

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION NO.12 OF 2017

IN

CRIMINAL CONTEMPT PETITION NO.7 OF 2016

(Suo Moto .vs.. Satish Mahadeorao Uke)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Smt. K.H. Joshi, Addl.P.P. for the petitioner,
Shri C.J. Joveson, Advocate for the respondent.

CORAM : P.B. VARALE & Z.A. HAQ, JJ.

DATED : 27-02-2017

By this application, an unusual declaration is sought by the respondent Satish Mahadeorao Uke. The respondent Satish Mahadeorao Uke has sought leave to permit Shri Bijoy Krishna Adhikary, Advocate who is said to be enrolled with Bar Council of West Bengal in 1980 to argue on his behalf though Shri Bijoy Krishna Adhikary has not filed Vakalatnama. Shri C.J. Joveson, Advocate who has filed Vakalatnama on behalf of the respondent Satish Mahadeorao Uke has submitted that he is authorised by Satish Mahadeorao Uke to plead the case, however, Shri C.J. Joveson, Advocate feels that cause of the respondent Satish Mahadeorao Uke can be better represented and argued by Shri Bijoy Krishna Adhikary, Advocate who is very senior and having wide experience in practice. Shri C.J. Joveson, Advocate has relied on the first proviso below Sub-Rule (2) of Rule 2 of Schedule VII of Chapter XXXII of the Bombay High

Court Appellate Side Rules, 1960, to urge that he has right to engage an Advocate on behalf of the respondent Satish Mahadeorao Uke to plead the case.

There is no doubt that the first proviso below Sub-Rule (2) of Rule 2 of Schedule VII of Chapter XXXII of the Bombay High Court Appellate Side Rules, 1960 enables Advocate who is authorised by the party by signing Vakalatnama in his favour, to engage a lawyer to plead the case of the party before the Court. However, in the present case, the request is coming from the party itself i.e. from Satish Mahadeorao Uke as is clear from the Criminal Application No.12/2017. It is not explained why Shri Bijoy Krishna Adhikary, Advocate could not sign Vakalatnama on behalf of the respondent Satish Mahadeorao Uke. In these facts, the first proviso below Sub-Rule (2) of Rule 2 of Schedule VII of Chapter XXXII of the Bombay High Court Appellate Side Rules, 1960 will not be of any help to the respondent Satish Mahadeorao Uke. We cannot grant the request made by Criminal Application No.12/2017.

The criminal application is dismissed.

Criminal Application No.13/2017.

By this application, the respondent Satish Mahadeorao Uke seeks exemption from personal appearance on the ground that his presence is required

at Mumbai to assist his lawyer for prosecuting the writ petition filed by him in last week challenging the vires of Sections 2(c), 12, 14 and 15 of the Contempt of Courts Act, 1971 and seeking some other reliefs.

By the order passed on 08-02-2017, charges are framed against the respondent Satish Mahadeorao Uke and he was called upon to file his reply till 22-02-2017. By this order passed on 08-02-2017, the respondent Satish Mahadeorao Uke was directed to remain present before this Court on 22-02-2017 at 2.30 p.m.

On 22-02-2017 as Court time was over, the hearing of *suo moto* Criminal Contempt Petition No.7/2016 was adjourned for 23-02-2017 at 10.30 a.m. On 23-02-2017, the respondent Satish Mahadeorao Uke filed Criminal Application No.10/2017 seeking adjournment and Criminal Application No.9/2017 seeking exemption from personal appearance. Though we were not inclined to adjourn the matter, in the interests of justice, we granted time till 27-02-2017, however, the Criminal Application No.9/2017 was rejected. Non-bailable warrant was issued against the respondent Satish Mahadeorao Uke. It was clarified that if he avoids execution of the non-bailable warrant, orders regarding forfeiture of amount of security deposited by him with the registry of this Court may be passed. It was further clarified that even if the respondent Satish

Mahadeorao Uke is not present, we will proceed with the hearing of *suo moto* Criminal Contempt Petition No.7/2016.

In the facts of the case, the reason given by the respondent Satish Mahadeorao Uke for seeking exemption from personal appearance is not satisfactory.

The criminal application is dismissed.

Till 22-02-2017 the respondent Satish Mahadeorao Uke, who himself is an advocate, appeared in person and represented his case. We find that now the respondent Satish Mahadeorao Uke is avoiding to appear before this Court and assist the Court for disposal of the *suo moto* Criminal Contempt Petition No.7/2016. As the act of the respondent Satish Mahadeorao Uke cannot be condoned, we direct that out of the amount of Rs.2,00,000/- deposited by the respondent Satish Mahadeorao Uke with the registry of this Court, an amount of Rs.1,00,000/- be forfeited.

The criminal application is dismissed accordingly.

Criminal Application Nos.11/2017 & 15/2017.

These applications are filed by the respondent Satish Mahadeorao Uke with the following prayers :

In Criminal Application No.11/2017.

“Application seeking to keep in abeyance all further proceedings in Criminal Contempt Petition No.7/2017 and another Criminal Contempt Petition (unnumbered) arising out of order dated 22-02-2017 in Criminal Contempt No.7/2016 pending before this Hon'ble Bench till Writ Petition Lodging No.597/2017 filed by the applicant before the Principal Seat of this Hon'ble Court is decided, preferred by the applicant through his counsel Shri C.J. Joveson.”

In Criminal Application No.15/2017.

“Application seeking to keep in abeyance all further proceedings in Criminal Contempt Petition No.7/2017 and another Criminal Contempt Petition (unnumbered) arising out of the order dated 22-02-2017 in Criminal Contempt Petition No.7/2016 pending before this Hon'ble Bench till Writ Petition Lodging No.597/2017 filed by the applicant before the Principal Seat of this Hon'ble Court is decided and further seeking a declaration that an advocate on record is free to engage any other lawyer enrolled with any Bar Council in India as a counsel and that such a right is invested in the applicant's advocate on record, and further seeking refund of the amount of Rs.2 Lakhs deposited by the applicant in compliance with the order of this Hon'ble Court and further grant exemption from personal appearance to the applicant, preferred by the applicant through his counsel Shri C.J. Joveson.”

Normally, judicial propriety requires that if a connected matter or offshoot is pending before the Superior Court, the subordinate Court should adjourn the matter awaiting the decision of the Superior Court and this is the submission made on behalf of the

respondent Satish Mahadeorao Uke also. However, in the present case, it cannot be said that any connected matter or offshoot is pending before the Co-ordinate Bench or Superior Court. The petition challenging the vires of the provisions of the Contempt of Courts Act, 1971 is before a co-ordinate bench at the Principal Seat. The filing of writ petition by the respondent Satish Mahadeorao Uke challenging the vires of Sections 2(c), 12, 14 and 15 of the Contempt of Courts Act, 1971 cannot be said to be a connected matter or offshoot of the present matter. Moreover, the Hon'ble Chief Justice has constituted Special Bench to hear *suo moto* Criminal Contempt Petition No.7/2016, the matter is being heard since 18-07-2016, after this Court took cognizance and initiated proceedings for contempt against the respondent Satish Mahadeorao Uke, framed charges and gave time to file reply and then kept the matter for hearing, the respondent Satish Mahadeorao Uke chose to file the writ petition at the principal seat. In these facts, we cannot accede to the request made on behalf of the respondent Satish Mahadeorao Uke by these applications.

The criminal applications are dismissed.

Criminal Application NO.14/2017.

By this application, the respondent Satish Mahadeorao Uke prays that the amount of Rs.2,00,000/-

deposited by him with the registry of this Court be refunded. By the order passed on Criminal Application No.13/2017, we have directed that out of amount of Rs.2,00,000/- deposited by the respondent Satish Mahadeorao Uke, Rs.1,00,000/- be forfeited.

Considering the conduct of the respondent Satish Mahadeorao Uke, at this stage the balance amount of Rs.1,00,000/- cannot be refunded till the disposal of *suo moto* Criminal Contempt Petition No.7/2016.

The criminal application is dismissed.

JUDGE

JUDGE

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