

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.261 of 2017

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1. Bar Council Of India through Its Assistant Secretary Namely Awanish Kumar Pandey, S/o Late Ram Ekbal Pandey, R/o -21, Rouse Avenue, Institutional Area, New Delhi- 110002.
 2. Manan Kumar Mishra, Chairman, Bar Council of India, S/o Late Sheo Chandra Mishra, R/o Near- Rajdhani Gas Godown, P.S. Shashtri Nagar, District- Patna, Behind- A.N. College, Shivpuri, Patna- 800023.
 3. Nilesh Kumar the then Vice-Chairman, Bar Council of India, S/o Sri Shambhu Prasad Agrawal, R/o Upper Bazar Pyada Tolli, Ranchi, P.O.- G.P.O. Ranchi, P.S.- Kotwali Ranchi, District- Ranchi (Jharkhand).
 4. Shrimanto Sen, Secretary, Bar Council of India, S/o- Shantonu Sen, R/o D 773, F.F. C.R. P.S. C.R. Park, District- South Delhi, Park, New Delhi- 110019.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar.
2. Umesh Kumar Singh, S/o Late Kedar Nath Singh, R/o Village- Purwan, P.S.- Brahampur, District- Buxar, At Present- Mohalla- Sarwati Lane, East Lohanipur, P.S.- Kadamkuan, District- Patna (Complainant).

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Suraj Narayan Prasad Sinha, Sr.Adv.
	:	Mr.Ramakant Sharam, Sr.Adv.
	:	Mr.Sanjay Kumar Pandey, Adv.
	:	Mr.Laxmikant Sharma, Adv.
	:	Mr.Bal Govind Sharma, Adv.
For the State	:	Mr. Apurva Kumar, Adv.
In person	:	Mr.Umesh Kuamr Singh.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date:14-09-2017

Heard Mr.Suraj Narayan Prasad Sinha and
Mr.Ramakant Sharma, learned senior counsel, appearing for
the petitioners as well as Mr.Umesh Kumar Singh, Advocate,
appearing in-person as respondent No.2.

2. The petitioner No.2, the Chairman of Bar
Council of India, the petitioner no.3, the Vice Chairman of



Bar Council of India and petitioner no.4, the Secretary of Bar Council of India are accused in connection with Complaint Case No.2312(C)/2016 brought before the learned Chief Judicial Magistrate, Patna by respondent no.2 Umesh Kumar Singh on the allegation that the petitioner nos. 2 to 4 have committed offences under Sections 120(B), 467, 468, 471, 406, 420/34, 500 and 501 of the Indian Penal Code .

3. Vide order dated 14.02.2017, the learned Judicial Magistrate 1st Class, Patna has taken cognizance in the aforesaid complaint case against the petitioner Nos. 2 to 4 for the offences under Sections 420 and 468 of the Indian Penal Code and has issued summons against them to face trial.

4. The petitioners have challenged the aforesaid order in this writ application on the ground that a bare perusal of the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case alleged against the petitioners. In other words, the complaint does not disclose any case against the petitioners. Another ground for challenge is that entire allegation is based on the resolution of petitioner No.1, the Bar Council of India which is a statutory body under Section 4 of the Advocates



Act 1961. The resolution was under rule making power contained in Section 49 (ab) and under Section 49 (ah) of the Advocates Act. Therefore, the liability goes against the petitioner No.1 who is not an accused in this case and unless there is specific provision laid down under the statute making, accused Nos. 2 to 4 vicariously liable, they can not be prosecuted in the light of ratio decided in **S.K. Alagh Vs. State of Uttar Pradesh & Ors (2008) 5 SCC 662.**

5. According to complaint petition, the Bar Council of India published Notification No.276/2014 in the Gazette of India notifying "Certificate of Practice and Renewal Rules, 2014" for that petitioner Nos.2 to 4 who were accused Nos. 1 to 3 in the complaint petition hatched criminal conspiracy for cheating the fellow members. As per the provisions in Rules, 2014, Rs. 400/- was payable to the Secretary of State Bar Council of India and Rs. 100/- was payable in the name of Secretary, Bar Council of India in the bank account of B.C.I. Practice Fund Account. Though, Chapter-IV clearly prevents opening of any other separate account save and except single account in the name of the Bar Council of India.

6. Again the Chairman of the Bar Council of India wrote a letter to Hon'ble the Chief Justice of Patna High



Court vide B.C.I. Letter No. 2187 dated 19.05.2016 regarding the malpractice adopted by some of the staff members of the Civil Courts as well as some non-advocates vide Annexure-2 to the complaint petition, which was alleged a defamatory and against the reputation of the Civil Court staff as well as Civil Court Advocates, in the society. The said letter was circulated by the District Bar Association. The whole object behind the exercise aforesaid by the accused persons was to hatch illegal money.

7. Learned counsel for the petitioners submits that the Bar Council of India is a statutory body which is competent under Section 49 of the Advocates Act to make rules to regulate the practice. The said rule has been upheld by a Division Bench of this Court in C.W.J.C.No.9976/2016 vide Annexure-3. Moreover, the relevant provisions of 2014, Rules were modified to some extent by reducing the quantum of chargeable fee and finally 2014 Rules was substituted by Certificate and Place of Practice (Verification) Rules, 2015 Vide Annexure-2 which came into effect on 13.01.2015 much before filing of the complaint case on 25.07.2016. Rule 34 and 35 of 2015 Rules read as follows:

34. Repeal of all Resolutions/Rules



passed /framed either by any State Bar Council or by Bar Council of India.

Any Resolutions/Rules passed/framed by any State Bar Council or by Bar Council of India, which are inconsistent with these Rules, shall stand repealed from the date on which these Rules come into force.

35. *The decision with regard to Rs.500/- or Rs.200/- (as the case may be) as paid by any Advocate as Practice fee as provided under Bar Council of India Certificate of Practice and Renewal Rules. 2014, prior to the date of commencement of these Rules of 2015, shall be taken by the concerned State Bar Council. Either after deducting Rs.100/- as Process/ Verification fee the rest of Rs.400/- or Rs.100/- (as the case may be) is to be refunded to the Advocate or it may be utilized for the insurance of the Advocate and his family or for the benefit and welfare of concerned Advocate. This decision is to be taken by the concerned State Bar Council only after*



obtaining option of concerned Advocate.

8. I find substance in the submission of the learned counsel for the petitioners that except bald allegation, there is no substantial material disclosed in the complaint petition or in the statement of witnesses examined under Section 202 Cr.P.C. to substantiate that the petitioner Nos.2 to 4 had created any forged document nor there is material to substantiate that they individually or collectively cheating anyone. The entire decision of bringing the new Rules in force was of the Bar Council of India. The Constitution whereof is mentioned in Section 4 of the Advocates Act and the resolutions alleged to be taken by the petitioner Nos.2 to 4 were resolutions of the Bar Council of India. Those resolutions might have been challenged by the aggrieved party and it has been informed that the same is under challenge but the resolutions of Bar Council of India cannot be argued to be the act of petitioner Nos.2 to 4 either individually or collectively to fasten them with any criminal liability for the act committed by the statutory body.

9. So far letter at Annexure-2 to the complaint petition is concerned, petitioner No.2 has clearly stated in para-2 thereof that the Council (B.C.I.) has got the information that in most of the District/Taluka Courts, the



non-practicing advocates are adopting illegal device and are putting their signature over some old Vakalatnamas filed by other advocates and this corrupt practice is being adopted in connivance with the concerned staff of the Civil Court. This malpractice is frustrating the very object of the Rules. The Rules have been allowed to be implemented strictly, by the Hon'ble Supreme Court of India.

10. A bare perusal of the aforesaid letter would reveal that the same contains no defamatory or scandalous remark against the advocates or the Civil Court staff. Only the fact of malpractice has been brought to the notice of Hon'ble the Chief Justice of Patna High Court. Moreover, the court below has not taken cognizance for offences under Sections 500 and 501 of the Indian Penal Code.

11. So far order of cognizance under Sections 420 and 468 of the Indian Penal Code against the petitioner Nos.2 to 4 is concerned, the complaint petition does not disclose that the petitioner Nos.2 to 4 have created any document or forged any document nor there is material to substantiate that they have cheated any one. Hence, apparently, the complaint discloses no offence against petitioner Nos.2 to 4. As such, the entire criminal prosecution



of the petitioner Nos. 2 to 4 is an abuse of the process of the Court. Accordingly, fit to be quashed.

12. Incidentally, respondent No.2 requested to this Court to call for a report from the Secretary, Bihar State Bar Council as to whether any money has been transferred to the Bar Council of India from the separate fund maintained by the State Bar Council under Certificate and Place of Practice (Verification) Rules, 2015. The report has been received that no money has been transferred to the Bar Council of India. In reply to the aforesaid report, written petition is there on behalf of the respondent No.2 that the statement of receipt and expenditure has not been supplied by the Secretary. These are the academic matters because this Court is not going to decide, the conduct of the Bihar State Bar Council, in this writ application.

13. Learned respondent No.2 raised preliminary objection against the maintainability of the writ application on the ground that the alternative and efficacious remedy is available to the petitioners under Section 482 Cr.P.C. before this Court. The power under Section 482 Cr.P.C. is very wide. Therefore, the petitioners should have approached this Court under Section 482 Cr.P.C. and this writ application is not maintainable. As normally, the



alternative remedy bars the extra ordinary writ jurisdiction of the Court.

14. I do not find any substance in the submission of the respondent No.2 in view of the judgment of the Hon'ble Supreme Court in ***M/s Pepsi Foods Ltd. And another v. Special Judicial Magistrate and others*** reported in ***A.I.R. 1998 SC 128***. Para-25 and 26 of the judgments are being reproduced below:

“ 25. In Nagendra Nath Bora v. Commr. Of Hills Division, 1958 SCR 1240: (AIR 1958 SC 398 at p.413) this Court observed as under:

“ It is thus, clear that the powers of judicial interference under Art.227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Art. 226 of the Constitution. Under Art.226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art.227 of the Constitution, the power of interference is limited to seeing that the Tribunal functions within the limits of its authority.”



26. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the appellants could not invoke its jurisdiction under Art.226, the Court can certainly treat the petition one under Art.227 or S. 482 of the Code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief S.482 of the Code or Art.227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts. The present petition though filed in the High Court as one under Arts. 226 and 227 could well be treated under Art.227 of the Constitution”.

15. The next contention of the learned respondent no.2 is that the Bar Council of India is not an accused in the complaint case. Hence, it has no locus standi



to file this writ application.

16. I do not find any merit in the submission aforesaid because the Bar Council of India has every right to come forward in protection of its office-bearers who are going to be prosecuted for the act of decision taken/notification issued by the Bar Council of India a statutory body. Moreover, the complaint petition also reveals that the Rule was issued by the Bar Council of India.

17. Learned respondent No.2 submits that there is no provision for maintenance of separate bank account whereas the Bihar State Bar Council is maintaining a separate bank account under the head Certificate and Place of Practice (Verification) Rules, 2015.

18. I find substance in reply to the aforesaid contention that the separate fund is being maintained because it is yet under dispute whether such fee is chargeable or not, if the competent court holds that such fee is not chargeable, the fund is to be refunded to the concerned advocates. Furthermore, a proportion has been provided in the rules which would go to the share of the District Bar Association as well as in the welfare scheme of the advocates.

19. In view of the aforesaid discussion, specially conclusion of this Court that no offence is prima



facie disclosed in the complaint petition against the petitioners for which cognizance has been taken by the learned court below as well as considering the fact that the petitioner Nos.2 to 4 cannot be vicariously held liable for the act of petitioner No.1 unless the statute specifically so provides. Hence the criminal prosecution of the petitioner Nos. 2 to 4 is an abuse of the process of the court. Accordingly, the impugned order passed in Complaint Case No. 2312(C)/2016 hereby stands quashed.

20. This writ application is allowed, however, without any cost.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	12.09.2017
Uploading Date	14.09.2017
Transmission Date	14.09.2017

