

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.111 of 2018

S.Mukanchand Bothra

.. Petitioner

Vs.

State By

The Inspector of Police,
Central Crime Branch,
Vepery, Chennai.

... Respondent

PRAYER: Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order / judgment dated 16.12.2017 made in Crl.M.P.SR.No.20113 of 2017, on the file of the learned Principal Sessions Judge, Chennai and prays for setting aside the same.

For Petitioner : Mr.M.Gagan Bothra
Party-in-Person

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

O R D E R

The petitioner, Mr.Mukanchand Bothra has filed a petition in Crl.M.P.SR.No.20113 of 2017 before the learned Principal Sessions Judge, Chennai, through his Power Agent by namely one Mr.M.Gagan Bothra, who is the own son of the petitioner.

2.The case of the petitioner is that the petitioner, who is an accused is having so many complication regarding his health and hence he has unable to appear before the Courts to represent on behalf of him. Therefore, he filed a petition under Section 2 (q) of Cr.P.C. read with Section 32 of the Advocates Act, 1961 for seeking permission to represent his case by his Power Agent Mr.M.Gagan Bothra.

3.To support his case, the petitioner has produced a judgment before the Court below in a case of Harishankar Rastogi v. Girdhari Sharma and Another reported in (1978) 2 SCC 165.

4.Citing the said judgment, the petitioner has represent before the Court, he may be permitted the power agent, who is

the petitioner's son Gagan Bothra to represent on behalf of him.

5.Considering his case, the learned Principal Judge, City Civil Court, Chennai has dismissed the application by stating that the citation rendered by the petitioner is not applicable to the petitioner's case. Therefore, the learned Judge has dismissed the said petition in Crl.M.P.SR.No.20113 of 2017 on 16.12.2017. Challenging the said order, this Criminal Revision Case has been filed before this Court.

6.I heard Mr.Gagan Bothra, Party-in-Person Power Agent of Mr.Mukanchand Bothra, who is the petitioner and Mr.T.Shanmuga Rajeswaran, learned Government Advocate (Criminal Side) for the respondent and perused the documents and judgments cited by the petitioner.

7.It is the case of the petitioner that he has filed a petition for relaxing the bail condition imposed by the learned Principal Judge, City Civil Court, Chennai, is having so many complication in respect of his health. Therefore, he filed a petition in Crl.M.P.SR.No.20113 of 2017 to permit his Power Agent Mr.M.Gagan Bothra, who is his own son to represent the petition filed for bail condition relaxation. To support his case by citing the provision under Section 2(q) of Cr.P.C. and Section 32 of the Advocates Act, he may be permitted to represent by his son, who is the power agent on behalf of the petitioner in the said petition.

8.The provisions of Section 2(q) of Cr.P.C. is as follows:

"(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."

The provisions of Section 32 of the Advocates Act, 1961, is reads as follows:

"Sec. 2(q) of Cr.P.C. is the definition for pleader. Sec.32 of the Advocates act, 1961 is for advocates. The present petitioner is not an advocate". This finding of the learned Judge is completely erroneous and contrary to section 32 of the advocates act, 1961. Section 32 of the advocates act is as follows:-

"Section 32:- Power of court to permit appearances in particular case: Notwithstanding anything contained in this chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this act, to appear before it or him in any particular case."

9.As per the provisions, it made clear that the Court can permit even a non-Advocate to represent a litigant. In the case on hand, admittedly the power agent Mr.Gagan Bothra, who is the son of the petitioner Mr.Mukanchand Bothra. It is represent that the petitioner Mr.Mukanchand Bothra is a heart patient consisting of 99% heart blockage and recently suffered heart failure and is also undergoing kidney treatment. Therefore, he appointed his own son Mr.Gagan Bothra as a Power Agent for representing him before the Court.

10.The Hon'ble Supreme Court in the case of Harishankar Rastogi v. Girdhari Sharma and another reported in (1978) 2 SCC 165, it is observed that as follows:

"4.Having regard to this conspectus of considerations I hold that a private person, who is not an advocate, has no right to barge into Court and claim to argue for d party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may, even after grant of permission, withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission. In the present case I have noticed the petitioner and his friend who is to represent him, come together with mutual confidence. The party somehow has not shown sufficient confidence in advocates he has come by. This bodes ill for him. I should have suspected the association of the private person as having sinister implications of exploitation of a guileless party but suspicion by itself should not be the basis of a conclusion. Therefore,. I think it right to give the party, who appears to be unable to represent his own case, an opportunity to present his grievance through, his friend. That friend, judging by the note prepared and put in, seems to be familiar with law, although quacks can prove fatal friends. I grant the petitioner permission to be represented by a private person as prayed for, with the condition that if this latter proves unworthy, the permission will be withdrawn."

11.As per the above judgment rendered by the Hon'ble Supreme Court, the Court can grant or withhold permission for representing a litigant on condition that if this latter proves unworthy, the permission can be withdrawn by the Court.

12.The Hon'ble Supreme Court in the above judgment cited supra very clearly held that a person who want to represent the litigant to get prior permission from the concern Court. Accordingly, the petitioner has filed the present petition before the learned Principal Sessions Judge, City Civil Court, Chennai.

13.Admittedly, in this case, the petitioner has filed the petition to relax the conditions imposed by the said Court and his own son who is appointed as Power Agent of the petitioner has filed petition to relax the condition to get permission from the Court, he filed the petition in Crl.M.P.SR.No.20113 of 2017, but the learned Judge without considering the same has dismissed the said petition by saying that on behalf of the petitioner a party who is non Advocate cannot represent the litigant.

14.Though, this Court and the Hon'ble Apex Court in various cases has permitted the Power Agent to represent on behalf of the Principal, but here, the petitioner, who appointed his son as a Power Agent by producing the original Power of Attorney before the Court below, which was not accepted with valid reason.

15.Therefore, the very order of the learned Judge is totally not correct and against the order passed by the Hon'ble Supreme Court. Hence, this Court warranting interference in the order passed by the Court below.

16.In the result:

(a) this Criminal Revision Case is allowed and the order passed in Crl.M.P.SR.No.20113 of 2017, on the file of the learned Principal Judge, City Civil Court, Chennai, is set aside;

(b) the learned Principal Judge, City Civil Court, Chennai, is directed to number the Criminal M.P.SR.No.20013 of 2017 and grant permission to the petitioner to represent by his power agent viz., Mr.Gagan Bothra;

(c) the said exercise should be done within a period of one week from the date of receipt of a copy of this order.

s/d-

Assistant Registrar(CS IX)

True Copy

Sub-Assistant Registrar

vs

To

1. The Principal Sessions Judge,
City Civil Court, Chennai.
2. The Inspector of Police
Central Crime Branch
Vepery, Chennai.
3. The Public Prosecutor
High Court, Madras.

+2 Ccs to Mr.M.Gagan Bothra, Advocate sr 5703.

Cr1.R.C.No.111 of 2018

SP(05/02/2018)



WEB COPY