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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2535/2011, CRL.M.A. 17434/2022

VINAY SIKAND

.....Petitioner

Through:

versus

TARUN AHLUWALIA & ORS

.....Respondents

Through: Mr. Ankur Aggarwal and Mr. Nitin
Sharma, Advocate.

+ CRL.M.C. 3532/2011

TARUN AHLUWALIA

.....Petitioner

Through: Mr. Ankur Aggarwal and Mr. Nitin
Sharma, Advocate.

versus

VINAY SIKAND & ORS

.....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
19.05.2025

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1. The present petitions stem from a criminal complaint registered as CC No. 1081/2001, instituted by Mr. Tarun Ahluwalia under Section 138 of the Negotiable Instruments Act, 1881, against Mr. Vinay Sikand. The complaint pertains to the dishonour of a cheque valued at INR 4,50,000/- issued by Mr.



Sikand in favour of Mr. Ahluwalia.

2. In the course of the said proceedings, Consequent to his persistent non-appearance, Non-Bailable Warrants were issued against Mr. Sikand and thereafter, proceedings under Sections 82 and 83 of the Code of Criminal Procedure, 1973, were initiated. Subsequently, Mr. Sikand filed Crl. M.C. 1176/2006 before this Court seeking quashing of the complaint, contending that he had already paid Mr. Ahluwalia amounts exceeding the value of the dishonoured cheque. In support, he relied on two receipts dated 2nd August, 2004 and 7th April, 2005, and an affidavit dated 7th April, 2005, allegedly issued by Mr. Ahluwalia. However, Mr. Ahluwalia denied these documents in his counter affidavit. Accordingly, by order dated 14th November, 2006, this Court directed the Trial Court to examine the authenticity of the aforementioned documents. Pursuant to the Court's directions, the Trial Court, in its inquiry report dated 24th June, 2011, concluded that the receipts and the affidavit in question were forged.

3. Aggrieved by these findings, Mr. Sikand filed above captioned CRL.M.C. 2535/2011 under Article 227 of the Constitution of India challenging the Trial Court's findings dated 24th June, 2011. Conversely, Mr. Ahluwalia filed CRL.M.C. 3532/2011 seeking initiation of proceedings under Sections 191, 192, and 193 of the Indian Penal Code, 1860 against the accused for making false statements under oath and fabricating evidence during proceedings in Crl. M.C. 1176/2006.

4. This Court was apprised that Mr. Sikand has been declared as a Proclaimed Absconder by order dated 6th August, 2019 and an FIR No. 381/2019 in this regard has also been registered under Sections 174A at P.S. Chhawala. In such circumstances, on 1st May, 2025, the Court observed as



follows:

“4. In these circumstances, the conduct of the Petitioner strikes at the very foundation of the bona fides required for invoking the extraordinary jurisdiction of this Court under Article 227 of the Constitution. While approaching this Court in challenge to the Trial Court’s findings, the Petitioner has simultaneously chosen to evade appearance before the Trial Court, resulting in proceedings under Section 82 of the Cr.P.C and his being declared a Proclaimed Absconder. Such conduct undermines the integrity of judicial proceedings and reflects a clear attempt to selectively engage with the legal process. A litigant cannot, on the one hand, seek relief from this Court while, on the other, wilfully obstruct the progress of the very proceedings from which the petition arises.

5. Accordingly, it is directed that the Petitioner shall positively remain present in person on the next date of hearing, failing which the proceedings shall be liable to be dismissed.”

[Emphasis Supplied]

5. Since Mr. Sikand failed to appear, the Court on 7th May, 2025 directed his counsel, Mr. Lokesh Kumar, to file an affidavit confirming that the order had been communicated to his client and to furnish proof of such communication.

6. Thereafter, on 13th May, 2025, since Mr. Kumar asserted that he continues to hold instructions and remains authorised to argue the matter. Accordingly, he was directed to file a further affidavit, confirming whether he has any verifiable means of contacting his client:

“1. In terms of the directions issued on 07th May, 2025, Mr. Lokesh Kumar, counsel for the Petitioner (Mr. Vinay Sikand), has placed on record an affidavit enclosing certain communications addressed to his client. Mr. Kumar submits that he has taken necessary steps to inform Mr. Sikand of the Court’s directions. However, despite these efforts, he has been unable to establish any contact with the Petitioner. That said, Mr. Kumar asserts that he continues to hold instructions and remains authorised to argue the matter.

2. This submission, however, does not persuade the Court. It may be true that Mr. Kumar was vested with authority through a Vakalatnama executed at the time of filing of the petition in 2011. Yet, at this stage, the Petitioner’s whereabouts are entirely unknown. The address disclosed to



the Court on the affidavit annexed to the petition is no longer valid in light of the affidavit filed by Mr. Kumar. Thus, it is not merely a case of non-appearance. The question is more fundamental – whether a litigant who is untraceable and whose last known address is no longer valid, admittedly so, as per Mr. Kumar's own affidavit, can be said to be pursuing the proceedings at all.

3. *The Court had directed the personal presence of the Petitioner in view of certain developments requiring his participation. The right of legal representation, though vital, is not divorced from the obligation of the litigant to remain accessible and accountable in proceedings initiated by him. The continued authority of counsel cannot be presumed to survive in a vacuum where the client's existence in relation to the case becomes entirely notional.*

4. *Accordingly, Mr. Kumar is directed to file a further affidavit on or before the next date, confirming whether he presently has any verifiable means of contacting his client.*

5. *Re-notify on 19th May, 2025."*

7. In compliance, Mr. Kumar has filed an affidavit stating as under:

"4. That the deponent-counsel for the petitioner, vide his letter dated 2.05.2025, sent through Speed Post, has communicated the order of the Hon'ble Court passed on 11.05.2025, at the address mentioned in the cause title of the petition. The speed post tracking report placed on record earlier, shows that the petitioner has LEFT WITHOUT ANY INSTRUCTIONS". It has also come on record that the petitioner is suffering from Cancer and not able to appear in person before the court. The medical record has been placed before the Ld. trial Court as is evident from the order dated 6.8.2019, passed by the Ld. trial court.

5. That as already stated earlier, the counsel for the petitioner has tried to contact the petitioner on phone No. 7677677772, but he could not establish any contact with his client-petitioner and the reply received on phone was that the number is invalid.

XXX ... XXX ... XXX

9. That the 'Bar Council of India Rules', provides that the Advocate can not withdraw his vakalatnama without issuing notice to the client and for justifiable reasons. It is also settled proposition of law that the Advocate whose vakalatnama is on record can not withdraw from the case and refuse to argue the matter on the ground of no instructions and/or for non appearance of his client. Thus, the counsel for the petitioner -deponent is competent to represent his client and appear before the Hon'ble court so long as his vakalatnama is on record.

XXX ... XXX ... XXX



12. That the deponent -counsel for the petitioner, in order to ensure the presence of the petitioner, has taken the aforesaid appropriate steps and communicated the aforesaid order to the petitioner as stated above. The deponent-counsel for the petitioner, presently has no other verifiable means to contact his client and has no other address except the address mentioned in the cause title of the petition. The deponent submits that if the Hon'ble Court in its wisdom feels that in view of the non appearance of the Petitioner inspite of directions issued, the deponent -advocate has lost his authority to appear before this Hon'ble court on behalf of the petitioner and vakalatnama ceases to exist in his favour then the Hon'ble Court may pass appropriate orders in accordance with law.”

8. Notwithstanding the apparent lack of instructions, Mr. Kumar urges he is authorized to represent, appear and argue the case as his *Vakalatnama* is on record. He further contends that as per the Bar Council of India Rules, an Advocate cannot withdraw his *Vakalatnama* without issuing notice to the client and for justifiable reasons.

9. The Court has carefully considered these submissions but finds them unsustainable. The validity of legal representation is contingent upon a continuing relationship of agency between counsel and client. While a *Vakalatnama* creates authority in favour of an advocate to act, plead, and argue on behalf of a litigant, such authority is not absolute or impervious to lapse. It is premised on the client remaining available, accessible, and responsive to counsel's communications. In this case, despite specific orders of this Court requiring the personal appearance of the Petitioner, Mr. Sikand has not only failed to appear, but has also remained untraceable. Mr. Kumar, by his own admission, has been unable to contact him and confirms that the address on record is no longer valid.

10. The deliberate avoiding of Court proceedings is also evident from the order dated 6th August, 2019 passed by the Metropolitan Magistrate



declaring Mr. Sikand as a Proclaimed Absconder. The said order reads as follows:

“Vide orders dated 16.05.2019 and 27.06.2019, it was recorded that Ld. Counsel for accused had submitted that he was not aware as to whereabouts of accused and had only contacted him telephonically. Today again Ld. Counsel for accused submits that he has had no physical meeting or instructions from the accused in person as to conduct the case any further on his behalf. It is further submitted by Ld. Counsel that the medical record placed on record has also been received by him through Whatsapp and by meeting a stranger at Dhaula Kuan, Delhi who handed over the documents to him. However, he submits that he is not able to state anything as to identity of the person from whom the documents were received.

The above conduct of the accused reveals that he is deliberately avoiding the appearance before the Court. Furthermore, his conduct in not instructing his counsel either himself or through any identified person casts even greater suspicion as to his bonafides and intention to appear before the court. The manner and mode of obtaining the medical record as stated fairly by Ld Counsel for accused also casts doubt on the veracity and authenticity of these documents. No authorized person on behalf of accused has appeared who can state as to the actual physical condition of the accused and substantiate the medical record. Thus, it appears that accused is deliberately not appearing before the court and merely biding his time on the pretext of an illness. the veracity of the record of which is itself shrouded with doubt.”

11. In such circumstances, the mere existence of a *Vakalatnama* cannot be treated as an irrevocable power of attorney to carry on proceedings in perpetuity, particularly when the litigant he purports to represent has absented himself from the process entirely and made himself unreachable. The role of an advocate is not independent of the client’s instructions. Indeed, it is standard practice that submissions made in Court by counsel are qualified as being “on instructions,” precisely to reflect that the Advocate is acting under the authority and direction of a present and participatory litigant. When the litigant is absent and no contact can be established over an extended period, it would be a legal fiction to treat the



Advocate's authority as continuing. While Mr. Kumar places reliance on the Bar Council of India Rules to underscore his professional obligation towards his client, it must be remembered that as an officer of the Court, counsel equally bears a responsibility to ensure that the client he purports to represent is real, accessible, and capable of being held accountable for the consequences of the proceedings. Where such instructions no longer exist, and where even the most basic channels of communication with the client have broken down, the authority conferred by a *Vakalatnama* cannot be treated as enduring in perpetuity. In such a scenario, the *Vakalatnama* loses its functional relevance and becomes effectively nugatory and cannot be used to keep the proceedings alive.

12. In such circumstances, the mere subsistence of a *Vakalatnama* on record cannot serve as a substitute for the litigant's accountability to the judicial process. The invocation of Bar Council of India Rules cannot override the fundamental requirement that proceedings before a Court must be predicated on real, demonstrable participation. Furthermore, the present proceedings are not criminal appeals, which cannot be dismissed even in the absence of the appellant.

13. Accordingly, CRL.M.C. 2535/2011 filed by Mr. Sikand is dismissed for non-prosecution and abuse of process. As regards CRL.M.C. 3532/2011 seeking initiation of proceedings under Sections 191, 192, and 193 of IPC is concerned, this prayer is being sought on the basis of the observations of the inquiry report. It shall remain open to Mr. Ahluwalia to approach the Trial Court, in accordance with law.

14. The petitions are accordingly disposed of in the above terms.



15. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

MAY 19, 2025/nk