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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement Delivered on: 07.02.2023

+ **CONT.CAS.(CRL) 2/2023 & CRL.M.A. 3256/2023 (permission for bringing additional facts and document on record)**

ABHIJIT MISHRA

..... Petitioner

versus

DR. SUBASH VIJAYRAN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Petitioner in person.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. Mr. Abhijit Mishra, who is an advocate by profession, has instituted the present criminal contempt petition seeking initiation of criminal contempt proceedings against Dr. Subash Vijayran, the solitary respondent herein, who is statedly an advocate by profession enrolled with the Bar Council of Delhi vide Enrollment No. D/6633/2019.

2. In sum and substance, it is asseverated by Mr. Abhijit Mishra that Dr. Subash Vijayran is simultaneously practicing both as an advocate as

well as a medical doctor and as a consequence is *ipso facto* guilty of “criminal contempt”.

3. It is an admitted position that Mr. Abhijit Mishra has simultaneously instituted a Writ Petition, i.e., **W.P. (C) No. 1492/2023**, titled as ‘**Mr. Abhijit Mishra v. Bar Council of Delhi & Anr.**’, which is pending adjudication before the learned Single Judge of this Court, whereby he has substantially prayed for cancellation of Dr. Subash Vijayran’s license to practice law.

4. The long and short of Mr. Abhijit Mishra’s submission is that since Dr. Subash Vijayran is allegedly guilty of misconducting himself as an advocate and has accordingly rendered himself liable to disbarment; thus, his very appearance on behalf of clients before the Courts in Delhi constitutes interference with the administration of justice.

5. There is no gainsaying the legal position that, action for misconduct against an advocate is expressly stipulated under Section 35 of the Advocates Act, 1961, which clearly and unequivocally prescribes that any advocate who is guilty of professional or other misconduct can be proceeded against by way of an enquiry and *inter alia* removed from the state roll of advocates.

6. In the present case, it is an admitted position that the learned Single Judge of this Court in **W.P. (C) No. 898/2019**, titled as '**Dr. Subash Vijayran v. Bar Council of Delhi & Anr.**' vide order dated 28.01.2019, has categorically declined Dr. Subash Vijayran, permission to retain his appellation as a medical practitioner consequent upon his being enrolled as an advocate.

7. We also observe from the material placed on record that there is a personal disagreement between Mr. Abhijit Mishra, the petitioner herein and Dr. Subash Vijayran, the solitary respondent herein. The same is further eloquently evident on a plain reading of **Annexure P-3** annexed at Page 66 of the present petition; which evidences a Whatsapp conversation between the two. A reading of the said 'chat' between the parties herein, indicates that there seems to be some professional rivalry and personal animosity between them. A simple perusal of the conversation also reveals that Mr. Abhijit Mishra; who represents some doctors of MAMC in inter-se disputes between them and Dr. Subash Vijayran; is threatening Dr. Subash Vijayran on behalf of the said clients. The relevant portion of the Whatsapp conversation between the parties is extracted herein below:

"Abhijit Mishra: Can I suggest you something?"

Dr. Subhash Vijayran.C: Yes sir

Abhijit Mishra: Just go back to AIIMS if you still have chance

Abhijit Mishra: Next 3 years would be worse in MAMC

Abhijit Mishra: UK is going to get arrested in short while and things will change dramatically

Abhijit Mishra: You have already made enemy out of Dr Sreenivas and Dr Amandeep

Dr. Subhash Vijayran.C: Hmm. I got the point

Abhijit Mishra: If you would continue then I would overwhelm you with Criminal and Civil Case

Dr. Subhash Vijayran.C: Hmm... I won't do anything for you to do that...

Dr. Subhash Vijayran.C: Sir

Abhijit Mishra: You have already done that

Abhijit Mishra: I am on clock"

8. In that view of the matter, as well as the facts and circumstances of the case antecedent and attendant and in view of the mandate of the Contempt of Courts Act, 1971, we find ourselves unable to initiate criminal contempt proceeding against the respondent.

9. We find it necessary, at this juncture to highlight the relevant decisions that Mr. Abhijit Mishra has placed reliance on during the course of arguments.

(i) ***'In Re: Sanjiv Datta and Ors.'***, reported as (1995) 3 SCC 619, and in particular paragraph 20, which read as follows:

"20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other

professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

(ii) '**Goa Antibiotics & Pharmaceuticals Ltd. v. R.K. Chawla**', reported as (2011) 15 SCC 449, and in particular paragraphs 3 and 4 , which read as follows:

"3. A perusal of the above provision shows that only a person who is enrolled as an advocate can practise in a court, except where otherwise provided by law. This is also evident from Section 29 of the Act. A natural person can, of course, appear in person and argue his own case personally but he cannot give a power of attorney to anyone other than a person who is enrolled as an advocate to appear on his behalf. To hold otherwise would be to defeat the provisions of the Advocates Act.

4. Section 32 of the Act, however, vests discretion in the court, authority or person to permit any person who is not enrolled as an advocate to appear before the court and argue a particular

case. Section 32 of the Act is not the right of a person (other than an enrolled advocate) to appear and argue before the court but it is the discretion conferred by the Act on the court to permit anyone to appear in a particular case even though he is not enrolled as an advocate.”

(iii) **‘S. Ramachandra Rao v. Nagabhushana Rao and Others’**, reported as **2022 SCC Online 1460**, and in particular paragraph 57, which read as follows:

“57. In view of the above, we need not dilate on the other contentions urged on behalf of the contesting respondent and counter thereto by the learned counsel for the appellant. However, we may take note of an apprehension suggested in the submissions made on behalf of the respondent that if the operation of Section 32 of the Act of 1961 is not confined to non-advocates, it may additionally create scope for unscrupulous advocates, who might have been suspended from practice or might be engaged in other malpractices as per the Bar Council of India Rules, to circumvent the legal consequences by appearing as power of attorney holders. This line of submissions is rather unnecessary and overexpansive; and it does not correlate with the real matter in issue before us. However, we may observe that the permission under Section 32 of the Act of 1961, by its very nature, is to be granted on case-to-case basis and could also be refused with reference to the given set of facts and circumstances referable to a particular case and any particular person. In any case, for all the features and factors of the present case, this line of submissions carries no relevance and does not require any further comment.”

10. On a specific query from this Court, Mr. Abhijit Mishra has been unable to invite our attention to any observations made by the Hon’ble Supreme Court in the decisions relied upon by him and extracted hereinabove, which could lead to the conclusion that the misconduct of an advocate in the peculiar facts and circumstances of the present case tantamount to criminal contempt.

11. Having given our anxious consideration to the judgments relied upon by Mr. Abhijit Mishra, we find that none of them advance his case insofar as initiation of criminal contempt proceedings against the respondent are concerned.

12. The petition is accordingly dismissed whilst reserving liberty to Mr. Abhijit Mishra to prosecute appropriate proceedings in accordance with law before the Bar Council of Delhi, which is the statutory body empowered to initiate and adjudicate proceedings for misconduct against any advocate on their roll.

13. No further directions are called for, with the above observations, the present contempt petition is disposed of as being devoid of merits.

**SIDDHARTH MRIDUL
(JUDGE)**

**GAURANG KANTH, J
(JUDGE)**

FEBRUARY 07, 2023/pa/dn

[*Click here to check corrigendum, if any*](#)