

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No.469 of 2019

Md. Sahabuddin Baig Appellant
Versus
The Union of India through C.B.I./ SPE, Ranchi
 Respondent
With

Cr. Appeal (SJ) No.284 of 2019

Ramanand Ram @ Ramannand Ram Appellant
Versus
The Union of India through C.B.I. Respondent
With

Cr. Appeal (SJ) No.364 of 2019

Smt. Shobha Sinha Appellant
Versus
The Union of India through C.B.I. Respondent
With

Cr. Appeal (SJ) No.444 of 2019

Md. Ilyas Hussain @ Md. Illiyas Hussain
 Appellant
Versus
The Union of India through Central Bureau of Investigation
 Respondent
With

Cr. Appeal (SJ) No.457 of 2019

Kedar Paswan Appellant
Versus
The Union of India through CBI/ SPE/Ranchi
 Respondent
With

Cr. Appeal (SJ) No.458 of 2019

Dhudheshwar Nath Singh @ Dudheshwar Nath Singh
 Appellant
Versus
The Union of India through C.B.I. Respondent

CORAM : HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellant : Mr. Samir Malik, Advocate (In
 Cr.Appeal (SJ) No.469 of 2019)
For the C.B.I. : None

Order No.11 Dated- 13.05.2021

I.A. Nos.1691 of 2021, 2353 of 2021 and 8963 of 2019 in Cr. Appeal (SJ) No.469 of 2019

I.A. No.3670 of 2020 in Cr. Appeal (SJ) No.284 of 2019

I.A. Nos.4795 of 2020 and 7665 of 2019 in Cr. Appeal (SJ) No.444 of 2019

I.A. No.10586 of 2019 in Cr. Appeal (SJ) No.457 of 2019

Heard the learned counsel for the appellant-petitioner of Cr. Appeal (SJ) No.469 of 2019 and the Interlocutory Applications arising out of that appeal as mentioned above through video conferencing.

2. No one turns up on behalf of the appellants of Cr. Appeal (SJ) No. 284 of 2019, Cr. Appeal (SJ) No. 364 of 2019, Cr. Appeal (SJ) No. 444 of 2019, Cr. Appeal (SJ) No. 457 of 2019 or Cr. Appeal (SJ) No. 458 of 2019. Similarly no one turns up for the common respondent of these appeals namely the Union of India represented by the Central Bureau of Investigation.

3. Learned counsel for the appellant of Cr. Appeal (SJ) No.469 of 2019 submits that he is not ready for hearing of Cr. Appeal (SJ) No.469 of 2019 on merits today and he is only ready for hearing of the three interlocutory applications i.e. I.A. Nos.1691 of 2021, 2353 of 2021 and 8963 of 2019 in Cr. Appeal (SJ) No.469 of 2019 relating to suspension of execution of sentence of the appellant-convict.

4. It is pertinent to mention here that the apparent reason for non-appearance of the learned counsels for the appellants of the connected appeals arising out of the same impugned judgment and for that matter the common respondent of all these appeals is the resolution passed by the Jharkhand State Bar Council as is evident from a communication received by the Registrar General of this Court from the Jharkhand State Bar Council to the effect that the Advocates of Jharkhand have been restrained by the Jharkhand State Bar Council from appearing in any proceedings of this Court as well as other Courts and Tribunals, both physically and virtually, in view of the Covid-19 Pandemic till 16.05.2021.

5. Mr. Samir Malik, the learned counsel for the appellant-petitioner of Cr. Appeal (SJ) No.469 of 2019 appearing before this court today is not enrolled with the Jharkhand State Bar Council

which has passed the resolution for all Advocates of Jharkhand abstaining from the proceedings of the Court till 16.05.2021 and obviously not bound by the said resolutions passed by the Jharkhand State Bar Council which has also resolved, as is evident from its communication under Reference No.1165-1201/2021 dated 18.04.2021 that any deviation or non-compliance of the said resolution of the Jharkhand State Bar Council restraining all the Advocates of the State of Jharkhand completely including their support staffs who work upon their respective direction from all Court works, whether physically or online and whether at the High Court or other Courts and Tribunals will make the concerned Advocate liable to be treated as misconduct.

6. It is needless to mention that the following issues

“(i) Whether the State Bar Council has the competence and authority to restrain all the Advocates enrolled with it and their support staff from appearing before the Courts and tribunals continuously for about a month?

(ii) Whether mere appearance by an Advocate who is an officer of the Court before a court of law can be termed as misconduct?

(iii) Whether the State Bar Council has the competence and authority to pass any resolution regarding the conduct of advocates' clerks by couching the resolution with the words 'support staff of the advocates'; the license of whom is issued by the registry of this court for the clerks of the advocates practising before this Court and in case of district courts the concerned Principal District Judge?”

are probably the grey areas having not been decided by any judicial forum, which needs to be addressed in the interest of proper and smooth functioning of this court as well as to prevent the access of justice being denied to the litigants for all practical purposes, if the resolution of the Jharkhand State Bar Council restraining all the Advocates of the State of Jharkhand as well as their support staff from appearing in court continues for an indefinite period.

7. Be that as it may, but the thing is that when the threat of 'misconduct' by none other than the Jharkhand State Bar Council which has been vested with the power by the statute to suspend the

license of all Advocates enrolled with it, hangs as Damocles' sword over the head of an Advocate, it is highly unlikely that any prudent Advocate will take the risk of appearing before the Court. So, this Court is of the considered view that the service of the copy of the Interlocutory Application by sending a copy of the same by email to the concerned Advocate, who is handicapped by the said resolution of the Jharkhand State Bar Council, under the circumstances as discussed above, cannot be treated as a valid service of the copy of the petition upon the respondent-opposite party.

8. Under such circumstances, it will not be fair to take up these matters in the absence of any body appearing for the appellants of the connected appeals as well as the common respondent-opposite party of all these appeals.

9. If the Jharkhand State Bar Council does not make any further extension of the said resolution restraining all the Advocates of the State of Jharkhand and their support staffs as already indicated above, the legality of which resolution is yet to be tested, then the appellant-petitioner will be at liberty to move before this Court as and when such a resolution of the Jharkhand State Bar Council comes to an end for hearing of the matters.

10. In alternative, the appellant-petitioner is directed to supply copy of these Interlocutory Applications along with a copy of this order directly to the concerned officer of the common respondent of all these appeals namely Central Bureau of Investigation within a week from this order and the Central Bureau of Investigation may authorize any of its officer and intimate the same to the Court Master of this Court or the Central Bureau of Investigation may engage any lawyer, if willing to appear in the case may be from outside the State of Jharkhand on the next day of listing of this case.

11. List these appeals after three weeks.