

**In the court of Sh. Suresh Kumar Goyal,
Addl. Chief Judicial Magistrate, Ludhiana.**

Crl.no.278 of 06.11.2015

CHI/2357/2015

Date of Order: 05.10.2016

FIR No.212 of 11.07.2015

Under Section 420, 465, 467, 468, 4171, 120-B IPC

P.S.Div. No.5, Ludhiana

State Vs. Shaiwal Gupta.

Application Under Section 239 Cr.PC for discharge of accused.

Present: Sh. R. S. Chahal APP for the State.

Accused on bail with counsel Sh.S. K. Bawa Adv.

ORDER

This order will dispose off an application, filed under Section 239 Cr.PC, for discharging the accused Shaiwal Gupta.

2. It is pleaded in this application that present false and frivolous FIR has been lodged by the complainant Perna Kaur, in order to harass and humiliate the applicant/accused and further in order to grab money from him. As alleged, the licence of practice of applicant/accused is not forged or fabricated, as is crystal clear from the officials from the university of Lucknow, wherein, the applicant/accused was a student. The attendance sheet bears the signatures of applicant/accused. The same factum was even got verified by the police officials and is found

mentioned in the statement under Section 161 Cr.P.C of C. Mandeep Singh. Even otherwise, the University authorities have nowhere stated that the provisional certificate of law issued to applicant/accused bearing no.4791 has been forged or fabricated or that the same has not been issued by them University authorities. Rather, it has been clearly stated by the Controller of Examination, University of Lucknow that the said provisional certificate was issued to Raghupati Singh, who was an employee of the university and had the capacity to issue the said provisional certificate. More so, the complainant has not been cheated in any manner and no inducement has been made to the complainant nor there is any allegation with regard to any cheating in the entire complaint, and as such the present FIR is not sustainable in the eyes of law. Even the application, upon which the license of the applicant/accused has been cancelled, was not submitted before the Bar Council by the complainant, rather, it was submitted by Sh. Shekhar Gupta, Advocate and complainant after connivance with the officials of Bar Council, as well as, the Shia College, got procured false report and in order to pressurize and blackmail the applicant/accused. Earlier, the complainant had agreed to mutually end the matrimonial bliss between her and the applicant/accused and has willfully and intentionally signed a petition under Section 13-B of HMA, in the presence of her counsel Sh. H. S. Narang Advocate, wherein, the terms and conditions were put in black and white and the complainant after receiving permanent alimony backed out from the same and started demanding more amount from applicant/accused and in the event of the applicant inability to pay the excess amount demanded, the complainant

has connived with Shekhar Gupta Advocate, who happens to be the step brother of applicant/accused, and has started this habit of getting the applicant/accused framed in a false and frivolous case and is bent upon spoiling his career. No offence is made out against the applicant/accused and as such he deserves to be discharged from the present case. Hence, present application.

3. Reply to said application was filed by the prosecution, submitting that present FIR has been rightly lodged against the accused/applicant. The facts detailed in the present application have no legal sanctity. The report u/S. 173(2) Cr.PC presented before the court is very clear and there is more than sufficient evidence documentary as well as in the shape of witnesses of different institutions who clearly make out the case that applicant had never been a student of Shia College of law under University of Lucknow and infact one different person namely Shiv Kumar Gupta son of R. R. Gupta of Lucknow had been actual student, who passed out against the university Roll No.250202 in the year 2003. It has established during the investigation that accused/applicant has forged and fabricated the degree of law and had never been a student of Shia college of Law Lucknow. Further on the basis of alleged forged degree of law accused/applicant managed to get the licence to practice as an advocate from Bar Council of Punjab and Haryana. During investigation it has also surfaced that with the use of forged degree the applicant has been impersonating and has been cheated judicial system. Enough evidence in the shape of documents have been collected by Investigating Officer. On the basis of a complaint and on strength of certain documents

from Shia College of Law, Lucknow, the Bar Council of Punjab and Haryana cancelled the licence of the applicant/accused after providing him proper opportunity of hearing. It was noticed that since the obtaining of licence from the Bar Council, the applicant/accused did not comply with the undertaking given and could not produce the authenticated degree documents from the concerned university of his qualification. Even during the time, when applicant allegedly claimed himself to be studying law, all these documents collected pertain to period 2005-06, whereas as per another aspect of the investigation, it is found that during the same time, applicant had been studying Masters in English from Govt. College for Boys, Ludhiana as a student in year 2002 to 2004. This is a stage of framing a charge against the accused/applicant and the court is to consider only prima facie evidence and there is sufficient evidence against applicant/accused to proceed further. Rest of averments have been denied in general.

4. I have heard learned APP for the State as well as learned defence counsel and gone through the record carefully.

5. Ld. Defence counsel has contended that present false and frivolous FIR has been lodged by the complainant Perna Kaur against the accused/applicant, in order to harass and humiliate him and to grab money from him. Infact, the licence of practice of applicant/accused is not forged or fabricated and the said fact was even got verified by the police officials. He further contended that the complainant has not been cheated in any manner and no inducement has been made to the complainant nor

there is any allegation with regard to any cheating in the entire complaint, and as such the present FIR is not sustainable in the eyes of law. The application upon which the license of the applicant/accused has been cancelled, was not submitted before the Bar Council by the complainant, rather, it was submitted by one Sh. Shekhar Gupta, Advocate and complainant after connivance with the officials of Bar Council, as well as, the Shia College, got procured false report. The complainant had agreed to mutually end the matrimonial bliss between her and the applicant/accused and has willfully and intentionally signed a petition under Section 13-B of HMA and after receiving permanent alimony the complainant backed out from the same and started demanding more amount from applicant/accused and when applicant/accused refused to pay the excess amount this false case has been registered against him. He prayed that no offence is made out against the applicant/accused and as such he be discharged from the present case.

6. On the other hand, Ld. APP for the State has argued that present FIR has been rightly lodged against the accused. There is more than sufficient evidence on record that applicant/accused had never been a student of Shia College of law, under University of Lucknow and infact one different person namely Shiv Kumar Gupta son of R. R. Gupta of Lucknow, had been actual student, who passed out against the university Roll No.250202 in the year 2003 and it has been established, during the investigation that accused/applicant has forged and fabricated the degree of law and on the basis of alleged forged degree of law accused/applicant managed to get the licence to practice as an advocate from Bar Council of

Punjab and Haryana. This is a stage of framing charge against the accused/applicant and the court is to consider only prima facie evidence and there is sufficient evidence against applicant/accused to proceed further. In support of his contentions, he has also placed reliance upon case law titled **Vigilance and Anti Corruption Vs. K. Ponmudei and others, 2014(1) RCR(Criminal), 572 (SC).**

7. I have considered the arguments advanced by both the counsels and have also gone through the record carefully.

8. Present FIR has been lodged on the ground that accused has forged and fabricated the degree of law and had never been a student of Shia college of Law Lucknow and on the basis of alleged forged degree of law, accused managed to get the licence, to practice as an advocate from Bar Council of Punjab and Haryana and in this way with the use of forged degree, the accused has been impersonating and cheated judicial system and public at large. The veracity of the contentions being raised by the accused and that of the different prosecution witnesses in their statements recorded during the investigation and the conclusion being arrived in the final report can only be ascertained after the case is put to the trial. Hon'ble Supreme Court in case law **Vigilance and Anti Corruption Vs. K. Ponmudei and others, 2014(1) RCR(Criminal), 572**, supra, after placing reliance upon case law **Onkar Nath Mishra v. State (NCT of Delhi), 2008(1) RCR(Criminal) 336; 2007(6) Recent Apex Judgments (R.A.J.) 656: (2008) 2 SCC 561**, has held as under:-

11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is, whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence”.

9. As the allegations made in the final report under Section 173 Cr.PC and accompanying documents do points towards the prima facie involvement of applicant/accused in the impugned offences, so at this stage no ground is made out to discharge the accused/applicant. Accordingly, in view of above said discussion and case law referred by Ld. APP for the state the present discharge application being meritless stands dismissed.

**Announced:
05.10.2016**

**Suresh Kumar Goyal,
Addl. Chief Judicial Magistrate,
Ludhiana.**

Present: Sh. R. S. Chahal APP for the State.

Accused on bail with counsel Sh.S. K. Bawa Adv.

Arguments heard on application, filed under Section 239 Cr.PC, for discharging the accused Shaiwal Gupta.

Vide my separate detailed order of even date, the present application stands dismissed. Now to come upn 14.10.2016 for consideration on charge.

Announced:

05.10.2016

Suresh Kumar Goyal,

Addl. Chief Judicial Magistrate,

Ludhiana.