

(2018) 02 MAD CK 0245
In the Madras High Court
Case No : 15357 of 2017

Romance

APPELLANT

Vs

The Inspector of Police

RESPONDENT

Date of Decision : 07-02-2018

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 439(1)(b) - Power to examine the accused
- Special powers of High Court or Court of Session regarding bail
Indian Pen

Citation : (2018) 02 MAD CK 0245

Hon'ble Judges : R.Pongiappan

Bench : Single Bench

Advocate : K.P.Narayanakumar, K.S.Duaripandian, M.Mohideen Basha

Final Decision : Allowed

Judgement

1. The petitioner herein is a practising Advocate in Kanyakumari District, Tamil Nadu. He enrolled his name under the Bar Council of Tamil Nadu,

vide Enrollment No.MS.1355B/1995. During the course of practice, on 05.09.2017, based on a complaint given by a Clerk working in Judicial

Magistrate Court No.I, Kuzhithurai, the Inspector of Police, Kaliyakkavilai Police Station, Kanyakumari District, registered a case against the

petitioner for the offences under Sections 205, 419, 420, 468 and 109 IPC, in which, it is alleged that on 05.09.2017, a case in C.C.No.33 of

2015 was posted for 313 Cr.P.C. questioning and the petitioner herein, being the Advocate had represented a false person as A1. Accordingly,

after registration of the case, at the request made by the Senior Members of the Bar, the learned District and Sessions Judge, Kanyakumari District

at Nagercoil, granted an order of anticipatory bail, vide order dated 12.09.2017,

in Cr.M.P.No.3076 of 2017, in which, he imposed the following condition:-

""The petitioner shall not appear before the Judicial Magistrate No.I and II, Kuzhithurai, until his name is cleared by the Bar Council of Tamil Nadu.""

2. Now, the petitioner has filed this petition under Section 439(1)(b) of the Code of Criminal Procedure, in which, he is seeking the relief to set

aside the abovesaid conditional order restraining him from appearing before the Judicial Magistrate Court Nos.I and II, Kuzhithurai.

3. I have heard Mr.K.P.Narayanakumar, learned counsel appearing for the petitioner, Mr.M.Mohideen Basha, learned Amicus Curiae, who was appointed to assist the Court and Mr.K.S.Durai Pandian, learned Additional Public Prosecutor appearing for the State.

4. The learned counsel appearing for the petitioner contended that as per Section 30 of the Advocates Act, 1961, the petitioner herein is having

the right to practise in any Courts situated in India. Further, he added that till the conclusion of trial in the case registered against the petitioner, we

cannot presume that the petitioner is guilty of the offence under the abovesaid Sections of law. Now, considering the said aspect, it is necessary to

extract below Section 30 of the Advocates Act, 1961:

""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.""

5. Further, in the petition, the petitioner herein averred that on the fateful day, as per the request made by the Bar Federation of Tamil Nadu and

Puducherry, all the Advocates were abstained from appearing before the Court, due to which, he is not having any chance for impersonating the

other person, as a real accused.

6. As far as this submission is concerned, it could be placed before the Trial Judge, in order to prove his innocence. In other words, the said

submission is unnecessary for deciding this petition. Apart from that, the order deprecating the petitioner from appearing before the Court is only a punishment for an Advocate.

7. On going through Section 35 of the Advocates Act, 1961, which would clearly speak about only the State Bar Council or the Bar Council of

India is having the power to suspend an Advocate from practice or for removing the name of the Advocate from the State roll of Advocates. The

said provision reads as follows:

""35. Punishment of advocates for misconduct.-(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) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending

before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the

advocate concerned and to the Advocate-General of the State.

(3) 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.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from

practising in any Court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary

committee of the State Bar Council either in person or through any advocate appearing on his behalf.""

8. So, according to the said provisions, the concerned Bar Council alone is having the power to suspend the practice of an Advocate or for

removing the name of the Advocate from the State Roll of Advocates. But, in the case on hand, the learned District and Sessions Judge,

Kanyakumari, took the power vested with the Bar Council of Tamil Nadu and passed the present impugned order. So, the order passed by the

learned District and Sessions Judge, Kanyakumari, is nothing but onerous.

9. At this juncture, it is relevant to refer the judgment of the Hon"ble Apex Court in *Munish Bhasin and others Vs. State (Government of NCT of*

Delhi) and another reported in 2009 (2) SCC (Cri) 56, wherein at Paragraph Nos.10 and 11, it has been held as follows:

""10.It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions

Court would be justified in imposing freakish conditions. There is no manner of doubt that the Court having regard to the facts and circumstances

of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the

accused cannot be subjected to any irrelevant condition at all.

11.The conditions which can be imposed by the Court while granting anticipatory bail are enumerated in sub-section (2) of Section 438 and sub-

section (3) of Section 437 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating

officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent

him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or Court, or (iv) restricting the

movements of the accused in a particular area or locality or to maintain law and order etc. To subject an accused to any other condition would be

beyond jurisdiction of the power conferred on Court under Section 438 of the Code.""

10. The abovesaid decision is squarely applicable to the present case on hand. In the present case placed before this Court, the offence committed

by the petitioner is not concluded and proved. If the petitioner is not found guilty for impersonation, passing an order, restraining him from

practicing as an Advocate is against the constitutional rights guaranteed to him.

Therefore, the prayer sought for by the petitioner is a justifiable one.

11. Accordingly, this Criminal Original Petition is allowed and the conditional order dated 12.09.2017, passed in Cr.M.P.No.3076 of 2017, by

the learned District and Sessions Judge, Kanyakumari District at Nagercoil, with regard to restraining the petitioner from appearing before the

Judicial Magistrate Court Nos.I and II, Kuzhithurai, alone is set aside and the other portions of the order shall stand unaltered.

12. Before parting with the case, this Court appreciates the very able assistance rendered by Mr.M.Mohideen Basha, learned counsel, who was

appointed by this Court as Amicus Curiae to assist the Court.