
(1996) 10 MP CK 0043
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 325 of 1996

Ramnath Lathi

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-10-1996

Acts Referred:

Advocates Act, 1961 — Section 17, 24, 29, 30, 32
Advocates Rules, 1961 — Rule 14, 9
Criminal Procedure Code, 1973 (CrPC) — Section 303, 319
Penal Code, 1860 (IPC) — Section 148, 149, 307

Citation : (1997) 1 MPLJ 579

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; S.H. Sen, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.

Shri Ramnath Lathi, the petitioner in person.

Shri S. H. Sen, Dy. G. A. for State. Both of them have been heard. Record has been perused.

The petitioner is hereby assailing the order passed by learned Second Additional Sessions Judge, Ujjain in the matter of S.T. 23/93 dated 7-8-1996 by which Shri R. N. Lathi, advocate, the petitioner was prohibited from appearing in the case for co-accused for defending him.

Few facts need to be stated for the purpose of unfolding the controversy. A criminal case was pending against accused Umrao and 10 others for offence punishable u/s 148 read with 149 and section 307 of Indian Penal Code. Those accused were charged that on 10-11-1993 they had formed an unlawful assembly along with present petitioner-R. N. Lathi with a common object to

assault Satyanarayan. It was also alleged that the members of said unlawful assembly were armed with deadly weapons for the purpose of assaulting Satyanarayan. By using those weapons they did cause such bodily injuries to Satyanarayan which if Satyanarayan would have died would have made all of them liable for conviction for his murder. The record shows that on 20-11-1993, the present petitioner R. N. Lathi was made an accused by the court in view of provisions of section 319, Criminal Procedure Code, 1973 (hereinafter referred to as Code for short). The charge was framed against other accused and the petitioner by the Court on 20-11-1993.

The petitioner, R. N. Lathi wanted to appear for accused Umrao Singh, when he was defending himself in that case. Said accused Umrao s/o Gangaram had submitted an application for engaging Shri R. N. Lathi, advocate for his defence in that case in view of provisions of section 303 of the Code. Learned court has opined that as Ramnath Lathi was an accused in that case he was not entitled to appear as counsel for his co-accused and he (learned Judge), thus, did not permit the petitioner, Ramnath Lathi to appear on behalf of co-accused Umrao and that order is being assailed by Ramnath Lathi, by this petition.

Shri Lathi placed reliance on section 303 of the Code which provides that -

"Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice."

For the purpose of justifying his argument he placed reliance on the judgment of Supreme Court in the matter of State of M. P. v. Shobharam reported in 1966 MPLJ 961, wherein the Supreme Court has held -

"When a person is arrested, he gets a right to be defended by a legal practitioner of his choice."

The Supreme Court has further held in that judgment that "A person arrested and put on his defence against a criminal charge, which may result in penalty, is entitled to the right to defend himself with the aid of counsel."

Shri Lathi further placed reliance on the judgment of the Supreme Court in the matter of Madhu Limaye reported in AIR 1969 SC 1014 wherein the Supreme Court held -

"Two requirements of clause (1) of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him."

Shri Lathi submitted that in view of these decisions of the Supreme Court and the provisions of Advocates Act, 1961 (hereinafter referred to as Advocates Act

for short), it was not proper and legal for the learned Judge to pass such an order and prevent him from appearing for co-accused Umrao. He submitted that said order needs to be set aside as it is illegal and he needs to be permitted to appear and defend Umrao as a lawyer of his choice. Shri Sen, Dy. G. A., appearing for State submitted that Shri R. N. Lathi, the present petitioner is an accused person in the said case himself and accused cannot appear for co-accused in the same case. He submitted that impugned order is correct, proper and legal and revision petition be dismissed.

The provisions of Advocates Act provides definition of "Advocate" which means an advocate entered in "Roll" under the provisions of this Act. It provides definition of . "Roll" as a roll of advocates prepared and maintained under this Advocates Act. "State Roll" means a roll of advocates prepared and maintained by a State Bar Council u/s 17.

Section 17 provides -

"Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of (a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926, immediately before the appointed day (including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time express an intention in the prescribed manner to practice within the jurisdiction of the Bar Council, (b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed day.

(2) Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

Sub-section (4) of Section 24 provides -

"Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions namely :- (a) he is a citizen of India (b) he has completed the age of twenty one years (c) he has obtained a degree in law.

Section 24A provides -

"No person shall be admitted as an advocate on a State roll - (a) if he is convicted of an offence involving moral turpitude : (b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955."

Section 29 provides -

"Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates."

Section 30 provides -

"Subject to the 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."

Section 32 provides -

"Notwithstanding anything contained in this Chapter any Court, authority or person may permit any person, not enrolled as an advocate under this Act to appear before it or him in any particular case."

Section 33 provides -

"Except as otherwise provided in this Act or in any other law for the time being in force no person shall, on or after the appointed day, be entitled to practise in any Court or before any authority or persons unless he is enrolled as an advocate under this Act."

Section 34 provides -

"(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto."

Section 35 provides -

"(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee (1) (A) of section 35 provides - "The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceedings pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council."

Sub-section (3) of section 35 provides -

"The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may, make any of the following orders, namely -

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council direct that the proceedings be filed; (b) reprimand the advocate; (c) suspend the advocate from practice for such period as it may deem fit; (d) remove the name of the advocate from the State Roll of Advocates."

Section 45 provides -

"Any person who practises in any Court or before any authority or person, in or before whom he is not entitled to practice under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months."

Thus, the Advocates Act has provided a right to an advocate who has been admitted to this "roll" to practice in any court subject to provisions in respect of disqualification. The advocate is entitled to practise before any court, in tribunal or person who is authorised to record the evidence in view of the provisions of Advocates Act. He is entitled to practise till he is not disqualified from practising under provisions of Advocates Act.

The High Court of M.P. has framed rules u/s 34(1) of Advocates Act. Rule 9 of those rules provides -

"(1) Except when specially authorised by the Court or by consent of the party, an advocate, who has advised in connection with the institution of a suit, appeal or other proceeding or has drawn up pleadings in connection with such matter, or has during the progress of any suit, appeal or other proceeding appeared, acted or pleaded for a party, shall not, unless he first gives the party whom he has advised or for whom he has drawn up pleadings, appeared, acted or pleaded, an opportunity of engaging his services, appear or act or plead, in such suit, appeal or other proceeding or in an appeal or application for revision arising therefrom or in any matter connected therewith for any person whose interest is in any manner in conflict with that of such party.

It has been provided-

"That the consent of the party may be presumed if he engages another advocate to appear, act or plead for him in such suit, appeal or other proceeding without offering an engagement to the advocate whose services were originally engaged by him or on his behalf."

Sub-Rule (2) of Rule 9 provides -

"Where it appears on the face of the record that the appearance of an advocate in any proceeding for any party is prejudicial to the interest of the other party on account of the reasons mentioned in sub-rule (1) above, the Court may refuse to permit the appearance to be filed or cancel such appearance if it has already been filed after giving the said advocate an opportunity of being heard."

Rule 13 provides that -

"No advocate who has been debarred or suspended or whose name has been struck off the Roll of Advocates shall be permitted to act as a recognised agent of any party within the meaning of Order 3 of the Code of Civil Procedure, 1908."

Rule 14 provides that -

"No advocate who has been found guilty of contempt of Court shall be permitted to appear, act, or plead in any Court unless he has purged himself of contempt."

Thus, these are the instances where an advocate can be prevented from appearing in the court for a party in view of provisions of Advocates Act and in view of the rules framed by M.P. High Court.

The judgments of Supreme Court in (1) State of M.P. vs. Shobharam (supra) and (2) Madhu Limaye's case (supra) are dealing with the point of the right of a person detained by the police or accused of criminal offence to consult a legal practitioner of his choice and to be defended by him.

Article 22(1) of Constitution of India mandates that a person who is arrested and detained in the custody has a right of being informed of the reasons of his arrest. Such a person has right to consult an advocate of his choice or has a right to be defended by an advocate of his choice, in respect of such arrest or the prosecution or proceeding which may follow such arrest. But here in this revision petition a different case has to be dealt with because in the present matter Mr. R. N. Lathi wants to act as an advocate for co-accused in the same case in which petitioner Mr. R. N. Lathi, is an accused himself. In the present case such co-accused has by making an application informed the Court that he wanted to be defended by Mr. R. N. Lathi in said case as an advocate of his choice and the court has not permitted Mr. R. N. Lathi to appear for such co-accused by passing an order which is under challenge in this revision petition.

In the present case the name of petitioner R. N. Lathi advocate, has not been struck off from the "roll" maintained by Bar Council of the State. He has not suffered any disqualification which has been indicated by provisions of Advocates Act mentioned above.

The co-accused who has permitted Mr. Lathi to appear for him in the said case for his defence, when Mr. Lathi happens to be a co-accused in the said case. It is for that co-accused to decide whether his interest conflicted with the interest of Mr. R. N. Lathi who happens to be a co-accused. He has opted for being defended by Mr. R. N. Lathi. It indirectly means that till the time when such appearance was put before the court, there was nothing on record to show that the interest of Mr. R. N. Lathi, advocate, conflicted with the interest of said co-accused Umrao. Till that time the said co-accused Umrao had his faith in Mr. R. N. Lathi. The learned Court should not have found any disqualification with Mr. R. N. Lathi for defending for himself as well as appearing as an advocate for said co-accused Umrao.

An advocate who does not suffer any disqualification in view of provisions of Advocates Act, and rules framed by the High Court, has a right to plead, act and do all necessary legal things for such an accused in a criminal prosecution, suit or any other legal proceeding conducted before a court, a tribunal or person who has been authorised to record the evidence, of course subject to the statutory prohibitions, if any legally provided. If during the course of such prosecution, suit or proceedings, such an advocate starts acting in such a way which conflicts with the interest of such co-accused or such litigant, the court, tribunal or such

person who is authorised to record the evidence, would be definitely empowered legally to prevent such an advocate for acting further for such a co-accused or litigant. After all, the court, tribunal or person who is authorised to record the evidence, is to guard the interest of the litigant or party having locus standi to contest any such prosecution, suit or proceeding or litigation before it. There may be cases wherein illiterate persons, villagers, members of scheduled castes and scheduled tribes, may be appearing in criminal prosecution, suit or proceeding or litigation before the court, tribunal or any person authorised to record the evidence; and there may be cases wherein, a case like present case, may be put before the Court, tribunal or such person authorised to record the evidence. If the Advocate act contrary to interest of such co-accused or such litigation, whether the court should sit silently and permit such litigant to be unprotected? Certainly not. But when the advocate is acting within his limits and within his power, he cannot be prevented from appearing for such litigant or co-accused.

In the present case learned trial Court has erred in preventing Mr. R. N. Lathi the present petitioner from appearing for co-accused Umrao, when there is no disqualification against him. Mr. R. N. Lathi should be permitted to appear for co-accused Umrao, as an advocate till he is within his power, authority and limits of his duty. If he starts acting against the interest of co-accused Umrao the court would be certainly empowered to restrain him and bring it to his notice that he is acting against interest of co-accused Umrao. After all an advocate has to be aware of his responsibility as an advocate who performs a noble profession. An advocate has to maintain the traditions and dignity of such noble profession meant for helping the needy litigants in the arena of litigation.

Thus, the revision petition is hereby allowed. The order which has been passed by Second Additional Sessions Judge, Ujjain is hereby set aside.

Mr. R. N. Lathi is permitted to appear for co-accused Umrao till he does not act contrary to his interest and remains within the limits of his duty as an advocate and power as an advocate.