

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1043 of 2017

In

CRIMINAL MISCELLANEOUS No.22924 of 2016

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1. Co-ordination Committee Of Three Association Of Lawyers Of Patna High Court Through Its Chairman Yogesh Chandra Verma S/o Late P.C. Verma having its office at Library of Advocate Association, P.S. Patna Kotwali, District
 2. Uma Shankar, son of Raghuwansh Pd. Singh, Resident of Jagat Narayan Road, P.S.- Kadam Kuan, Patna, Vice Chairman of the Co-ordination Committee.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The High Court of Judicature at Patna through its Registrar General, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Adv. Mr. Yogesh Chandra Verma, Sr. Adv.
For the Respondent/s	:	Mr. Mrigank Mauli, Adv. Mr. Piyush LaL, Adv. Mr. Prince Kumar Mishra, Adv. Mr. Sanket, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-07-2019

This appeal questions that part of the order whereby, while hearing three criminal miscellaneous bail applications, the learned Single Judge proceeded to discuss the manipulation of facts in relation to the seizure of narcotics of 277 k.g. of Ganja from the possession of accused persons that was wrongly shown as 7 k.g. and 27 k.g. that necessitated the issuance of directions for



regulating the procedure of verifying the identity of advocates. The records appear to have been manipulated and without impleading the proper and necessary parties, both the bail applications had been filed. The learned Single Judge noted the discrepancies and then the involvement of the advocates and the advocates' clerks has been discussed from paragraph 7 onwards up to paragraph 17 in the impugned judgement..

2. The learned Single Judge recorded his opinion in paragraph 18 onwards and then refers to the institution of a criminal case calling upon the Central Bureau of Investigation to take appropriate action in the matter in another case that was detected by this Court. The Court has observed in paragraph 36 that lawyers have formed a syndicate and their appearance becomes deceitful on account of the manner of presentation of cases and, therefore, the system of enrolling the advocates-on-record deserves to be regulated by updating the Rules of the Advocates-on-record who are in practice of the High Court for which an appropriate vigilance will be maintained.

3. The ultimate directions given are contained in paragraph (v) which is extracted hereinunder:

“(v). As it is apparently clear that system of AOR has been introduced 7-8 years earlier, the lawyers who are working in Patna High Court, Civil Court, Patna



City Court, Patna City and Advocates are working in Danapur were allowed to become AOR and on their applications Registry prepared the list of AOR but it seems that the same has not been up-dated or verified as to whether the Advocates who were enrolled as AOR are still in practice, as in course of time some Advocates might have left the practice, certain Advocates might have died during in course of time but their names are still standing in the list of the AOR which requires verification and its updating. This Court directs the Registry that a proper notice should be published in the list, asking all Advocate-On-Record (AOR) must file an affidavit giving declaration therein that he/she is in active practice along with specimen signature and photograph, update the list of the AOR. Notice should be published consecutively for a week so that proper information be disseminated to avoid future complaint of AOR. If the affidavit along with specimen signature and photograph are not filed within 30 days from the last date of publication of notice, their names and AOR should be blocked and the same will be released subject to compliance and only after proper verification by the Registry. While updating the AOR, the Registry will remain vigilant and make proper verification of the affidavit filed by the AOR. **The Registry will update the list of AOR regularly seeking declaration on affidavit by month of March every year. ”**

4. There are other directions as well pertaining to the nature of the control to be exercised in order to ensure that the identity of the lawyer is fully disclosed.



5. It is this direction which virtually is the basis of filing of this appeal, and a Division Bench on 25th July, 2017 passed the following interim order:

“Defects pointed out by the office be rectified during one week. In the meanwhile, a copy of the appeal along with annexures be served on the counsel representing the respondents. They may seek instructions in the matter.

Considering the fact that *prima facie* the order in question passed, so far it pertains to filing of an affidavit by the Advocate on Record is concerned, the same being within the rule making power of the High Court, *prima facie*, a direction in a criminal miscellaneous case which has the effect of amending the High Court Rules may not be *prima facie* permissible.

To examine this question, the respondents are directed to file their counter affidavit. In the meanwhile, operation of the order dated 05.07.2016 passed in Cr. Misc. No.22924 of 2016, so far as it directs for filing of an affidavit by the Advocate on Record for the purpose of verification, shall remain stayed and other process already contemplated under the High Court Rules, shall continue to remain in force.”

6. Counter affidavits and replies have been filed and the matter came to be adjourned thereafter.

7. We note that the appeal was filed with a delay condonation application as the same was delayed by 350 days which is indicated in the order dated 26.11.2018. Since the matter



has been going on and it involves and concerns a particular dimension relating to advocates, we find it expedient and in the interest of justice to condone the delay and treat the appeal to be within time. The prayer for condoning the delay is therefore, accepted and the appeal shall accordingly be treated to be within time. I.A. No.5653 of 2017 is, accordingly, disposed of.

8. Shri Mrigank Mauli, learned counsel, has been heard for the respondent High Court who has raised a preliminary objection along with the counsel for the State that the present appeal would not be maintainable keeping in view Clause 10 of the Letters Patent of the Patna High Court, inasmuch as since the order has been drawn up in a criminal case, the appeal would not lie against any such order. Learned counsel have relied on a Division Bench Judgement of this Court in the case of **Dipak Bajaj Vs. The Union of India through Department of Revenue & Ors.**, reported in **2019 (1) P.L.J.R. 282**.

9. It has further been pointed out that the challenge raised to the validity of the Advocate-On-Record Rules, as framed by the High Court is engaging the attention of this Court, inasmuch as in the case of **Anju Mishra & Ors. Vs. the High Court of Judicature at Patna & Ors.**, reported in **2015 (3) P.L.J.R. 603**, the amendments dated 10th of December, 2009



regarding registration of advocates as advocates-on-record of the Patna High Court Rules under heading “D” of XXIV of Part 5 of the 1916 Rules was partly allowed holding that the impugned Rule disabled advocates from practising in Courts and the restrictions placed in Rules 4, 5, 6, 7(vi)(a) were liable to be struck down. Further, certain other conditions contained in the Advocate on Record Rules were also modified.

10. It appears that a review application was filed. The said judgement was reviewed and recalled which is reported in the case of **The High Court of Judicature of Patna through the Registrar General vs. K.K. Chaubey & Ors.**, reported in **2015 (4) P.L.J.R. 328**, Consequently, the result is that the said reference pertaining to the challenge raised to the *vires* of the Rules is still pending and, consequently, this Court should not hear this appeal and allow any such grievances to be decided in the Full Bench itself.

11. These two preliminary objections, therefore, have to be dealt with first and for this Shri Y.V. Giri, learned senior counsel for the appellant, has urged that the judgement in the case of **Dipak Bajaj** (supra) was concerned with a situation where the issue of nature of the writ petition was discussed in the background that the writ petition had been disclosed to be a writ



petition filed under the criminal jurisdiction of the Patna High Court Rules. It was held therein that the subject-matter of the dispute was compounding in respect of an offence arising out of the Customs Act, 1962 and the penalty imposed thereunder and therefore the writ petition was rightly entertained as a criminal writ petition. It was urged therein that the issue of compounding was a civil transaction and, therefore, the appeal should be entertained. This contention was negated holding that it was not a civil liability and it was finally held that in view of the law laid down by this Court in the case of **Ram Kishan Fauji Vs. State of Haryana**, reported in **(2017) 5 SCC 533**, it was the nature of exercise of jurisdiction that would determine the maintainability of the appeal. Paragraph 45 of the said decision in the case of **Ram Kishan Fauji** (supra) is extracted hereinafter:

“45. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of civil court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other factors as have been enumerated therein.”

12. It was ultimately held in the case of **Dipak Bajaj** (supra) that since the nature of jurisdiction exercised was in respect of an offence which had been committed in the State of



Uttar Pradesh, neither the writ petition was entertainable nor the Letters Patent Appeal could have been entertained under Clause 10 of the Patna High Court Rules. Shri Giri, therefore, contended that the said judgement does not go in favour of the respondents and rather comes to the aid of the appellant, inasmuch as in the instant case the nature of jurisdiction exercised by the learned Single Judge while issuing the impugned directions is in respect of the Rules pertaining to enrolment of advocates on record and was not an exercise of a criminal jurisdiction.

13. Shri Giri has then cited the judgement in the case of **Lokmat Newspapers Pvt. Ltd. Vs. Shankar Prasad**, reported in **(1999) 6 SCC 275** to substantiate his submissions. He submits that in the said case the issue was that if the jurisdiction has been exercised by the High Court under Article 227 of the Constitution of India, then in view of Clause 15 of the Bombay High Court Rules, a Letters Patent Appeal would not be maintainable, but if the learned Single Judge was exercising the jurisdiction under Article 226 of the Constitution of India, then a Letters Patent Appeal would be maintainable and a litigant could not be deprived of the right to maintain the appeal.

14. The judgement in the case of **State of Madhya Pradesh & Ors. Vs. Vishan Kumar Shiv Charan Lal**, reported



in **(2008) 15 SCC 233** has also been cited to contend that the nomenclature of the proceedings would not govern the jurisdiction of the Court, but it is the form of proceedings and the nature of jurisdiction exercised that would be determinative of the maintainability of a Letters Patent Appeal under Clause 10.

15. Having considered the aforesaid judgements and the issue raised in the present appeal, we are of the clear opinion that the nature of the jurisdiction exercised by the learned Single Judge by issuing the impugned directions, even though is in a bail matter pertaining to the criminal jurisdiction of this Court, yet the nature of the directions issued are in exercise of the jurisdiction by way of a mandamus which partakes the character of a writ under Article 226 of the Constitution of India for regulating the maintenance of the Advocate-on-Record Rules and to take appropriate steps as directed in the judgement so long as the Rules of the High Court are not amended providing for the same. The direction, therefore, issued in the impugned order does not anywhere relate to the merits of the case of the bail applications where a fraud had been detected and where the learned Single Judge has exercised his discretion in recalling an earlier order passed in a bail matter, but at the same time, after having done so, the learned Single Judge has proceeded to take up the issue which concerns the general



maintenance of the rolls of the Advocates-on-Record in the High Court in order to check on the identity of advocates who are practising in the High Court. This was not the issue in the original case which was essentially a bail matter. The consequences of a lawyer having manipulated records or having given an incorrect statement could be examined in the bail application itself and the same would be a matter concerning the merits of that bail application, but any further direction for maintaining the advocates on rolls cannot be treated to be within the jurisdiction of the Court in the exercise of powers under Section 438 or 439 of Cr.P.C. while hearing a bail application. This part of the exercise undertaken by the learned Single Judge is, therefore, severable, inasmuch as these are general directions for ensuring the identity of all advocates who are regularly practising in the High Court and regulating the same as per the directions contained therein which includes the filing of affidavits by advocates in the month of March annually before the Registrar. This direction, therefore, does not form the essential nature of the dispute of the bail application and is an exercise for ensuring the regulation of the practice of advocates in the High Court in general. We find this part of the order to be an attempt made by the learned Single Judge in order to streamline and also prevent any such mishap in future.



We, therefore, find this part of the direction to be amenable to appeal, inasmuch as, firstly, the directions have been issued without impleading any lawyer representative or issuing any notice in this regard in general either to the State Bar Council or to any of the Bar Associations of the High Court. The directions were issued without the participation of the forum of lawyers that were likely to be affected by the issuance of such directions. In effect, it was a *suo motu* exercise by the learned Single Judge having come to the conclusion that the measures and steps were essential in the interest of the institution.

16. The learned Single Judge was right in his approach in taking up the issue, but at the same time, the question if of forum and of entertaining of such a plea that can be made subject-matter of a Letters Patent Appeal. We are of the opinion that the Letters Patent Appeal in the aforesaid background would be maintainable so as to question the correctness of the directions issued in the impugned judgement and we, therefore, have no hesitation in proceeding to hear the matter on merits.

17. The second preliminary objection is with regard to the issue of *vires* of the Rules engaging the attention of a Full Bench of this Court as referred to hereinabove. We are conscious of the fact that the validity of the Rules is still to be examined and,



therefore, we find that it would have been more appropriate that the issue raised herein could have been made an additional issue for reference in order to streamline the Rules keeping in view the nature of the problem that was sought to be remedied by the learned Single Judge. Nonetheless, what we find is that the scope of the directions issued by the learned Single Judge has been subjected to a challenge only to the limited area of the filing of the annual affidavits. This is, however, not directly in issue before the Full Bench where the very validity of the Rules is under challenge. We, therefore, find that the pendency of the matter before the Full Bench does not appear to be an impediment in the hearing of this appeal.

18. Coming to the merits of the challenge raised to the impugned directions, Shri Y.V. Giri, learned senior counsel, has urged that the directions issued clearly question the right of an advocate to practise in a Court which is governed by the Advocates Act, 1961 and the Bar Council of India Rules. He has, therefore, referred to Section 30 and 34(1) of the Advocates Act to urge that even assuming that such a direction was necessary, the same should have been by way of an administrative decision through the Full Court of the Hon'ble High Court by way of a collective decision, inasmuch as the power to regulate the practice



of a lawyer in the High Court vests with the High Court and not with a learned Single Judge sitting on the judicial side. The issuance of such a direction, therefore, is contrary to the provisions of the Advocates Act as the directions issued are not by the Full Court. It is submitted that in case the learned Single Judge felt that such necessary arrangements were imperative, then a direction could have been issued for the High Court to have considered the matter.

19. He then submits that no lawyer or lawyer's representative has been heard and, for that matter also, the learned Single Judge could not have virtually *ex parte* imposed a condition that required the approval of a collective decision of the Full Court.

20. During the pendency of the writ petition, we had attempted to allow the learned counsel to come up with some solution keeping in view the nature of the problem, inasmuch as the identity of the lawyers practising in the High Court deserves verification as the responsibility and accountability of any matter having been presented in the High Court has to be of the Advocate on record or the lawyer concerned. It does usually happen that lawyers coming from the Civil Court, as has happened in the case giving rise to this controversy, without there being any proper



identity causes difficulty in tracing their roots. It is quite possible that utilizing fake Vakalatnamas or even Vakalatnamas in the name of any dead lawyer or a lawyer who has given up practice may create such situations. It is keeping in view these contingencies, of which the present is a burning example, that the learned Single Judge appears to have issued these directions so as to maintain a consistency to ensure the identity of a regular practising lawyer in the High Court. The idea of bringing about such a regulation does not appear to be unreasonable, but what the appellant contends is that filing of an annual affidavit in the month of March every time by a regularly practising lawyer is a measure which is not only cumbersome for lawyers, but also not appropriate without there being a well considered Rule in this regard.

21. The matter may, therefore, require a further deliberation and in order to resolve the issue, in our opinion, it would be appropriate that the matter is considered on the administrative side by the High Court keeping in view the powers exercisable in terms of Section 34(1) of the Advocates Act, 1961.

22. We, therefore, make the interim order dated 25.7.2017 absolute and direct that the order dated 5th July, 2016 impugned herein, insofar as it directs for filing of an affidavit by the advocate on record for the purpose of verification, shall remain



in abeyance till a final decision is taken in the matter after due deliberations by the Full Court of the High Court.

23. The appeal stands disposed of with a direction to the Registrar General to place a copy of this judgement and the judgement of the learned Single Judge for consideration by the Full Court as directed by the Chief Justice in the meeting to be convened for the said purpose.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	AFR
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