

CRM No.M-95 of 2018

{1}

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No.M-95 of 2018
Date of decision:05.01.2018

Vishvajeet Sharma

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Deepanshu Mehta, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Notice of motion.

Mr. I.P.S.Doabia, Additional Advocate General, Punjab accepts
notice on behalf of the respondent-State.

Contention of the petitioner in the present petition is that
petitioner-Vishvajeet Sharma being Director of the Company-M/s Teleone
Consumers Product Private Limited has falsely been implicated in FIR
No.08/2017 dated 13.06.2017 under Sections 420, 120-B IPC and 66-D I.T.
Act, registered with P.S Punjab State Cyber Crime, S.A.S.Nagar, Punjab at
the instance of Manish Grover, wherein, it has been alleged that a product
namely 'Divya Kit' which was developed by the complainant being sold in
the market through various advertisements, whereas, the petitioner-accused
being Director of the Company, *ibid*, is selling the same product by taking
the screen shots of the websites and helpline phone numbers mentioned on

the website of the complainant.

Apprehending arrest at the instance of the police, the petitioner filed anticipatory bail application before the concerned Court which was taken up on 12.12.2017 (Annexure P-2) and following order was passed:-

“Vishvajeet Sharma Vs. State (BA-2096-17)

*Present: Sh. Anil Sharma, Advocate, counsel for
petitioner/applicant.
Sh. S.S.Sahota, Addl.PP for State-respondent.*

Police record produced by SI Sandeep Kumar. As per allegations contained in the FIR, the complainant had developed a product, namely, 'Divya Kit', which was being sold by him. The petitioner allegedly sold the product manufactured and registered by the complainant by mentioning their phone numbers on the website.

It is submitted by ld. Counsel for the petitioner that the product which is being sold by the petitioner is no 'Divya Kit' but it is 'Divya Jiwan Kit'. No cheating has been committed by the petitioner. He is ready to join the investigation, so he may be admitted to pre-arrest bail.

On the other hand, it is submitted by ld. Addl. PP assisted by Sh. Amarpreet Singh, Advocate that the petitioner is selling the product of complainant and not some other product. He has caused financial loss as well as loss to the goodwill of the complainant. The custodial interrogation of the

petitioner is required for further investigation of the case, as such, present bail application may be dismissed.

Heard. File perused.

Keeping in view the facts and circumstances to this case, petitioner is directed to join investigation on 15.12.2017 at 10.00 a.m. In the event of his arrest, he shall be admitted to interim bail by the I.O to his satisfaction and subject to the fulfillment of the provisions of Section 438(2) Cr.P.C. Police record be produced on 18.12.2017.

(Jaswinder Singh)

ASJ/Mohali/12.12.2017

*Date of order 12.12.2017
Neeraj”*

Though the reference has also been made to Registration of Trade Mark under the Trade Marks Act, 1999 (Annexure P-3). However, on the adjourned date, the matter was taken up by other Additional Sessions Judge, namely, Sh. Puneet Mohan Sharma and the factum of which was not in the knowledge of the petitioner nor his newly engaged counsel, thus resulted into dismissed-in-default of the anticipatory bail application on 22.12.2017. He submits that the petitioner has been prevented from putting across his case as pleaded in the bail application and other grounds to be argued at an appropriate stage and time. He further submits that he may be given an opportunity of hearing before the competent Court, in accordance with law.

Mr. I.P.S.Doabia, learned Additional Advocate General, Punjab submits that the petitioner is at liberty to move an application for recalling of the order dated 22.12.2017, whereas, counsel for the petitioner has referred to the provisions of Section 362 of Code of Criminal Procedure which prohibit the Judge from recalling of the order.

In rebuttal, learned counsel for the petitioner also submits that the bail application cannot be dismissed in default, at the best, the matter could have been decided after hearing the public prosecutor.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the impugned order dated 22.12.2017 which reads thus:-

“Vishvajeet Sharma Vs. State

*Present: None for the petitioner.
 Sh. Manjit Singh, Addl.PP for the State.
 Sh. Amanpreet Singh, Adv. Counsel
 for the complainant.*

None appeared on behalf of the petitioner. Since morning case has been called several time during the day. It is already 4 PM now. It seems that applicant is not interest in this bail application. Therefore, the present bail application is ordered to be dismissed in default and the interim relief is ordered to be vacated. File be consigned to the record room.

Pronounced in Open Court

*(Puneet Mohan Sharma)
ASJ-SAS Nagar*

UID No.PB0167

*Date of order 22.12.2017
jyoti”*

On conjective reading of the interim order and impugned order aforementioned, I am of the view that learned Additional Sessions Judge ought not to have dismissed the anticipatory bail application for non-prosecution . At the best, it should have been decided on merit.

Be that as it may, without commenting upon the merits and demerits of the matter, I am of the view that the petitioner should be given a chance to project his case before the concerned Judge, particularly in view of the interim order as according to the petitioner, the matter is with regard to some violation of trade mark or a case of “Passing Off”.

Resultantly, the impugned order dated 22.12.2017, is set aside and anticipatory bail application bearing No.BA/3713/2017 is ordered to be restored to its original number.

The parties and complainant are directed to appear before the Sessions Judge, SAS Nagar on 08.01.2018, who will either himself hear the case or assign it to anyone else.

Petition stands disposed of.

Till 08.01.2018, arrest of the petitioner is ordered to be stayed.

(AMIT RAWAL)
JUDGE

January 05, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No