
(2007) 08 MP CK 0038
In the Madhya Pradesh High Court

Shyamlal Vyas

APPELLANT

Vs

Inderchand Jain and Others

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Advocates Act, 1961 — Section 30, 34
Constitution of India, 1950 — Article 129, 14, 142, 145, 226
Contempt of Courts Act, 1971 — Section 10

Citation : AIR 2008 MP 15 : (2007) 4 MPHT 366

Hon'ble Judges : Sheela Khanna, J;A.K. Gohil, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Gohil, J.—Petitioner has filed two contempt petitions in which Shri Ashok Vailankar is appearing as an Advocate/Lawyer on behalf of petitioner. There was an objection that he cannot appear, act or plead in the case as he has been convicted under Contempt of Courts Act.

2. Petitioner has filed I. A. No. 12938/07 for transfer of these petitions to Main Seat. Parties are heard on the application as well as on Contempt Petition.

3. This order shall also govern the disposal of Contempt Petition No. 120/03.

4. Shri Raja Sharma, Advocate submitted that the respondent No. 1 Inderchand Jain has expired on 1-5-05 and this fact is in the knowledge of Counsel for the petitioner and he has not filed any application for bringing the LR's of the respondent No. 1 on record. Therefore, this contempt petition abates against the respondent No. 1.

5. On 25-7-07, Shri Ashok Vailankar appearing as Counsel for the petitioner obtained time to satisfy this Court that being a convicted lawyer in a contempt petition by this Court which is also affirmed by the Apex Court and the SLP filed by Shri Vailankar in the Supreme Court against his conviction has already been dismissed by the Supreme Court. On 25-7-07, we have granted time to Shri

Vailankar to argue on that question. Liberty was also granted to submit written submission that now can he appear as a lawyer. In the order-sheet decision of the Supreme Court against him were also mentioned. Instead of satisfying this Court on the moot question, he has filed LA. No. 12938/07, and application for transferring the case to Jabalpur Main Seat in view of the notification dated 15/17 July, 1992, 5-8-1993 and 3-8-2005 as the Gwalior Bench of this Court is not having jurisdiction to hear this contempt petition.

6. We have heard Counsel for the parties on this application and has also perused the notifications 15/17-7-1992 according to which all petitions challenging the vires of the State or Central Act or Statute or any order or rule or Regulation/Notification/Ordinance and petitions filed under Article 226/227 of the Constitution shall be heard at Jabalpur. By another notification, on 5-8-93 issued by the Hon''ble Chief Justice all the cases instituted by or against any High Court Judge of Madhya Pradesh or against the Registrar of this Court relating to any matter, shall be heard at Jabalpur and by another notification dated 3-8-05, according to which all cases instituted by or against any High Court Judge of Madhya Pradesh or against Registrar General, Registrar, Additional Registrar, Deputy Registrar of this Court, all cases relating to selection or appointment of a Judicial Officer, all cases instituted by or against a Judicial Officer or Ex-Judicial Officer of Madhya Pradesh and all cases instituted by or against an employee of High Court or District Court shall be heard at Jabalpur. The petitioner has filed this contempt petition u/s 10 of the Contempt of Court Act, 1971 for breach of undertaking and the petitioner Shyamlal Vyas has not filed this petition for challenging the vires of any State or Central Act nor it is a petition under Article 226/227 of the Constitution nor it has been filed against any High Court Judge nor against any of the officer mentioned in the notifications.

7. The repeated submissions of Shri Ashok Vailankar is that the Gwalior Bench is not having any jurisdiction to hear this petition, on the basis of the aforesaid notification, we do not find that there is any force in the submissions made by the Counsel for the petitioner. This Gwalior Bench is having jurisdiction to hear the contempt petition and it is not barred by any of the notifications mentioned above. We have also asked Shri Vailankar whether he can satisfy that he can appear as a lawyer on behalf of the petitioner. His submission is that he has mentioned all the facts in the application and he wants decision thereon, Considering the submissions and after perusal of the application, we do not find any force in the application. Accordingly, this LA. No. 12938/07 is dismissed.

8. It is admitted position on record that Shri Ashok Vailankar, Advocate has been convicted under the Contempt of Courts Act by the Division Bench of this Court in Misc. Civil Case No. 380/1992 against which he had filed SLP in the Supreme Court which has also been dismissed by the Supreme Court. u/s 34(1) of the Advocates Act, 1961 High Court has framed rules and according to Rule 14 "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".

9. In view of the aforesaid rule, it is clear that Shri Ashok Vailankar has been found guilty of Contempt of Court and he has not been purged himself of contempt. Therefore, in view of Rule 14 (supra), he cannot be permitted to appear, act and plead in this Court. We have repeatedly asked Shri Vailankar to satisfy us that how he can practice as an Advocate unless he has purged himself of contempt but he was unable to satisfy us. He has also not filed any written submissions on the point for which time was also granted to him.

10. In case of *In re: Vinay Chandra Mishra* (the alleged contemner), , the Hon"ble Supreme Court considering the misconduct of the Advocate and after invoking the power under Article 129 read with Article 142 of the Constitution suspended his practice as an Advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an Advocate, shall stand vacated by him forthwith.

11. In case of *Pravin C. Shah Vs. K.A. Mohd. Ali and Another*, , the Hon"ble Supreme Court has held that the Rule 11 of the Kerala High Court Rules is a self-operating provision and until after purging himself of Contempt of Court he cannot appear in the Court, act or plead and Supreme Court has directed that in future whenever an Advocate is convicted by the High Court for Contempt of Court, the Registrar of that High Court shall intimate the fact to all the Courts within the jurisdiction of that High Court so that presiding officers of all the Courts would get the information that presiding officers of all the Courts would get the information that the particular Advocate is under the spell of the interdict contained in Rule 11 of the Rules until he purges himself of the contempt.

12. In case of *Harish Uppal v. Union of India* AIR 2003 SC 739, the Constitution Bench of the Supreme Court has held that right of appearance in Courts is still within the control and jurisdiction of Courts. Section 30 of the Advocates Act has been brought into force and rightly so. Control of conduct in Court can only be within the domain of Courts. Thus, Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding conditions on which a person (including an Advocate) can practice in the Supreme Court and/or in the High Court and Courts subordinate thereto. Such a rule would be valid and binding on all. Unless self-restraint is exercise. An Advocate appears in a Court subject to such conditions as are laid down by the Court. Thus, even then the right to appear in Court will be subject to complying with conditions laid down by Courts just as practice outside Courts would be subject to conditions laid down by Bar Council of India. The Court has further held that an Advocate is an officer of the Court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the Court. They owe a duty to their client. Strikes interfere with administration of justice. They cannot thus disrupt Court proceedings and put interest of their clients in jeopardy. In conclusion it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike.

13. In case of Bar Council of India Vs. High Court of Kerala, , the Hon''ble Supreme Court has held that Rule 11 framed by the High Court u/s 34(1), Advocates Act, being legislative in character, held, not hit by Article 14 merely because of not providing for a further opportunity for hearing and the petition was dismissed. Thus, Rule 14 framed by the High Court exercising powers u/s 34(1), Advocates Act, 1961 is very clear and according to which no Advocate, who has been guilty of Contempt of Court shall be permitted to hear, act or plead in any Court unless he has purged himself of contempt.

14. In view of the aforesaid rule unless Shri Vailankar purged himself of contempt he cannot be allowed to appear, act or plead in any Court as he has been found guilty of Contempt of this Court. Therefore, we do not permit him to appear as an Advocate in this case and he is also not entitled to practice as an Advocate in any Court. As has been held in the case of Pravin C. Shah (supra), the Registrar of this High Court shall intimate the fact to all the Courts within the jurisdiction of that High Court so that Presiding Officers of all the Courts would get the information that the particular Advocate is under the spell of the interdict contained under Rule 11 of the High Court Rules.

15. We have also perused the contempt petition, which has been filed against Shri H.D. Gupta, Advocate for breach of undertaking given before the High Court on 2-5-03 before Shri Justice Uma Nath Singh in Civil Revision No. 86/2003. The order-sheet dated 2-5-03 is as under:

Shri H.D. Gupta, learned Counsel for the applicant.

Shri B.B. Shukla, learned Counsel with Shri Ashok Vailankar, learned Counsel for the respondent.

Shri Gupta undertakes to deposit the rent amount with the Rent Controller, within 15 days.

List the matter for final hearing after vacation in the week commencing from 25th of June, 2003.

16. Shri H.D. Gupta was appearing as Counsel for the applicant in that Civil Revision No. 85/03 and he has undertaken to deposit the rent amount with the Rent Controller, within 15 days. If he has violated and has not deposited the rent the parties are free to proceed in accordance with law and if such an undertaking is not complied with the lawyer cannot be prosecuted for contempt. Ultimately, it is the party on whose behalf he has given undertaking in the Court and the party is already added as respondent in this contempt petition. In the reply, Counsel for contemner No. 2 submitted that on 4-8-03 rent of Rs. 1320/- from January, 01 to September, 03 was deposited and copy of challan has been filed. If it was not deposited in 15 days, the party was free to proceed further against him to execute the order or for getting the petition dismissed but in our opinion on such an undertaking a lawyer cannot be prosecuted for breach of undertaking. Shri H.D. Gupta has filed his own reply and affidavit in the contempt petition and has

submitted his unconditional apology before this Hon''ble Court. Therefore, if there was any breach of the undertaking we accept the unconditional apology rendered by Shri H.D. Gupta, who is designated Senior Advocate of this Court and we do not see any deliberate action on his part. Thus no contempt is made out, accordingly this contempt petition is hereby dismissed. Rule Nisi is discharged.