
(2017) 06 AHC CK 0009
In the Allahabad High Court
Case No : 501 of 2017

Baljeet Singh

APPELLANT

Vs

Pratap Singh & Ors

RESPONDENT

Date of Decision : 09-06-2017

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs
Code of Civil Procedure, 1908, Order 3Rule 4, Order 3Rule 3, Order 19 -
Advocates Act, 1961, Section 30 - Right of advocates to practise

Citation : (2017) 06 AHC CK 0009

Hon'ble Judges : B. Amit Sthalekar

Bench : Single Bench

Advocate : Akhilesh Tripathi, Shilpa Ahuja, Varun Dev Sharma, Ayank Mishra

Judgement

1. Heard Sri Akhilesh Tripathi, learned counsel for the appellant and Sri Ayank Mishra and Sri A.P. Mishra, learned counsel for the respondents no.2 and 3.

2. This is the defendant's second appeal. Without going into the merits of the impugned order, at the time of admission Sri Varun Dev Sharma, learned counsel for the respondents raised a preliminary objection that the person who has filed the affidavit in support of the stay application in this second appeal is one Sri Rohit Kumar Tyagi, who has claimed in para 1 of the affidavit that he is the family friend of the appellant and states that he is doing pairvi of the case on behalf of the appellant. The learned counsel for the respondents submits that Sri Rohit Kumar Tyagi was in fact the counsel for the appellant before the lower appellate court and therefore, as a counsel he cannot be the pairokar of his client and file an affidavit to the stay application in support of the present second appeal and this act of his amounts to professional misconduct.

3. On the preliminary objection so raised by the learned counsel for the

respondent, the Court vide its order dated 10.5.2017, directed Sri Rohit Kumar Tyagi to be present in the court on 16.5.2017 and file his affidavit. Sri Rohit Kumar Tyagi appeared before the court on 16.5.2017 and also filed an affidavit. In para 1 of the affidavit, he has stated that he is the family friend of the appellant and is doing pairvi of the case and is well versed and acquainted with the facts and circumstances deposed to in the affidavit. However, the preliminary objection and the allegations of the learned counsel for the respondents that Sri Rohit Kumar Tyagi was the counsel for the appellant before the lower appellate court and, therefore, he could not have filed the affidavit in support of the present second appeal as a family friend, has not been denied in the affidavit filed by Sri Rohit Kumar Tyagi. In paragraph 3 of the affidavit, the deponent Sri Rohit Kumar Tyagi submits an unconditional apology for the alleged misconduct as it was out of naivety and that he did not commit the alleged misconduct intentionally. Paragraph 3 of the affidavit reads as under:- "3. That at the outset the deponent submit that the deponent submit an unconditional apology for the alleged misconduct as it was purely out of naivety and the deponent intentionally did not commit the alleged misconduct."

4. In paragraph 5 of the affidavit, the deponent submits that he filed the affidavit under the instructions of his client, who was also his family friend on the impression that there is no legal bar in swearing the affidavit inasmuch as he is not the counsel for the appellant in the High Court. Paragraph 5 of the affidavit reads as under:- "5. That the deponent submits that the deponent on the instructions of his earlier client who also appears to be his family friend sworn the affidavit on the impression that there is no legal var in swearing the affidavit in as much as the deponent is not a counsel of Sri Baljeet Singh before the Hon"ble High Court and no Vakalatnama has been executed in his favour."

5. In paragraph 6 of the affidavit, he submits that he has sworn the affidavit in his capacity as pairokar and not as an Advocate and there is no legal bar as provided in Order III Rule 3 & 4 C.P.C. or Order 19 C.P.C. He further submits that there is no express bar in the Rules as contained in the Bar Council of India Rules under the Advocates Act, 1961. In paragraph 7 of the affidavit, he submits that even an Advocate has an implied authority of law to swear an affidavit on behalf of his client and in the instant case, though the deponent was counsel in the lower appellate court but he is not counsel for the appellant before the High Court.

6. In my opinion, the contention of Sri Rohit Kumar Tyagi, Advocate is thoroughly misconceived. A counsel who appears though a Vakalatnama on behalf of his client cannot step into the shoes of that client. His identity must remain distinct from that of his client. It is one thing for an Advocate to file a personal affidavit in his client's case to explain the delay in filing the case if attributed to him but it is quite another thing for the advocate to file a petition or appeal or proceeding on affidavit swearing to facts which concern only his client more so when the advocate has appeared for the said client in an earlier proceeding in his capacity

as the client's advocate and not as his witness. The Supreme Court in *Vinoy Kumar Vs. State of U.P. and Others*, (2001) 4 SCC 734 has held as under:- "1. Aggrieved by the orders passed by the District and Sessions Judge, Varanasi dated 13-2-2001 transferring a number of criminal cases for disposal to the Additional District and Sessions Judge/Special Judge, the petitioner- Advocate, representing the accused persons in three of such transferred cases, filed a writ petition in the High Court praying for quashing of the said order. It was contended that by the transfer of the cases, the speedy trial of the accused has been hampered and that the order has been passed in a casual manner. The writ petition was dismissed by the High Court holding that the petitioner being an advocate had no locus standi to challenge the legality of the order by way of a writ petition.

2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.

3. In the instant case the petitioner had not filed the petition in public interest and did not disclose the circumstances which prevented the affected persons from approaching the court. In the discharge of his professional obligations, the petitioner-advocate is not obliged to file the writ petition on behalf of his clients. No circumstance was mentioned in the petition which allegedly incapacitated the affected persons from filing the writ petition. Section 30 of the Advocates Act, only entitles an advocate to practise the profession of law and not to substitute himself for his client. The filing of the writ petition in his own name, being not a part of the professional obligation of the advocate, the High Court was justified in dismissing the writ petition holding that the petitioner had no locus standi.

4. The reliance of the learned counsel on *Chairman, Railway Board & Ors. v. Chandrima Das (Mrs.) & Ors.* (2002) 2 SCC 465 is misplaced inasmuch as in that case the writ petition had been filed in public interest where it was found on facts

that the affected person was not in a position to approach the court for the redressal of her grievances.

5. There is no merit in this petition which is accordingly dismissed."

7. The Supreme Court has referred to the provisions of Section 30 of the Advocates Act, 1961 and has held that the said section only entitles an advocate to practise the profession of law and not to substitute himself for his client. The filing of the writ petition in his own name was not a part of the professional obligation of the advocate and the High Court was, therefore, justified in dismissing the writ petition holding that the petitioner had no locus standi.

8. Section 30 of the Advocates Act, 1961 provides that every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territory to which the Act apply. Thus, an advocate gets his right to practise in a court only under Section 30 of the Act. "Practise" in itself means to appear on behalf of his client before a Court or Tribunal in the best interest of his client. Practise, however, certainly does not give liberty to an advocate to identify himself with his client and step into the shoes of his client, so far as the rights of his client are concerned. Section 30 of the Act reads as under:- "30. Right of advocates to practise.-Subject to provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,-

(i) in all Courts including the Supreme Court;

(ii) before any Tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

9. I am, therefore, of the view that *pima facie*, the said Advocate, Sri Rohit Kumar Tyagi is guilty of professional misconduct in identifying himself with his client and filing an affidavit in support of the present second appeal, but considering that he himself expresses that he had acted under naivety and has submitted an unconditional apology, I do not propose to refer the matter to the Disciplinary Committee of the State Bar Council in the hope that this incident would in itself be a lesson enough for the said counsel to mend and mind his ways for future.

10. For reasons aforesaid and in view of the law laid down by the Supreme Court in the case of Vinoy Kumar (*supra*), this second appeal is dismissed.