In Re: Mahbub Ali Khan

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Court : Andhra Pradesh

Decided On : Mar-26-1957

Reported in : 1958CriLJ155

Judge : Subba Rao, C.J.,; Manohar Pershad and; Mohd. Ahmed Ansari, JJ.

Appellant : In Re: Mahbub Ali Khan

Judgement :

Manohar Pershad, J.

1. Through a letter dated 1-7-1956, the District and Session Judge, Bidar, reported to the High Court, Hyderabad, that Shri Mahbub Ali, an advocate, having filed his vakalatnama on be-half of 13 accused in Murder Case No. 10/8/55, State v. Dev Rao and Ors. has failed to attend the Court on the dates of hearing, viz., 16-6-55 and 1-7-55; that he sent a telegram expressing his inability to attend the Court; that the case had to be adjourned; that the accused had informed that they had already paid their fees to the advocate and that the file also is with the advocate. The District and Sessions Judge requested that the High Court may call for an explanation of the advocate and take necessary action against him. A notice was issued to the advocate by the High Court calling on him to submit his explanation. The advocate, it appears filed a counter and later an affidavit. It is stated in the counter that one Shri Seethal Pershad was the principal lawyer on behalf of the accused and that he (Mahboob Ali) was engaged by him to plead in the case on

daily fee basis and that he could not attend the Court on the aforesaid dates of hearing as he was not paid his travelling and boarding expenses. Through a second letter dated 22-8-1955 the District and Sessions Judge while forwarding the application of the advocate concerned to the- High Court informed that the advocate was regularly appearing on the dates of hearing of the case. But through a third letter dated 26-8-55 the District and Sessions Judge wrote again that the advocates for the accused, viz.,

(1) Shri Mahbub Ali

(2) Shri Seethal Pershad and

(3) Shri Krishna failed to attend the Court that day to plead for the accused in their defence. The matter was placed before a Bench consisting of the former Chief Justice Shri Schripat Rau Palnitkar, Mr. Justice Ansari and Mr. Justice Jagan Mohan Reddy. The learned Judges made the following observation:

Perused the record. Prima facie a case has been made out against the advocate that in a murder case he absented himself without sufficient cause. The accused have stated that they paid him full fees and that they could not engage another lawyer as they had no money to pay. They also stated that the file was with the lawyer. The advocate denied the allegations. Send a copy of the letter of the Sessions Judge and also a copy of the statement of the advocate to the Bar Council for enquiry and for report which may be submitted within two months.

The matter was accordingly referred to the Tribunal of the erstwhile Hyderabad Bar Council under Section 10(2) of the Indian Bar Council Act for enquiry and report. The Tribunal after recording the evidence and perusing the documents gave a finding that the charge that the advocate was guilty of professional misconduct had not been proved. The matter is before us under Section 12(3) oil the Bar Council Act.

2. The question to be determined is whether Shri Mahbub Ali, advocate, is guilty of misconduct. We may at the outset point out that an advocate engaged- in a case owes duty not only to his client but also to the Court The practice, extent and

measure of such duty and the circumstances in which the breach would constitute misconduct are different questions. No hard and fast rule can be laid down and it depends on the circumstances of each case. As is stated above the duties of the advocate are two fold. The advocate by his obligation is bound to discharge his duties to his client with the strictest fidelity and is answer able to the disciplinary jurisdiction of the Court for dereliction of duty. The relation involves' the highest personal trust and confidence so much so that it cannot be delegated without' consent. A pleader is more than a mere agent or servant of his client. He is also an officer] of the Court and as such he owes the duty of good faith and honourable dealing with the Court before which he practices his profession. 1 Three fundamental questions emerge for consideration, viz. firstly when a pleader has accepted a Vakalatnama is he bound to appear to conduct the case in its various stages, secondly if he is so bound does the liability continue till he has discharged himself by recourse to the appropriate procedure, and thirdly does the failure to appear to conduct the case before he has so discharged himself render the pleader liable to the disciplinary action by the Court. So far as civil cases are concerned there is a special provision in the Civil Procedure Code for appearance through a pleader or a recognised agent and for appointment of a pleader. Usually the appointment of a pleader is through a Vakalatnama. The form of Vakalatnama in civil and criminal cases is the same. Order 3, R, 1, C. P. C, refers to appearances in person by recognised agent or by pleader and O. 3, Rule 4, deals with the appointment of a pleader. There is no such specific provision in the Criminal Procedure Code excepting Section 340, Cr.PC which enjoins:

Any person accused of an offence before a criminal Court or against whom criminal proceedings are instituted under this Code in any such Court may of right be defended by a pleader.

Reference may be made to Sections 37 and 40, cls. (1) and (2) of the Hyderabad Civil Procedure Code corresponding to Rule 1, and Rules 4(1) and 4(2) of Section 3 of the Civil Procedure Code of 1908; O. 3, Rule 1, reads:

Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise

expressly provided by any law for the time being in force, be made or done by the party in person, or by his re- cognised agent, or by a pleader duly appointed to act on his behalf:Provided that any such appearance shall, if the Court so directs, be made by the party in person.

Order 3, Rule 4(1), enjoins:

Appointment of pleader. No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorised to act on his behalf.

Order 3, Rule 4(2), provides:

Every such appointment when accepted by a pleader shall be filed in Court and shall be considered in Court until determination with the leave of the Court bya writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

There is no such specific provision in the Cr. P. C excepting Section 340 which runs:

Any person accused of an offence before a criminal Court or against whom criminal proceedings are instituted under this Code to any such Court may of right be defended by a pleader.

Normally the appointment of a pleader is through a Vakalatnama. The form of a Vakalatnama in civil and criminal cases is the same. Question sometimes arises that when a pleader accepts a Vakalatnama and files it in Court thereby authorising him to act and plead on behalf of his client, does it follow that he is under an obligation to do so on a particular occasion. We may point out that an advocate who has accepted a Vakalatnama and filed it in the Court is ordinarily bound to appear and conduct his case in the absence of an agreement to the contrary. It is conceivable that the Vakalatnama may set out all the terms of the engagement between the advocate and his client or it may be that it may not set

out all such terms. When an advocate has accepted a Vakalatnama the implied condition is that he is liable to continue till he has discharged himself by recourse to the appropriate procedure. It is a mistake to suppose however that this is a matter solely between the pleader and his client. The statutory provisions on the subject leave no doubt that the appointment of a pleader when filed in Court with his acceptance continues to be in force until determined with the leave of the Court by a writing signed by the client or the pleader as the case may be. To this rule there are two exceptions, firstly death of the client or the pleader and secondly that of the determination of the proceedings. It is plain that the failure of a pleader to appear to conduct the case before he has discharged himself in the manner prescribed by law unless such an act can be justified renders him liable to the disciplinary action by the Court. In the instant case the advocate filed a general Vakalatnama without setting out the special terms of the engagement. He was therefore bound to appear on each and every hearing. Admittedly the advocate concerned did not appear on two occasions, namely 1-7-55 and 26-8-55. The advocate tries to justify his absence in two ways. In the first place he says that he was engaged not by the accused but by Shri Seethal Pershad through a Pairavakar Hanumantha Rao. The terms of the engagement he says were that he (respondent) should proceed to Bidar only on such hearings as were considered important by the Pairavakar and for such hearings he should be paid day fees besides his travelling expenses from Hyderabad to Bidar, that advance intimation was to be given by the Pairavakar of the dates of hearing on which he was required to attend and that if these expenses were not paid, it was not obligatory on him to go to Bidar for the case. The second ground for justifying the absence is that the Pairavakar had stated that on 1-7-1955 the prosecution witnesses were not attending the Court and that if he were to take him he would have to undergo expenses and on 26-8-55 statements of the accused under Section 342, Cr. P. Code, would be recorded and his presence was unnecessary. So far as the first ground is concerned the version of the advocate is substantially corroborated by the evidence of Shri Seethal Pershad and Shri Krishna, advocates. No doubt the two other advocates support the version of the advocate that he was engaged on day fees but the Vakalatnama filed in Court does not embody the said terms. It is a general Vakalatnama. The action of the advocate in absenting himself may be said

to be justifiable to the extent of his clients, but this action cannot be justified so far as the Court was concerned. On 1-7-1955 when the case was taken up in the Sessions Court there was no intimation to the Court at all as to why the advocate was not present. It is only on 2-7-1955 that the advocate sent a telegram to the Court for an adjournment. In that telegram also no reference is made to the special terms between him and the clients excepting the fact that the accused have not made arrangements. Of course on 11-8-1955 in the petition filed by the advocate there is a mention that he had been engaged on a day fee basis. Though this application does not bear the signature of the advocate still there appears to be no reason to doubt its genuineness as it forms part of the file of the Court. But this petition was filed long after the Sessions Judge's report to the High Court on 1-7-55, and it does not contain all the terms alleged by the advocate. From the letter of the Sessions Judge it appears that the accused had stated before him that they had paid the full fees to the advocate concerned, whereas the advocate in his explanation has stated that he was engaged on day fees and this statement of his is supported by the evidence of the other two advocates, Shri Seethal Pershad and Shri Krishna. The tribunal has accepted this version and we do not see any sufficient reason to differ from that finding. But the fact remains that this matter was not brought to the notice of the Court before 1-7-1955. It was the duty of the advocate con- cerned to have intimated the Court prior to the date of the hearing. This clearly goes to show that; the advocate has failed to discharge his duty to the Court. It is contended that this may amount to negligence and not misconduct. We are reluctant to accept this contention. The word 'misconduct' has a broad scope, and a wide range of meaning according to the different connections in which it is used.

3. Both in law and in ordinary speech the term 'misconduct' usually implies an act done wilfully with a wrong intention and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful.

4. It means also a dereliction of or deviation from duty. Even assuming that it is negligence and not misconduct such a negligence which amounts to dereliction of or deviation from duty cannot be excused. The advocate concerned was conducting a murder case where 13 accused persons were charged of murder and

3 lawyers had tiled their Vakalatnamas and none of them make their appearance. There is nothing on record to show why the other two lawyers did not make their appearance. It is stated on behalf of the advocate that Shri Seethal Pershad was the principal lawyer and that the file used to be with him. This explanation is on the face of it most objectionable. We cannot for a moment justify such an action and understand how a lawyer can accept a brief and allow the file to be kept by another lawyer. Such a practice is not commendable and it is hoped that the lawyer concerned would abstain from such a practice- The other explanation given by the advocate concerned for his absence on 1-7-55 and 26-8-55 is that the Pairavakar Hanumantha Rao had told him that on 1-7-55 the prosecution witnesses were not attending the Court, that if he were to take him to Bidar he would undergo unnecessary expenses, that on 26-8-55 the statements of the accused under Section 342, Cr.PC would be recorded and that his presence was unnecessary. His absence on 1-7-55 on the ground that the witnesses were not attending the Court that day may be justifiable to some extent so far as his clients are concerned. But by no dint of imagination could this absence of the advocate without intimating the Court beforehand be justifiable to the Court. Then again we fail to understand how the advocate can justify his action for his absence on 26-8-55 on the ground that his presence at the time of the recording of the statements of the accused under Section 342, Cr.PC was unnecessary. It is unimaginable that an advocate of his standing would think that the statements under Section 342, Cr.PC were not important. The object of recording statements under Section 342, Cr.PC is to acquaint the accused with all the circumstances appearing in the evidence against him and to explain him the importance of such circumstances. In the case of Hate Singh v. State of Madhya Bharat A.I.R. 1953 SC 468 (A), their Lordships of the Supreme Court have pointed out that the statements of the accused under Section 342. Cr.PC must be treated like any other pieces of evidence coming from the mouth of the witness. It would follow therefore that the statements of the accused under Section 342, Cr.PC are of great importance and we cannot understand how the advocate could think that his presence was unnecessary on that day. This action of his cannot amount to mere negligence but a dereliction of or deviation from duty. During the course of the arguments our attention was drawn to number of authorities. The first case relied upon is the case

In the matter of F., a Mukhtar A.I.R. 1929 Pat 337 (SB) (B). That was a case in which a Mukhtar, on the conviction of his client, had undertaken to file an appeal on his behalf on the understanding that the client's relations would pay him his remuneration. The Mukhtar's remuneration was never paid and he filed the appeal long after the period prescribed by law had expired. It was held:

The absence of the necessary remuneration does not absolve the legal adviser from his obligations to his client unless the matter is brought specifically to the notice of the client. This must be borne in mind by practitioners, particularly those who have the very responsible duty of appearing for very poor clients and especially in criminal cases. It is not right that a legal adviser should come after a lapse of time and should say it is true that he accepted instructions from his clients but those instructions were conditional upon his receiving his remuneration. If the client does not produce the necessary remuneration it is the duty of the legal adviser to go back to the client and then and there repudiate the instructions.

This case does not help the conclusion of the advocate; on the other hand it goes against him.

5. The next case is of Dogarmal Amir Chand v. P., a pleader A.I.R. 1930 Lah 947 (C). In this case the complaint against the pleader was that two parallel suits were proceeding against the Firm Dogar Mal Amir Chand, who were represented by Kishorilal, applicant. In one of the suits the complaint of the applicant was that his pleader closed the evidence on his behalf without any authority from him. The complaint in the other suit was that in spite of his engagement as a pleader and the receipt of Rs. 15 in full payment of the fee agreed upon, the pleader did not attend the case and allowed it to be decreed ex-parte against the applicant. The application of Kishorilal was sent to the Subordinate Judge under the Legal Practitioners' Act to call for a report from him and when the matter came up again before the District Judge he agreed with the conclusion of the Subordinate Judge. On revision filed by the petitioner, Shadi Lal, C.J. and Aga Haidar, J., held that:

Where a pleader signs a Vakalatnama on the distinct understanding that a sum paid to him is really in the nature of a part payment, and that the client will, settle the proper fee afterwards, and if the client fails to do so, it follows that mere

acceptance of Vakalatnama cannot cast upon the pleader the duty of defending the case.

This case also does not help the advocate for on the material on record their Lordships held that misconduct was not proved. The third case is that of Munireddi v. Venkata Rao ILR 37 Mad 238: A.I.R. 1914 Mad 512 (FB) (D). In this case the pleader had taken the defence of a client in the Sessions Court and having received his full fee had deliberately absented himself without malting any arrangement for the case and had further put forward a false plea that he did not agree to conduct his clients case in the Sessions' Court. This was rightly considered by the Court to be fraudulent on behalf of the pleader and was guilty of misconduct punishable under Section 13 of the Legal Practitioners' Act. This case is against the contention of the advocate. Emperor v. Rajanikanta Bose ILR 49 Cal 732 : A.I.R. 1922 Cal 515 (SB) (E), was a case where certain pleaders who had received fees had boycotted the Court in view of a political hartal which had been observed in the locality. At p. 793 (of ILR Cal) : at p. 529 of A.I.R., Woodroffe, J., observed:

Mere acceptance of a Vakalatnama does not bind the pleader to appear on every day of the proceeding in which it is given, for the giving of the Vakalatnama may be accompanied by special terms.

Great reliance is placed on this observation and contended that the advocate was not bound to ,appear on 1-7-1055 and 26-8-1955 when his fee was not paid. The absence of necessary remuneration, in our opinion, does not absolve the legal adviser from his obligation to his client unless the matter is brought specifically to the notice of the client. The advocate is bound to appear and conduct the case even if the fee or any portion thereof remains unpaid. The tribunal has taken the view that even a high standard of duty would not require that an advocate should proceed at his own expense from Hyderabad to Bidar. We agree, but in such cases it is the duty of the advocate concerned to intimate the client beforehand to enable him to make other arrangements. The conduct of the advocate in absenting himself and not taking such a step would, in our opinion, amount to deviation from duty.

6. On the facts stated above, we are definite that the absence of the advocate on both occasions does not amount to negligence alone but amounts to dereliction and deviation from duty. But having regard to the fact that the advocate had appeared on later hearings and the accused have no complaint and the lawyer absented himself not because of his engagements anywhere else or on his personal grounds, but relying on the statement of the Pairavakar that his appearance was unnecessary which in our opinion was not proper, we do not wish to take any action against him. We hope that the advocate concerned would take care not to give occasion to any such other complaint. We, therefore, close the matter with the observation that the advocate would know that he owes a duty not only to his client but also to the Court and that he should discharge his duties and ob- ligations befitting his profession to the satisfaction of his client and the Court.