

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.36935, 38143, 38147,
38163, 38165 and 38258 of 2017

COMMON ORDER

Heard Sri Rajagopalavann Tayi and Sri B.Venkateswarlu for petitioners, learned Government Pleader for Home and Sri Sharad Sanghi for 6th respondent.

The prayers in these writ petitions are substantially similar. With the consent of counsel, the writ petitions are disposed of by this common order.

For brevity, the averments and prayer together with written instructions in W.P.No.36935 of 2017 are referred to.

The petitioner prays for the following relief :-

“.... to issue an appropriate writ or direction, more particularly a Writ in the nature of Mandamus declaring the action of the respondents No.2 to 4 in harassing and threatening to close the business of the petitioner running in the name and style of Maa santosh Dhaba situated beside Saboo Maruthi Showroom, Somajiguda, Hyderabad, is illegal, arbitrary and unconstitutional and subsequently direct the respondents No 2 to 4 not to interfere with the business activity of the petitioner Maa Santosh Dhaba situated beside Saboo Maruthi Showroom, Somajiguda, Hyderabad and also direct the respondents not to remove the names affixed to the petitioner's business entity...”.

From the averments in the writ affidavit, it appears the 6th respondent is doing business in catering and hospitality services under the name and style 'Maa Santosh Dhaba'. The petitioner has started a hotel under the name and style 'Maa Santosh Dhaba'.

The 6th respondent filed complaint before the Deputy Commissioner of Police, Detective Department, CCS, Hyderabad-2nd respondent and the complaint is registered as FIR No.158 of 2017. Now the area of dispute between the parties is mode and manner of investigation undertaken by respondents 2 to 5. The objection of petitioner is that the respondents 2 to 5 are interfering with the business activity of petitioner or assisting 6th respondent in physically preventing the petitioner from carrying on trade or business. Such procedure followed by respondents cannot and could not be treated as part of investigation. Hence, the writ petition.

The Government Pleader (Home) referring to written instructions, dated 06.11.2017, submits that respondents 2 to 5 are investigating crime, which they are entitled to and whatever has been done during and in the course of investigation is only to collect the evidence on the allegations, for which charge-sheet is filed.

The Government Pleader specially relies on the following paragraphs in the written instructions, dated 06.11.2017, which read as follows:-

“It is submitted that the allegation of the petitioner that the official respondents visited the premises of the petitioner business on 30.10.2017 initially and started harassing him by closing down the shutter and also by removing the name of the petitioner business entity which is affixed without any right and that the official respondents accompanied by anti social elements of around 30 members barged into the petitioner entity on

30.10.2017 and taken away the billing equipment, stamps, computer and menu card is absolutely false and hence denied. Infact, the investigating officer along with the staff visited the business of the petitioner herein on 31.10.2017 and seized the above items by conducting panchanama in the presence of mediators.

It is pertinent to submit that the averments made in the affidavit are the part and parcel of the investigation in Cr.No.158/2017, for which, a detailed investigation is going on from all angles. It is pending for want of examination of some more witnesses and for collection material evidence to establish the offences against all the accused in the FIR. When the investigation is at the crucial stage in collecting the material evidence, at this juncture, if any orders/directions are passed, taking advantage of the same, the petitioners may not cooperate with the investigating agency, thereby fair and proper investigation cannot be conducted by the investigating agency.

and submits that the police will not mix up the investigation of present crime either by interfering with the activity of petitioner or interfering in the civil dispute.

Mr.Sharath Sanghi appearing for 6th respondent submits that the 6th respondent is a registered trade mark of Santosh Dhaba and the complaint given by 6th respondent makes out a cognizable offence against petitioners. Therefore, no exception to the crime registered by respondents 2 to 5 can be taken. He denies the allegation that the 6th respondent is taking the assistance of police in any manner in physically preventing the petitioner from carrying on business.

I have perused the record and noted the submissions of counsel appearing for parties.

Admittedly, the petitioner and the 6th respondent are locked in a trade mark dispute. The 6th respondent is of the view that alleged infringement of registered trade mark constitutes an offence, hence filed complaint before 2nd respondent, the same is registered as Cr.No.158 of 2017. This Court while disposing of the writ petitions is not restricting the discretion of Investigating Officer to investigate the crime registered by the police. But, in the process of investigation, it is required to be noted that the officers ought not to interfere with the business activity of petitioner except in a manner known to law, as at present, it is not the case of any of the parties that there is a prohibitory order against the petitioner or that the police are asked to render assistance in furtherance of such an order. Be that as it may, as the infringement of registered trade mark is not the subject matter of this writ petition, further deliberation on this aspect is not taken up.

Keeping in view the submissions of Government Pleader, I am satisfied the writ petitions can be disposed of by this order.

(a) The alleged trade mark infringement dispute between petitioner and 6th respondent is not considered by this Court and it is for the competent Court to examine and decide.

(b) The statement of respondents 2 to 5, as excerpted above, is accepted and it is made clear that during and in the course of investigation, the Investigating Agency shall not physically prevent or obstruct the petitioner from carrying on the business except in the manner known to law.

(c) All the assertions and denials of petitioners and 6th respondent in this behalf are left open for consideration in a properly instituted suit or proceeding.

With the above observations, the writ petitions are disposed of accordingly. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 15-11-2017
Prv

S. V. BHATT, J

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