

AFR

Court No. - 2

Case :- CRIMINAL MISC. WRIT PETITION No. - 7632 of 2022

Petitioner :- Brijesh @ Bhola

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Pankaj Goswami

Counsel for Respondent :- G.A.

Hon'ble Dr. Kaushal Jayendra Thaker,J.

Hon'ble Gautam Chowdhary,J.

Heard learned counsel for the petitioner and learned A.G.A. for the State.

By way of this petition, the accused-petitioner prays for quashment of the impugned first information report dated 15.01.2022 registered in Case Crime No.0028 of 2022 under Sections 420, 468, 469, 481, 482, 483, 485, 486, 487, 488 I.P.C., Section 63, 65 of Copy Right Act (Amendment) 1957 and Sections 103, 104 of Trade Mark Act, 1999, Police Station Tajganj, District Agra and also for staying his arrest in respect of the aforesaid first information report.

Learned counsel for the petitioner submits that neither there is infringement of Copy Right (Amended) Act 1957 nor Trade Marks Act, 1999 and due to business rivalry, the respondent no.4 has lodged the F.I.R. when in fact, the petitioner has nowhere used the name of Panchi Petha, which is the firm of the respondent no.4. He further submits that the learned Magistrate has allowed the application under Section 156 (3) Cr.P.C. which has resulted into lodgement of the impugned F.I.R. He further argued that the petitioner has been falsely implicated on the ground that he is running a business of Petha and Dalmoth in the name and style of Petha Dalmoth without using the trademark of Panchi Petha. Learned counsel has next argued that prior to running of aforesaid business by the

petitioner, the petitioner was working as a Manager in the firm of Panchi Petha since 2015 to 2020, whereas the petitioner started his own business after the lockdown in the country. It is lastly argued that since the petitioner was working as Manager in the firm of Panchi Petha, thereafter started his own business, due to which the petitioner has been falsely implicated in the present case.

We have perused the documentary evidence. Panchi logo on the petitioner's firm before the word "Petha" give us impression that the firm is representing "Panchi Petha", which is the firm of the respondent no.4. This fact prima facie can very well be ascertained with the photograph annexed at page 30 and 32 of the paper book. Therefore, we cannot entertain this petition, as it cannot be said that no prima facie case is made out. The exercise of extra-ordinary writ jurisdiction under Article 226 of the Constitution of India cannot be exercised against the petitioner. We fortified our view in view of the judgement of Hon'ble Apex Court in the matter of *Arun Bhandari Vs. State of U.P. and others reported in 2013 (2) S.C.C.*

In that view of the matter, the present writ petition is devoid of merit and is dismissed.

Order Date :- 21.6.2022/S.Ali