

Dr. Nishikant Dubey vs State Of Jharkhand Through The ... on 28 October, 2024

Author: Sanjay Kumar Dwivedi

Bench: Sanjay Kumar Dwivedi

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(Cr.) No. 564 of 2024

1. Dr. Nishikant Dubey, aged about 51 years S/o Shri Radhey Shyam Dubey R/o 18, G.R.G. Road, P.O and P.S-GRG Road, New Delhi-110001.

2. Anamika Gautam W/o Nishikant Dubey aged about 40 years resident of Opposite B.Ed College, Williams Town, P.O and P.S Town Deoghar, Dist- Deoghar, State-Jharkhand.

..... ... Petitioners

Versus

1. State of Jharkhand through the Superintendent of Police, Deoghar, O/o from his office at office of the Superintendent of Police, P.O. and P.S.-Deoghar, District-Deoghar.

2. Shiv Dutt Sharma, aged about 56 years, son of Shri Jwala Prasad Singh, R/o Shiv Niwas Bawan Bigha, beside Maa Lalita Hospital, Caster Town, P.O. and P.S.- Deoghar, District-Deoghar.

..... ... Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Prashant Pallav, Advocate.

	:	Mr. Parth Jalan, Advocate.
For the State	:	Mr. Manoj Kumar, G.A.-III.
	:	Mr. Deepankar, Advocate.
For the Resp. No. 2	:	Mr. Abhishek Krishna Gupta, Advocate.

05/ 28.10.2024 By a reasoned order dated 31.07.2024, the interim protection was provided to the petitioners and the respondent No. 2 was noticed and the matter was fixed for 23.09.2024. On 30.09.2024, Mr. Abhishek Krishna Gupta, learned counsel has appeared on behalf of respondent No. 2 by way of filing the vakalatnama and he took two weeks time to file counter affidavit in the matter, as such, the matter was adjourned and it was posted for today.

2. Today, when the matter was taken, Mr. Abhishek Krishna Gupta, learned counsel appearing for the respondent No. 2 has pointed out that he has filed one I.A. today, however, that I.A. was not available on record. The Court asked the Court Master to find out whether the I.A. has been filed or not, pursuant to that on inquiry, the Section has pointed out that one I.A. has been filed at 01.00 P.M. and the said I.A. has been produced by the concerned Section in this court and accordingly, the said I.A. being I.A. No. 11879 of 2024 has been taken on record.

3. Mr. Gupta, learned counsel appearing for the respondent No. 2 submits that in the said I.A., it has been pointed out that Mr. Prashant Pallav, learned counsel was previously an advocate of respondent No. 2, who was conducting the case of the respondent No. 2 and in view of that his appearance in the present case prejudiced the case of respondent No. 2. By way of inviting the attention of the court to para-8 of the said I.A., he submits that in view of para-8 of the writ petition, it is clear that Mr. Prashant Pallav has appeared on behalf of respondent No. 2 in O.A. No. 154 of 2013. He submits that in view of that and in light of Section 132 of the Bharatiya Sakshya Adhiniyam, 2023, the professional relationship continued even if the case is ceased at the earlier point of time. On these grounds, he submits that appropriate order may kindly be passed.

4. Mr. Prashant Pallav, learned counsel appearing for the petitioners submits that he has appeared for the respondent No. 2 in a case arising out of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as a junior counsel of Mr. A.K. Sinha, learned senior counsel in W.P.(C) No. 3710 of 2012, which was decided by a co-ordinate Bench of this court by order dated 07.10.2014. He submits that the cause of action of the present FIR is 24.06.2023 and this case is nothing to do with the O.A. case and in the O.A. case, pursuant to the order of the learned Tribunal, property has already been auction sold on 20.12.2023. He further submits that apart from that nothing is there to suggest that any material has been disclosed by him of the respondent No. 2. He then submits that the petitioner No. 2 is the purchaser trustee and petitioner No. 1 is nothing to do with the said trust. He submits that in anticipatory bail, he has appeared for Shiv Dutt Sharma, relating to the CBI matters, being RC-0007/2010, which was instituted against Maa Lalita Hospital, against the Director for the fraud of the bank loan. He further submits that the respondent No. 2 is in habit of making allegation against the counsels. He submits that only with the ulterior motive, the said I.A. has been filed, as the matter was fixed for final hearing today. He further submits that Mr. Abhishek Krishna Gupta was also the counsel in W.P.(PIL) No. 1248 of 2022 on behalf of the petitioners and in that case, he has further made an allegation against one of the senior advocate of this court and the Division Bench dealt with that case and after hearing the parties, has dismissed the said PIL by way of imposing a cost of Rs. One lakh.

5. It is very unfortunate that this petition has been filed that too making allegation against a practicing advocate of this court. Many lawyers are appearing at one point of time for one petitioner and at another point of time for another.

6. In para-8 of the I.A. No. 11879 of 2024, it has been stated as under:-

"8. That, thus, it is stated and submitted that the previously, Petitioners Advocate Mr Prashant Pallav was directly and completely involved with the PMCH as an Advocate

on behalf of Respondent No. 2 herein as is self- evident from Para-8 (dealing with OA No. 154/2013) of the WP (Cr) 564/2024. Also, Mr Prashant Pallav has been the Advocate of Respondent No. 2. More importantly, there is long and continuous advocate-client relationship between Mr Prashant Pallav with Respondent No. 2, which cannot be forgettable / forgotten. Thus, an element of collusion between the Petitioners and Mr Prashant Pallav as an Advocate is inferable. It is also worth noting that by way of such relationship fraud has been played upon the Hon'ble Court in obtaining interim relief vide Order dated 31/07/2024 passed in the instant WP (Cr) No. 564/2024. Needless to say, on this ground alone the prayers made in the WP (Cr) No. 564/2024 is fit to be set aside in the light of the Hon'ble Supreme Court judgment /order/decision dated 19/01/2024 in CRIMINAL APPEAL NO. 303/2024 [Kusha Durukka Vs The State of Odisha]."

7. Paragraph-8 of the writ petition is quoted as under:-

"8. That it is pertinent to mention that the informant has concealed material facts in the Impugned FIR. The facts necessary for the adjudication of the instant case are as under:-

a. It is submitted that once the account of the informant was declared as a Non-Performing Asset, Banks filed an Original Application before the Debt Recovery Tribunal, Ranchi which was registered as O.A. No. 154 of 2013 for recovery of a sum of Rs.

1,41,39,09,761.56 (INR One Hundred and Forty One Crores Thirty Nine Lakhs Nine Thousand Seven Hundred and Sixty One and Paise Fifty Six Only).

b. That the O.A. No. 154 of 2013 was allowed by the Debt Recovery Tribunal, Ranchi vide order dated 26th of June 2015 and recovery certificate was issued for recovery of an amount of Rs. 1,41,39,09,761.56 (INR One Hundred and Forty One Crores Thirty Nine Lakhs Nine Thousand Seven Hundred and Sixty One and Paise Fifty Six Only).

c. That after the issuance of Recovery Certificate, a Demand Notice dated 13th of July 2015 was issued by the Recovery Officer, Debt Recovery Tribunal, Ranchi wherein M/s Paritrans Medical College and Hospital was called upon to pay the certificate amount. d. That thereafter, the Recovery Officer vide order dated 13th of April 2016, issued the Warrant of Attachment of Immovable property mortgaged with the consortium bank which was forwarded to the Recovery Inspector. Another warrant of attachment of movable properties was issued on 27th of October 2016 and receiver was appointed for preparation of inventory of movable properties.

e. That thereafter repeated efforts were taken on the part of the Recovery Officer, Debt Recovery Tribunal, Ranchi and the Bank to auction the Scheduled Property. The Scheduled Property was again and again put to auction however no bidders turned up. Finally in the auction notice issued vide order dated 8th of November 2023 wherein the Auction was scheduled on 20th of December 2023, the property was

purchased by Baba Baidyanath Medical Trust. It would not be out of place to mention but this was the 11th time the property was put up for auction.

f. That it is pertinent to mention that before the date of scheduled auction i.e., 20th of December 2023, M/s Paritran Medical College and Hospital had filed an Interlocutory Application before the Recovery Officer on 18th of December 2023 for stay of the Auction Scheduled on 20th of December 2023. The Interlocutory Application was heard by the Recovery Officer on 19th of December 2023 and was rejected taking into account the previous conduct of M/s Paritran Medical College and Hospital.

g. That the auction of the Scheduled Property took place on 20th of December 2023 and Baba Baidyanath Medical Trust was declared as the Successful Bidder. The order of confirmation of the sale along with the Certificate of Sale was issued in favour of Baba Baidyanath Medical Trust on 23rd of January 2024.

h. That in the meantime, M/s Paritran Medical College and Hospital filed a writ petition under Article 226 of the Constitution of India before the Hon'ble High Court of Jharkhand against the order dated 19th of of 2015 which was registered as W.P.(C) No. 165 of 2024. It is imperative to mention that the informant knowing the fact that the Scheduled Property has been auctioned to Baba Baidyanath Medical Trust on 20th of December 2023 itself, filed the Writ Petition on 12th of January 2024 without impleading the Baba Baidyanath Medical Trust as Party Respondent.

Baidyanath Medical Trust file an intervention petition which was allowed. The trust also challenged the maintainability of the writ petition.

l. That it is submitted that the Bank filed a counter- affidavit in WP(C) 165 of 2024, wherein it was stated that the possession was handed over to Baba Baidyanath Medical Trust on 24th of January 2024 at 3:17 □□

j. That it is submitted, that after considering the entire facts of the case, this Hon'ble Court was pleased to dismiss the writ petition on the grounds of maintainability vide order dated 13th of February 2024 passed in W.P.(C) No. 165 of 2024."

8. Looking into the averments made in para-8 of the writ petition, it is crystal clear that the reference therein is with regard to one O.A. case arising out of a debt recovery tribunal and that is the subject matter in para-8 of the writ petition and that reference has been made in para-8 of the said I.A. In the said I.A., the order of the co-ordinate Bench has been annexed with regard to the said O.A. at Page-18 in W.P.(C) No. 3710 of 2012, which was decided by the judgment dated 14.10.2014, which clearly suggests that the said case relates to The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The cause of action of the present FIR is dated 24.06.2023 and it was pointed out that the petitioner No. 1 is nothing to do with the trust namely Baba Baidyanath Medical Trust and the petitioner No. 2 is one

of the trustee. Further Annexure-2 is an order of the Debt Recovery Tribunal, Ranchi, in R.C. 236 of 2015, which is recovery proceedings in which Mr. A.K. Yadav, learned counsel has appeared on behalf of the certificate debtors.

9. Section 132 of Bharatiya Sakshya Adhiniyam, 2023 is the para materia of Section 126 of the Indian Evidence Act and the said Section deals with the dual provision. This provision protects the party as well as the counsel. This protective umbrella also saves the counsel from unwanted and unnecessary proceedings. After all the counsel is only the carrying the brief of the client and he has no personal interest in the matter, being a member of a noble profession and the society considers him as indispensable. It is true that the lawyer has to show utmost care while dealing with the case of the clients. The lawyers cannot be said to be with the parties and similarly for the fault committed by the parties, the lawyers cannot be punished. In case, proceedings are also taken against the lawyer for the acts or omission committed by their clients, no lawyer would be able to discharge his function without fear. This is an independent profession and as such, the lawyer should be permitted to discharge his function without any external pressure.

10. The way, Mr. Abhishek Krishna Gupta, learned counsel has filed the present I.A. and as pointed out, which has been noted supra against one of the senior lawyer of this court, he has also made the same allegation in a W.P.(P.I.L), which was dismissed with a cost of rupees one lakh, which clearly suggests that with ulterior motive and maliciously the present I.A. has been filed, which is required to be dealt properly.

11. Thus, there is no communication by the counsel for the petitioners for any illegal purpose and on these grounds, it is crystal clear that there is no professional miscommunication by the learned counsel appearing for the petitioners and if such a position is there in filing of the I.A., in such a casual way, is a very serious thing and this is required to be dealt with otherwise, the Pandora box will be kept open to file cases against the lawyers if the Bench is not suited to any of the litigant.

12. In view of the above facts, the court finds that prima facie with ill motive so that this court cannot decide the case today, the respondent No. 2 has filed the aforesaid I.A., however, at the earlier point of time, two weeks time was taken by the learned counsel appearing for the respondent No. 2 to file counter affidavit and the counter affidavit has not been filed as yet and today itself, the aforesaid I.A. has been filed even the prayer is not made today for any time to file counter affidavit.

13. As such, the aforesaid I.A. is misconceived one and the same is dismissed with a cost of rupees one lakh. The cost shall be deposited before the Member Secretary, Jharkhand State Legal Services Authority, Ranchi within two weeks. Respondent No. 2 is directed to file the receipt of the same in the present case.

14. Learned counsel appearing for the respondent No. 2 submits that the time of the filing of receipt of the fine amount may kindly be extended, as the respondent will like to prefer the SLP before the Hon'ble Supreme Court.

15. In view of his such submission, the respondent No. 2 is directed to file the receipt of the fine amount in the present case within four weeks.

16. Let this matter appear on 09.12.2024.

17. The respondent No. 2 is directed to comply the earlier order by way of filing counter affidavit within two weeks. If the counter affidavit will not be filed before the next date, the writ petition shall be decided in absence of the counter affidavit and no further adjournment will be granted.

18. Interim order, granted earlier, shall remain in force till the next date of listing.

(Sanjay Kumar Dwivedi, J.) Amitesh/-