

Pyar Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-05-2006

Reported in : 2006CriLJ1354; 2006(2)MPHT331; 2006(1)MPLJ395

Judge : S.C. Vyas, J.

Acts : Narcotic Drugs and Psychotropic Substances Act; Legal Services Authorities Act, 1997 - Sections 29; [Legal Services Authorities Act, 1987](#); Code of Criminal Procedure (CrPC) , 1974 - Sections 303, 304, 304(1), 304(2), 397 and 401; Indian Penal Code (IPC) - Sections 34 397, 450 and 506; [Constitution of India](#) - Article 22 and 22(1); Madhya Pradesh Legal Services Authorities Regulations, 1997 - Regulation 33 and 33(2)

Appeal No. : Cri. Revn. No. 1108 of 2005

Appellant : Pyar Singh

Respondent : State of M.P.

Advocate for Def. : A. Kakani, Govt. Adv.

Advocate for Pet/Ap. : R.C. Pandey, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.C. Vyas, J.

1. This is a revision under Sections 397, 401 of Code of Criminal Procedure (for short hereinafter referred as Code), challenging the order passed by Additional Sessions Judge, Ujjain and Special Judge (NDPS Act), on 6-12-2005 in Sessions Trial No. 200/2005 whereby the learned Court has ordered to file the power submitted by Shri R. C. Pandey, Advocate on behalf of Pyar Singh in that case.

2. Accused Pyar Singh (applicant in the present revision) and some others were being tried by the learned Additional Sessions Judge and Special Judge for offence punishable under Sections 397, 450, 506(b) read with Section 34 of the Indian Penal Code. At the time of commencement of the proceedings before the learned Sessions Judge the applicant was not in a position to engage a counsel and, therefore, one Mr. B.M. Sharma was appointed to defend the applicant in the sessions trial. Later on applicant engaged Shri R. C. Pandey and his companions to appear, act and plead for him in the sessions trial. Shri R.C. Pandey Advocate submitted his memo of appearance in the case and also filed application for releasing the applicant on temporary bail. The permission was granted by the learned trial Court and thereafter, the matter was fixed for prosecution evidence. On 5-12-2005 Shri R.C. Pandey Advocate and his companions submitted the Vakalatnama duly signed by the applicant before the learned trial Court then Mr. B. M. Sharma, Advocate who was appointed by District Legal Services Authority for appellant raised certain objections. The learned Court vide impugned order held that as Mr. B. M. Sharma Advocate has already been appointed to defend the applicant in the sessions case on his prayer, when he does not possess sufficient means to engage his private counsel then permission to engage a private counsel cannot be granted. The learned Judge referred Regulation 33 of the M. P. Legal Services Authorities Regulations, 1997. (Regulations as made by M.P. State Legal Services Authority in consultation with the Chief Justice exercising powers conferred by Section 29 of the Legal Services Authorities Act, 1997). The learned Judge referring Regulation 33 held that:

the condition mentioned in Regulation 33 are not fulfilled in the present case and the present case does not come under any circumstances mentioned in the

Regulation 33, therefore, once legal aid has been provided to applicant on State's expenses then he can be permitted to engage a private counsel.

3. On the basis on this finding the Vakalatnama filed by Shri Pandey, Advocate was ordered to be filed and he was not permitted to appear, plead and act on behalf of applicant Pyar Singh.

4. Shri R.C. Pandey learned Counsel for the applicant submitted that every accused in a criminal trial has got a right guaranteed by Article 22(1) of the [Constitution of India](#), to be defended by an Advocate of his choice. Present applicant cannot be deprived of his this right guaranteed by [Constitution of India](#). He has further submitted that under the provisions of Section 303 of the Code of Criminal Procedure also an accused of a criminal trial has got a right to be defended by a counsel of his choice. The impugned order passed by learned trial Court is in contravention of the provision of Section 303 of Code of Criminal Procedure and is unsustainable, therefore, he prays that the impugned order be set aside and trial Court be directed to permit Shri R. C. Pandey, Advocate to appear, act and plead on behalf of the applicant.

5. Shri Ajay Kakani learned Counsel for the State has submitted that he does not oppose the submissions made by Shri R.C. Pandey, Advocate.

6. Sections 303 and 304 of the Code of Criminal Procedure read as under :

303. Right of person against whom proceedings are instituted to be defended.- Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

304. Legal aid to accused at State expense in certain cases.- (1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) the mode of selecting pleaders for defence under Sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of Sub-section (1).

(3) The State Government may, by notification, directed that, as from such date as may be specified in the notification the provisions of Sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

7. A bare reading of Section 303 of Criminal Procedure Code clears that every person accused for an offence before the criminal Court has got a right to be defended by a pleader of his choice. Section 304 contains provision regarding legal aid to the accused at State expenses in certain cases. Provisions of Section 304 only applies when in a Trial before the Court of Session the accused is not represented by a pleader and it appears that he does not have sufficient means to engage a pleader. But the provisions of Section 304 of the Code never comes in the way of right of accused to be defended by an Advocate of his choice. The person who has been granted legal aid as per the provisions of Section 304 of the Code can always on the later stage of the trial engage a counsel of his choice if circumstances permit him or if some Advocate of his choice agrees to appear on his behalf either on payment of fees by the accused himself or by his relatives or even without payment of any fees.

8. Under the provisions of Article 22(1) of the [Constitution of India](#) also an accused of an offence has got a legal right to engage any lawyer of his own choice and this freedom of engaging lawyer of his choice cannot be taken away by any Court merely on the ground that legal aid has already been provided to the accused in the case.

9. Regulation 33 which has been referred by the learned Trial Judge in the impugned order is also of no help for refusing permission to the applicant to engage a counsel of his choice. The provision of said Regulations are as under :

33. Withdrawal of legal services.- (1) The District Authority may either on its own motion or otherwise, withdraw legal services granted to any aided person in the following circumstances; namely:

(a) in the event of being found that the aided person was possessed of sufficient means or that he obtained legal service by misrepresentation or fraud :

(b) in the event of any material change in the circumstances of the aided person;

(c) in the event of any misconduct, misdemeanour or negligence on the part of the aided person in the course of receiving legal services;

(d) in the event of the aided person not co-operating with the District Authority or with the legal service advocate assigned by the District Authority;

(e) in the event of the aided person engaging a legal practitioner other than the one assigned by the District Authority;

(f) in the event of death of the aided person, except in the case of Civil proceedings where the right or liability survives;

(g) in the event of the application for legal service or the matter in question is found to be an abuse of the process of law or of legal service;

Provided that legal service shall not be withdrawn without giving due notice thereof to the aided person or to his legal representatives in the event of his death, to show cause as to why the legal service should not be withdrawn:

Provided further that no notice shall be necessary for withdrawal of legal service under Clause (h).

(h) on the recommendation of the Court concerned where matter is pending.

(2) Where the legal services are withdrawn on the grounds set out in Clause (a) of sub-regulation above, the District Authority Shall be entitled to recover from the aided person the amount of legal service granted to him.

10. Sub-clause 1(e) of the above referred regulation clearly makes a provision regarding withdrawal of legal services granted to the aided person in the event, such aided person engages legal practitioner other than the one, assigned by the District Authority. In the present case also the applicant has not only engaged Shri R.C.Pandey, advocate but he appeared on his behalf more than once moved an application for bail argued the matter and got a favourable order. This indicates that Shri R.C.Pandey, Advocate and his companions were permitted by the learned Trial Judge to appear, plead and act on behalf of applicant more than once. He was so permitted then there was no occasion to withdraw such permission merely on the objections raised by an advocate whose services were provided by District Legal Services Authorities. Such services of an advocate can always be withdrawn by the District Legal Services Authorities as discussed herein above and in the present case also on appointment of Shri R.C. Pandey and his companions services of advocate provided by Legal Services Authorities can always be withdrawn.

11. This is a matter of inquiry as to whether as per the provisions of Regulation 33(2) any amount of legal service granted is to be recovered from the petitioner or not and this question does not come under the purview of present revision petition.

12. Shri Pandey, advocate has placed reliance upon the judgment *Kegu Bhil v. Jayprakash* reported in 2002 MPWN 85, *Chandramani v. Rajeev Lochan Mishra* and *Anr.* 2003 (3) MPHT 12NOC and *AIR 2000 Supreme Court 2912 R. D. Saxena v. Balaram Prasad Sharma*. All these judgments are relating to civil matters but it has been held in all these cases that if a party wants to change his counsel then it is legal and moral duty of the advocate engaged earlier to return the brief of his client he has got remedies available to recover his unpaid fees. In the present case the fees of an advocate who has been engaged by District Legal Services Authorities will be paid by the District Legal Services Authority as per the provisions of [Legal Services Authorities Act, 1987](#) and so

there is no dispute regarding unpaid fees between appellant and legal advocate.

13. From the aforesaid it is manifestly clear that the order passed by the Trial Court is contrary to the provisions of law and is not liable to be sustained, therefore, this revision petition succeeds and is allowed. The impugned order is set aside and it is directed that the trial Court shall permit the applicant to engage counsel of his choice.

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