

D.E. Phade Vs. State of Maharashtra and anr.

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Court : Mumbai

Decided On : Sep-29-1998

Reported in : (1998)100BOMLR786

Judge : T.K. Chandrashekhara Das, J.

Appeal No. : Criminal Writ Petition No. 1013 of 1991

Appellant : D.E. Phade

Respondent : State of Maharashtra and anr.

Disposition : Petition allowed

Judgement :

T.K. Chandrashekhara Das, J.

1. The petitioner is a practising Advocate. He was served an order by the Additional Sessions Judge, Pandharpur District Solapur dated 31.1.1991 which reads as follows :

Read Section 205 r/w 109 of the Indian Penal Code and Section 340 and 195(b) of the Code of Criminal Procedure. The accused have today appeared in the Court. All the three named (1) Bogus Surety (2) Petition Writer and (3) Mr. D.A. Phade Advocate be released on executing their P.R. Bond for Rs. 1000/- today. They shall furnish security on the next day i.e. on 7.9.91 in the like amount as per

Section 340(d) of the Code of Criminal Procedure.

The said order came to be passed on the basis of a complaint that one Bapu Dattatraya Parade has furnished bogus surety for obtaining bail as per the order passed in Misc. Cri. Application No. 292 of 1990. It is disclosed that Bapu Dattatraya Parade has stood as surety. It is understood from the materials available in this writ petition that Bapu Dattatraya Parade has impersonated and put false signature of the surety and that the petitioner has committed abatement of such offence having identified him. From the above, I find no offence of abatement has been confirmed against the petitioner. From the materials, allegation what is forthcoming is that Bapu Dattatraya Parade has committed offence under Section 205 and there is no allegation that the petitioner has abated. In the absence of such allegation, advocate merely signing as identifying person cannot be said to have committed offence under Section 109. Advocate might have been wrongly persuaded to attest signature of the sureties. However, this will not amount to an offence of abatement.

In view of this, I do not think the order passed by Addl. Sessions Judge is sustainable as far as petitioner is concerned.

In the result, writ petition is allowed. Rule made absolute in terms of Prayer Clause (a). Interim order vacated.

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