

(2005) 05 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4033 of 1993

Bhagwati Prasad Singhal

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 139
Criminal Procedure Code, 1973 (CrPC) — Section 2, 297, 297(1), 539, 539
High Court of Madhya Pradesh Rules, 2008 — Rule 1
Notaries Act, 1952 — Section 8
Oaths Act, 1969 — Section 3, 3(1), 3(2), 6(2)

Citation : (2005) 3 JLJ 166

Hon'ble Judges : R.V. Raveendran, C.J;S.S. Kemkar, J

Bench : Division Bench

Advocate : P.N. Dubey, D.A.G. for Respondent No. 1 and S.C. Sharma and Akash Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Raveendran, C.J.—The Petitioner, an Advocate and Notary, has filed this Public Interest Litigation seeking a direction to the Respondents (State of Madhya Pradesh and the High Court of M.P.) to issue suitable directions to Judicial Magistrates not to administer oaths and affirmations in respect of affidavits meant for purposes other than judicial proceedings. He has contended that the power to administer oath in respect of affidavits other than those intended to be used in judicial proceedings, lies only with Notary Public or persons specially empowered by the State Government in that behalf; and that as Judicial Magistrates are not so empowered, they are not entitled to administer oath to such affidavits.

2. We may first refer to the relevant provisions of law bearing on the issue.

2.1. Section 139 of the Code of Civil Procedure, 1908 ("CPC" for short) provides as to who should administer oath in regard to affidavits for purposes of the said

Code. It reads thus:

In the case of any affidavit under this Code:

- (a) any Court or Magistrate, or
- (aa) any notary appointed under the Notaries Act, 1952; or
- (b) any officer or other person, whom a High Court may appoint in this behalf; or
- (c) any officer appointed by any other Court which the State Government has generally or specifically empowered in that behalf, may administer the oath to the deponent.

2.2. Similarly Section 297 of the Code of Criminal Procedure 1973, ("CrPC" for short) enumerates the persons before whom affidavits may be sworn. Sub-section (1) of Section 297 which is relevant reads thus:

Affidavits to be used before any Court under this Code may be sworn or affirmed before-

- (a) any Judge or any Judicial or Executive Magistrate, or
- (b) any Commissioner of Oaths appointed by a High Court or Court of Session, or
- (c) any notary appointed under the Notaries Act, 1952.

2.3. The Madhya Pradesh High Court Rules and Orders, also contain a provision as to who is empowered to administer oath in regard to affidavits to be used in the High Court and Supreme Court. Rule 1 of Chapter III of the said Rules and Orders is extracted below:

The Additional Registrar or Deputy Registrar, a notary public appointed under the Notaries Act, 1952, and other persons mentioned in Section 539 of the Code of Criminal Procedure and Section 139 of the Code of Civil Procedure, are persons empowered to administer the oath or receive the solemn affirmation in the case of affidavits to be used in this Court and the Supreme Court.

(Note: Section 539 of the Code of Criminal Procedure, 1898 referred in the said rule corresponds to Section 297 of the Code of Criminal Procedure.)

2.4. It is clear from the above provisions that they relate to and provide for only administration of oath or affirmation in respect of affidavits to be used in proceedings before the Courts covered by the CPC or Code of Criminal Procedure, as also the High Court and the Supreme Court. They do not enable or empower any one, in particular Judges or Judicial Magistrates to administer oath or affirmation in respect of affidavits which are not intended to be used in proceedings before Courts.

3. The Notaries Act, 1952 was enacted with the object of empowering Central and State Governments to appoint notaries not only for the limited purposes of the Negotiable Instruments Act, but generally for all recognized notarial

purposes. Section 8 of the Notaries Act deals with the functions of notaries and provides that a notary may do all or any of the following acts by virtue of his office.

- (a) Verify, authenticate, certify or attest the execution of any instrument;
- (b) to (d);
- (e) administer oath to, or take affidavit from, any person;
- (f), (h), (ha), (hb);
- (i) any other act which may be prescribed.

Thus a notary appointed under the Notaries Act is empowered to administer oath to any person or take affidavit from any person. This would necessarily include administering oath or affirmation in respect of any affidavit including those not intended to be used in any proceedings in Courts.

4. The Parliament also enacted the Oaths Act, 1969 to consolidate and amend the law relating to judicial oaths and for certain other purposes. Section 3 relates to Power to administer oaths and the said section is extracted below:

3. Power to Administer Oaths - (1) The following Courts and persons shall have power to administer, by themselves, or subject to the provisions of Sub-section (2) of Section 6, by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:

- (a) all Courts and persons having by law or consent of parties authority to receive evidence;
- (b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.

(2) Without prejudice to the powers conferred by Sub-section (1) or by or under any other law for the time being in force, any Court, Judge, Magistrate or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf-

- (a) by the High Court, in respect of affidavits for the purpose of judicial proceeding; or
- (b) by the State Government in respect of other affidavits.

The term "judicial proceeding" is not defined in the Oaths Act. The general meaning of the said terms is "a proceeding in Court". The term is defined in Section 2(i) of Code of Criminal Procedure as follows:

"Judicial Proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath.

The settled meaning of the term is "a proceeding the purpose of which is the ascertainment of some right or liability." The proceeding is criminal if the object is to ascertain the liability of the person accused. The proceeding is civil, if the object is to ascertain some right or status, or the right of one party and the liability of the other to some form of relief. In that sense, proceedings before any Tribunal (Administrative Tribunals, Debt Recovery Tribunals etc.) which has the power to summon any person and examine him on oath and receive evidence by affidavits, will be judicial proceedings.

5. Sub-section (1) of Section 3 empowers all Courts to administer oaths and affirmations in discharge of the duties imposed or in exercise of power conferred upon them by law. Sub-section (1) does not confer any power on Judges or Magistrates to administer oaths or affirmation in respect of affidavits which are not intended to be used in judicial proceedings. Sub-section (2) of Section 3, however, authorizes the empowerment of any Court, Judge, Magistrate or person to administer oaths and affirmations for the purpose of affidavits by two authorities, that is, by the High Court in respect of affidavits for the purpose of judicial proceedings, and by the State Government in respect of other affidavits. Therefore, no Judge or Magistrate can claim power u/s 3 to administer oath or affirmation in respect of affidavits to be used for purposes other than judicial proceedings, unless specifically empowered by the State Government.

6. The Petitioner had made a specific averment that State Government has not issued any order u/s 3(2)(b) empowering Judges or Magistrates to administer oath/affirmation (for the purposes of affidavits not meant to be used in judicial proceedings). The Respondents have not controverted this statement. In fact, by order dated 11.9.1990, this Court directed the Respondents to clarify whether any order had been made u/s 3(2)(b). Though no return is filed, we are informed by the learned Deputy Advocate General that the State Government has not made any order u/s 3(2)(b) of Oaths Act empowering any Court, Judge or Magistrate to administer oath or affirmation in regard to affidavits for purposes other than judicial proceedings. The Petitioner's contention thus, deserves to be accepted.

7. We may resultantly summarize the position as follows:

(a) A Judge or Magistrate or an Oath Commissioner may administer oath or affirmation in respect of any affidavit to be used in any judicial proceedings, that is, any proceeding before any Court to which CPC or Code of Criminal Procedure is made applicable or any proceeding before any Tribunal which is empowered to receive evidence on oath.

(b) A Notary Public may administer oath or affirmation in regard to all affidavits, that is, not only to the affidavits in respect of which oath or affirmation can be administered by a Judge, Magistrate or Oath Commissioner, but also affidavits which are to be used for purposes other than Court/Judicial proceedings.

(c) An Executive Magistrate can administer oath or affirmation in respect of

affidavits to be used in any criminal proceedings or any proceedings before the High Court.

(d) In regard to any affidavit which is to be used for purpose other than judicial/ Court proceedings, oath or affirmation can be administered by a Notary Public. It can also be administered by any person if empowered by the State Government u/s 3(2) of the Oaths Act, 1969. At present no person is empowered u/s 3(2) of the Oaths Act.

8. We, therefore, allow this petition and direct that no Judge or Magistrate, in the absence of any power conferred by the State Government by notification u/s 3(2) (b) of the Oaths Act, can administer oath or affirmation in regard to any affidavit which is meant for any purpose other than for Court/judicial proceedings. Let the Registry bring this position to the notice of all the Judges and Magistrates of the State for observance.