

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2817/2009

Reserved on: October 12, 2009

Pronounced on: October 15, 2009

ALOK KUMAR Appellant

! Through: Mr. Ajay Burman, Mr.
Rajesh Samanotra and Mr. Anwesh
Madhukar, Advocates

Versus

\$ THE STATE Respondent

^ Through: Mr. Amit Sharma, Ld.
Additional PP for the State with SI
Ghanshyam

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

V.K.Jain, J.

This is a petition under Section 482 of the Code of Criminal Procedure seeking permission to the petitioner to go to England and for release of his Passport.

2. FIR No. 426/2007 under Section 354/506 of IPC was registered against the petitioner at I.G.I. Airport, on the complaint of the prosecutrix. On filing of charge-sheet, a petition under Section 482 of Cr. P.C., being C.M. No. 299/2009, was filed by the petitioner and the proceedings before the Trial Court were stayed by this court vide order dated February 03, 2009. FIR No. 63/2008, under Section 376/420 of IPC was got registered by the prosecutrix at Police Station Connaught Place on the allegation that the petitioner had physical relations with her by misrepresenting that he was a bachelor and would marry her. Later, when she came to know that the petitioner was already married, he told her that his previous marriage lasted only for two months and a divorce case was pending. However, instead of marrying her, the petitioner married another woman on 25.11.2007.

3. The petitioner was admitted to regular bail in the case registered vide FIR No. 63/2008 of P.S. Connaught Place, vide order of the learned Addl. Sessions Judge dated 08.06.09 and one of the conditions for grant of bail was that before leaving India, he would seek permission of the court. The Passport of the petitioner was also seized by the

Investigating Officer. The petitioner filed an application before the learned Addl. Sessions Judge, seeking release of passport and permission to go abroad, on the ground that he was a Solicitor in London and having been held up in India on account of the cases registered against him, he could not get his Solicitor's Registration renewed. For the purpose of renewal of registration, he was required to complete 15 hours of Continuous Professional Development (CPD) course and was required to be in London to complete that course and other formalities. He also expressed desire to meet his son who is studying in England. The application having been rejected vide order dated 06.08.2009, the petitioner has come to this Court by way of this petition under Section 482 of the Code of Criminal Procedure.

4. It is an admitted case that the name of the petitioner has already been removed from the Roll of Solicitors under Regulation 11 of Solicitors (Keeping of Roll) Regulations, 1999. The documents filed by the petitioner during the course of arguments did not show whether his name was struck off the Roll of Solicitors Regulation Authority or was removed from the Roll. In his written submissions filed on 13.10.09, the petitioner has stated that in fact his name was

removed on account of his failure to respond to an enquiry made by Solicitors Regulation Authority and was not struck off. I am, therefore, proceeding on the assumption that the name of the petitioner was not struck off but was only removed from the Roll. The case of the petitioner is that since he could not complete his CPD course, he having been compelled to stay in India on account of the cases registered against him, his name was removed from the Roll of Solicitors and he has already submitted form KR4 to Solicitors Regulation Authority (SRA) for restoration to the Roll. A copy of form KR4 has been annexed to the affidavit of the petitioner dated 12th October, 2009.

It is not in dispute that the petitioner cannot obtain renewal of his Practising Certificate unless his name is restored to the Roll of Solicitors. The petitioner himself has filed an e-mail dated October 5, 2009 received by him from Solicitors Regulation Authority, informing him that in order to apply for a 2009-10 Practising Certificate, he needs to restore himself to the Roll. It is not known whether the Solicitors Regulation Authority will restore the petitioner to the Roll of Solicitors or not. Taking into consideration the strained relations between the petitioner and the

complainant, his application for restoration to the Roll is likely to be opposed by the complainant on various grounds, including his involvement in 3 criminal cases in India and the disciplinary proceedings initiated against him by the Bar Council in India. This is bound to delay the decision on the request of the petitioner, for restoration of his name to the Roll. In case the Solicitors Regulation Authority declines to do so, it will not be possible for the petitioner to obtain renewal of his registration as a Solicitor. In the event of name of the petitioner being restored to the Roll; he will have to complete his CPD programme, by 31.10.2009, if he wants renewal of his Regulation Certificate for the year 2009-10. Since only 2 weeks are now left in the month of October, 2009, it is highly unlikely that the decision on the application of the petitioner for restoration to the Roll can be taken so soon as to allow him to complete his CPD programme within next about 2 weeks. If he cannot complete the CPD programme by 31.10.2009, he cannot obtain renewal of his Registration for the year 2009-10 and will have to seek renewal only for the year 2010-11. If that be the case, the petitioner does not need to be in England right now, as CPD programme for the year 2010-11 can be completed by him up to 31.10.2010.

The petitioner does not need to be physically present in England for seeking restoration to the Roll of Solicitors Regulation Authority. He needed to file filled up form KR4 and deposit requisite fee, which he has already done. Therefore, at this stage, when the application of the petitioner, to Solicitors Regulation Authority, for restoring his name to the Roll, is still pending, there is no urgent need for the petitioner to go to England.

5. A perusal of form KR-4, submitted by the petitioner to Solicitors Regulation Authority shows that in reply to Clause 5 of the Form, he was required to inform whether he has been under investigation for any matter or subjected to any other disciplinary activities by a Professional / Regulatory Body. The petitioner replied to this question in negative. Admittedly, the petitioner is facing disciplinary proceedings before the Bar Council in India and a notice has already been issued to him. Therefore, instead of replying in negative, he was required to disclose the proceedings initiated against him by the Bar Council, to the Solicitors Regulation Authority. It was contended by learned counsel for the petitioner that the information under Clause 5 of the form was required only in respect of disciplinary action by a

Professional / Regulatory body in England and not by a Professional / Regulatory body in India. I am unable to agree with learned counsel for the petitioner in this regard. Clause 5 of the application from does not restrict the information to investigation or disciplinary activity by a Professional / Regulatory body in England. It relates to such an action by any Professional / Regulatory body, irrespective of the location of that body / authority. Thus, *prima facie*, it appears to me that the petitioner has not disclosed true state of affairs to Solicitors Regulation Authority. It appears that the petitioner had apprehension that if he disclosed the action initiated against him by Bar Council in India, the Solicitors Regulation Authority may not restore his name to the Roll and that is why he chose to conceal this fact, while filling up the form.

6. The grant of relief under Section 482 of Cr. P.C. is a discretionary relief and no person can claim grant of such a relief as a matter of right, even if he is able to make out a case on merits in his favour. The court is not obliged to grant a discretionary relief to a person who tries to conceal a material fact from a Regulatory Authority, even if that authority is based in England and not in India. The court,

may not render a helping hand to a person who is guilty of misconduct even if that misconduct is not in connection with a matter subject matter of adjudication before the court.

7. A perusal of the order dated 6th August, 2009 passed by the learned Addl. Sessions Judge, shows that during the arguments before her, it was submitted on behalf of the petitioner that on the earlier occasion as well he had been granted permission to travel and he had returned back to India. Admittedly, this statement is factually incorrect as the petitioner could not utilize the permission granted to him to go abroad and did not leave India at any point of time after registration of criminal cases against him. During the course of arguments before this court, the learned counsel for the petitioner denied having made such a statement before the learned Addl. Sessions Judge. The law in this regard is, by now, well settled. The record of proceedings of a court has to be taken as correct and if a party is aggrieved on account of recording of an erroneous statement, in the record the appropriate remedy for such a party is to approach the concerned Court at the earliest opportunity and seek suitable correction of the record of the Court.

8. In *State of Maharashtra v. Ramdas Shrinivas Nayak and Another*; (1982) 2 SCC 463, a concession made on behalf of the State of Maharashtra was recorded in the proceedings of the High Court. When the matter came up before the Supreme Court, it was contended by learned Attorney General that no such concession was ever made by the State. He requested (for this purpose) the Hon'ble Supreme Court to peruse the written submissions made in the High Court. The Hon'ble Supreme Court rejected the contention holding as under:

"We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by

affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

9. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd and Others*; (2003)2 SCC 111, it was contended before the Hon'ble Supreme Court that various other contentions had

also been raised before the High Court, which had not been dealt with. The Hon'ble Supreme Court declined to go into the said contention holding that the remedy of the appellant was to file appropriate application for review before the High Court. In *Jagbir Singh and Ors v. State (Delhi Administration)*; 2007 (5) SCC 359, a similar contention was again rejected by the Hon'ble Supreme Court holding that if really there was no concession, the only course open to the appellants was to move the High Court. Therefore, in this case also, if the petitioner had not submitted before the Addl. Sessions Judge that pursuant to the permission given by the court he had travelled abroad and had returned back to India, he should have filed appropriate application seeking necessary correction in the order. The petitioner having not adopted that course of action, the record of proceedings dated 6th August, 2009 must be taken as correct. This would show that the petitioner tried to obtain permission to go abroad by misrepresentation of fact. A person approaching a court of law has to come with clean hands and disclose all relevant facts. Misrepresentation, as regards a material fact being fatal to the person approaching the court, he would not be entitled to grant of a discretionary relief even if he is able to make out a good case on merits in his favour. In my view,

misrepresentation made by the petitioner before the learned ASJ alone is sufficient to deny the relief sought by the petitioner.

10. During the course of arguments it was also submitted on behalf of the prosecution that in fact the petitioner is also involved in a case registered against him at Police Station Sector 39 of Gautam Budh Nagar under Sections 406/409/506 of IPC and this information has been withheld by him from this Court. The petitioner did not deny that a petition filed by him under Section 482 of Cr. P.C. for quashing the criminal proceedings arising out of case no. 5239/08 of P.S. Sector 39, Gautam Budh Nagar has been dismissed by Allahabad High Court vide order dated 7th October, 2009. It would be pertinent to note here that in this court also, initially the petitioner did not disclose that his name had been removed from the Roll, though this was very much in his knowledge, as is evident from the e-mail dated 24.09.2009 received by him from Solicitors Regulation Authority. When it was informed during arguments on behalf of the complainant that a search on the website of SRA, by the name of the petitioner had yielded zero result, meaning thereby that he was no more a registered Solicitor and

therefore was not entitled to pursue CDP, that the petitioner filed an affidavit disclosing this information.

11. Even on merits, I am of the considered view that there is a reasonable apprehension of the petitioner not coming back to India to face the trial, if he is permitted to go to England. This is petitioner's own case that he wants restoration of his name on the Roll of Solicitors Regulation Authority and renewal of his registration as a Solicitor. Once it is done, the petitioner may choose to practise in England, instead of coming to India to attend the trial. This is more so, when his son is also studying in U.K. The offence under Section 376 of Indian Penal Code being a serious charge entailing punishment which shall not be less than seven years but which may be for life or for a term which may extend up to 10 years and the charge against the petitioner have already been framed, the apprehension of the prosecution that he is not likely to attend the trial, if permitted to go abroad, cannot be said to be unfounded.

12. For the reasons given above, I do not deem it appropriate to grant permission to the petitioner to go abroad. The petition is, hereby, dismissed. Vide an interim order dated September 22, 2009, the Passport of the

petitioner was temporarily released to him in order to enable him to complete necessary formalities with regard to his travel. While temporarily releasing the Passport, it was directed by this court that in case it comes to the conclusion that the petitioner is not entitled to the relief sought by him, then necessary order in that regard would be passed on next date of hearing. The petitioner, therefore, is directed to deposit back his passport forthwith. The petition stands disposed of.

(V.K. JAIN)
JUDGE

October 15, 2009/acm