constitution. The distinction between "procedure established by law" and "due process of law" has been appropriately covered. By resolving this judicial ambivalence, the Supreme Court could reaffirm the importance of procedural integrity in criminal intellectual property enforcement and enhance public trust in the legal system's commitment to justice.*

**Keywords:** Trademark, Enforcement, Procedure, Constitutionality, Misinterpretation.

### 1. Introduction

*"The history of liberty has largely been the history of the observance of procedural safeguards."* This quote by Justice Felix Frankfurter delivered in *McNabb v.*

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*United States*<sup>1</sup> in the context of following procedures established by law and not abusing the due process of law has echoed its way through numerous jurisprudences. The case highlighted the critical role of procedural safeguards in protecting individual rights and administering justice on equity grounds. A similar stance has been taken by Lord Denning in *Goldsmith v. Sperrings Ltd.*<sup>2</sup> where he remarked on the abuse of legal process by stating that: “If the court finds that its process is being abused, it has the power to stop it. It has the inherent power to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it or would otherwise bring the administration of justice into disrepute.” These lines underscore the judiciary’s role in preventing procedural abuse while balancing fairness. In Indian jurisprudence, this concept arose in *Maneka Gandhi v. Union of India*,<sup>3</sup> where Justice P.N. Bhagwati accentuated the importance of fairness and the role of discretionary powers, especially in restricting personal liberty, that must be exercised with a high level of judicial scrutiny.

The present case brings the intersection between intellectual property (IP) and criminal law with a pinch of jurisprudence. The case dealt with abuse of due process of law in the context of trademark infringement. The judgement, *inter alia*, underlines the significance of adhering to procedural safeguards in criminal IP enforcement and the role of judicial discretion in tackling the abuse of due process laid by law.

## 2. Background of the case

The case pertains to the issue of trademark infringement, where it was alleged that the respondent had abused the process of law by falsifying and applying a false trademark concerning goods sold by the petitioner. The petitioner is involved in the business of the sale of gram flour under the brand name of “MRS Ganpati”. An FIR was registered, and pursuant to this, a search investigation was conducted on the premises of the petitioner. Following this, a chargesheet was prepared against the petitioner for the offences punishable under Sections 482, 483 and 420 of the Indian Penal Code (IPC)<sup>4</sup> which is now replaced by Section 345, 347 and 318 of the Bharatiya Nyaya Sanhita (BNS)

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<sup>1</sup> 318 U.S. 332 (1943).

<sup>2</sup> [1977] EWCA Civ. J0223-1.

<sup>3</sup> 1978 INSC 16.

<sup>4</sup> The Indian Penal Code, 1860 (Act 45 of 1860), ss. 482, 483, 420; The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 345, 347, 318.

read with Sections 102, 103 and 104 of the Trade Marks Act, 1999.<sup>5</sup> The petitioner has challenged the same through this petition before the court.

The main question before the Court was whether the police could circumvent the procedural protections provided by Section 115(4) of the Trade Marks Act, 1999,<sup>6</sup> which requires that the Registrar of Trade Marks' opinion be obtained before conducting a search and seizure, to enforce trademark infringement. The legitimacy of the proceedings was questioned due to the non-compliance with this procedural requirement. It was up to the Court to decide whether the procedural error of ignoring the Registrar's opinion was a serious flaw or just an anomaly. The petitioner contended that to get around more stringent procedural requirements, the complaint was brought under the wrong provisions that is, the Copyright Act rather than the Trade Marks Act. It posed a question whether this kind of deliberate misfiling was an abuse of process that needed to be addressed by the courts. The fundamental right to liberty under Article 21 of the Constitution, which stipulates that any impairment of personal liberty must adhere to "just, fair, and reasonable" procedures, and the necessity to protect trademarks from counterfeiters is at the heart of this issue.<sup>7</sup>

This highlights the significance of procedural protections in IP enforcement, reiterating that, even though prompt action against counterfeit goods is required, due process must be respected. This case contributes to the debate over whether these protections ought to be considered obligatory or whether there are some situations that call for forbearance.

### **3. The Mandate of Section 115(4) of the Trade Marks Act**

Section 115(4) of the Trade Marks Act, corresponding to Section 64 of the Copyright Act, 1957<sup>8</sup> provides that a police officer not below the rank of deputy superintendent of police or equivalent has the power to search and seizure without a warrant the goods involved in committing the offence, as described under Section 103, 104 and 105 of the Act. Moreover, Rule 110 of Trade Mark Rules, 2002 also provides for

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<sup>5</sup> The Trade Marks Act, 1999 (Act 47 of 1999), ss. 102, 103, 104.

<sup>6</sup> *Id.*, s. 115(4).

<sup>7</sup> The Constitution of India, art. 21.

<sup>8</sup> The Copyright Act, 1957 (Act 14 of 1957), s. 63.

the opinion of the Registrar in search and seizure cases.<sup>9</sup> This provision is succeeded by a *proviso* clause stating that the concerned officer shall obtain the opinion of the Registrar on the matter and abide by the given opinion. In construing a section full and natural meaning should be given to the *proviso*.<sup>10</sup> It is a fundamental rule of construction that a *proviso* clause must be considered with relation to the principal matter to which it stands as a *proviso*.<sup>11</sup> Discussing the function of a *proviso*, the Supreme Court has held that a *proviso* can impose certain mandatory conditions to be fulfilled.<sup>12</sup> Consequently, the use of such clause in Section 115(4) imposes a mandatory duty on the part of the police officer to obtain the opinion of the Registrar.

Another term used in the section is the word 'shall'. The use of the word 'shall' have *prima facie* held to be ordinarily mandatory, but whether it casts a mandatory or directory effect has to be determined through the context in which it has been used and the purpose which it seeks to serve.<sup>13</sup> Interpreting Section 115(4) of the Act, the existence of *proviso* clause indicates that the legislature intended that the sub-section to have a mandatory effect. This clause aims to prevent unauthorised searches and seizures by guaranteeing that enforcement activities are supported by expert verification. Police may conduct arbitrary searches and seizures and result in unjust prosecution if they disregard the Registrar's opinion. It is a settled principle that to determine whether a provision is directory or mandatory, courts should consider the consequences of non-compliance to the said provision.<sup>14</sup> For instance, if the language of the section is interpreted to be a directory, implying that the police officer need not obtain the opinion of the Registrar, it would open floodgates of false search and seizure cases, thereby the consequences of such an insincerity interpretation would be fatal. Therefore, this is a mandatory provision of law and if there is a contravention of the same, it would make the search and seizure illegal and bad in the eye of the law. Any departure in this regard shall be interpreted as an illegality, and not merely as an irregularity.<sup>15</sup> The concerned *proviso* certainly acts as a condition precedent for holding a search by the police officer and contrary to doing the

<sup>9</sup> The Trade Mark Rules, 2002, Ministry of Commerce & Industry (Department of Industrial Policy).

<sup>10</sup> A.B. Kafaltiya, *Interpretation of Statutes* 151 (Universal Law Publishing Co., Delhi, 2008).

<sup>11</sup> Maxwell, *Interpretation of Statutes* 189 (LexisNexis, 12<sup>th</sup> edn., 1969).

<sup>12</sup> *S. Sundaram Pillai v. V.R. Pattabhiraman*, AIR 1985 SC 582.

<sup>13</sup> Avtar Singh and Harpreet Kaur, *Introduction to Interpretation of Statutes* 164 (LexisNexis, 4<sup>th</sup> edn., 2014).

<sup>14</sup> *Madhavan v. Excise Inspector*, (2000) Cri LJ 1636.

<sup>15</sup> J.S. Sarkar, *Sarkar on Trade Marks Law and Practice* 483 (Kamla Law House, Calcutta, 5<sup>th</sup> edn., 2008).

same goes against the procedure established by law.<sup>16</sup> It is also safe to say that if the search and seizure have been performed without obtaining the consent of the Registrar, it would render the search and seizure to be *void ab initio*, giving a right to the aggrieved party to claim injury compensation occurred due to such malicious operation.

In the instant case, by treating Section 115(4) of the Act as a directory provision, the judgement appears to have overlooked the explicit wording of the *proviso*, which uses the word “shall,” typically signifying a mandatory requirement. The condition should have been viewed as mandatory due to the possibility of arbitrary action or unfair prosecution in the absence of the Registrar’s opinion. The purpose of the proviso in Section 115(4), which is to guarantee that police operations in IP infringement cases are backed by expert verification, was not adequately addressed by the ruling. Additionally, the court’s reliance on the Rajasthan High Court’s decision in *Shivlal v. State of Rajasthan*<sup>17</sup> was misplaced. As IP offences under the Trade Marks Act are cognizable, which enables police to investigate and take action, the court in *Shivlal* decided that police actions could be supported even in the absence of the Registrar’s opinion. This method, however, ignores important differences between the current case and the *Shivlal* case. Section 115(4) of the Act adds a particular procedural requirement that is only applicable to trademark enforcement proceedings, in contrast to *Shivlal*, where the Court adopted a general interpretation of police powers under Sections 154 and 156 of the CrPC (now Section 173 and 175 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)).

The Karnataka High Court should have followed the precedent laid under *Pitambar Industries v. State of Madhya Pradesh*,<sup>18</sup> where the Rajasthan High Court held that a search and seizure conducted by the police officer without gaining the opinion of the Registrar is illegal and without jurisdiction. There appears to be a clear uniformity whether obtaining the opinion of the Registrar is mandatory or not due to these contradicting judgements. However, the author opines that the provision to obtain the opinion is *sine qua non* to Section 115(4). Since it is a condition precedent under the section that directly affects trademark proceedings and supersedes general CrPC laws by virtue of the concept that “specific provisions prevail over general provisions,” the failure

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<sup>16</sup> *Id.*

<sup>17</sup> (2013) 3 Cri. LR (Raj).

<sup>18</sup> (2018) MP LJ 691.

to acquire the Registrar's opinion as required by Section 115(4) cannot be ignored.<sup>19</sup> Furthermore, the statutory justification for requiring the Registrar to provide expert verification is not sufficiently addressed in the *Shivlal* case. In actuality, by ignoring the Registrar's responsibility to maintain procedural justice, reliance on *Shivlal* in this instance essentially negates the protection provided by Section 115(4).

#### 4. Judicial Discretion under Section 482: Inherent Powers or Inherent Abuse

Section 482 of the CrPC (now Section 528 of BNSS) has to be exercised in exceptional circumstances where a grave abuse of process of law has occurred.<sup>20</sup> The provision grants an inherent power to the High Courts to quash a proceeding to prevent abuse of the process of any court to meet the ends of justice. In this spirit, the Supreme Court has ruled that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482.<sup>21</sup> Moreover, if the police have overstepped their jurisdiction or outrightly neglected to follow the procedure laid under an Act, the High Court has an inherent power to intervene.<sup>22</sup>

The instant case presents a stark conservative approach to the utilisation of inherent powers under the BNSS. The quashing is appropriate when there is a legal bar against continuing proceedings, or when the complaint, even if taken at face value, does not constitute an offense. By bypassing this mandatory safeguard, the investigating authorities undermined a critical procedural step designed to prevent arbitrary and wrongful actions. Here, the High Court could have invoked Section 482 to quash the proceedings, reasoning that the absence of the Registrar's opinion negates a key element of the lawful procedure for initiating a trademark infringement investigation. Given the explicit nature of the requirement and the use of the term "shall," the High Court could have applied Section 482, interpreting the lapse as a fundamental flaw in the process.

Section 482 also empowers the High Court to step in when there is clear overreach or misuse of authority by investigative agencies, which is apparent in the current case. Here, the police acted without the mandatory safeguard, conducting search

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<sup>19</sup> *State of U.P v. M/S. Agarwal Brothers & Anr.*, (2007) ALL LJ (6) 14.

<sup>20</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 482.

<sup>21</sup> *State of Maharashtra v. M. Devendrappa*, AIR 2002 SC 671.

<sup>22</sup> *State of Haryana v. Bhajan Lal*, 1990 INSC 363.

and seizure operations without consulting the Registrar. This overreach grants a rightful authority where the High Court has the inherent power to intervene to prevent wrongful exercise of authority, especially when procedural non-compliance exposes the accused to potential harm. It is a well settled principle that proceedings can be quashed if it is evident that there is existence of a legal bar against its continuation or institution.<sup>23</sup> The Karnataka High Court had erred while deciding that there's no need to invoke the inherent powers of the court. The flaw in their reasoning was to assume that the investigation conducted was merely an irregularity and not a fatal disregard to the statute. However, the provision explicitly stated that obtaining the opinion was essential, and bypassing such rule results in abuse of the process of law, thereby warranting the High Court to invoke its inherent powers under Section 482 of CrPC. By categorizing this requirement as directory, the court undermines the procedural rigor that the legislature intended, potentially inviting a broader disregard for statutory protections in IP enforcement cases.

The Court's reluctance to exercise its powers under Section 482 CrPC is problematic, as the doctrine of abuse of process specifically exists to prevent exactly this kind of procedural bypass. Section 482 empowers High Courts to quash proceedings where there has been a grave abuse of process or a significant procedural violation. Here, the failure to obtain the Registrar's opinion constitutes an abuse of process, as it disregards a fundamental procedural safeguard. This departure from statutory procedure compromises the legitimacy of the proceedings, making Section 482 CrPC the appropriate tool to address this lapse. By not viewing the omission of the Registrar's opinion as a mandatory failure, the court opens the door for law enforcement agencies to bypass essential procedural safeguards, increasing the risk of arbitrary actions and unverified prosecutions. By refraining from quashing the proceedings, the court implicitly condones procedural shortcuts that can compromise the fairness of enforcement actions. Therefore, the court substantially departed from the original intention of Section 482, i.e., to grant inherent powers to the High Court and instead caused inherent abuse of the procedure established by law.

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<sup>23</sup> *Id.*

## 5. Beyond Legislation: Importance of due process in Justice

Article 21 of the Indian Constitution provides for personal liberty to all without deprivation to anyone except according to procedure established by law.<sup>24</sup> The phrase *procedure established by law* has a very interesting story of its introduction under the Indian Constitution. When B.R. Ambedkar went to USA, he met Justice Frankfurter, whose quote on procedural justice has been the starting point of this comment. He advised against the use of the term *due process of law* and suggested he incorporate procedures established by law in the Constitution to avoid the uncertainties that arose in the USA. However, the *Maneka Gandhi* case reversed this stance and we have been following due process of law ever since. The word *due* has been interpreted to mean just, fair and reasonable.<sup>25</sup> Therefore, a law can be declared unconstitutional if it acts against these principles. Justice Fazl Ali held that whatever *procedure established by law* may mean, it must include: (i) notice; (ii) an opportunity to be heard; (iii) an impartial tribunal; and (iv) an orderly course of procedure.<sup>26</sup>

However, in the current judgment, the court downplays the significance of obtaining the Registrar's opinion before initiating a search and seizure. This safeguard is not a mere technicality or 'irregularity' as interpreted by the judgement, but a procedural step that is central to ensuring fairness, as it adds a layer of expert verification before the exercise of enforcement powers. By interpreting this procedural safeguard as a directory rather than mandatory, the court overlooks the need for a "fair and reasonable" process and risks arbitrary enforcement actions, thus deviating from the evolved interpretation of Article 21.

Justice Frankfurter's advice to adopt *procedures established by law* aimed to prevent uncertainties and avoid arbitrary interpretation, as seen in due process-based systems. Yet, this judgment introduces uncertainty into IP enforcement procedures by creating inconsistency in the application of statutory requirements. The *AK Gopalan* case was overruled due to the same reason that a fair, reasonable and just process of law must be performed otherwise the legislature or the executive can exceed the fundamental rights available to the citizens. Justice Fazl Ali's view on the *procedure established by law*

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<sup>24</sup> *Supra* note 7.

<sup>25</sup> M. P. Jain, *Indian Constitutional Law* 1403 (Kamal Law House, Calcutta, 5th edn., 1998).

<sup>26</sup> H. M. Seervai, *A Critical Commentary* (EBC, 4<sup>th</sup> edn. 1993).

emphasized essential procedural elements, an orderly procedure. The Registrar's opinion is a vital part of an orderly procedural framework, and its omission risks undermining IP enforcement fairness. It sidesteps a key procedural safeguard intended to ensure that enforcement actions are fair and non-arbitrary, contradicting the requirement for a deliberate and structured approach to protecting rights as envisaged under the catena of judgements and Article 21 of the Constitution, the *suprema lex*.

While Section 482 of the CrPC empowers the court to quash proceedings that constitute an abuse of process, the court in the instant judgement chose not to apply it, despite the failure to comply with a mandatory procedural safeguard. The Court's reluctance to exercise its powers under Section 482 in this case represents a missed opportunity to reinforce procedural standards in IP law enforcement. This leniency could signal those procedural safeguards, particularly those aimed at preventing unjustified or baseless actions, are not critical, which weakens judicial oversight and the procedural due process framework established by *Maneka Gandhi*. Therefore, stricter adherence to procedural requirements, particularly in cases involving the exercise of executive powers, is essential to uphold constitutional protections and prevent abuse of authority.

Moreover, this discussion should also shift our attention towards abuse of the process of law. The term has been defined as a conduct which although cannot be characterised as *per se* illegal, can cause prejudice or harm towards the party against whom it is aimed.<sup>27</sup> An example of the same can be observed in the present case where to bypass the procedure of obtaining the opinion of the Registrar, the complaint was registered under Section 63 of the Copyright Act, instead of Section 115, where there has been no mention of obtaining such consent. This raises significant concerns regarding procedural justice, especially in IP disputes. It also goes against the observation made in *Cisco Technology, Inc. v. Santosh Tantia*<sup>28</sup>, where the court discussed the implications of following wrongful procedures in IPR cases. However, despite some attention to this area, there still lacks clear standards for preventing such forms of procedural abuse.

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<sup>27</sup> Pika Maxmillian, "Gambarini Camilla," *Jus Mundi*, available at: <https://jusmundi.com/en/document/publication/en-abuse-of-process> (last visited on November 04, 2024).

<sup>28</sup> 2014 (59) PTC 356 (Del).

Referring again to the statement given by Lord Denning on the abuse of process as already mentioned, courts have the power to correct such abuse and ensure procedural justice to the aggrieved party. Lord Denning emphasised that such procedural abuse must be curbed to preserve fair judicial processes. This leads to propose some suggestions for the same to ensure that the letter of law is not misused and the intent of such letter is realised.

### **6. Policy Suggestions**

As it has been continuously stated throughout the comment, clarifying the mandatory nature of the Registrar's opinion would resolve judicial inconsistencies and reinforce procedural integrity. Given these divergent views, the matter warrants urgent attention from the Hon'ble Supreme Court to resolve the judicial ambivalence and establish a consistent interpretation of this matter. This would serve multiple purposes as it would restore coherence on the issue and reinforce the principles as laid under Article 21. Secondly, to improve procedural integrity in IP enforcement, the legislature can bring an amendment to Section 115(4) of the Trade Marks Act that could explicitly require obtaining the Registrar's opinion in all IP-related criminal investigations. A change in Trade Mark Rules, 2002 can also be brought to make it mandatory. This policy would reduce the risk of arbitrary or wrongful enforcement by guaranteeing searches are backed by expert input. However, the added bureaucracy may slow down urgent cases that require swift action. This reform would foster a fairer judicial process, although it may introduce additional administrative costs for IP enforcement agencies.

Thirdly, to address the practice of filing complaints under the wrong sections by police officers, providing specialized training for law enforcement officers on IP law and procedural safeguards could significantly reduce procedural abuses. The root cause behind such mistakes is the lack of training among police personnel in the field of IPR as they are mainly trained in traditional offences, such as murder and cheating. With specialised training sessions on IPR and related fields, officers would better understand IP laws and the procedural requirements involved, leading to more accurate and fair enforcement. Nevertheless, implementing training on a large scale could be resource-intensive, especially in rural or understaffed jurisdictions. Despite the initial investment, this approach would enhance procedural compliance over time, reducing the likelihood

of wrongful prosecutions and improving overall enforcement efficiency. Fourthly, an independent oversight body dedicated to monitoring IP enforcement could be established to ensure compliance with procedural safeguards, not only limited to the mandatory Registrar's opinion. Such an entity would add accountability and deter procedural abuses by enforcing adherence to these requirements. Lastly, a time-bound mechanism for the Registrar's office to deliver opinions could be introduced. This policy would ensure that procedural protections do not delay necessary enforcement actions, helping prevent potential abuses while enabling prompt intervention in IP disputes.

### **7. Conclusion and Way Forward**

The Karnataka High Court through this case has established not only a wrong precedent but has disturbed the rule of uniformity in law which is the basic rule in common law countries. The judgment's interpretation, treating the Registrar's opinion as merely a directory, represents a departure from the clear legislative intent of the Trade Marks Act, which seeks to protect against arbitrary and unjustified enforcement actions. Moreover, the case presents a remarkable intersection of criminal and intellectual property law, and also jurisprudence and administrative law by bringing the discussion on the abuse of the process of law. Ultimately, upholding these safeguards strengthens public trust in the legal system and fortifies the balance between effective IP enforcement and protection of individual rights.