

CNR No. DLCT-000150-2025
Complaint Case No. 13 of 2025
Complaint u/s. 223 r/w 222(1) BNSS
For offences alleged u/s. 356(2) BNS
P.S. Malviya Nagar
Lipika Mitra v. Nirmala Sitharaman

08.10.2025

Present: Sh. Somnath Bharti, Sh. Anand Prakash Gautam and Ms. Samta Sharma, Ld. Counsels for the complainant.
Sh. Zoheb Hossain (through VC), Sh. Sanjeev Menon (physically) and Sh. Satyam (physically), Ld. counsels for proposed accused.

I.A. No.3 of 2025

1. This application is with prayer for waiver of cost of Rs.5,000/- imposed vide Order dated 16.07.2025. The reason for the imposition of the cost was non-appearance of complainant side on the date of hearing, despite date of 16.07.2025 being fixed at the request and convenience of both the sides vide Order dated 26.06.2025.
2. The application was filed on 17.07.2025 itself, and the complainant side stated that since the counsel noted wrong date of 17.07.2025, none could appear on 16.07.2025. The application also states that the Order was brought to his knowledge on the news that cost has been imposed and hence application was filed on the very next date.
3. The application has been vehemently contested by the opposite side and vide written reply, the proposed accused recalls that on 26.06.2025, there was deliberation between the counsels as well as the court for fixing next date of hearing and considering particular day of Wednesday, 16.06.2025 was fixed as per convenience of both sides as well as date register of this Court. The proposed accused also states that the complainant side did not even file any daily diary of the counsel to show that wrong date was fixed

and it was their duty of care to check the correct date of hearing as well as previous Order from the website available.

4. During arguments, the complainant side filed a copy of daily diary of counsel Sh. Anand Prakash Gautam (whose vakalatnama is on record) to show support their application that the counsel noted a wrong date. It was clarified that although on 26.06.2025, Id. counsel Sh. Somnath Bharti was appearing, but he noted wrong date of 17.07.2025 and communicated wrongly the same to Sh. Anand Prakash Gautam.
5. The proposed accused countered the argument that the application itself cannot be filed in present times since all information is available on Case Information System (CIS) which is accessible to all. It is also argued that the Orders of 26.06.2025 was visible and available on Court website on the very next day of hearing and even all information is readily available on 'eCourtsServices' mobile application available to lawyers and litigants alike. The prayer of the opposite side is to thus reject the application and seek recovery of the cost which has been nominal and been directed to be paid to the newly constituted Advocates' Welfare Fund of this District. The proposed accused side has also relied on various judgments and handed over a compilation of the cases to counter the application.
6. Submissions Heard. File perused.
7. Firstly, this Court is not inclined to discuss the judgments cited by each side. Imposition of cost by the Court is very case specific and no facts of two case are alike. None of the judgment referred to by either side pertains to a stage of hearing on arguments on point of cognizance, when complainant has defaulted in appearance and cost being imposed. Also the

judgments do not discuss about order being available on CIS, Court website and even 'EcourtsServices' mobile application. With the prayer at hand, discussing five judgments relied by complainant side and about twenty judgments relied by the proposed accused is nothing but wastage of judicial time. However, it necessary to note that none of the judgments referred by either side pertains to stage of pre-summoning evidence, where complainant has defaulted and cost was imposed and reaffirmed or waived later.

8. This Court would only stick to the facts and circumstances of the present case. On 26.06.2025, matter was being adjourned and the undersigned can distinctively remember that convenience of both counsels were sought for the next date of hearing. After some deliberation, 16.07.2025 was fixed as it was convenient to both the side and the undersigned can even remember that Wednesday was chosen by either side as per their convenience, so 16.07.2025 was the date of hearing. Now there is no argument from the complainant side that the case details were not updated on CIS or that the Order dated 26.06.2025 was not uploaded forthwith on Court website or 'eCourtsServices' mobile application. Hence, the complainant side failed to observe duty of care in noting and then checking the Orders of the Court.
9. As regard the ground taken, the complainant side filed one daily diary of advocate Sh. Anand Prakash Gautam, but it is true that on 26.06.2025 only advocate Sh. Somnath Bharti was appearing physically in the Court. There is no record of Sh. Anand Prakash Gautam appearing physically or through VC. The vakalatnama on record carries the names of seven counsels for the complainant and as such it cannot be believed that none of the counsels took a duty of care to check the Orders of this Court. Further, it may be possible that Sh. Anand Prakash Gautam was not present on 26.06.2025

and as such he would not have recorded next date of this case to be either 16.07.2025 or 17.07.2025 in his daily diary. Now when the opposite side took a written objection to any material not being filed with the application, date of 17.07.2025 could have been recorded in the diary of Sh. Anand Prakash Gautam and filed during arguments. There is a possibility of such diary being filled and copy filed on record as an afterthought.

10. This Court is thus not inclined to allow the present application. The same is rejected and cost imposed vide Order dated 16.07.2025 be paid by the complainant side by the next date of hearing.

I.A. No. 2 of 2025

11. This application is filed by the proposed accused with prayer for this Court to direct the complainant's main counsel Sh. Somnath Bharti to withdraw his Vakalatnama in the present case. The application states that Sh. Somnath Bharti is husband of the complainant and as such personally as well as pecuniary beneficiary of the present case and same is against Rule 6 and 9 of the Bar Counsel Rules. It is argued that the Rules have been framed for the advocates to act rationally and with duty of care towards the Court. Before any relations to the parties, the advocates being an 'Officer of the Court', they must show that they are not directly or indirectly interested in the outcome of the case. Hence, Sh. Somnath Bharti is stated not to be fit to appear for the complainant and as such direction is sought to order him to withdraw his Vakalatnama in this case.
12. The complainant side has not filed reply, but have addressed arguments in the present case. It is argued that the prayer itself is misconceived as no such Order can be passed. It is argued that the Court is within its power to direct Bar Council of Delhi or Bar Council of India, if it sees misconduct of

an advocate appearing, in failing to adhere to any rules and regulations. However it is argued that the Court has to be objective and reasoned in recommending to the Bar. Mere blood or conjugal relation to a litigant is no bar for an advocate to represent him/ her. An advocate can exercise due rationale and objectivity even after being related to his client. It is further argued that the rules itself do not bar or pass any strictures, it is only when the Court finds that the advocate has due to personal or pecuniary relation, failed to assist the Court or have acted with malice, can the advocate be recommended for disciplinary action to the Bar.

13. The proposed accused has even filed some judgments of the Hon'ble High Courts as well as Hon'ble Supreme Court to show that actions have been recommended when the advocates have appeared to have personal or pecuniary relation with the litigation. Even precedents exists where Courts have directed counsels to withdraw their vakalatnama. The proposed accused referred to judgment of **Rajendra V. Pai v. Alex Fernandes, (2002) 4 SCC 212** and **S. Vijayalakshmi v. The Secretary to the Government, (2010) 2 CTC 475** to show that 'personal interest' has wider interpretation and to show that 'counsels loses the moral authority to represent a client, whose case itself depends upon the evidence of the very same counsel'. The proposed accused also referred to case of **Gohel Himatsingh Lakhaji v. Patel Motilal Garbaldas and Ors. (1965) 6 GLR 531** to argue that 'if a court comes to the conclusion that a trial will be embarrassed by the appearance of an advocate, and if, notwithstanding the Court's expression of its opinion, the advocate refuses to withdraw, in such a case the Court has inherent jurisdiction to require the advocate to withdraw. Similarly, precedent of case **Sadat Mirkhan Dalmirkhan v. Joint Civil Judge, 1994 SCC OnLine Bom 318** was referred to argue that 'the Trial Court has the power to determine the appointment of an

Advocate'. The Id. Counsel for the proposed accused has clarified about their objection, that they are not opposed to Mr. Somnath Bharti being counsel for the complainant in general, however, specific to the present case, extensive reference have been made to his reputation as well as defamation of Mr. Somnath Bharti and as such the proposed accused apprehends that this gives rise to Mr. Somnath Bharti being a probable witness, if not for complainant then for the defence. It is also argued that the pleadings of the present complaint, gives an impression that more defamation is averred against Mr. Somnath Bharti than the complainant herself and as such this Court ought to determine the vakalatnama of Mr. Somnath Bharti.

14. Submissions heard. File perused.
15. This Court is conscious of the fact that an advocate is first an 'Officer of the Court' and as such have to act in aid of the Court to reach the interest of justice. It is also a bounden duty of the advocate appearing for any party to assist the court and not gain any pecuniary benefits of the litigation himself except his professional fees. The complainant side has also relied on **Kamla Prasad Roy and Another v. Binod Kumar Roy, 1988 SCC OnLine Pat 228** to argue that Rule 1 to 8 of Bar Council of India Rules in its manifestation are strict restriction, but so far as Rule 9 is concerned, it appears to be recommendatory.
16. It is settled that in the eyes of law both husband and wife are two separate individuals having different proprietary and pecuniary interests. Although one may argue that both are interested in each other's rights and interests, however same cannot be questioned to be unethical and immoral. A spouse, in this backdrop, may prosecute or defend the interest of the other before

the Court of law. Although one may also say that in such a case, the spouse would show keen interest to seek higher compensation or relief, however, this cannot be called illegal unless some unethical practice is employed. This Court cannot pre-suppose that only because the main counsel for the complainant is related to her by marriage, he is pecuniarily interested. Unlike Rule 1 to 8 which uses the word 'shall', Rule 9 uses the word 'should', which in form is an 'advice'. Although the powers exist with the Court to report any unethical or immoral act to the Bar Council of India. However, to pre-empt lack of objectivity in every scenario of spouse defending or prosecuting for his/her spouse would be to challenge a healthy relationship between the Bar and the Bench.

17. Upon specific query of this Court, the complainant side undertook that Mr. Somnath Bharti is not in the list of witnesses of the complainant and there is no intention to call him in the witness box. The defence however has argued that situation may arise that he may call Mr. Somnath Bharti in the witness box, since averments qua his reputation have been made in the complainant. This call has to be made by Mr. Somnath Bharti, if he wishes to withdraw his vakalatnama. This Court sees no ground to determine his vakalatnama at this stage. In case of specific violation of any Rule by any of the counsel for either party, this Court can always write to the Bar Council of India or Bar Council of Delhi for necessary information and action, if any.
18. Another objection to vakalatnama of Mr. Somnath Bharti was that extensive averments have been made to his reputation in the complainant. In this regard, contents of the complaint have been perused and it is true that paragraph 2 to 6 pertains to how Mr. Somnath Bharti has attained high reputation. The complaint however has been qua defamation of

complainant Ms. Lipika Mitra (wife of Mr. Somnath Bharti). No leave has been sought by Ms. Lipika Mitra to prosecute complaint of defamation of her spouse and even cognizance of offence, if any is yet to be taken by this Court. As rightly pointed out by the complainant, that unlike Code of Civil Procedure, 1908, no provision conferring ‘inherent powers on the Magistrate’ exists in Code of Criminal Procedure, 1973 or Bharatiya Nagarik Suraksha Sanhita, 2023. The Magistrate unlike Civil Judge, has no inherent powers and he is bound by strict procedures. As such this Court can neither invoke any inherent powers to deny cognizance for excessive/irrelevant pleadings nor can it strike of pleadings of the complaint. The complaint can be filed in comprehensive manner, however the deposition by the complainant may be curtailed to only relevant facts as provided under Bharatiya Sakshya Adhiniyam, 2023.

19. This Court finds no bar to spouse prosecuting for or defending his/ her spouse. There is no bar to even claim for maximum possible punishment or compensation, even when spouse is defending or prosecuting for his/ her spouse. In law, the husband and wife are two separate natural person and their pecuniary interests may be different. The Bar Council of India Rules specifically Rule 9 and Rule 13 are advisory in nature and it is for the complainant and her counsel to decide in their best interests. Accordingly, the application of the proposed accused for direction to determine the Vakalatnama of Mr. Somnath Bharti, is rejected and disposed off.
20. As regards the judgments relied by both the sides. Again none refers to a case where husband was representing his wife in defamation case and the Court ordered determination of his vakalatnama. All the cases are specific to facts and circumstances arising in those cases and where the Courts had pointed out to specific instance of violation of Bar Council of India Rules.

Specific reference to judgment of **Gohel Himatsingh Lakhaji v. Patel Motlal Garbaldas & Ors.; (1965) 5GLR 531.** is attracted since in this case objection was raised as to appearance of accused as the lawyer for the other accused. This was opposed by the Court since the lawyer was stepping in the Court with mixture of two characters. Another specific reference was also made to judgment of **Sadat Mirkhan Dalmirkhan v. Joint Civil Judge, Senior Division, Yavatmal & Ors.; 1995(1) Mh.L.J. 195** wherein the Id. Trial Court determined the vakalatnama of the counsel for the accused for the reason that he had already appeared as a witness on behalf of the prosecution. The facts of the above two cases are clearly distinguishable from the facts at hand before this Court in this case. Other cases are also specific to the facts and circumstances of those cases and have clear distinction.

21. Before parting with this Order, this Court would like to clarify as to why the proposed accused is taking part in the proceedings of the case before the complainant or her witnesses, if any have been examined. Same is relevant to clarify in view of the recent Order dated 25.07.2025 passed by the Hon'ble High Court of Delhi in **Brand Protectors India Pvt. Ltd. v. Anil Kumar; Crl. M.C. No. 1465 of 2025.**
22. Present complaint is filed under Section 210(1)(a) r/w 223 BNSS, 2023 for a non-cognizable, bailable and summons trial case for offence punishable under Section 356(2) Bharatiya Nyaya Sanhita, 2023 against Nirmala Sitharaman. Considering the position of law under Bharatiya Nagarik Surakhsha Sanhita, 2023 particularly Section 223, the Court issued notice to proposed accused for granting her right to be heard at the stage of cognizance. The Hon'ble High Court has ruled that in complaint case, complainant and the witnesses, if any are to be examined first before

issuing notice to the proposed accused for opportunity of being heard while taking cognizance. The said interpretation is qua Section 223 of the BNSS.

23. In the present case, the complaint came for hearing for the first time on 19.05.2025 and as such the present Court issued notice to the proposed accused before examining the complainant or the witnesses. Be that as it may, this Court is now duty bound to follow the law laid down in **Brand Protector case (supra)**. The proposed accused accordingly, may watch the proceedings of the present case, but she cannot be heard until complainant and witnesses are examined, subject to condition that prima facie case is made out to proceed to such stage.

Order

24. Application No. 2 of 2025 filed by the proposed accused is rejected and disposed off. Application No. 3 of 2025 filed by the complainant is rejected and disposed off. The complainant is to pay cost in terms of Order dated 16.05.2025 by the next date of hearing and proof be filed on record.
25. Application no.1 of 2025 filed by the proposed accused is kept pending and this Court would suggest the proposed accused to press this application after the complainant and her witnesses are examined. This would be in tune with the judgement passed in **Brand Protector case (supra)**.
26. Matter be fixed for pre-summoning evidence on **01.11.2025 at 11:00 am**.

**[PARAS DALAL]
ACJM-01, RADC
New Delhi, 08.10.2025**