

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2228 of 2024

Applicant :- Virendra Kumar And Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Civil
Secrt. Lko. And Another

Counsel for Applicant :- Pankaj Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarathi,J.

1. Heard Sri Gyanendra Pathak, holding brief of Sri Pankaj Kumar Shukla, the learned counsel for the applicant and Sri Puneet Kumar Yadav, the learned State Counsel.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of the nonailable warrant dated 29.02.2024 as well as the entire criminal proceedings of Criminal Case No. 1960/2024, arising out of Case Crime No. 06/2024, under Sections 323, 504, 506, 427 & 452 IPC, Police Station Fakharpur, District Bahraich, pending in the court of Judicial Magistrate, Bahraich.

3. The opposite party no. 2 has filed an F.I.R. No. 6 in Police Station Fakarpur, District Bahraich on 03.01.2024 against the applicants, stating that he is an advocate practicing in Civil Court, Bahraich. the accused persons have illegally taken into possession some land forming a part of a lane and a sehan on 28.12.2023 and when the complainant and his father objected against it, the accused persons opposed them, entered their house, beaten them and damaged some household goods.

4. The applicant no. 2 has filed a Suit No. 512/2024 in the Court of Civil Judge (Junior Division), Kaiserganj, Bahraich against four persons, including the complainant, his father, mother and brother, claiming a perpetual injunction.

5. From the aforesaid facts, there appears to be a civil dispute between the parties.

6. A letter dated 14.02.2024 given by the complainant-advocate to the President and General Secretary of District Bar Association, Bahraich has been annexed with the application, wherein he has written that some members of the District Bar Association are helping the accused persons and they want to file an application for their release on bail. The opposite party no. 2 has stated in the aforesaid letter that District Bar Association, Bahraich has passed a mandate in its general body meeting that in any matter, in which an advocate is involved, no other advocate will appear on behalf of the accused person and will not file his vakalatnama on his behalf. He has complained to the President / General Secretary of the District Bar Association, Bahraich to take action against Sri. Babu Ram Tiwari Advocate, who had accepted the case of the applicants and has also requested that the Bar Association should ensure that no Advocate appears on behalf of the accused persons in the case instituted by the complainant Advocate against them.

7. The aforesaid conduct of the opposite party no. 2, who is a practising advocate and that of the District Bar Association, is very disturbing. The profession of Advocacy has long been considered as a noble profession and it is expected that Advocates shall conduct themselves in a noble manner.

8. Bar Council of India has framed Bar Council of India Rules, and PART VI thereof contains “**RULES GOVERNING ADVOCATES**”. Chapter II contained in Part VI contains rules regulating “STANDARDS OF PROFESSIONAL CONDUCT AND ETIQUETTE”, which have been framed under Section 49(1)(c) of the Advocates Act read with the Proviso thereto. Section II of the Chapter II contains Rules regarding duties of Advocates towards their clients. Rules 11 and 15 of Section II of Chapter II of Part VI are as follows: -

“11. An advocate is bound to accept any brief in the Courts or Tribunals or before any other authorities in or before which he

proposes to practise at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

* * *

15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.”

9. The act of the complainant Advocate in putting pressure on Sri. Babu Ram Tiwari, who has been engaged by the applicants to seek their release on bail, and of the District Bar Association in passing a mandate restraining Advocates in general from appearing in any matter against any Advocate, is not commensurate with the noble conduct expected from any Advocate, besides being violative of the provisions contained in the above referred Rules 11 and 15.

10. The opposite party no. 2 himself has stated in his letter dated 14.02.2024, that the applicants are making efforts to file a bail application, from which it appears that the applicants are not trying to abscond from the process of law and it is the complainant himself and the members and office bearers of District Bar Association, Bahraich, who are crating hindrance and who are putting undue obstacles against the applicants taking the recourse of law.

11. The aforesaid peculiar circumstances of the case warrant a deeper scrutiny by this Court.

12. Issue notice to the opposite party no. 2

13. The State as well as the opposite party no. 2 may file their reply within a period of two weeks.

14. Issue notice to the President and General Secretary of the District Bar Association, Bahraich to place their version regarding the claim of the complainant that a resolution has been passed by the District

Bar Association that no advocate would appear in a case on behalf of the accused persons in which some advocate are involved from the other side.

15. List in the week commencing 06.05.2024.

16. Till the next date of listing, as an interim measure, it is provided that the non-bailable warrant dated 29.02.2024 as well as the entire criminal proceedings of Criminal Case No. 1960/2024, arising out of Case Crime No. 06/2024, under Sections 323, 504, 506, 427 & 452 IPC, Police Station Fakharpur, District Bahraich, pending in the court of Judicial Magistrate, Bahraich, shall remain stayed.

Order Date :- 22.03.2024

Pradeep/-