Public Prosecutor, Andhra Pradesh Vs. Kothakapu Etreddy Venkata Reddi and ors.

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Court : Andhra Pradesh

Decided On : Mar-08-1960

Reported in : AIR1961AP105; 1961CriLJ356

Judge : Jaganmohan Reddy and ;Kumarayya, JJ.

Acts : Evidence Act - Sections 126; Constitution of India - Articles 19(1) and 22(1); Legal Practitioners Act - Sections 13

Appeal No. : Criminal Misc. Petn. No. 176 of 1960

Appellant : Public Prosecutor, Andhra Pradesh

Respondent : Kothakapu Etreddy Venkata Reddi and ors.

Advocate for Def. : R.V. Rama Rao, Adv.

Advocate for Pet/Ap. : Adv. General and ;Addl. Public Prosecutor

Judgement :

Jaganmohan Reddy, J.

1. This criminal miscellaneous petition is presented by the Government of Andhra Pradesh under Section 126 of the Indian Evidence Act and Section 561-A of the

Criminal Procedure Code, for directing Shri R. V. Rama Rao, Ex-Public Prosecutor to withdraw his appearance for respondents 1 to 5 (A-1, A-6, A-7, A-9 and A 10) and also to refrain from appearing for any of the respondents 6 to 10) (A-2 to A-5 and A-8) on the ground that Shri Rama Rao was the Public Prosecutor up to the forenoon of 21-1-1960; that in his capacity as such filed a memo of appearance on behalf of the Government in Crl. Appeal No. 86/1959 filed by respondents 1 to 5(A-1, A-6, A-7, A-9 and A-10); that in the said capacity he also advised the Government to prefer appeals against the acquittal of respondents 6 to 10 herein, namely A-2 to A-5 and A-8; that the Government accepted his advice and asked him to prefer an appeal which he did (being Cr. Appeal No. 296/1959), and that both the appeals Cr. Appeal No. 86/1959 and 206/1959 arise out of the same Sessions Case.

2. In the counter which Shri R. V. Rama Rao filed on behalf of the respondents, it was stated that the provisions of law under which the application was made were not applicable inasmuch as there are no confidential communications which can be divulged in this case and in any case the opinion given by Shri Rama Rao is already divulged by the State itself which waived its privilege under Section 126 of the Indian Evidence Act and that Section 561-A applies only to matters specified therein and to none else.

It is further stated that the accused have fundamental right to be defended by any counsel not retained by the State and that no counsel may refuse an engagement without being guilty of professional misconduct and that every advocate has fundamental right to practice his profession and no restriction is imposed by law curtailing his right. The counter further stated that since the engagement of Shri Rama Rao is terminated and a new Public Prosecutor was appointed, he is not bound under law to seek permission from Government to appear against the State : yet out of courtesy he wrote on 26-1-1960 offering his service as Special Public Prosecutor and requesting a reply before 1-2-1960, but the Government had not the decency to send a reply even to this date.

In that counter it was however, admitted that Shri Rama Rao tendered some advice on a perusal of the judgment of the trial court which is 'public juris', but the

Public Prosecutor is not merely within his right but has a sacred duty not to press the appeal if after studying the entire case, he finds that the appeal is not maintainable and that he is entitled to change his earlier opinion in the same way as the High Court which may give a notice of enhancement is not bound to enhance the sentence.

The further contention was that though Shri Rama Rao filed a. memo of appearance for the Government in Cr. Appeal 86 of 1959 the appearance is only as a Public Prosecutor and not as Shri R. V. Rama Rao; that 'if the contention of the State is correct that it is personal, Shri Rama Rao alone would be competent to represent the State which is admittedly not the case nor could he be superseded without his consent under the rules framed under the Legal Practitioners Act'; that he is not appearing for the respondents in Cr. Appeal 2CC/1959 though he is entitled to appear if he were to be engaged, and that in a criminal case, the case of each of the accused is separate as laid down by the Supreme Court and the observations of the State that both appeals arise out of the same case have no significance. In the circumstances it was prayed that the petition of the Government should be dismissed.

3. Having regard to the importance of the question involving the rights and duties of an advocate and the high standards that have to be maintained in the profession, we gave notice to the Advocate General; but before we deal with the arguments submitted before us, it is necessary to state that the case out of which the aforesaid appeals arise is against 10 accused who were charged before the Additional Sessions Judge of Kurnool with various offences under Sections 148, 447, 302 read with Section 149 and Section 326 read with Section 149 I. P. C. for causing the murder of one Narayanappa and for injuring his son Rama Subbiah, P. W. 1. The trial ended in an acquittal of A-2 to A-5 and A-8 of all the charges, while A-1, A-6, A-7, A-9 and A-10 were fcund guilty under Sections 148, 447, 302 read with Sections 149 and 326 read with Section 149 I. P. C. and were sentenced accordingly.

This incident is alleged to have taken place on 8-6-1958 at 2 p.m., in Voggi Chenu of Hosur Village, and is alleged to have been seen by P.ws 1 to 6 and when the

Goverment referred the matter to the erstwhile Public Prosecutor Shri R. V. Rama Rao as to whether an appeal could be filed against the accused, Sri Rama Rao, advised the filing of an appeal and in his memorandum of appeal stated that 'the Court below should have seen that all the ten accused were implicated in the First Information Report which was recorded at the scene of occurrence shortly after the murder', that 'the Court below having accepted the evidence of the six direct wifnesses for convicting the rest of the accused should have accepted their evidence on the record to these accused (respondents) as well', and that 'the Court below should have convicted the respondents of the offences charged.'

4. The question now is whether having regard to the fact that Sri Rama Rao, as the Public Prosecutor, had tendered his advice, and filed the Appeal should he be permitted to appear for the accused in appeal filed both against their conviction and against their acquittal. Though with respect to the latter, the learned advocate states that he has not filed his appearance in view of the position taken by him in the counter we will also deal with that matter as in our view both these cases are clearly linked with each other.

5. The three aspects of the question involved in this case, as they appear to us, are (1) where during the period an advocate is appointed to discharge the duties of the Public Prosecutor he has done nothing more than filing a memo, which did not involve any preparation or looking into the records or for that matter a hearing; (2) where the Public Prosecutor has drafted the grounds and appeared at the stage of admission or opposed a bail application or advised the Government on any matter connected therewith, and (3) where as in this case there is an appeal againt acquittal and an appeal against conviction, and the Public Prosecutor gave an opinion in the case of appeal against acquittal, but had nothing to do with the appeal against conviction.

In the above three instances, is the Public Prosecutor precluded, after his term as Public Prosecutor has come to an end, from appearing for the opposite party? It may be stated that the State Government has the power to appoint a Public Prosecutor under Section 492 Cr. P. C. which appointment may be either general or particular, such as for any case or in any specific class of cases. The duties of a

Public Prosecutor in so far as they are based on contractual rights, are covered by G. O. Ms. 200 Home dated 11-1-1949 which applies to the Public Prosecutors in Andhra Pradesh also.

That G. O. prescribes the general duties of a Public Prosecutor which are that he is regarded as the Assistant to the Advocate General, especially for mofussal business and in cases of difficulty may apply to that officer for advice, and in turn he shall advise the Advocate General whenever in cases appertaining to his duties he is required to do so.

Paragraph 2 of the G. O. specifies the particular duties he is called upon to discharge which include his appearance in appeals, in case referred to the High Court for confirmation of capital sentence, to present any revisions or appeals against acquittal or conviction or discharge, or to appear in important and difficult cases referred to the High Court under Section 438 Cr. P. C., or in all cases in which the High Court has directed notice to the Public Prosecutor, or in all references under Section 307 Cr. P. C. and when specially deputed by the Government to proceed to moffusal to appear for the State in criminal cases.

Paragraph 3 of the G. O. debars the Public prosecutor from advising or holding briefs against the Government without their special permission in criminal matters except those arising in the City of Madras; from defending accused persons in criminal prosecutions without the special permission of Government with respect to which matters he himself is required to be a judge as to whether he can or cannot under this sub-rule advise on a question of law any private party who applies to him.

He is further prohibited from accepting any appointment as a director in any company without the sanction of the Government. In so far as his remuneration is concerned, he is to receive a salary of Rs. 400/- per mensem and is also allowed a fee of Rs. 30/- per appearance as specified in paragraph 5; but it may be stated that no fee appears to be payable for advising the Government, as that appears to be included in the duties of the Public Prosecutor.

The Public Prosecutor under the G. O. is appointed for a fixed term and in so far as Shri Rama Rap was concerned, he was appointed till the 21st January 1960 and his duty to appear on behalf of the State ceased on that date unless the State wanted to engage him in any particular case. Since on the date when he ceased to be a Public Prosecutor, his duty to appear for the State has also ceased, is it open to him to appear in all cases in which he has filed memos of appearance or has done something in furtherance of these cases or advised the Government?

There is in our view, some difference between civil and criminal cases in so far as the appearance of the advocates is concerned, which in civil cases is governed by Order 3, Rule 4 C. P. C. and Rules 18 to 20-A of the Civil Rules of Business. While a vakalat is necessary in civil cases for the appointment of a pleader signed by the person for whom he is acting or by a person duly authorised by such person, no such vakalat is necessary in criminal cases under the Cr. P. C.

All that Section 304 Cr. P. C. says is that any person accused of an offence before a Criminal Court or against whom proceedings are instituted under the Code in any such Court, may of right be defended by a pleader. Under Order 3, Rule 4(vi) Madias amendment no Government. or other pleader appearing on behalf of the Government or on behalf of any public servant sued in his official capacity shall be required to present any document empowering him to act; but such pleader shall file a memo of appearance signed by himself and stating particulars mentioned in Sub-rule (v), i.e., the names of the parties to the suit, the name of the party for whom he appears and the name of the person by whom he is authorised to appear.

Similarly, under Section 493 Cr. P. C. the Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal. If, therefore, the Cr. P. C. does not require a Public Prosecutor to file any memo of appearance, the mere filing of such a memo by itself does not show that he has appeared in that case. It may be that the memo is filed merely for the purposes of claiming fees; but in so far as the Court is concerned, he can appear and plead at the time when the case is heard without filing any written appearance. G. O. Ms. 200/Home referred to above shows that a

Public Prosecutor is entitled to draw the fees if he appears in Court at the hearing.

For instance, in prescribing the fees payable where notice has been directed to the Public Prosecutor or in references under Section 307, it is stated that if the Public Prosecutor 'obtains the instructions of the District Magistrate in sufficient time to enable him to argue the case when it comes on for hearing in the High Court and appears in court accordingly at the hearing, he will draw his usual fees of its. 30/-, but if he does not so appear his fee will be limited to Rs. 15/-. This stipulation makes it clear that the hearing at which the Public Prosecutor is entitled to his fees and that contemplated under Section 493 Cr. P. C. is the one when the case is actually heard.

In this sense, a Public Prosecutor who has merely filed a memo in a criminal case without taking any further steps in the matter, cannot be precluded from appearing in all those cases for the opposite party after he ceased to be the Public Prosecutor, because he has not in fact appeared on behalf of the Government or taken any steps or done anything and there is nothing either contractual or otherwise from a professional point of view to preclude him from appearing for the opposite party in such cases.

6. The considerations which may weigh in determining whether a Public Prosecutor can appear for the opposite party after he ceased to be so in cases in which he has done something in furtherance of the prosecution of the cases, such as where he has information or perused the records including the case diaries or has appeared and argued the case partly, are different to those in the first category of cases where he has done nothing; but merely filed a memo of appearance.

In civil cases, Rule 20 of the Civil Rules of Business clearly lays down the circumstances in which a pleader may or may not act for the opposite party. It says 'that except when specially authorised by the Court or by the consent of the party, a pleader who has advised in connection with the institution of a suit, appeal or other proceeding or has drawn pleadings in connection with any such matter, or has during the progress of any such suit, appeal or other proceeding, acted for a party, shall not, unless he first gives the party for whom he had advised, drawn

pleadings or acted, an opportunity of engaging his services, appear in such suit, appeal or other proceedings, or in any appeal, or application for revision arising therefrom or in any matter connected therewith for any person whose interest is opposed to that of his former client; provided that the consent of the party shall be presumed if he engages another pleader to appear for him in such suit, appeal or other proceeding without offering an engagement to the pleader whose services he originally engaged. Explanation. -- Notwithstanding anything hereinbefore contained, a practitioner who discloses to one client the information confided to him his capacity as the legal practitioner of another client without the latter's consent, shall not be protected merely by reason of his being permitted to appear for the other client under this rule,'

7. There is no such rule governing criminal cases, nor any rules have been made under the Cr. P. C. Even in the Civil Rules of Business, though the advocate can appear with the consent of the party or where he is specially authorised by the Court, he cannot and is not deemed to have been authorised to disclose to the opposite party information confided to him or which he obtains in that case. Section 126 of the Indian Evidence Act bars such communication, whether it is in civil cases or criminal cases unless it is with the express consent of his client.

Shri Rama Rao says that between the Public Prosecutor and the State there can be nothing confidential which can be used against the State and his order of appointment is purely contractual, viz., till the attainment of 60 years or for 5 years as the case may be; that the post carried a general retainer of Rs. 400/- per month and a special retainer of Rs. 30/- that even in such cases where he is entitled to get fees, the Public Prosecutor has no right to appear unless the State appoints him and that the State can always appoint a Special Prosecutor even though there may be a Public Prosecutor.

On the analogy of Rule 20 of the Civil Rules of Practice, he further contends that because a contract is for a limited period, once that comes to an end, the Public Prosecutor becomes released from his engagement to appear for any other party unless the State is prepared to appoint him in such a case, as they do not want him to appear on the other side; that in the absence of the State continuing him,

he can appear in such of those cases whether he has done something in furtherance of the prosecution or not, against the State and at any rate, the mere appointment of another Public Prosecutor amounts to a contractual release such as the one envisaged in Rule 20 of the Civil Rules of Business.

These contentions, if accepted, in so far as they relate to criminal cases, would, in our view, lead to startling results and would bring down the professional ethics from the highest pedestai, which are and have always been the desideratum, to the lowest ebb, became it would not only not take into account the imparting of confidential information which is protected under Section 126 of the Indian Evidence Act, but also the embarrassment which it may cause to the lawyer in appearing for both sides at some stage or the other and the justifiable suspicion and apprehension that may be created in the mind of his erstwhile client.

All these considerations ought to weigh in deterring an advocate from appearing for the opposite party. In our view the general principle precluding an advocate appearing for one party, from appearing for the opposite party, apart from any contractual inhibition, is one of public policy based on maintaining public confidence and the highest traditions of the Bar. This rule has been stated in Halsbury's Laws of England, Vol. 3, (Lord Simond's edition) page 47, paragraph 68, thus:

'Counsel ought not to accept a brief against a party, even though the party refuse to retain him, in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by that party.'

Shri R. V. Rama Rao contends that no confidential information was imparted to him and that he merely perused a public copy of the judgment when he advised the Government to file an appeal against acquittal. Whether confidential information has been imparted or not would be a question of fact. It may, in certain cases, be the very antethesis of the privilege afforded under Section 126 of the Indian Evidence Act to embark on an enquiry which necessarily must elicit the information which the Court considers to be confidential and a protected privilege.

Even where only the circumstances and the matters pertaining to which the alleged confidential information has been imparted is disclosed, it may be found necessary to elicit the nature of that information to test the veracity or otherwise of the witness' story and to determine whether the information was of a confidential nature. In order to prevent an advocate from appearing for the opposite party, what we have to see is whether in the circumstances of a particular case, having regard to the Steps taken in the litigation or criminal proceedings, it can be reasonably inferred that confidential information could have been imparted. In the case of Earl Cholmondeley. v. Lord Clinton, (1815) 19 Ves Jun 261 at p. 266 the Lord Chancellor said,

'If there is any ground for this application, either as a motion in the cause or upon the general jurisdiction, it must be furnished by a general principle, not the particular circumstances of the case; otherwise the court must try every such case on its particular circumstances, and it cannot be so discussed without a disclosure from the solicitor of all he knows.'

While, as we have said, in civil cases consent of the party or the special permission of the Court can permit a lawyer to act for the opposite party and the question of imparting any confidential information to the other party would only be a ground for professional misconduct, in criminal cases there is no provision for an advocate to appear for the opposite party with the consent of that parly, though even in such cases the imparting of confidential information protected under Section 126 of the Indian Evidence Act to the other party would make him liable to a charge of professional misconduct.

But even where circumstances exist from which a reasonable inference can be raised that confidential information could have been imparted that would, in our view, preclude an advocate from appearing for he opposite parly, not on the ground of professional misconduct, but as an improper conduct for an advocate maintaining the highest traditions of the Bar to adopt. We, therefore, did not agree with the learned advocate that only in such cases where he is liable under the professional misconduct can he be prevented from appearing for the opposite party.

Even apart from any contractual obligation, the Court will, in the exercise of their powers to maintain the highest traditions of the Bar and the profession, preclude advocates from appearing for the opposite party if that is likely to embarrass the advocate or raise a suspicion in the mind of the client with respect to the conduct of his erstwhile advocate or that it is not gentlemanly conduct or that it is improper to do so, or the circumstances are such from which an inference of imparting of confidential nature of information can he raised.

This is not only so with respect to the advocates, but where advocates have been raised to the Bench, they have voluntarily in the best traditions of the Bar declined to hear cases in which they have been engaged and appeared prior to their elevation. The law in England is also the same and has been stated in Halsbury's Laws of England (Simond's edition) Vol. 3 page 48:

'If counsel who has advised on or been engaged in a case is raised to the Bench, and the same case comes before him, the practice is for him to refuse to adjudicate on it'.

8. The argument that the remuneration received by him is akin to the general retainer is equally without force, because, as we understand the term, a 'retainer' is the engagement of an advocate to give his services and involves the payment of fee, and the acceptance of the retainer binds the advocate to accept the brief from the party retaining him and not to appear or act for the opposite party. There is nothing further than that, unless by implication or specific contract a fee is paid which includes not only the duty not to appear for the opposite party and to appear for that party, but also to give advice to that party whenever required to do so.

In the strict sense of the term, the remuneration paid to the Public Prosecutor cannot be called a retainer whether general or special. It is a remuneration paid which includes to a great extent work done during that period and for tendering advice when called upon though a Special fee is payable over and above that for the case in which he appears. Ordinarily nobody would be expected to conduct a case for the nominal fee which the Government pays, Because an advocate is appointed to an office for a specific term and the post has a fixed remuneration with the assurance that during that period he will have sufficient volume of work to

compensate him, such a post is coveted and aspired.

Even if it was a case of a retainer and where it was terminated after which the advocate appeared for the plaintiff against his former client, their Lordships of the Privy Council in A. A. Pleader of Agra v. Judges Of The High Court, Allahabad, AIR 1930 PC 60; described the conduct as 'unwise and to be regretted', though it did not amount to grossly improper conduct in the discharge of his professional duty.' In Mary Lilian Hira Devi v. Digbijai Singh, AIR 1917 PC 80; Sir John Edge observed at page 84 thus :

'Before concluding, their Lordships must express their complete assent to the observations of the learned Judges of the High Court on the impropriety of a legal practitioner who has acted for one party in a dispute, such as there was in this case, acting for the other party in subsequent litigation between them relating to or arising out of that dispute. Such conduct is, to say the least of it, open to misconception and is likely to raise suspicion in the mind of the original client and to embitter the subsequent litigation. As the learned Judges of the High Court have said in this case. 'This is a matter which concerns the honour of the profession'.'

In a case where a person appeared for the defendant to have an ex parte decree set aside the latter appeared for the opposite party namely for the plaintiff in that suit in a title suit filed by the defendant in that suit, a special Bench of the Patna High Court consisting of Courtney-Terrell, C. J. Mohammad Noor and Varma, JJ. in S. P. A. Pleader, In The Matter of, AIR 1934 Pat 352 observed that the pleader had taken instructions from the defendant and received his confidence in the matter of the genuineness of the Small Causes Court suit and notwithstanding that confidence he accepted the instructions of the other side, which conduct was improper.

'Proper professional conduct is not a mere matter of compliance with technical rules. It is one of which every one who aspires to be called a gentleman should have an instinctive appreciation.' In Tajen-dra Chandra v. Tajendra Lal, AIR 1939 Rang. 183, (SB); a Special Bench of Rangoon High Court consisting of Roberts, C. J. Mya Bu and Mosely, JJ. after considering the several authorities including the observations of the Privy Council in AIR 1917 PC 80, observed that it is clear that

an advocate or pleader who has appeared on behalf of one party in a suit ought not to allow himself to be placed in the position in which there might be come suspicion, whether well or ill founded, that his knowledge of his client's case would be used by him on a subsequent occasion in appearing for another party and against his original client.

A case which is directly in point relating to an Ex-Public Prosecutor appearing for the accused in criminal case is that In The Matter of an Advocate, AIR 1958 Mad 511 (FB), where a Public Prosecutor having given an opinion to prosecute, appeared for the accused after he had ceased to be a Public Prosecutor and was charged with professional misconduct. The Full Bench disagreeing with the finding of the Tribunal that the advocate was guilty of the two charges framed against him one of which was that he had suppressed the fact of his having given an opinion on the side of the prosecution when his right to appear was challenged in subsequent proceedings, observed:

'.....The only question then raised was about certain alleged confidential communications, and the question of the respondent having given an opinion was not relied on as disqualifying him from appealing for the accused.

But we find however that the respondent is guilty of improper conduct in having taken up engagement on behalf of the accused in the cases in which he, as Public Prosecutor, gave an opinion or appeared at the time of the bail applications on behalf of the prosecution. Whatever may be the position in civil cases, we are of the view that an advocate who has given an opinion for one side in a criminal case should not accept an engagement at subsequent stages of the case for the opposite side'.

Again at page 513, Ramchandra Iyer, J., observed:

'But whether the question is viewed merely on the basis of a contract of service or from the higher standards of professional morality, which in our opinion should be the guiding principle, it is improper for an advocate who held the office of a Public Prosecutor or was engaged as a Special Public Prosecutor to accept an engagement for the defence in a case in which at an earlier stage he advised or

gave an opinion to the prosecution or appeared on behalf of the prosecution at the stage of interlocutory applications like applications for bail etc.,'

With due respect we agree with this statement of law. While in a case of professional misconduct it may be necessary to establish breach of confidence or some act which would amount to grossly improper conduct of an advocate in the discharge of his professional duty within the meaning of Section 13 of the Legal Practitioners Act, any conduct which may not necessarily amount to that and which is deemed to be improper suspicious or embarrassing and does not accord with the highest standards of professional morality or ethics, would entitle this Court to prohibit an advocate from appearing for the opposite party.

9. Shri Rama Rao further contends that inasmuch as the accused cannot be denied under Article 22(1) of the Constitution of India 'the right to consult and to be defended by a legal practitioner of his choice' any order prohibiting him to appear for the accused would contravene a constitutional guarantee conferred on an accused. This argument overlooks the fact that what is guaranteed is a legal practitioner of his choice who is not otherwise barred or disabled from appearing for him.

If the legal practitioner is disabled under any statute or under the general law, it is not the purpose of the guarantee to remove any such disability. Even the freedom to carry on a profession or trade under Article 19(1)(g) is subject to reasonable restrictions under Clause (6) of that article and the privilege of employing an advocate of his choice would in the circumstances be limited by any reasonable restrictions for that advocate to appear generally or in any particular case. Otherwise, the right under Article 22(1) which is in fact a privilege would become transmuted into a right of the lawyer.

In the case of Ananthakrishnan v. State of Madras, : AIR1952 Mad395 a Bench of the Madras High Court consisting of Rajamannar, C. J. and Venkatarama Aiyar, J., observed that the right to plead and act on behalf of suitors in Court is not a right flowing from citizenship.....It is not only a citizen who is entitled to be enrolled as an advocate of this Court. Even a foreigner, if he fulfils the prescribed qualifications and requirements can be enrolled as such.

The exclusive right to represent suitors in Court which an advocate possesses is really in the nature of a privilege, though the fact that it is a privilege does not imply that on the conferment of the privilege, there can be discrimination. Article 14 is a sufficient safeguard against an unequal treatment. The charge of a fee by way of levy of stamp duty for such privilege cannot be invalid as unconstitutional.

Similarly, in Rangaswami v. Industrial Tribunal Ford St. George Madras, : AIR1954 Mad553 the present Advocate General challenged the validity of Section 36(4) of the Industrial Disputes Act which made the right of the litigant dependent on the consent of his opponent and therefore that' provision was unreasonable as it places a bar on the right of engaging a counsel. The Court rejected that contention as it considered that there was no discrimination and that the Legislature made no difference between the employers and the employee. In the course of the judgment, Venkatara-ma Aiyar, J. said:

'.....that a person who has obtained the requisite legal qualifications is not entitled on that ground alone to a right of audience in Courts. He must, further, be admitted to the bar before he could practice. That is a matter which is regulated by statutes and the extent of the right to practise must depend on the terms of those statutes. The right is also a privilege as it is limited to those who are admitted to the Bar.....The right of the first appellant to practise, is, therefore, just what is conferred on him by Section 9 and Section 14 (1)(a), (b) and (c) of the Bar Councils Act, neither more nor less, and when the particular right claimed by him cannot be found within the four comers of those sections, then there is nothing in respect of which the guarantee under Article 19(1)(g) could be involved. That article merely operates to protect the rights which a person otherwise possesses under the law. It does not create any new rights in him'.

10. Lastly, Shri R. V. Rama Rao contends on the basis of some observations in Nar Singh v. State of Uttar Pradesh, : [1955]1SCR238 that the case of each accused is different arid therefore he cannot be prevented from appearing for the accused who have been convicted, even if he is debarred from appearing for the acquitted accused for whom, he says, he does not propose to appear. This contenlion also, in our view, is not well-founded. No doubt, the Supreme Court

were interpreting the word 'case' in Article 134(1)(c) and for that purpose thought that the High Court of Allahabad was wrong when they considered that the only case they had before them was the appeal as a whole. Bose, J. observed at page 571 (of SCJ): (at p. 458 of AIR):

'That in our opinion, is wrong. 'Case' as used there means the case of each individual person. That would be so even if the trial had been by the High Court itself but it is even more so on appeal because, though several persons may join in presenting a common memorandum of appeal (if the rules of the Court in question so permit), the appeal of each forms a separate 'case' for these purposes.'.

These observations do not, in our view, assist the learned advocate, because the question here is not whether each case is different, but whether the cases are so connected that it is improper for an advocate to appear in them having regard to the steps taken by him in furtherance of the prosecution of the case of the others. As we have already observed, the case of all the accused arose out of the same transaction and with respect to the same incident for which all of them have been charged together.

The case of the prosecution against all the accused is based upon the same evidence. If the learned advocate has given an opinion with respect to that evidence as establishing the case against the acquitted accused, his opinion with respect to the others obviously is that they have been rightly convicted. Having given this opinion which has a direct bearing on the case of the other accused also for whom he is now seeking to appear, we think it would not be proper to permit Shri Rama Rao to appear for any of the accused in this case.

It must not be forgotten that a Public Prosecutor has recourse to case-diaries and other information which is not available to the accused and which the accused cannot even obtain on inspection. Whether in a particular case he has looked into the case-diaries or merely gave an opinion on the judgment, is a matter which can he ascertained after investigation; but in our view, it would not be possible to investigate whether there was any confidential cum-munication or not which is protected under S. 126 of the Indian Evidence Act, as we have already said, without infringing that privilege.

11. Office of the Public Prosecutor is one to which considerable prestige is attached and it goes without saying that it is just as impoitant in the discharge of the duties of a Public Prosecutor to use the great powers attached to his office to protect the innocent as well as to get the guilty convicted. In the discharge of the functions of such an office, the opinion given by him cannot be expected as having been given flippantly or lightly or by merely perusing a public copy of a judgment. It must be deemed to be an opinion given on a full consideration of the facts and circumstances of the case, as was indeed strenuously and seriously contended before a bench of this Court in In Re Public Prosecutor, : AIR 1960 AP64 .

In that case it was sought to be argued as one of the grounds by Shri Rama Rao as he was then in his capacity as a Public Prosecutor, that appeals against acquittals when filed by the State after considering . the opinion of the Public Prosecutor and after bestowing the greatest care, cannot be summarily dismissed. We cannot also accept the argument based on an analogy of a notice of enhancement of a sentence given by the High Court without ultimately enhancing the sentence, as affording a basis for the contention that a Public Prosecutor ordinarily advises an appeal against acquittal in most cases with a view to bring the judgment of acquittal before the Court, which does not preclude him from saying that there is no case against the accused after going through the records.

We are somewhat appalled at this argument, because that is certainly not our view of the discharge of the duties of the high office of the Public Prosecutor who should, in cases of appeals against acquittal, call for all the materials, look into them and give an opinion after serious consideration. Not doing so would be to jeopardise and hattass an acquitted accused contrary to the high standards of professional ethics and fairplay that is attached to the office of the Public Prosecutor and the members of the Bar in general.

The interests of the administration of justice, the observation of the highest traditions of the Bar of which the advocate is a member should itself dictate him to reject the proffered brief for the other side. The question of propriety cannot depend upon the confidential communication; he is the best person to judge in what circumstances he should appear against the accused and in doing so,

always he must interpret any particular situation against himself and against his interests for the maintenance of the highest standards of professional ethics. 'Quod dubitas ne feceris' is a good rule for tbe regulation of one's own conduct.

12. We, therefore, direct Shri R. V. Rama Raonot to appear for any of tbe accused in this case,as well as to withdraw his appearance for them.