

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Writ Petition (Cr.) No.88 of 2016High Court of Chhattisgarh **Versus** State of Chhattisgarh and others

SB

Hon'ble Shri Justice Sanjay K. Agrawal

1		
31/03/2016	Dr. N. K. Shukla, Senior Advocate with Ms. Vijay Laxmi Saraf, Advocate for petitioner. Mr. J.K.T. Gilda, Advocate General with Mr. Arun Sao, Deputy Advocate General for the State / respondent No.1, on advance copy. Heard on the question of admission. The writ petition being arguable is admitted for hearing. Issue notice to the respondents. PF and copies as per rules. Notices be made returnable within 10 weeks and list the matter for further orders in week commencing 20th June, 2016. Also heard on I.A.No.1/2016, application for grant of stay. Issue notice to the respondents on the said application also. PF and copies as directed above. Dr. N.K. Shukla, learned Senior Counsel appearing on behalf of petitioner, would submit that respondent No.2 has instituted criminal complaint in the Court of Additional Chief Judicial Magistrate, Raipur under Section 200 of the	

	CrPC also against Hon'ble the Chief Justice of this Court; and an Hon'ble Judge of the High Court alleging commission of offences under Sections 120-B, 294, 323, 506, 186, 353, 511 read with Section 34 of the Indian Penal Code and in which learned Additional Chief Judicial Magistrate by its order dated 26-3-2016 fixed the case for preliminary evidence of the complainant / respondent No.2 on 18-4-2016. Learned Senior Counsel would further submit that such a complaint has been filed by respondent No.2, who is not a public servant and has no locus and authority to file such a criminal complaint and it has been filed at the instance of respondent No.3, who is an indisciplined judicial officer, only to scandalize the entire judicial institution and designed to malign and lower the image of state judiciary in public view which is wholly illegal, without jurisdiction and without authority of law. Learned Senior Counsel would also submit that without prior approval of Hon'ble the Chief Justice of India, a criminal case cannot be registered against Hon'ble the Chief Justice and against Hon'ble Judge of the High Court in view of law laid down by the Supreme Court (Constitution Bench) in the matter of K. Veeraswami v. Union of India and others¹. Learned Senior counsel also referred to the judgment rendered by the Supreme Court in the matter of State of Rajasthan v. Prakash Chandra² to buttress his submission. He would also submit that the complaint filed by respondent No.2 is also statutorily barred by provision contained in Section 195(1)(a)(i) of the CrPC which clearly provides that no court shall take cognizance of any offence punishable under	
--	---	--

1 (1991) 3 SCC 655

2 (1998) 1 SCC 1

	Section 186 of the IPC except on the complaint in writing of the public servant concerned as admittedly respondent No.2/complainant is not a public servant. Dr. Shukla would also submit that since disciplinary action(s) and other proceeding has been taken against respondent No.3 and in one proceeding, punishment has also been imposed against respondent No.3, therefore as a counter-blast such a criminal complaint has been filed by respondent No.2. Relying upon the decision rendered in <u>Baradakanta Mishra v. The Registrar of Orissa High Court and others</u>³, he would submit that disciplinary control exercised by the High Court over the subordinate judiciary under Article 235 of the Constitution of India is a function which is essentially for the administration of justice and it is always done in furtherance of administration of justice and no exception can be taken of it. Respondent No.3 instead of taking legal recourse against the punishment awarded and other proceeding taken against him, got the impugned complaint filed through respondent No.2, which is nothing but disrespectful and deliberate design to malign the image of State Judiciary, which is constitutionally impermissible, statutorily barred under law, factually nonexistent and absolutely perverse to the record therefore, effect and operation of the impugned order dated 26-3-2016 be stayed and further proceeding of the said criminal case be also stayed and record of the criminal case (unregistered)/2016 titled as Pratibha Gwal v. Amit Dubey and others be requisitioned in the interest of justice. In the matter of <u>K. Veeraswami</u> (supra), Their Lordships have clearly held that without prior approval/consultation of Hon'ble the Chief	
--	--	--

	Justice of India no criminal case shall be registered against a Hon'ble Judge of the High Court and Hon'ble the Chief Justice of the High Court by directing as under:- “We therefore, direct that no criminal case shall be registered under Section 154, Cr.P.C. against a Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter. Due regard must be given by the government to the opinion expressed by the Chief Justice. If the Chief Justice is of opinion that it is not a fit case for proceeding under the Act, the case shall not be registered.” Similar is the law laid down by the Supreme Court in the matter of Prakash Chandra (supra) in which it has been held as under:- “34. Even otherwise, it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a Judge of a Court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings. This immunity is essential to enable the Judges of the Court of Record to discharge their duties without fear or favour, though remaining within the bounds of their jurisdiction. Immunity from any civil or criminal action or a charge of contempt of court is essential for maintaining independence of the judiciary and for the strength of the administration of justice.....” In the matter of Baradakanta Mishra (supra),	
--	--	--

	the Supreme Court has held in no uncertain terms that the disciplinary control exercised by the High Court over the subordinate judiciary in their judicial administration is essentially exercised for furtherance of administration of justice. Their Lordships held as under:- “46. In the State of West Bengal v. Nripendra Nath Bagchi⁴, this Court has pointed out that control under Article 235 is control over the conduct and discipline of the Judges. That is a function which, as we have already seen, is undoubtedly connected with administration of justice. The disciplinary control over the misdemeanours of the subordinate judiciary in their judicial administration is a function which the High Court must exercise in the interest of administration of justice. It is a function which is essential for the administration of justice in the wide connotation it has received and, therefore, when the High Court functions in a disciplinary capacity, it only does so in furtherance of administration of justice.” Thus, after hearing learned Senior Counsel appearing for the petitioner at some length, after going through the contents and averments of criminal complaint filed by respondent No.2, after perusing the order dated 26.03.2016 fixing the case for preliminary evidence of the complainant, following the law laid down by Their Lordships of the Supreme Court in the matter of <u>K. Veeraswami</u> (supra) with regard to registration of criminal case qua the Hon’ble Judge of the High Court, further following the law laid down in the Supreme Court in the matter of <u>Baradakanta Mishra</u> (supra) with respect to nature of disciplinary jurisdiction exercised by the High	
--	--	--

	Court under Article 235 of the Constitution of India, taking note of law laid down by the Supreme Court in the matter of <u>Prakash Chandra</u> (supra) indicating the immunity from criminal and civil action available to Hon'ble Judge of the High Court and taking into consideration the specific provision contained in Section 195(1)(a)(i) of the CrPC for filing complaint except by public servant for offence under Section 186 of the IPC, I am of the opinion that the petitioner has made out a prima facie case for grant of interim order in its favour. Looking to the facts and circumstances of the case elaborated herein-above, I deem it appropriate and expedient to pass following interim order in the interest of justice:- 1. Effect, operation and execution of order dated 26.03.2016 passed by the Additional Chief Judicial Magistrate, Raipur in Criminal Complaint Case No. (unregistered)/2016 filed on 26.03.2016 titled as Pratibha Gwal v. Amit Dubey and others shall remain stayed until further order. 2. Consequently no further proceeding/further action shall be taken pursuant to above-stated order dated 26.03.2016 and proceeding taken, if any, pursuant to that order shall also remain stayed until further orders. 3. It is further directed that the record of "Criminal Complaint Case No. (unregistered)/2016 – Pratibha Gwal v. Amit Dubey and others" pending in the Court of Shri Ashwani Kumar Chaturvedi, Additional Chief Judicial Magistrate, Raipur be summoned immediately. Requisition be	
--	---	--

	sent through the District and Sessions Judge, Raipur for forthwith transmission of the record of the case in a sealed cover to this Court and be kept with the Registrar General in such a cover to be called for. 4. The Registrar General of this Court is directed to communicate this order to Shri Ashwani Kumar Chaturvedi, Additional Chief Judicial Magistrate, Raipur through the District and Sessions Judge, Raipur for strict compliance. 5. Urgent certified copy as per rules. Sd/- (Sanjay K. Agrawal) Judge	
--	--	--