

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8945 of 2017

Date of decision: 11.08.2017

Punjab and Haryana High Court Bar Association (Regd.)

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: Hon'ble Mr. Justice S.S. Saron.
Hon'ble Mr. Justice Avneesh Jhingan.

Present: Mr. H.S. Brar, Advocate; Mr. R.S. Randhawa, Advocate
and Mr. Rajeev Kwatra, Advocate for the petitioner.

Mr. Vaneet Kumar Sharma, Advocate.

Mr. S.S. Pannu, DAG, Haryana for respondents No.1
to 4.

Mr. PPS Thethi, Addl. A.G., Punjab.

Mr. Pawan Singh, respondent No.5 in person.

Mr. Gautam Jain, respondent No.6 in person.

S.S. Saron, J.

Mr. Pawan Singh (respondent No.5) and Mr. Gautam Jain (respondent No.6) in compliance to order dated 08.08.2017 have appeared in person.

This petition has been filed by the Punjab and Haryana High Court Bar Association under Articles 226/227 of the Constitution of India for directing respondents No.1 to 4 to protect the life and liberty of Sh. Vaneet Kumar Sharma, Advocate of this Court and also protect the life and liberty of his family members from respondents No.5 and 6 as also their accomplices. A further direction it has been prayed be issued to respondents No.1 to 4 for

taking legal action against respondents No.5 and 6 for the threats they have held out against Sh. Vaneet Kumar Sharma, Advocate.

The Punjab and Haryana High Court Bar Association ('Bar Association' - for short) is a registered body working for the welfare of the Advocates as well as for upholding the dignity of the overall judicial system. Information was received by the Bar Association that threats were being made to a member of its Association namely Sh. Vaneet Kumar Sharma. The threats were held out as the said Advocate was appearing as a counsel for the party who was in litigation with respondents No.5 and 6. Therefore, indulgence of this Court has been sought in the larger interest of Advocates and Judicial Officers to take appropriate action against respondents No.5 and 6 so that in future such persons do not adopt such illegal ways and means to influence, hold out threats and intimidate the judicial system. Resolution dated 21.04.2017 (Annexure P-1) passed by the Bar Association has been placed on record.

Sh. Pawan Singh (respondent No.5) got lodged FIR No.10 dated 30.01.2016 (Annexure P-6) at Police Station Sector 19, Panchkula against Gagandeep Bansal, Lalit Bansal and Ajay Pandit. The complainant alleged that he was defrauded by the said persons. The said accused persons applied for bail which was allowed to them on 07.05.2016.

During the course of hearing on the application for bail the learned Additional Sessions Judge -I, Panchkula on 25.04.2016 passed the following order:-

"Reply to bail application filed by the police.

Complainant filed written arguments containing

page No.1 to 13, which are also containing 13 pages. Copy supplied to the opposite counsel. To come up on 29.04.2016 for arguments on bail application.

Complainant who is present in the Court showing some sort of arrogance in his behaviour saying his argument in verbatim be considered. He is advised to cool down and his lawyer may make submission at an appropriate time when the bail application is taken up for arguments.”

The above order has been placed on record to show the past conduct of respondents No.5 and 6. In any case, after bail had been granted to the accused in case FIR No.10 dated 30.01.2016 (Annexure P-6) registered at Police Station Sector 19, Panchkula, it is submitted that respondent No.5 in an utter illegal manner and in total defiance and contempt to judicial authority made a complaint against the Presiding Officer due to which he withdrew from the proceedings of the case. Copies of orders dated 07.05.2016 (Annexure P-3) and 09.12.2016 (Annexure P-4) have been placed on record. In the order dated 09.12.2016 (Annexure P-4) Sh. Vaneet Kumar Sharma, Advocate had appeared for the revision petitioner which was filed against Pawan Singh (respondent No.5 herein).

It is mentioned that earlier to the filing of the complaint by Pawan Singh (respondent No.5) against the learned Additional Sessions Judge, Panchkula, he lodged the complaint before the Ludhiana Police making allegations of forgery committed against him by the accused in aforesaid FIR No.10 dated 30.01.2016

(Annexure P-6). The said complaint after investigation was filed by the Ludhiana Police. They reached the conclusion that no criminal liability was made out. However, Pawan Singh (respondent No.5) it is alleged acted in an illegal and mala fide manner and lodged FIR No.10 by deviating from his earlier complaint submitted to the Ludhiana Police and totally changing the place of occurrence. He, it is alleged, tried to establish the same occurrence at Panchkula by falsely alleging that some payment in dispute was allegedly made at Panchkula.

One of the accused in case FIR No.10 dated 30.01.2016 (Annexure P-6) namely Gagandeep Bansal through Sh. Vaneet Sharma, Advocate filed a petition i.e. Crl. Misc. No. M-15940 of 2016, in this Court. It was alleged that the petitioner - Gagandeep Bansal apprehended danger to his life and liberty from private respondents and their accomplices. It was also alleged that the private respondents along with their accomplices had trespassed into his house and committed violence. The petition was disposed of by this Court vide order dated 10.05.2016 (Annexure P-7) to let the petitioner approach the Senior Superintendent of Police, SAS Nagar, Mohali who shall look into the representation of the petitioner - Gagandeep Bansal and dispose of the same in accordance with law.

FIR No.393 dated 24.11.2016 was registered at Police Station Zirakpur District SAS Nagar for the offences under Sections 451, 323, 506 and 149 IPC against the private respondents of the petition filed by Gagandeep Bansal in this Court.

A mention has been made to the various litigations between Gagandeep Bansal and respondents No.5 and 6 herein.

Sh. Vaneet Kumar Sharma, Advocate has been appearing for Gagandeep Bansal. During the course of his engagement, a notice dated 27.03.2017 (Annexure P-8) was received by him from respondents No.5 and 6 regarding his professional misconduct. It is stated that they had been mentioned as accused in a complaint filed by his client Gagandeep Bansal with the SSP, Mohali on 23.03.2016. It is stated that they had reasons to believe that he (Vaneet Kumar Sharma) had intentionally failed to perform his professional services in a fair and transparent and unbiased manner and had acted in connivance with his client Gagandeep Bansal with the intention to put undue pressure and defame the social credibility of the parties (accused) as mentioned in the complaint letter due to reasons as mentioned therein. Amongst the reasons it is mentioned that after filing the complaint with the SSP, Mohali the clients of Vaneet Kumar Sharma, Advocate being dissatisfied with the investigation of the SSP, Mohali and the Police Station under his jurisdiction filed a petition in this Court through him as a counsel seeking directions to the police for investigation in the matter. It is further stated in the notice that in this regard he (Vaneet Kumar Sharma) might have received the following documents from his client i.e. (a) date of filing of complaint with SSP, Mohali with Diary No. and computerized number; (b) dates on which your client submitted written statements in Police Station on which police took no action and (c) name and designation of Punjab Police officials who were hand in glove with accused in complaint who took no action on the basis of complaint as alleged in complaint. Sh. Vaneet Kumar Sharma, Advocate was requested to send the above documents to respondents No.5 and 6 as the same were the basis

of his client's petition in the High Court for inaction of Punjab Police. Further averments and allegations have been made against Sh. Vaneet Kumar Sharma, Advocate in his capacity as counsel for Gagandeep Bansal.

This approach and conduct of respondents No.5 and 6 is inappropriate and a counsel engaged by a litigant is bound by a fiduciary relationship. The relationship between a counsel and his client is one of trust and confidence. Faith is reposed by a client in his counsel who seeks his advice for the litigation that is being pursued by him. In a fiduciary relationship between a client and counsel a very high degree of conduct is expected from a counsel and he is not liable to divulge any information given to him in confidence leave alone give documents that he has received. In fact Section 126 of the Evidence Act which relates to 'professional communications' enjoins that no barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment. In terms of the proviso, nothing in the said Section is protected from disclosure relating to any such communication made in furtherance of any illegal purpose; any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the

commencement of his employment. It is immaterial whether the attention of such barrister, pleader, attorney or vakil, was or was not directed to such fact by or on behalf of his client. In terms of the explanation the obligation stated in the said Section continued after the employment has ceased.

In O.P. Sharma v. High Court of P&H (2011) 6 SCC 86 Hon'ble the Supreme Court made the following observations relating to ethical standards in the judicial system (SCC p. 101):-

"37. A court, be that of a Magistrate or the Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself the responsibility of dispensing justice is ought to be maintained. All the functionaries, be it advocates, Judges and the rest of the staff ought to act in accordance with morals and ethics.

Advocate's role and ethical standards

38. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the

public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system.

39. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules.”
(Emphasis added)

In the circumstances, Sh. Vaneet Kumar Sharma, Advocate who was engaged as a counsel by Gagandeep Bansal in the litigation with respondents No.5 and 6 was/is well within his rights not to disclose or divulge any information that he received during the course of his engagement as an Advocate or even thereafter to the opposing parties of his client.

The conduct of respondents No.5 and 6 has been such that they had been addressing communications direct to this Court and other Judges of this Court they have been appearing in person in some Courts and have been addressing arguments which can be said to be improper in judicial proceedings. Communications were addressed to this Court also through post which have been ordered to be returned to them as these were not accepted by post.

In respect of the litigants appearing in person, the Supreme Court in Bhuwneshwar Singh v. Union of India and others, (1993) 4 SCC 327 had taken note of the increase in the number of cases in which the parties appeared in person in the Supreme Court and felt that a stage had reached when the Supreme Court, on the administrative side, was required to consider the desirability of providing some procedure to scrutinize their petitions and screen the parties, appearing in person, and only such of the parties who were certified by an authority/committee as "competent" to assist the Court in person, may, with the leave of the Court, be permitted to argue in person. Those of the litigants, who were not so certified, or those to whom leave was not granted by the Supreme Court, it was said should be referred to the Legal Aid and Advice Board or the "Supreme Court Senior Advocates Free Legal Aid Society", which was a voluntary body and offered assistance in appropriate cases, irrespective of the financial position of the concerned litigant. It was further said that apart from providing proper assistance to the Court, the assistance by the lawyers would ultimately tend to be in the interest of the litigants themselves. It would also take care of preventing objectionable and unparliamentary language in the pleadings, which some of the 'parties in person' permit themselves

the liberty of indulging in, not being familiar with the Court craft and the bounds of law within which the parties must formulate their pleadings in proper language. Such a course, it was said, would advance public interest by safeguarding individual interests also. It was observed by their Lordships and rightly so that their experience showed that every advocate – senior, not so senior and junior – whenever requested by the Court to offer assistance had responded positively and generously and therefore the interest of the 'party in person' who would be represented by such a counsel would stand adequately protected. No more was said on this aspect at the said stage.

In view of the pleadings being filed by respondents No.5 and 6 through post, these were ordered to be returned and respondents No.5 and 6 were asked to appear in person. They had appeared in person.

While appearing in persons, they had initially taken an affront to the Court. Thereafter, Pawan Singh (respondent No.5) stated that he is a Chartered Accountant and a professional. This Court was of the view that being a professional his behavior had been somewhat inappropriate. It was contemplated for taking legal action against him as also against Gautam Jain (respondent No.6). However, realizing their mistake, they expressed their sincere regrets.

Respondents No.5 and 6 have been addressing letters to Sh. Vaneet Sharma, Advocate of this Court. A pointed reference has been made to the letter dated 27.03.2017 (Annexure P-8) which is addressed to Sh. Vaneet Sharma, Advocate in which his

conduct in representing his client Gagandeep Bansal against respondents No.5 and 6 has been commented upon.

The Advocates are officers of this Court and in case respondents No.5 and 6 have any grievance against their opponents they are at liberty to proceed against them in accordance with law. However, commenting on the conduct of the counsel in the discharge of his professional duty is unfortunate; besides, being inappropriate. Both the respondents i.e. respondents No.5 and 6 have unequivocally stated that they shall be careful in future and would address letters after getting professional advice in the matter and would not be irresponsible as they have been.

In view of the above, with the hope that they adhere to their said stand and position, nothing survives in the present petition and the same is accordingly disposed of.

(S.S. Saron)
Judge

(Avneesh Jhingan)
Judge

11.08.2017
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Note:

Whether the order is speaking/reasoned:	Yes
Whether the order is reportable :	Yes