

Ct. 05
Item No.11
10.04.2023
(Suvendu)

WPA 6175 of 2022

**West Bengal Law Clerks Association
Basirhat Criminal Court Unit
Vs.
The State of West Bengal & Ors.**

Mr. Kumar Jyoti Tewari
Mr. Aniruddha Tewari
Mr. Amit Sinha
Mr. Bitan Das

.....for the petitioner

Mr. Samrat Sen, Ld. AAAG,
Ms. Manali Ali

.....for the State

Mr. Sukanta Chakraborty

...for the respondent no.6

The affidavit of service is taken on record.

The petitioner, West Bengal Law Clerks Association Basirhat Criminal Court Unit, is aggrieved by an order passed by the learned Additional Chief Judicial Magistrate, Basirhat, North 24 –Parganas on 27th January, 2022. The impugned order gives a list of names of 83 advocates of the local Criminal Bar Association who have applied for enlistment of their names as sureties in criminal matters.

Learned counsel appearing for the petitioner submits that the petitioner is aggrieved by the order

since the order is contrary to Section 35 of The Advocates Act, 1961 and Rule 128 of The Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 as well as the fact that the law clerks of the petitioner's association have been deprived of acting as sureties by reason of the impugned order.

The learned AAAG appearing for the State has placed the relevant Rules of 1985.

Prima facie, it appears that the bar under Rule 128 is applicable to a lawyer standing as a surety for his own client in any criminal proceeding in a Court. It is not clear from the order passed by a learned Single Judge (as His Lordship then was) on 20th July, 2007, annexed to the writ petition, as to whether the facts of the case related to the petitioners' standing as sureties for their own clients attracting the bar under Rule 128.

Rule 127(4) which, according to learned AAAG, gives an appellate forum to the petitioner will not be applicable in the present case since the first order must be of a Sub -Divisional Judicial Magistrate whereas the impugned order in the present case has been passed by the learned Additional Chief Judicial Magistrate.

Needless to say however, any order passed by the Sub -Divisional Judicial Magistrate or the Additional Chief Judicial Magistrate as in the present

case must comply with the requirements of Section 35 of The Advocates Act, 1961 as well as Rules 126, 127 and 128 of The Calcutta High Court Criminal (Subordinate Courts) Rules, 1985.

WPA 6175 of 2022 is accordingly disposed of with a direction on the learned Additional Chief Judicial Magistrate to revisit the impugned order upon strict compliance of Rule 126 which sets out the eligibility criteria of the applicants and Rule 127 which casts an obligation on the Sub –Divisional Judicial Magistrate or the Chief Metropolitan Magistrate to make an enquiry on the financial soundness and the general fitness of the applicants and thereafter ensure that the procedural formalities should be complied with. The concerned authority shall also clarify that the lawyers shall not be allowed to stand as sureties for their own clients in any criminal proceedings which is the only bar under Rule 128. The entire exercise shall be completed within eight weeks from date and shall be communicated to the petitioners within a week thereafter.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)