

T. C. Mathai and Another

Vs

District & Sessions Judge, Thiruvananthapuram, Kerala

Criminal Appeal No. 354 of 1999

(K. T. Thomas, M. B. Shah JJ)

31.03.1999

JUDGMENT

THOMAS, J. -

1. Leave granted.

2. The appellant claims to be the power-of-attorney holder of a couple (husband and wife) now living in Kuwait. He sought permission of the Sessions Court, Trivandrum to appear and plead on behalf of the said couple who are arrayed as respondents in a criminal revision petition filed before the said Sessions Court (they will be referred to as the respondent-couple). But the Sessions Judge declined to grant permission as the request for such permission did not emanate from the respondent-couple themselves. Thereupon the appellant moved the High Court of Kerala under Article 226 of the Constitution for issuance of a direction to the Sessions Judge concerned to grant the permission sought for. A Single Judge of the High Court dismissed the original petition against which the appellant filed a writ appeal which too was dismissed by a Division Bench of the High Court.

3. Underterred by the successive setback in securing a right of audience on behalf of the aforesaid couple the appellant travelled a long distance from the southern end of the country right up to the national capital to personally argue before the Apex Court that he is entitled to plead for the respondent-couple in the Sessions Court. We heard the appellant-in-person though we are still now unable to appreciate why he, instead of incurring so much expenses and strain, did not advise the respondent-couple to engage a counsel for pleading their cause before the Sessions Court.

4. The appellant, during the course of his arguments, referred to a commentary on criminal law to support his contention that a power-of-attorney holder has all powers to act on behalf of his principal. We would assume that the respondent-couple would have executed an instrument of power of attorney empowering the appellant to act on their behalf. Can he become a pleader for the respondent-couple on the strength of it ?

5. Section 303 of the Code of Criminal Procedure (for short "the Code") entitles a person to the right of being defended by a "pleader" of his choice when proceedings are initiated against him under the Code. "Pleader" is defined in Section 2(q) as thus :

"2. (q) 'pleader', when used with reference to any proceeding in any court, 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;"

6. The definition envelopes two kinds of pleaders within its ambit. The first refers to legal practitioners who are authorised to practise law and the second refers to "any other person". If it is the latter, its essential requisite is that such person should have been appointed with the permission of the court to act in such proceedings. This is in tune with Section 32 of the Advocates Act, 1961 which empowers a court to permit any person, who is not enrolled as an advocate to appear before it in any particular case. But if he is to plead for another person in a criminal court, such permission should be sought for by that person.

7. It is not necessary that the "pleader" so appointed should be the power-of-attorney holder of the party in the case. What seems to be a condition precedent is that his appointment should have been preceded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case.

8. The work in a court of law is a serious and responsible function. The primary duty of a criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

9. Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practise in all the court in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

10. But if the person proposed to be appointed by the party is not such a qualified person, the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause [Section 2(q) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned.

11. V. R. Krishna Iyer, J. had occasion to deal with a similar matter while considering a plea like this in a chamber proceeding in the Supreme Court. In that case, a party sought permission to be represented by another person in a criminal case. Learned Judge then struck a note of caution in the following terms in *Harishankar Rastogi v. Girdhari Sharma* ((1978) 2 SCC 165 : 1978 SCC (Cri) 168 : AIR 1978 SC 1019) : (SCC p. 167, para 3)

"If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter-productive service from him.

Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly or blockheadedly private representatives filing arguments at the court. Likewise, the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the court. Other situations, settings and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice."

12. The appellant submitted that he is the duly appointed attorney of the respondent-couple by virtue of an instrument of power of attorney executed by them and on its strength he contended that his right to represent the respondent-couple in the court would be governed by the said authority in the instrument.

13. In Stroud's Judicial Dictionary, power of attorney is described as "an authority whereby one is set in the turne, stead, or place of another to act as an agent of the person granting it. Section 2 of the Power of Attorney Act, 1882 empowers the donee of a power of attorney to do anything "in and with his own name and signature" by the authority of the donor of the power. Once such authority is granted, the said Act recognises that everything done by the donee "shall be as effectual in law as if it had been done by the donee of the power in the name and with the signature ... of the donor thereof".

14. Under the English law, "every person who is sui juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right", (vide *Jackson & Co. v. Napper* ((1886) 35 ChD 172 : 55 LT 836) ChD at p. 172). But this Court has pointed out that the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation, (vide *Ravulu Subba Rao v. CIT* (AIR 1956 SC 604 : (1956) 30 ITR 163)).

15. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party-in-person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with "the personal attendance of the accused, and permit him to appear by his pleader" if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power-of-attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.

16. In this context reference can be made to a decision rendered by a Full Bench of the Madras High Court in *M. Krishnammal v. T. Balasubramania Pillai* (AIR 1937 Mad 937 : (1937) 2 MLJ 552) when a person, who was the power-of-attorney holder of another, claimed right of audience in the High Court on behalf of his principal. A Single Judge referred three questions to be considered by the Full Bench, of which the one which is relevant here was whether an agent with the power of attorney to appear and conduct judicial proceedings has the right of audience in court. Beasley, C. J., who delivered the judgment on behalf of the Full Bench stated the legal position thus : (AIR Headnote)

"An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of the principal, either in the appellate or original side of the High Court. ... There is no warrant whatever for putting a power of attorney given to a recognized agent to conduct proceedings in court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney [which] is confined only to pleaders, i.e., those who have a right to plead 99in courts."

17. The aforesaid observations, though stated sixty years ago, would represent the correct legal position even now. Be that as it may, an agent cannot become a "pleader" for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. The respondent-couple have not even moved for such a permission and hence no occasion has arisen so far to consider that aspect.

18. The appeal is accordingly dismissed.