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**(1984) 08 AHC CK 0082**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 2988 of 1984

Imam Baksh

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 06-08-1984

**Acts Referred:**

Constitution of India, 1950 — Article 39

**Citation :** (1984) 08 AHC CK 0082

**Hon'ble Judges :** S.K. Dhaon, J

**Bench :** Single Bench

**Advocate :** S.K. Chaturvedi, for the Appellant;

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## **Judgement**

S.K. Dhaon, J.—The applicant is facing a trial before the Special Judge (E. C. Act) Jhansi. He made an application before the learned Judge praying that a counsel may be assigned to him for his defence at the expense of the State. This application has been rejected on 3-2-1984, hence this application u/s 482 of the Code of Criminal Procedure.

2. Before the learned Judge below the applicant had set up a clear case that he had no means to engage a counsel. The learned Judge did not deal with this aspect of the matter at all. He contented himself by observing that the applicant could manage to engage a counsel as at the initial stage of the case he had engaged a counsel. The learned Judge was called upon to decide a crucial question of fact as to whether the applicant on the date of the making of the said application had any means to engage a counsel. The mere fact that at some earlier stage the applicant had engaged a counsel did not and could not mean to that his financial condition remained stationary throughout. Section 304 of the Code provides that where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the court that the accused has no sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State. The learned Judge was, therefore; required to focus his attention to the primary question as to whether the

applicant was represented before him by a counsel (pleader). If it was found that a counsel was representing the applicant, no further enquiry was necessary. In case no counsel represented the applicant, the learned Judge was called upon to determine the question as to whether the applicant had sufficient means to engage a counsel for his defence. In the impugned order of the learned Judge it is implicit that before him (Judge) the applicant was not represented by any counsel (pleader,). The learned Judge declined to accede to the request made by the applicant for assigning a counsel for his defence on the ground that initially the applicant had managed to engage a counsel.

3. The echo of the provisions contained in Section 304 of the Code now finds place in Article 39-A of the Constitution of India, which forms a part of the Directive principles of the State policy. It is well settled that these principles are fundamental to the governance of our country. Courts should therefore, administer the provisions of Section 304 of the Code with zeal and interpret, the same liberally in favour of the citizen seeking legal aid. The application made under the said provisions should be disposed of on judicial considerations.

4. In the instant case the learned Judge rejected the application on an extraneous consideration that initially the applicant had managed to engage a counsel. Such an approach of the learned Judge cannot be and should not be countenanced.

5. This application succeeds and is allowed. The impugned order dated 3-2-1984 is quashed. The learned Special Judge (E. C. Act) is directed to assign a counsel (pleader) for the defence of the applicant at the expense of the State.