
(1971) 10 RAJ CK 0009
In the Rajasthan High Court
Case No : Criminal Revision 404 of 1971

Shri Shamsheer Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-10-1971

Acts Referred:

Constitution of India, 1950 — Article 19, 22
Penal Code, 1860 (IPC) — Section 109, 500, 504, 506

Citation : (1971) WLN 442

Hon'ble Judges : L.S. Mehta, J

Bench : Single Bench

Judgement

L.S. Mehta, J.—Shamsheer Singh petitioner made a complaint in the court of Additional Munsif Magistrate, First Class, Ajmer City (East) u/s 500, read with Section 109, I.P.C., and under Sections 504 and 506, I.P.C., In that complaint the accused are - (1) Amrit Kumar, Advocate, and (2) Ajit Singh. In the course of trial Shamsheer Singh appeared as a witness on April 20, 1971. After the Examination-in-chief of the witness was over, the accused were directed to cross-examine him. At the initial stage of the cross-examination Amrit Kumar submitted to the court that he would conduct cross-examination on behalf of himself and accused Ajit Singh. An objection was raised on behalf of learned Counsel for the complainant that since Amrit Kumar was himself an accused in the case, he could not represent Ajit Singh. That objection was over-ruled by the trial court. This revision petition has accordingly been filed against that order.

2. A short question that arises for the disposal of this revision petition is whether an Advocate, who is an accused in a criminal case, can represent the co-accused at the trial.

3. If the proposition propounded by the court below is accepted, the accused would be in dock for a part of the time and would be in counsel's seat for the remainder of the time. This would be a startling proposition. There is no objection to an Advocate, who being tried for a criminal offence to conduct his

own defence. He is fully entitled to do so. But he cannot put up his appearance in the court in the same matter in two capacities. In other words, he cannot be permitted to stand in the dock at one time and to appear as counsel for his co-accused at the other. In *New Brunswick & Canada Railway Co. v. Conybear* 1862 (9) H.L.C. 711 it has been observed by the Lord Chancellor (Lord Westbury),-

Certainly. But not both as party and counsel. The respondent must elect to argue in person or not. There cannot be a mixture of the two characters.

In *Nuton v. Chaplin* (1850) (19) L.J.C.P. 374 the Court of Common Pleas held that a barrister, who was a party in an action, civil or criminal, is in the same position as any other party. Wilde C.J. observed:

I do not think that a party in a civil or criminal case, who is also counsel, is in a different position from any other party. In a criminal matter, a party would not be entitled to sit in wig and gown among the bar as his own counsel.

In *re S. Subramnya Sarma and Ors.* AIR 1941 Mad. 808 Leach C.J. observed-

An advocate who is accused of a criminal offence or is a party in a civil court is fully entitled to conduct his own defence or his own case but he cannot appear in the same matter both as a counsel and party. Consequently, an advocate who is accused with others of a criminal offence cannot appear at the trial as counsel for his co-accused.

4. Article 22(1) of the Constitution provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

5. What is guaranteed to an accused person under the aforesaid provisions of the Constitution is that he may select a legal practitioner of his own choice. But it does not mean that even if the legal practitioner is disabled under any statute or under the general law, he is entitled to represent the accused. Even the freedom to carry on a profession or trade under Article 19(1)(g) of the Constitution is subject to reasonable restrictions under Clause (6) of that Article. A privilege of employing an advocate of his own choice would under certain circumstances be limited by any reasonable restrictions. In this connection a reemergence is made to the Judgment of a Division Bench of the Bombay High Court in *Emperor Vs. Dadu Rama Surde*, . In that case Beaumont C.J. held,-

An accused is entitled to select the advocate whom he desires to appear for him and the prosecution cannot fetter that choice merely by serving a subpoena on the advocate to appear as a witness; but if the Court comes to the conclusion that the trial would be embarrassed by such appearance, and inspire of expression of opinion by the Court to that effect, the advocate does not withdraw, the Court has inherent jurisdiction to require him to withdraw.

Likewise in *Public Prosecutor, Andhra Pradesh Vs. Kothakapu Etreddy Venkata*

Reddi and Others, his lordship Jaganmohan Reddy observed,-

Even apart from any contractual obligation, the Court, will in the exercise of its powers to maintain the highest traditions of the bar and the profession, preclude advocates from appearing for the opposite party if that is likely to embarrass the advocate.

In Halsbury's Laws of England, Third Edition, Volume 3 page 61 it has been pointed out-

There are certain occasions when a barrister must decline to accept instructions because of special circumstances which would render it difficult for him to maintain his professional independence or would otherwise make acceptance incompatible with the best interests of the administration of justice.

6. The principle underlying the above authorities is that justice should not only be done, but manifestly and undoubtedly seem to be done.

7. In the present case if the lawyer allows to represent the co-accused in the course of trial, the trial is likely to be materially embarrassed and it is well within the jurisdiction of the court to require the advocate not to represent the co-accused. Such powers have to be implied for effectively exercising the duty cast on the Court for the fair and impartial administration of justice. The guarantee envisaged under Article 22(1) of the Constitution, has only been given to the accused person to have of his own choice a lawyer, who is not otherwise barred or in any manner disabled from appearing for him. In other words, in criminal trial if a lawyer, who is an accused person himself wants to appear on behalf of his co-accused in the same trial, he can never remain unconcerned or indifferent to the cause. In such a case the trial is bound to result in embarrassment.

8. In the result, I accept the revision application and set aside the order of the learned Additional Munsif Magistrate, First Class, Ajmer City (East), Ajmer dated April 20, 1971, to the extent to which he permitted Amrit Kumar, Advocate, to cross-examine the witness on behalf of his other co-accused Ajit Singh.