

1	SACHIN SHANKAR MAGADUM	<u>04/09/2025</u>
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Sri. S.Rajshekar, learned counsel accepts notice to respondent No.2.

Sri. B.N.Jagadish, learned Special counsel is directed to accept notice to respondent No.1.

Petitioner's counsel to serve two sets of copies of the writ petition on the standing counsel.

2. Meanwhile, respondent No.1/Investigating Agency is directed not to take any coercive steps till the next date of hearing in the light of the observations made by the Hon'ble Apex Court in SLP No.9334/2025. This Court deems it fit to extract the relevant portion of the observations made by the Hon'ble Apex Court at Paras 7 to 12 of the said SLP, which reads as under:

"7. Prima facie, we find merit in the said submission. The legal profession is an integral component of the process of administration of justice. Counsel, who are engaged in their legal practice apart from their fundamental rights under Article 19(1)(g) of the Constitution of India, have certain rights and privileges guaranteed because of the fact that they are legal professionals and also due to statutory provisions like Section 132 of BSA. Permitting the Investigating Agencies/Prosecuting Agency/Police to directly summon defence counsel or Advocates, who advice parties in a given case would seriously undermine the autonomy of the legal provision and would even constitute a direct threat to the independence of the administration of justice.

8. In view of this important issue, which is arising in this case, we feel that this is a case where notice need to be issued to the learned Attorney General for India, learned Solicitor General of India, the Chairman, Bar Council of India and for the time being to the President/Executive Committee of the Supreme Court Bar Association and to the President/Executive Committee of the Supreme Court Advocates-on-Record Association to assist the Court in addressing this important question. Ordered accordingly. Some of the questions which arise for consideration are:

(i) When an individual has the association with a case only as a lawyer advising the party, could the Investigating Agency/Prosecuting Agency/Police directly summon the lawyer for questioning?

(ii) Assuming that the Investigating Agency/Prosecuting Agency/Police has a case that the role of the individual is not merely as a lawyer but something more, even then should they be directly permitted to summon or should judicial oversight be prescribed for those exceptional criterion of cases?

9. Both these issues and such other issues as may arise would have to be addressed on a comprehensive basis because what is at stake is the efficacy of the administration of justice and the capacity of the lawyers to conscientiously and fearlessly discharge their professional duties. This is a matter directly impinging on the administration of justice. Hence, subjecting the Counsel in a case to the beck and call of the Investigating Agency/Prosecuting Agency/Police prima facie appears to be completely untenable.

10. In view of the importance of the matter, let the papers be placed before Hon'ble the Chief Justice of India for passing such directions as His Lordship may deem appropriate. As far as the present matter is concerned, till further orders, the respondent-State is restrained from summoning the petitioner and there shall be stay of operation of the notice dated 24.03.2025 or such other subsequent notices that may have been issued to the petitioner.

11. Issue notice to the respondents. Let notice also be issued as directed in Para 8 hereinabove.

12. Let the matter be placed before Hon'ble the Chief Justice of India."

3. It would be also relevant to take cognizance of the suo moto cognizance taken by the Hon'ble Chief Justice of India in Suo Moto Writ Petition (Criminal) No.2/2025. The observations made by the Hon'ble Apex Court is extracted which reads as under:

"1. Applications seeking intervention/impleadment are allowed.

2. We have heard learned counsel appearing before us. The learned counsel emphasize the need for issuance of certain guidelines so as to protect the lawyers from the misuse of the process of law by the investigating agencies such as Directorate of Enforcement (ED), Central Bureau of Investigation (CBI) and police authorities.

3. Written submissions have been filed on behalf of the Supreme Court Bar Association (SCBA), the Supreme Court Advocates on Record Association (SCORA) and other associations.

4. A copy of the said submissions be furnished to the learned Attorney General for India (AG) as well as the learned Solicitor General of India (SG), within a period of three days from today.

5. This Court will hear the responses of the learned AG and learned SG on 12.08.2025, before proceeding to issue any direction.

6. List these matters on 12.08.2025, high up on the Board. "

4. The next crucial document which needs to be adverted at this juncture is the Technical Circular No.03/2025 dated 20.06.2025. The same is extracted which reads as under:

"Subject: Directive for issuing summons to Legal Practitioners/Advocates/Lawyers.

It has come to the notice that field formations are issuing summons to legal practitioners/Advocates/Lawyers during the course of money laundering investigation to disclose/produce communications and documents in professional capacity pertaining to their clients.

2. In this connection, attention is invited to Section 132 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA, 2023) which is re-produced as under:

132. (1) No advocate, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his service as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional service, or to disclose any advice given by him to his client in the course and for the purpose of such service:

Provided that nothing in this section shall protect from disclosure of-

(a) any such communication made in furtherance of any illegal purpose;

(b) any fact observed by any advocate, in the course of his service as such, showing that any crime or fraud has been committed since the commencement of his service.

(2) It is immaterial whether the attention of such advocate referred to in the proviso to sub-section (1), was or was not directed to such fact by or on behalf of his client.

Explanation. The obligation stated in this section continues after the professional service has ceased.

(a) A, a client, says to B, an advocate-"I have committed forgery, and I wish you to defend me". As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an advocate-"I wish to obtain possession of property by the use of a forged deed on which

I request you to sue". This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(3) The provisions of this section shall apply to interpreters, and the clerks or employees of advocates.

3. From the above, it is amply clear that legal practitioner cannot be compelled to disclose any communication made to him in the course and for the purpose of his professional service as such legal practitioner, by or on behalf of his client unless with his client's express consent. However, proviso to Section 132 of the BSA, 2023 has carved out certain exceptions.

4. In view of the above, it is directed that no summons shall be issued to any advocate in violation of Section 132 of the BSA, 2023. Further, if any summon needs to be issued under the exceptions carved out in proviso to Section 132 of the BSA, 2023, the same shall be issued with the prior approval of the Director, ED.,

5. This issues with the approval of the Director, Directorate of Enforcement. "

5. In view of the observations made by the Hon'ble Apex Court in the above extracted interim orders and the Circular dated 20.06.2025, the summons dated 01.09.2025 shall be kept in abeyance till the next date of hearing.

Re-list in fresh matters list on 08.10.2025.

Last Updated On: 2025-09-08 13:43:00