

*

HIGH COURT OF DELHI : NEW DELHI

Date of Decision : 18.11.2011

CRL.M.C. 208/2002

Ramzani Petitioner
Through: Mr. L. K. Singh, Adv.

Versus

Nizamuddin & Anr. Respondents

Through: Mr. S. C. Bhuttan Adv., Mr.
Navin Sharma, APP, Mr. Shivji
Singh, SI, P.S. Tilak Marg, Delhi.

CRL.M.C. 209/2002

Ramzani Petitioner
Through: Mr. L. K. Singh, Adv.

Versus

Nizamuddin & Anr. Respondents
Through: Mr. S. C. Bhuttan Adv., Mr.
Navin Sharma, APP, Mr. Shivji
Singh, SI, P.S. Tilak Marg, Delhi.

CRL.M.C. 210/2002

Ramzani Petitioner
Through: Mr. L. K. Singh, Adv.

Versus

Nizamuddin & Anr. Respondents

Through: Mr. S. C. Bhuttan Adv., Mr.
Navin Sharma, APP, Mr. Shivji
Singh, SI, P.S. Tilak Marg, Delhi.

CRL.M.C. 243/2002

Ramzani Petitioner
Through: Mr. L. K. Singh, Adv.

Versus

Nizamuddin & Anr. Respondents
Through: Mr. S. C. Bhuttan Adv., Mr.
Navin Sharma, APP, Mr. Shivji
Singh, SI, P.S. Tilak Marg, Delhi.

CRL.M.C. 244/2002,

Ramzani Petitioner
Through: Mr. L. K. Singh, Adv.

Versus

Nizamuddin & Anr. Respondents
Through: Mr. S. C. Bhuttan Adv., Mr.
Navin Sharma, APP, Mr. Shivji
Singh, SI, P.S. Tilak Marg, Delhi.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

V.K. SHALI, J.

1. These are five criminal misc. cases for quashing of criminal complaints and the orders passed by the Sessions Court rejecting the application of the petitioner for recalling of the order of summoning. Before I refer to the facts of the cases, I must express my deep anguish that these are five cases in which the complainant happens to be an advocate who was engaged by the petitioner as his counsel with a view to defend him, but the respondent / complainant choose to prosecute the petitioner maliciously with a view to wreak vengeance and to spite him because he was instrumental in exposing the mis-deeds of the advocate.
2. Briefly stated the facts of the case are that a complaint case bearing no. 187/1/1997 titled **Nizamuddin Vs. Ramzani** and two others Smt. Bhagwati Devi and Mohd. Saleem was filed under Section 384/500/506/34 IPC. The petitioner was summoned as an accused in the said case. The petitioner feeling aggrieved by the order of summoning had filed an application u/S 204 Cr.P.C. for dropping of

proceedings against him before the learned Magistrate on 30.09.2000. The said application was rejected by the learned MM.

3. Feeling aggrieved by this rejection, the petitioner had filed a Crl. Rev. P. No. 9/2001 before Sh. R. K. Sharma, the then learned Additional Sessions Judge, Delhi alleging that he was the client of respondent/advocate since 1986-1996. During this period, the respondent was in the habit of extorting money from the petitioner in the name of Presiding Officer/Public Prosecutor. Originally the present petitioner obliged the respondent /complainant by conceding to his illegal demands but at some point of time he resisted these illegal demands. One of the averments made in the petition is that the respondent being an advocate had misused his position by filing as many as 31 complaints against various persons out of which in 21 cases, he had named the present petitioner, as an accused. A detailed table of these cases have been given by the petitioner along with the petitions and the same is

reproduced herein as under:

ANNEXURE-B

S. NO.	PARTICULARS	DATE OF FILING	UNDER SECTION	POLICE STATION	COURT
1	Nizamuddin Vs Ramzani Etc.	20.01.98	323/506/34	Pahar Ganj	Sh. S. S. Malhotra, M.M., Delhi
2	Nizamuddin Vs Ramzani Etc.	09.03.98	323/506/34	Hauz Khas	Sh. S. S. Malhotra, M.M., Delhi
3	Nizamuddin Vs Ramzani Etc.	01.05.98	393	Chandni Mahal	Sh. S. S. Malhotra, M.M., Delhi
4	Nizamuddin Vs Ramzani Etc.	03.07.98	307/506/34	Sadar Bazar	Sh. S. S. Malhotra, M.M., Delhi
5	Nizamuddin Vs Ramzani Etc.	13.11.97	500	Hauz Khas	Sh. S. S. Malhotra, M.M., Delhi
6	Nizamuddin Vs Ramzani Etc.		423/500	I.P. Estate	Sh. S. S. Malhotra, M.M., Delhi
7	Nizamuddin Vs Rizwan Ahmed	12.08.98	365/384/506	Chandani Chowk	Sh. S. S. Malhotra, M.M., Delhi
8	Nizamuddin Vs Ramzani	08.03.99	506	Subzi Mandi	Sh. S. S. Malhotra, M.M., Delhi
9	Nizamuddin Vs Ramzani	07.01.98	323/506/34	Subzi Mandi	Sh. S. S. Malhotra, M.M., Delhi

	Etc.				
10	Nizamuddin Vs Ramzani Etc.		506	Subzi Mandi	Sh. S. S. Malhotra, M.M., Delhi
11	Nizamuddin Vs Ramzani Etc.		500	Subzi Mandi	Sh. S. S. Malhotra, M.M., Delhi
12	Nizamuddin Vs Ramzani Etc.		506	Pahar Ganj	Sh. Shahbudin, M.M., Delhi
13	Nizamuddin Vs Ramzani Etc.	08.07.00	323/50 6/34	Darya Ganj	Sh. R. K. Sharma, M. M.
14	Nizamuddin Vs Ramzani Etc.	04.08.00	323/50 6/34	Jama Masjid	Sh. M. S. Rohilla, M. M., Delhi
15	Nizamuddin Vs Ramzani Etc.	29.09.00	307/50 6/34	Maurice Nagar	Sh. Deepak Garg, M.M., Delhi
16	Nizamuddin Vs Ramzani Etc.		Sec. 133 Cr.P.C	Kamla Market	SDM, Darya Ganj
17	Nizamuddin Vs Ramzani Etc.		Sec. 133 Cr.P.C	Kamla Market	SDM, Kotwali
18	Nizamuddin Vs Haseen		323/34	Chandni Mahal	Sh. M. S. Rohilla, M.M., Delhi

19	Nizamuddin Vs Naseem		323/50 6/34	Karol Bagh	Sh. A. K. Kuhar, M.M. Delhi
20	Nizamuddin Vs Naseem & Haseen			Hauz Khas	
21	Nizamuddin Vs Naseem, Haseen & Iqbal		323/50 6/34	Pahar Ganj	
22	Nizamuddin Vs Ram Kishan		325/50 6/34	Sadar Bazar	
23	Nizamuddin Vs Ram Kishan		325/50 6/34	Kamla Market	
24	Nizamuddin Vs Ram Kishan		325/50 6/34	Subzi Mandi	
25	Nizamuddin Vs Sharafat		325/50 6/34	Hauz Khas	
26	Nizamuddin Vs Mohd. Din		325/50 6/34	Hauz Khas	
27	Nizamuddin Vs Atam Prakash		W.P. No. 1393/9 5		
28	Nizamuddin		323/50 6/34	Pahar Ganj	

	Vs Nasim				
29	Nizamuddin Vs Nasim		323/50 6/34	Chandni Mahal	
30	Nizamuddin Vs Mohd. Iqbal			Sadar Bazar	
31	Nizamuddin Vs. Mohd. Iqbal			Hauz Khas	

4. The petitioner had also filed a complaint against the respondent for his professional misconduct on 29.04.1997 before the Bar Council of Delhi which was registered as complaint no. 12/1997 and a show cause notice dated 15.10.1997 was alleged to have been issued. The respondent having the knowledge of procedural law used some close relatives and stock witnesses in order to pressurize the petitioner to withdraw the complaint against the respondent in the Bar Council, making false and frivolous complaints against the petitioner before the criminal courts and getting him summoned. This was one

of the such complaints which was filed by the respondent against the petitioner for an offence under Section 384/500/506/34 IPC. The petitioner had prayed that the learned Trial Court had fallen into an error in not recalling the order of summoning on account of illegality on the part of the respondent in misusing his position. This prayer of the petitioner was also rejected by the learned Additional Sessions Judge vide order dated 15.05.2001. Feeling aggrieved, the petitioner had filed the present petition for quashing of the impugned order dated 15.5.2001, passed by the learned ASJ and order dated 30.9.2000 passed by the learned MM rejecting the application of the petitioner for recalling of the order of summoning dated 30.5.1998 and also praying for quashing of the complaint.

5. The main ground of the petitioner for quashing of the complaint is that the complaint was initiated against the petitioner by the respondent with a view to wreak vengeance and in retaliation of a complaint having been made by the petitioner against the respondent before the

Bar Council. For this purpose, the petitioner has placed reliance on the judgment of the Apex Court in case titled **State of Haryana & Ors. Vs Bhajan Lal & Ors.** AIR (1992) SC 604 wherein one of the main grounds for quashing of the FIR was the malafides of the respondent in initiating the criminal proceedings against a party with a view to wreak vengeance.

6. The petitioner had also relied upon a judgment in case titled **Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. AIR 1998 SC 128**, wherein it has been held that "summoning of an accused in a criminal case is a serious matter". Criminal law cannot be set into motion as a matter of course, it is not that the complainant has to bring only two witnesses to support his allegations in the complaint, to have the criminal law set into motion. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the allegations made in the complaint and the evidence

both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home against the accused.

7. A notice has been issued to the respondent/State as well as to the respondent no. 1, however, he has chosen not to file any formal reply despite sufficient time having been given, therefore, the averments made in the petition are deemed to have been admitted.
8. Out of these cases, as has been stated herein above, in 21 other cases also, the respondent has chosen to make the present petitioner as an accused. It may be pertinent here to refer to the fact that the respondent has not chosen to file a formal counter affidavit so as to contest the averments made in the petition.
9. On 11.04.2002 Hon'ble Mr. Justice R. S. Sodhi, (as his Lordship then was) had passed the following order.

"Learned counsel for the petitioner submits that the petitioner had engaged Mr. Nizamuddin, Advocate, respondent no.1 herein, to defend him in various proceedings in the Court. Mr. Nizamuddin required the petitioner to pay money for the Public

Prosecutor and also for the Judicial Officers trying the cases. The petitioner refused to do so and made a complaint to the Bar Council as a result of which Mr. Nizamuddin filed a suit for damages against the petitioner herein which is pending in the court and thereafter Mr. Nizamuddin also filed 31 complaints in different Police Stations under various allegations only out of malice and to harass the petitioner. He further submits that the matter has gone thus far that even the counsel who is defending the petitioner herein in those complaint cases is being embroiled by filing a complaint against him to prevent him from taking the cases of the petitioner. Learned counsel for the petitioner, therefore, submits that the complaints being mala fide and with ulterior motives are abuse of the process of law and ought to be quashed.

Learned counsel for the State submits that in complaint dated 12.08.1998 under Section 365/384/506 IPC, Police Station Chandni Chowk, and complaint dated 29.09.2000 under Section 307/506/34 IPC, Police Station Maurice Nagar, investigation was done by the local police and the same were found to be false.

In this view of the matter, I deem it appropriate to direct the Crime Branch to inquire/investigate into the complaints mentioned at pages 62 and 63 (Annexure-F) of the petition and submit their report within a period of one month. I order accordingly. The petitioner shall supply copies of the 31 complaints mentioned in Annexure-F to the Crime Branch.

The matter is adjourned to 23 May, 2002.

In the meantime, proceedings in the trial court are stayed.

Dasti.

**S/d
R. S. Sodhi, J"**

10. It may also be pertinent to mention here that subsequent thereto, the Crime Branch, after the investigation has reported that the cases which are purported to have been filed by the respondent against the present petitioner are false and frivolous which vindicate the stand of the present petitioner.
11. The other four cases are also on the same lines and same pleas except that the complaints in those cases are under different sections of IPC. I may briefly reproduce herein the Sections under which the complaints have been filed and the impugned orders which have been assailed by the present petitioner.
12. In Crl. Misc. No. 209/2002 the respondent/complainant filed a complaint under Section 323/506/34 IPC against the

present petitioner. The petitioner on being summoned had filed an application for recalling of the order of summoning. The said application was rejected by the learned MM on 30.09.2000 whereafter the present petitioner had preferred a criminal revision petition bearing no. 05/2001 which was also dismissed by the learned Additional Sessions Judge on 15.05.2001.

13. In Crl. Misc. No. 210/2002 a complaint was filed by the respondent under Section 323/356/379/506/34 IPC in respect of which the present petitioner was summoned. An application for recalling of summoning order was dismissed by the learned Magistrate on 13.03.2001 against which the petitioner preferred a revision petition bearing no. 31/2001 which was also dismissed by the learned Sessions Judge vide order dated 01.10.2001.
14. In the Crl. Misc. No. Case no. 243/2002, a complaint was filed by the respondent under Section 323/307/506/34 IPC in respect of which the petitioner was summoned for the aforesaid offences. An application for recalling of the

summoning order was dismissed by the learned Magistrate on 30.9.2000 against which the petitioner preferred a revision petition bearing no.7/2001 which was also dismissed by the learned Sessions Judge vide order dated 15.05.2001 leading to the filing of the present petition.

15. In Crl. Misc. No. 244/2002, a complaint was filed by the respondent under Section 323/356/392/506/34 IPC in respect of which the petitioner was summoned. The petitioner had filed an application for recalling of the order of summoning dated 09.06.1998 which was dismissed by the learned MM on 30.09.2000. The petitioner feeling aggrieved by the said impugned order, filed a revision petition bearing no. 08/2001 which was also dismissed by the Sessions Court on 15.05.2001 against which the present petition has been filed.
16. I have heard the learned counsel for the petitioner as well as the respondent.
17. At the outset, I must say that Mr. Bhuttan, the learned counsel for the respondent tried to defend the action of the

respondent/complainant by urging that the present petition may not be allowed on account of the fact that the learned Trial Court is yet to decide essentially the disputed questions of fact. He had also stated that the present petitioner had made a false and frivolous complaint and committed various offences for which he deserves to be tried by a Court so as to bring the guilty to the book. It was also contended by the learned counsel for the respondent that the present petitions are not maintainable on account of the fact that the petitioner in almost all the five cases had filed an application for dropping the proceedings against him by recalling the order of summoning, which had been rejected by the learned MM. The revision petitions filed by the petitioner had also been dismissed in all the five cases. It is contended that the order of summoning has already been subjected to judicial scrutiny and the petitioner has availed the remedy of revision. Now, it is not open to the petitioner to file a petition under Section 482 Cr.P.C. which will be in violation

of Section 397 (3) of Cr.P.C. which prohibits the filing of the second revision and hence he prayed that all the petitions be dismissed. He has placed reliance on **Balbir Singh Vs. State and Anr.** 2009(VI) AD Delhi 9, **Pepsi Food Pvt. Ltd. & Anr. Vs. Export Inspection Agency** 2007(2) JCC 1530, **K. M. Mathew Vs. K.Abraham & Ors.** 2002 (3) JCC 1523 and **Jagdish Ram Vs. State of Rajasthan & Anr. 2004 (1) JCC 611** in order to justify the summoning order by contending that the learned Magistrate had sufficient evidence available on record to issue the order of summoning.

18. I have gone through these authorities. I do not think that these authorities are of any help to the respondent/complainant because the issue before the Court is not as to whether the summoning order is justified or not but it is as to whether the complaints are liable to be quashed on the ground that they were actuated by malafides of the respondent.

19. The learned counsel for the petitioner contended that no

doubt, Section 397 (3) Cr.P.C. lays down that a party who had preferred a revision, is prohibited from filing the second revision but if one sees Section 482 Cr.P.C., it starts with a non-obstante clause and filing of the revision petitions will not come in the way of the petitioner in getting the complaints quashed if he is able to show to the Court that the complaints filed by the respondent are in gross abuse of the processes of law. For this purpose, the learned counsel has contended that the respondent /complainant has filed as many as 31 criminal complaints in different police stations against different persons out of which in 21 cases he has made the present petitioner as an accused. This fact is not refuted by the respondent either by filing the counter affidavit or even during the course of submissions. It is further contended by the learned counsel for the petitioner that the respondent was extracting money from the petitioner as he was his client from 1986 to 1996 in the name of the Public Prosecutors/Presiding Officers and till the time the

petitioner obliged the respondent, there was no problem, the day he resisted to such illegal demands, the petitioner was threatened with dire consequences. The petitioner had made a complaint against the respondent to the Bar Council of Delhi also and on the basis of the same a show cause notice was also issued to the respondent. The petitioner was also instrumental in getting a case registered against the respondent for making fake claims of being SC /ST because of which he was convicted on 30.04.2001 by a competent Court and sentenced to imprisonment. It was contended by the learned counsel for the petitioner that all these facts were sufficient enough to create a malice in the mind of the respondent/complainant to prosecute the petitioner with a view to wreak vengeance. The learned counsel also referred to the orders which were passed by Hon'ble Mr.Justice R. S. Sodhi (Retd.) referring the entire matter to the Crime Branch, Delhi Police with a view to investigate into the matter as to whether the complaints which are purported to have been filed by the

respondent/complainant against the present petitioner were genuine or not. Crime Branch had filed a report that these complaints which have been lodged by the respondent against the petitioner are false. Taking these facts into consideration, it was contended that the respondent had misused his position of being a lawyer to the detriment of the petitioner, and therefore, the complaints irrespective of the rejection of the application seeking recalling of the summoning orders or the revision petitions deserves to be quashed.

20. I have carefully considered the submissions made by respective sides and have gone through the record.
21. I find force in the submissions made by the learned counsel for the petitioner that this is a classic case where a person belonging to a noble profession of law, who is supposed to defend a party has misused his position of being an advocate by proceeding to file as many as 21 complaints against his own client as he had resisted to his alleged illegal demands of paying money in the name of Presiding

Officers and Public Prosecutors. The illegal demands do not remain only an allegation but it is a fact deemed to be admitted because the respondent/complainant has chosen not to file any counter affidavit to the petition. A fact which is admitted need not be proved.

22. Secondly, it has also been alleged by the petitioner that he had made a complaint to the authorities that the respondent /complainant is not of a particular caste, which he was holding out himself to be. This fact is also found to be correct inasmuch as he was convicted in respect of a case of giving a false certificate of caste. Therefore, two vital facts which are brought on record by way of clinching evidence clearly establish that the respondent/complainant had a malafide against the petitioner. This fact gets further fortified by the fact that in the case titled **State of Bihar Vs. P.P.Sharma** 1992 Supp (1) SCC 222, the Supreme Court has clearly held that the allegations of malafide are very easy to make but it is very difficult to prove the same. Further, it was held that the initial onus of proving the

malafides has to be discharged by the petitioner where upon, the respondent would have only to rebut the same. In the instant case, it can be said with full confidence that this initial onus has been discharged by the petitioner in full measure, while as the respondent /complainant has failed to dislodge this presumption. On the contrary, the submissions made by Mr.Bhuttan, learned counsel for the respondent /complainant, that the case involves disputed question of fact or the technical objection of the petition being barred by Section 397 (3) Cr.P.C. are without any merit. The Court cannot be silent spectator to the abuse of the processes of law more so when, it is being resorted by a member of the profession which we all consider to be noble and that too against his own client. It may be pertinent here to refer to the judgments of the Apex Court giving the observation regarding the conduct of a lawyer which the Court expects him to maintain qua his client.

23. In **Sanjeev Datta**, In Re. (1995) 3 SCC 619, the Supreme Court has stated thus:

"The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilized society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practiced it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalized. No service will be too small in making the system efficient, effective and credible."

P.D. Khandekar Vs. Bar Council of Maharashtra (1984)

2 SCC 556

*"An advocate stands **in a loco parentis** towards the litigants. Therefore, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. The client is entitled to receive disinterested, sincere and honest treatment. Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. For an advocate to act towards his client otherwise than with utmost good faith is unprofessional."*

24. Mr. Bhuttan, being an experienced counsel ought to have persuaded his misguided lawyer friend for withdrawing the complaint or striking a compromise with the petitioner rather going ahead with the case. My learned Predecessor Hon'ble Mr. Justice R. S. Sodhi (Retd.) had referred the matter to the Crime Branch for investigation, which also came to the conclusion that these complaints in respect of which the present petitions are filed, are false and frivolous. Once this report filed by the Crime Branch has come on record, it goes beyond any shadow of doubts that the respondent/complainant has misused his position of being an advocate. It is pertinent here to refer to the order of

Hon'ble Mr.Justice R.S.Sodhi (Retd.) which has been reproduced herein above. In view of the aforesaid facts and circumstances, I feel that one of the contingencies which has been enumerated in **Bhajan Lal's case (Supra)** is fully satisfied in the present case i.e. where a complaint has been initiated against a party with a view to wreak vengeance, it is fairly and squarely a plea available to the petitioner for getting the complaints quashed. This persuades this Court to quash all the five complaints which are initiated against the present petitioner. Normally speaking, the conduct of the respondent/complainant being highly reprehensible and in violation of the Code of Conduct of Bar council would have entailed the placing of the matter before the Bar Council for such disciplinary action as it would have been considered necessary, but as it has been averred in the petitions that the present petitioner had already made a complaint against the respondent/complainant before the Bar Council, I feel it will not be conducive to make a fresh complaint to the Bar

Council of Delhi to look into the matter.

25. Accordingly, all the five Criminal Miscellaneous cases and the complaints bearing CC Nos.187/1/1997, 4540/1998, 33/2001, 30/1/1998, 5370/1998, pending before the learned Metropolitan Magistrate are quashed. Parties to bear their own costs.

V.K. SHALI, J

NOVEMBER 18 , 2011
KP