
(2000) 04 AHC CK 0015

In the Allahabad High Court

Case No : Criminal Misc. Application No. 4546 of 1999

Abhinandan Singh

APPELLANT

Vs

Mahesh Kumar Mishra and Others

RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Advocates Act, 1961 — Section 35
Bar Council of India Rules, 1975 — Rule 39

Citation : AIR 2001 All 77

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Tej Pal, K.D. Tiwari, D. Kumar, J.S. Sengar and R.P.S. Chauhan, for the Appellant; A.G.A. Hemendra Kumar and Viresh Mishra, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—This petition was dismissed as not pressed on 29-10-99. The petitioner has now moved an application to recall the order dated 29-10-99 and to restore the petition and to decide it on merits.

2. I have heard Sri J. S. Sengar, learned Counsel for the petitioner and Sri Viresh Mishra, learned Counsel for opposite parties.

3. The petition was filed through Sri Tej Pal Advocate. An application was moved to dismiss the petition as not pressed by Sri K. D. Tiwari, Advocate on 26-10-99. It was also prayed that the office be directed to list the petition. Sri K. D. Tiwari also filed his Vakalatnama for the petitioner. The petition came in computer list on 29-10-99 was dismissed on that date as not pressed. Sri K. D. Tiwari was present at the time of hearing of the present recall application and has stated that he was instructed by the petitioner to move an application for dismissal of the petition on the ground that it is not pressed. He further stated that the petitioner was known to him from before and he has also conducted two cases of the petitioner.

4. It is contended by the learned counsel for the petitioner that the name of Sri Tej Pal Advocate was not printed in the computer list and he was not heard. It is argued that Sri Tej Pal was Advocate in this case and Sri K.D. Tiwari Advocate could not have appeared on behalf of the petitioner. In support of the arguments, the learned Counsel has referred to Rule 39 of the Bar Council of India Rules, 1975, which is as follows :

"39. An Advocate shall not enter appearance in any case in which there is already an Advocate on record except with his consent".

5. On the basis of this rule, it has been argued by Mr. Sengar that Sri K.D. Tiwari Advocate did not obtain permission of Sri Tej Pal, who was already an Advocate on record of this case. That therefore, he could not have appeared for the petitioner nor could have moved an application that the petition is not pressed. That therefore, the order passed in the petition without opportunity of hearing to Sri Tej Pal, counsel for the petitioner, is liable to be recalled.

6. I have considered the arguments of the learned counsel carefully. The questions are whether this rule is being ever observed ? Whether on the basis of this rule, the Court can refuse hearing to another Advocate in a case in which there is already an Advocate on record, and whether this rule has a force of law. The reply of all these questions is necessarily against the petitioner. It has been observed that the Advocates file their fresh Vakalatnama and appear in the case inspite of the fact that there is already an Advocate on record from before. The Court cannot refuse to hear the counsel, who filed Vakalatnama on behalf of party and cannot direct him to obtain permission of the Advocate, who was appearing from before. It will create many complications.

7. Lastly the rules, no doubt, have been framed under the Advocate Act, 1961. However, these rules do not have the force of law and cannot be enforced in the Court. These rules are neither the legislation nor delegated legislation and cannot be enforced in the court of law. On the basis of these rules, The Bar Council of India may initiate proceedings for misconduct, in case the breach of any rule is committed by any Advocate. However, these rules do not have the force of law and cannot be enforced in the Court. The Court cannot refuse to hear an Advocate on the basis of Rules 39 of the rules referred to above.

Considering the circumstances, I am of the view that Sri K.D. Tiwari has withdrawn the petition under the instructions of the petitioner. There is no ground to recall the order.

The application of the petitioner is, therefore, dismissed.