

Laxminarayan Agrawal Vs Kalpana Pandey AndOrs**Criminal Miscellaneous Petition (CRMP) No. 1412 Of 2017**

Court: Chhattisgarh High Court**Date of Decision:** Feb. 23, 2018**Acts Referred:**

Indian Penal Code, 1860 " Section 182, 211, 500#Code Of Criminal Procedure, 1973 " Section 240, 397

Hon'ble Judges: Goutam Bhaduri, J**Bench:** Single Bench**Advocate:** V.C. Ottalwar, Kalpana Pandey, Madhunisha Singh**Final Decision:** Dismissed

Judgement

Goutam Bhaduri, J

1. This petition is against the order dated 13.09.2017 passed in Criminal Revision No.25/2017, whereby the order dated 23.06.2017, passed in criminal

complaint case No.891/2015 framing charges against the petitioner, was affirmed.

2. Facts of the case, in brief, are that a complaint was filed by respondent No.1 Smt. Kalpana Pandey that she is a practicing Advocate at Korba Bar

since 1997. Initially in 1997 the procedure was that a mandatory training was required under some senior Advocate, therefore, after completion of

such training her name was registered in the Madhya Pradesh Bar Council in the year 1998. It is contended that in the meanwhile, the clause of

mandatory training was erased and the registration of advocates were considered from date of their original enrollment. It is stated that States of

Madhya Pradesh & Chhattisgarh were bifurcated in the year 2000 and the documents with respect to the Advocates, who were practicing at

Chhattisgarh Bar, were transferred to the Chhattisgarh Bar Council. Therefore, the complainant had filed an application to the Bar Council of

Chhattisgarh that her date of registration of 1998 may be amended and her registration be made from 1997 and was amended accordingly by the Bar

Council of India.

3. Thereafter, it is the case of the complainant that she was aspirant to be appointed as a Notary and had filed the application for appointment as

Notary at Korba. As for appointment to the post of Notary particular period of experience at Bar was required so the respondent No.1 made an

application in this regard to the District Bar Association, Korba and accordingly experience certificate was issued on 15.01.2013. In the meanwhile,

the Chhattisgarh State Bar Council amended the date of registration of the complainant to be of the year 1997. Consequent upon such amendment, the

complainant again made an application to the Bar Association that in the register of the Bar Association instead of 1998 date of practice/enrollment of

the complainant be recorded as 1997. Having been made such application, the President, District Bar Association, in his personal capacity misusing his

position as Bar President without any resolution of Bar Association projecting himself to be as President of Bar Association made allegations over the

complainant that the complainant has tampered & fabricated the date of registration and different letters were thrown to the Superintendent of Police,

Collector, Secretary M.P. Bar Council and copies were forwarded to the Chief Justice of India, New Delhi, Chief Justice & Registrar General, High

Court of Chhattisgarh, Bilaspur etc.

4. The complainant being aggrieved by such act, initially made a complaint to the Superintendent of Police, Korba, when the police did not take any

action on such complaint another complaint was filed on 05.07.2013 before the Chief Judicial Magistrate, Korba on 21.02.2014. Wherein, after

preliminary evidence, the report was called from the Police and after receipt of the same, the offence under Sections 182, 211 & 500 of the I.P.C.

was registered against the petitioner. Thereafter, the case was transferred to the JMFC on 23.06.2017 charges were framed against petitioner, which

were denied and the case was fixed for evidence. The said framing of charge was subject of challenge before the Sessions Judge, Korba in Criminal

Revision No.25/2017, wherein by order dated 13.09.2017 the learned Sessions Judge dismissed the revision, therefore, the instant petition.

5. Learned counsel for the petitioner would submit that only letter was thrown to different authorities and wherein only apprehension was made about

the tampering and such apprehension was genuine because of the fact that two documents of registration were before the Bar Association. He would

further submit that the nature of document Annexure A-6, which is filed in this case would show that no offence is made out by the petitioner in his

capacity of President of Bar Association, therefore, the charges framed against the petitioner are liable to be quashed.

6. Smt. Kalpana Pandey, respondent No.1, who is present in person before the Court have vehemently opposed the argument and would submit that

the way the conduct was made by the petitioner, it would amount to defamation of Advocates as without any proper enquiry or resolution of Bar

different allegations were made about the tampering of document by petitioner for which he was not authorised. She would further submit that the

petitioner is also free to adduce his evidence and take part in the trial, which cannot be questioned at this stage, therefore, the petition being devoid of

any merit is liable to be dismissed.

7. Perused the documents filed along with the petition. The document Annexure A-6 is dated 02.02.2013 was sent by the petitioner to the different

authorities i.e. M.P. State Bar Council, Secretary Bar Council of India, New Delhi, Collector, Korba etc. as also the copy of the same was forwarded

to the Chief Justice of India, New Delhi, Chief Justice and Registrar General, High Court of Chhattisgarh Bilaspur. Perusal of such letter would show

that the allegations have been leveled that the respondent has fabricated in the certificate of registration and the date was altered. It is stated that the

crime has been committed by the respondent about tampering, therefore, immediate action be taken against respondent No.1 and several other

allegations were also made.

8. The argument which is advanced by the petitioner that the letter was at the behest of Bar Association Korba and it was a joint decision, therefore,

the petitioner cannot be solely responsible for it, cannot be appreciated. Perusal of the letter Annexure A-6 would show that the petitioner has shown

himself to be the President of District Bar Association Korba. The letter also engrafts certain reference number given a projection of an official letter.

Neither any resolution of the Bar Association is attached nor likewise any document has been filed to show that it was a unanimous decision of the

Bar Association to address such letter. The Bar Association which is a body corporate has to act through its resolution and generally a mens rea

would be missing as the Bar Association is a juristic entity or an artificial person. Apart from it no document has been placed to show that the

petitioner was authorised by the Bar Association to issue such letter to show it was within his scope of authority to make such statement in writing on

behalf of Bar Association.

9. Therefore any office bearer of a Bar Association will not have an implied authority to make any statement or address any letter like nature and find

it convenient to hit out on any one and start a secondary debate that it was in capacity of office bearer of Bar Association. If any office bearer of Bar

Association has intended for a committed dialogue then it has to act through the Bar Association, which is a juristic person and acts through it's

resolution passed by majority of members according to it's article of associations. The principle therefore emerges out that any office bearer of Bar

Association will not have an unfettered right to use his position and make any correspondence simply because he or she holds a post in the association

as it would be against the constitution of Bar Association and may eventually begin to emit danger signals for entire judicial system or an individual.

Therefore, in absence of any support of a resolution of any letter by Bar Association, it may be a personal liability of the member of 'Bar' and not that

of Association and it may expose him for the civil and criminal actions subject to the proof of facts.

10. Further the nature of allegations in the complaint would show that the complaint was made by the petitioner alleging tempering of certain

documents by the respondent and the police was directed to take actions against the respondents. The respondents having been aggrieved by the

same, filed a complaint under Section 500 of I.P.C. and primary evidence was placed on record. The Court after evaluating the evidence, learned

Court below has registered a complaint.

11. The Supreme Court in a case law reported in AIR 2013 SC 52 - Shoraj Singh Ahlawat Vs. State of U.P has observed that the Court trying the

case can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless.

Section 240 of Cr.P.C. provides for framing of a charge which reads as under:

240. Framing of charge.- (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for

presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion,

could be adequately punished by him, he shall frame in writing a charge against the accused.

12. Hon'ble the Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not be

put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the

stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. Therefore, taking into account the

above position of law, the argument which has been advanced by the learned counsel for the applicant, cannot be accepted as prima facie the Court

has to only see whether there is ground to presume that the accused had committed the offence or not ?

13. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of State of

Rajasthan Vs. Fatehkaran Mehdu, reported in AIR 2017 SC 796. The ratio would point out that at the stage of framing of charge, the Court is

concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the

accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is

to be applied.

14. Applying the aforesaid principles in this case, after going through the documents, defence adduced by the petitioner cannot be accepted as gospel

truth and he will be at liberty to confront the witnesses with the necessary documents at the stage of evidence when the witnesses are cross-

examined.

15. Therefore, in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the

petition is dismissed.