

(2006) 03 CHH CK 0050
In the Chhattisgarh High Court
Case No : M.Cr.C. No. 381 of 2006

Surendra Pal Singh Parihar

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Advocates Act, 1961 — Section 30, 34(1)
Advocates Rules, 1961 — Rule 3
Bar Councils Act, 1926 — Section 14, 9(4)
General Clauses Act, 1897 — Section 15, 3

Citation : AIR 2006 Chh 100 : (2006) 3 CGLJ 218

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Bhishma Kinger, S.C., Surendra Singh, Pratul Shandilya and Bhaskar Pyasi, for the Appellant; Pramod Verma, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.K. Sinha, J.—A short question involves for consideration in this petition as to whether an advocate enrolled in a different State can appear and conduct a case in the State of Chhattisgarh or not?

2. The brief facts, as stated in the petition are that this petitioner is enrolled as an Advocate with the Bar Council of Uttar Pradesh. His enrolment Number is U. P. 73/ 1448. Two of the accused persons in Sessions Trial No. 329/2005 (State through C.B.I. v. Amit Jogi and 30 Ors.) pending in the Court of 3rd Addl. Sessions Judge, Raipur, engaged the petitioner to defend their case. The recording of the evidence in the trial commenced on 13-12-2005. On 13-12-2005, the petitioner appeared in the said Court and filed his memo of appearance. The said memo was also signed by Shri J. S. Rathore, Advocate, Gwalior and Shri R. K. Tiwari, a local advocate practicing at Raipur. The petitioner then conducted the trial till 29-12-2005 and no objection was raised regarding his appearance in the said case. It appears that thereafter on some dispute, the Sessions Judge asked the advocates to file fresh memo of appearance duly

signed by the accused persons. It is stated in the petition that accordingly, the petitioner and his associates submitted a fresh memo of appearance before the Court. However, on the direction of the Court, an application for permission to conduct the trial was also made on behalf of the petitioner. The said application was dismissed on 30-12-2005 and ultimately the petitioner was not permitted to conduct the trial at Raipur Court on the ground that he is, enrolled as an advocate in Uttar Pradesh and is not enrolled in the State of Chhattisgarh and has not obtained permission from the Bar Association to appear in the State of C. G., therefore, he was not entitled to appear and conduct the said case in the said Court. The learned Addl. Sessions Judge took the support of a decision rendered in the matter of Wajid Hussain v. Secy. State Bar Council M.P. 1993 (2) MPWN 220.

3. Section 14 of (The Indian) Bar Councils Act, 1926 (Act XXXVIII of 1926) reads as under:

14. Right of advocates to practice.

(1) An advocate shall be entitled as of right to practice-

(a) subject to the provisions of Sub-section (4) of Section 9, in the High Court of which he is an advocate, and

(b) save as otherwise provided by Sub-section (2) or by or under any other law for the time being in force in any other Court and before any other Tribunal or person legally authorized to take evidence and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practice.

(2) Where rules have been made by any High Court within the meaning of Clause (24) of Section 3 of the General Clauses Act, 1897 or in the case of a High Court for which a Bar Council has been constituted under this Act, by such Bar Council u/s 15 regulating the condition subject to which advocates of other High Courts may be permitted to practice in the High Court such advocates shall not be entitled to practice therein otherwise than subject to such conditions.

(3) Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules determining the reasons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction. This section provides that an advocate shall be entitled as of right to practice in any other Court and before any other Tribunal or person legally authorised to take evidence and before any other authority subject to the rules made by any High Court or in the case of a High Court for which a Bar Council has been constituted under this Act by such Bar Council u/s 15 regulating the conditions subject to which advocates for other High Courts may be permitted to practice in the High Court, such advocate shall not be entitled to practice therein otherwise than subject to such conditions.

4. The Parliament then enacted the Advocates Act 1961, Chapter IV of this Act provides for right to practice and Section 34(1) in the said Chapter provides power of High Court to make Rules. It has been provided that the High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the Court subordinate thereto.

5. Chapter I in section two of the High Court Rules and orders in M.P. (C.G.) contains the rules framed u/s 34(1) of the Advocates Act 1961, Rule 3 of the aforesaid Rules provides that an Advocate who is not on the roll of Advocates of the Bar Council of the State in which the Court is situated, shall not appear, act or plead in such Court, unless he files an appointment along with an advocate who is on the roll of such State Bar Council and who is ordinarily practicing in such Court.

6. Therefore, it is apparent that the only condition specified for appearance, act or plead in a Court in this State for the outsider advocate is that he shall have to file an appointment along with an advocate who is on the roll of the local State Bar Council and who is ordinarily practicing in such Court. The above provisions would make it clear that an advocate enrolled with the Bar Council of other State can appear in the Court in this State only when he files an appointment along with an advocate who is on the roll of State Bar Council of this State and who is ordinarily practicing in the Court where the appearance has been sought,

7. In the matter of Wajid Hussain (supra), the situation was entirely different. In the said case, the petitioner was enrolled in the State Bar Council, Gujarat and has started practicing in Alot (MP) since 1990 and was practicing regularly at Alot (M.P.). When he applied for his enrolment in the Bar Association, Alot as a member, on this, on 22-9-1992 the State Bar Council directed the petitioner not to practice at Alot, Distt. Ratlam (M.P.) till the petitioner gets his name transferred from the roll of State Bar Council, Gujarat to the State Bar Council M.P. This was challenged by the petitioner in the writ petition on the ground that u/s 30 of the Advocates Act 1961, the petitioner had a right to practice in any part of the country. The High Court said that Section 30 of the aforesaid Act is yet to be enforced and the action of the Bar Council of Madhya Pradesh was upheld dismissing the writ petition. The ratio of the judgment, which is totally missed by the trial Court, is that in the said case the petitioner has prayed for regularly practicing at a particular place, without his enrolment in the local State Bar Council, on the strength of Section 30 of the Advocates Act 1961, which was denied by the High Court and it was not a case of casual appearance or appearance in any particular case as in the present case. The present is an incident of appearance in a particular case and the judgment relied on by the Court below is distinguishable on this point.

8. In the result, the impugned orders dated 30-12-2005 and 30-12-2005 regarding not allowing the petitioner to appear in the Sessions Trial on behalf of the two accused persons are set aside.

9. It is declared that the petitioner who is an advocate enrolled in the State of U. P. may appear in the State of Chhattisgarh also subject to the conditions laid down in Rule (3) of the Rules framed u/s 34(1) of the Advocates Act 1961 which find place in Chapter-1 of Section two of the High Court Rules and Orders in M.P. (C.G.).

10. The petition is allowed to the extent indicated above.