

CJ & HCJ:

W.P. No.4095/2020

20.02.2020

Heard the learned senior counsel appearing for the petitioners. We permit the petitioners to carry out the amendment for impleading the office bearers of the fourth respondent as party respondents. The amendment to be carried out within one week and amended copy to be furnished within one week.

2. Issue notice to the respondents as well as the newly arrayed respondents returnable on 3rd March, 2020. The learned Additional Government Advocate takes notice for the first to third respondents.

3. The Executive Council of the fourth respondent passed a resolution on 15th February, 2020 resolving that no member of the fourth respondent Bar Association shall file *vakalat* on behalf of the persons shown as accused in FIR No.10/2020 registered with Gokula police station at Hubballi. The

resolution also records that the same may be conveyed to the State Bar Council urging the State Bar Council to give a call to all the lawyers to boycott such anti-nationals and not to file *vakalat* on their behalf.

4. So far as such resolutions are concerned, the law is already laid down in the case of ***A.S.MOHAMMED RAFI .v. STATE OF TAMIL NADU REPRESENTED BY HOME DEPARTMENT AND OTHERS***¹. In paragraphs 10 and 24 of the said judgment, the Apex Court has held that such resolutions passed by the Bar Associations are wholly illegal and against all traditions of the Bar and against professional ethics. Moreover, such resolutions tend to take away the constitutional right of the accused to be defended by an advocate of his choice. In view of the resolution passed by the fourth respondent, it may not be possible even for the Legal Aid lawyers who are members of the fourth respondent to defend the accused in FIR No.10/2020.

¹ (2011) 1 SCC 688

5. Whether such a resolution amounts to interference with the course of judicial proceedings will have to be decided after notice is served to the fourth respondent and its office bearers.

6. Our attention is also invited to the Rules framed by the Bar Council of India under the heading **STANDARDS AND PROFESSIONAL CONDUCT AND ETIQUETTE** and in particular, Rules 11 and 15 thereof. Rule 15 is relevant which reads thus:

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"15. An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify refusal to accept a particular brief."

7. In the petition, it is pointed out that on 17th February, 2020, when the accused were produced before the Court of the learned JMFC I Class at Hubballi, they could not be represented by any advocate and the accused who are students, were assaulted in the Court premises itself. Today, certain photographs are tendered by the petitioners along with a memo in support of the said contention.

8. A number of members of the Bar have filed affidavits in which they have volunteered to appear for the accused in the said case.

9. Considering the nature of the resolution passed by the Executive Council of the fourth respondent, even if a member of the Bar who is also a member of the fourth respondent desires to appear for the accused, even such a member of the Bar deserves to be granted protection at the hands of the police. It is the duty of the police to ensure that the constitutional rights of the persons shown as accused are protected. If the accused are not allowed to be represented

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by any advocate, it will amount to violation of the constitutional rights of the accused.

10. We, therefore, direct that the advocate or advocates who wish to appear for the accused and/or who wish to file an application for grant of bail on their behalf will give an intimation in writing to the third respondent. After receiving such an intimation, the third respondent - the Commissioner of Police shall ensure that complete police protection is given to the advocate(s). The police must ensure that ~~when~~^{the} the advocate(s) who give intimation to the Commissioner of Police are protected right from their entry into the town of Hubballi. The police must also ensure that such advocate(s) are allowed to enter the Court premises for the purpose of filing bail applications after securing the signature of the accused on the *vakalat*. The police must ensure that the advocate(s) are permitted to appear before the concerned Court for arguing the bail applications and also for opposing extension of judicial custody.

11. We direct the petitioners or one of the petitioners to forward a copy of the decision of the Apex Court in the case of *A S. MOHAMMED RAFI* (supra) and other relevant decisions of the Apex Court to the fourth respondent with a request to the said respondent to reconsider the resolution passed on 15th February, 2020 as *ex facie* it appears to be against the mandate laid down by the Apex Court.

12. We are sure that if such a letter is addressed to the fourth respondent, necessary steps will be taken by the fourth respondent on the basis of such a letter, inasmuch as, being an Association of Advocates, the fourth respondent is bound by the constitutional mandate and is also bound to ensure that its members follow the rules of ethics framed by the Bar Council of India. If the fourth respondent refuses to reconsider its stand taken in the resolution, the said conduct will have to be considered when we hear the petition.

13. In the event, adequate police protection is not granted to the advocates who wish to represent the accused, we grant

liberty to the petitioners to move this Court by filing an interlocutory application.

14. Let the petition be listed on 3rd March, 2020 under the caption of 'Orders.'

Chief Justice

JUDGE



Assistant Registrar
High Court of Karnataka
Bangalore - 560 001

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