

**(2001) 02 RAJ CK 0116**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Bail App. No. 795 of 2001

Ranveer Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

**Date of Decision :** 20-02-2001

**Acts Referred:**

Advocates Act, 1961 — Section 29, 30, 33, 49(1), 49(2)  
Constitution of India, 1950 — Article 225, 227  
Criminal Procedure Code, 1973 (CrPC) — Section 2  
General (Civil) Rules, 1986 — Rule 491  
General (Criminal) Rules, 1980 — Rule 46  
Rajasthan High Court of Judicature Rules, 1952 — Rule 439, 493  
Rajasthan High Court Ordinance, 1949 — Section 46

**Citation :** (2002) 1 RLW 304 : (2001) 4 WLN 429

**Hon'ble Judges :** R.R. Yadav, J

**Bench :** Single Bench

**Advocate :** Karni Ola, Vice-President, S.K. Gupta and R.K. Mathur, Ved Pal Shastri and Dharamveer Tholia, for the Appellant; S.S. Rathore, Public Prosecutor and P.C. Jain, Amicus Curiae, for the Respondent

## **Judgement**

Yadav, J.—In the present bail application, the Court is called upon to decide at first instance as to whether Shri Ved Pal Shastri, Advocate, appearing on behalf of the accused- applicant, is entitled to be given audience as an Advocate, wearing "Dhoti."

2. It is to be observed at the outset that after liquidating ego, with sense of divinity, the members of Bar and Bench both are to act as role model upholding the supremacy of rule of law. This Court can neither afford craving for particular dress by Advocates against the statutory provisions prescribed under law, while giving audience in a case, nor it can afford aversion of wearing "Dhoti" by an Advocate, while addressing the Court, if statutory Rules relating to dress of Advocates prescribed Dhoti as sober dress. The only concern of this Court, is to see that the Court must act and function in clean ambience of law, detaining the confidence of general public at large and litigant public in particular that

supremacy of rule of law is maintained in courts of law, with poor and rich high and low men of status and rank alike with even handed and no one whosoever he may be is treated above the rule of law.

3. Courts or Tribunals, before allowing a person to argue a case on behalf of other, are to be objectively satisfied that person appearing in a case on behalf of other person, is enrolled as a Senior Advocate or an as Advocate, in the roll of the Bar Council of the State and is also wearing prescribed proper sober dress.

4. The controversy involved in the present bail application at the first instance gravities and centres round the wearing of Dhoti by the advocate of accused-applicant, therefore, I would like to confine my discussion only relating to dress of Advocates while appearing in Courts or Tribunal.

5. In State of Rajasthan, provisions are made by the High Court of Judicature for Rajasthan in exercise of its general rule making power under Article 225 and 227 of the Constitution, along with rules relating to dress of advocates which deserves to be mentioned in brief for effective adjudication of the controversy involved. The Rajasthan High Court, in exercise of the general rule making power, conferred under Article 227 of the Constitution and all other powers enabling it in that behalf and with the approval of the Governor of Rajasthan, has made General Rules (Civil), 1986, wherein, u/Rule 491, court-dresses for officers and lawyers are prescribed, which reads thus:-

"491. Court dress for officers and lawyers,-The following distinctive costume shall be worn by Presiding Officers of Civil Courts and by advocates and pleaders practising in such courts:-

Black coat achkan with bands."

6. The aforesaid Rule 491 of the General Rules (Civil), has been amended by Rajasthan High Court which reads thus:-

"491-Court dress for Officers and lawyers : The following distinctive costume shall be worn by Presiding Officers of the Civil Courts and by Advocates and pleaders practising in such Courts:-

Black Coat (Buttoned up or of open collar) or achkan with bands. With a black coal, white shirt and white/black and white striped trousers and with the achkan, a churidar pajama or white/black and while striped trousers shall be worn. The lady Presiding Officers and lady Advocates, appearing before the Civil Courts, shall wear a white saree without border, or with sober border and white blouse, or white salwar kurta, along with open neck or open collar black coat with white bands."

7. The aforesaid amended General Rules (Civil), relating to court-dresses for Officers and Advocates, is made enforceable with effect from 29.7.99, from the date of publication in Rajasthan Gazette.

8. It is to be noticed that the High Court of Judicature for Rajasthan, again, in

exercise of its power, under Article 227 of the Constitution and all other powers, enabling it in that behalf, with the approval of Governor of Rajasthan, has made revised rules, known as General Rules (Criminal), 1980. The High Court has framed Rule 46, relating to court dress for officers and lawyers, which reads thus:-

"46 Court dress for officers and lawyers,- The following distinctive costumes shall be worn by Presiding Officers of Sessions Courts and other Criminal Courts and by advocates and pleaders practising in such Courts:

Black coat (buttoned up or of open collar) or achkan with bands. With a coat, trousers and with the achkan, churidar pajama or trousers shall be worn. Ladies presiding over or appearing before the Sessions Court and other Criminal Courts as advocates, shall wear a white saree and white blouse along with an open neck or open collar black coat with bands."

9. It is further to be noticed that the Rajasthan High Court, in exercise of its power conferred by Section 46 of the Rajasthan High Court Ordinance, 1949, read with Article 225 of the Constitution of India and all other powers, enabling it in that behalf, has framed the Rules of the High Court of Judicature for Rajasthan, 1952, and in the aforesaid rules, the High Court has prescribed dress to Advocates, under Rule 439, which reads thus:-

"Rule 439. Distinctive costumes for Advocates.-The following distinctive costumes shall be worn by Advocates practising in the High Court:-

(i) By Advocate-a black gown of alpaca or other stuff made after the pattern of a King's Counsel's gown, with bands.

(ii) If an Advocate desires to wear a headdress of any kind, he should wear a turban.

(iii) All Advocates when appearing in the Court shall wear black coats or "achkans."

The operation of the rule regarding the wearing of gown may be suspended in the summer season for such period, as may be fixed each year by the Chief Justice."

10. A close scrutiny of the aforesaid rules, made by the High Court of Judicature for Rajasthan, indicates that the High Court of Rajasthan has not prescribed "Dhoti" as a sober dress, to an Advocate, either practising in the Subordinate Courts or in the High Court. It is further to be noticed that wearing of gowns by Advocates in the High Court, can be suspended for a fixed period during summer season.

11. At this juncture, it is to be imbibed by all of us that after a long struggle of the members of the Bar during British regime and thereafter, their right to practise as members of unified Bar is recognised by Parliament, by passing the Advocates Act, 1961, making provisions under Sections 29, 30 and 33 of the

aforesaid Act, to the effect that subject to the provisions of this Act and any rules made thereunder, there shall be only one class of persons entitled to practise the profession of law, namely, advocates. According to Section 30 of the Advocates 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 practice.

12. u/s 33 of the aforesaid Act, it is further provided that except as otherwise provided in the Act of 1961, 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 person, unless he is enrolled as an advocate under this Act.

13. I am reminded by Dr. P.C. Jain, the President, Rajasthan High Court Bar Association, Jaipur, to make a mention of Section 2(q) of the Code of Criminal Procedure, 1973, wherein, while defining "pleader", it is provided that pleader means a person authorised by or under any law for the time being in force, to practise in such Court, and includes any other person appointed with the permission of the Court, to act in such proceeding.

14. It is pertinent to mention here that since in the present case, the Court is called upon to decide the dress of Advocates, therefore, I do not propose to dwell upon the right of practice of an Advocate, under the Advocates Act, or under any other Act, before courts and tribunals. It is left open to be decided in appropriate case, after laying proper foundation in this regard, I confine my discussion relating to dress of Advocates, within the four corners of the provisions made under the Advocates Act, 1961 and the rules framed thereunder in the backdrop of the Rules relating dress to Advocates framed by Rajasthan High Court in General Rules (Civil) 1986; General Rules (Criminal) 1980; and Rules of the High Court of Judicature for Rajasthan 1952.

15. Relating to dress of Advocates, practising in the territory of India and appearing before Supreme Court, High Courts, subordinate courts, tribunals or authorities under Sub-section (1) of Section 49 of the Act of 1961, provides that the Bar Council of India may make rules for discharging its functions. It is to be noticed that Clause (gg) of Sub-section (1) of Section 49 of the Act of 1961, was inserted by Parliament, with effect from 31.1.74, which reads thus:-

"(gg) the form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal."

16. A close scrutiny of Sub-section (1) of Section 49 of the Advocates Act, 1961, further reveals a rider on the power of the Bar Council of India in framing rules

relating to the dress of advocates. According to the first proviso, added to Sub-section (1) of Section 49, it is envisaged that no rules, made with reference to Clause (c) or Clause (gg) shall have effect unless they have been approved by the Chief Justice of India.

17. Shri R.K. Mathur, member of Bar Council of India, brought to my notice that in exercise of its power conferred upon the Bar Council of India under Clause (gg) of Sub-section (1) of Section 49, it has framed rules relating to the dress of advocates, under chapter IV of the Bar Council of India Rules. These rules relating to the dress of advocates framed under Chapter IV of the Bar Council of India rules read thus:-

"Advocates appearing in the Supreme Court, High Courts, Subordinates courts, Tribunals or authorities shall wear the following as part of their dress which shall be sober and dignified:-

#### I. ADVOCATES OTHER THAN LADY ADVOCATES

(a) Black buttoned up coat, chapkan, achkan, black sherwani and white bands with advocates" Gowns, or

(b) a black open breast cost, white shirt, white collar, stiff or soft, and white bands with Advocates Gowns,

In either case long trousers (white, black striped or grey) or Dhoti.

#### II. LADY ADVOCATES

(a) Black and full and half sleeve jacket or blouse, white collar stiff or soft, with white bands and Advocates" Gowns.

White blouse, with or without collar, with white bands and with a black open breast coat, or

(b) sarees or long skirts (while or black or any mellow or subdued colour without any print or design) or Flare (while, black or black striped or grey) or Punjabi dress Churidar-kurta or salwar-kurta with or without dupatta) while or black:

Provided that the wearing of Advocates" gown shall be optional except when appearing in the Supreme Court or in a High Court:

Provided further that in courts other than Supreme Court, High Court, District Court, Sessions Court or City Civil Court a black tie may be worn instead of bands."

18. It is also brought to my notice by Shri Mathur that the aforesaid statutory rules, framed by the Bar Council of India, in exercise of its power under Clause (gg) of Sub-section (1) of Section 49, has got the approval of the Chief Justice of India, on 17.1.1980.

19. From the discussion made hereinabove, this Court is to adjudicate whether in

view of the statutory general rules, framed in State of Rajasthan, by the High Court, in exercise of its power, under Article 255 and 227 of the Constitution, with approval of Governor of Rajasthan contained in General Rules (Civil), General Rules (Criminal) and the Rules of the High Court of Judicature for Rajasthan, 1952, relating to dress of Advocate would prevail upon the special statutory rules, framed by the Bar Council of India with approval of Chief Justice of India, or the rules relating to dress of Advocates framed by Rajasthan High Court ceased to continue to be in force after framing of the Rules by Bar Council of India with approval of Chief Justice of India within the meaning of Sub-section (2) of Section 49 of the Act of 1961, which provides that notwithstanding anything contained in the first proviso to Sub-section (1) any rules made with reference to Clause (c) or Clause (gg), of the said sub-section and in force immediately before the commencement of the Advocates Act, 1973 shall continue in force until altered, repealed or amended in accordance with provisions of the Act of 1961.

20. I am of the view that the Rule 493 of the High Court of Judicature for Rajasthan Rules, 1952, Rule 491 of General Rules (Civil), and Rule 46 of General Rules (Criminal), are general rules, framed by the High Court, in exercise of its general rule making power, whereas, the rules framed by the Bar Council of India, in exercise of its power, under Clause (gg) of Sub-section (1) of Section 49 of Advocates Act are special rules, therefore, special Rules framed by Bar Council of India, relating to dress of Advocates either appearing in Supreme Court or in High Court or before the subordinate courts, tribunals or authorities would prevail over the aforesaid Rules framed by High Court of Rajasthan.

21. I am fortified in taking the aforesaid view from the mandatory provisions envisaged under Sub-section (2) of Section 59 of the Advocates Act, 1961, brought to my notice by Shri S.K. Gupta, member of the Bar Council of Rajasthan, and it is submitted that only prior to framing of the rules relating to dress of Advocates by Bar Council of India with approval of Chief Justice of India, the existing rules in force made by High Court shall continue in operation but after alteration, repeal or amendment made by the Bar Council of India with prior approval of Chief Justice of India, Rule 439 of the Rules of High Court, Rule 491 of General Rules (Civil) 1986 and Rule 46 of General Rules (Criminal) 1980 become inoperative and redundant.

22. There is substance in the aforesaid argument made by Shri Gupta. I am of the view that since the Bar Council of India has framed statutory rules relating to dress of Advocate in exercising of its statutory power, conferred under Clause (gg) of Sub-section (1) of Section 49 of the Advocate Act, and these Rules relating to dress of Advocates are approved by the Chief Justice of India under the first Proviso of the aforesaid sub-section, therefore, by necessary implication the rules relating to dress of Advocates, framed in State of Rajasthan by the High Court of Rajasthan mentioned hereinabove cease to continue in force and become redundant.

23. From the discussion made hereinabove, the learned counsel for the accused-applicant, Shri Ved Pal Shastri, succeeded to demonstrate before me that he is entitled to appear before this Court, wearing "Dhoti" as prescribed under the statutory rules framed by the Bar Council of India in exercise of its powers conferred under Clause (gg) Sub-section (1) of Section 49 of the Act of 1961, with approval of Chief Justice of India, and the rules made by High Court of Rajasthan, relating to dress of Advocates, appearing before Subordinate Courts or appearing before High Court of Judicature for Rajasthan at Jodhpur Principal Seat and Jaipur Bench, become redundant and inoperative. The Advocates, practising in State of Rajasthan, while appearing before subordinate courts tribunals, authorities or in the High Court, are to wear the dress, prescribed by the Bar Council of India with approval of Chief Justice of India, quoted in extenso, in paragraph-16 of this order. Now, wearing of gowns by Advocates, is made optional, except when appearing in the Supreme Court, or in the High Court. Under Rule 439 of the Rules of the Court, suspension of wearing of gowns by Advocates, in the summer season, in the High Court of Judicature for Rajasthan, is impermissible and the Advocates are under legal obligation to appear before the High Court, wearing Advocates' gowns, to get right of audience.

24. Office of Registry of this Court, is directed, to send one copy of the order, passed today, in this case, to the Chairman, Bar Council of Rajasthan, and one copy each to the President of High Court Bar Association at Jodhpur and Jaipur.

25. After dictation of Judgment, the large number of Advocates, present in Court, made a request to mark the Judgment "reportable". The request made by the learned members of the Bar, present in Court, is allowed and the Judgment is hereby marked "reportable."

26. Put up this bail application for orders on 22.2.2001.