

P.C. Jose Vs. Nandakumar

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Court : Kerala

Decided On : Jul-26-1993

Reported in : AIR1997Ker243; 1994CriLJ682

Judge : K.T. Thomas, J.

Acts : [Advocates Act, 1961](#) - Sections 23, 29 and 33; [Indian Penal Code \(IPC\), 1860](#) - Sections 228; Code of Criminal Procedure (CrPC) , 1974 - Sections 345

Appeal No. : Cri. M.C. No. 831/93

Appellant : P.C. Jose

Respondent : Nandakumar

Advocate for Def. : M. Retnasingh (DGP), Public Prosecutor,; A.G.M.B. Kurup,;

Advocate for Pet/Ap. : P.C. Jose, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.T. Thomas, J.

1. A delicate question is involved in this case. Can a litigant claim that he has equal right with advocates to sit on the front seats in a court room when advocates

are to stand due to want of seating facilities?

2. Facts, having a queerish tinge, are the following : Petitioner was a party in a civil suit in the court of a Munsiff. Petitioner was conducting his case without the aid of a counsel. On 16-7-1992 petitioner occupied one of the seats on the front row of the court hall. Some advocates including seniors in the Bar were standing as seats were not available for them to sit. Learned Munsif then asked the petitioner to move out of the seat for accommodating the seniors in the Bar. But petitioner declined to obey and persisted in claiming right to sit at the same place. He also told the Munsiff that without a written order he was not prepared to obey the direction of the court. Learned Munsiff treated the aforesaid conduct of the petitioner as amounting to insult or interruption intentionally caused to a judicial functionary during judicial proceedings. Thereupon he took cognizance of the offence specified in Section 228 of the Penal Code and resorted to the steps envisaged in Section 345 of the Criminal P.C. (for short 'the Code'). He asked the petitioner to show cause why he should not be punished. As there was no satisfactory explanation, learned Munsiff sentenced the petitioner to a fine of Rs. 150/-.

3. Petitioner challenges the aforesaid proceedings invoking the inherent powers of the High Court under Section 482 of the Code. Here also petitioner argued his own case without the aid of a counsel.

4. Since a decision in the case may have some implications on the rights of members of the Bar, I heard learned Advocate General, learned Director General of Prosecution, President of the Advocates' Association and senior counsel Shri T.P. Kelu Nambiar. Sri S. Vijayakumar Advocate argued as amicus curiae. I express my gratitude to them for their valuable assistance. Shri Sebastian Tharakan a law junior at the Bar also addressed arguments quite admirably.

5. On the one side of the question there is equality of status enshrined in the Constitution of India. A court of law being a public institution, every one -- whether the litigant conducts the case in person or his cause is expounded by an advocate --- has the right to present the cause and there shall be no discrimination. On the other side there is the special status of advocate in a court of law, being member

of the Bar. The question raised in this case cannot be answered without viewing the aforesaid profiles.

6. There is no use in harping on the premise that there is no statutory provision conferring preferential right on advocates regarding seating accommodation in a court room. Contextually it is useful to bear in mind that there is no statutory provision regarding the seat of a judge in a court hall or the seat of the court officer (or bench clerk) or seat for witnesses etc. It would hinge on preposterousness if a litigant claims, on the strength of equality clause, that he has a right to sit on any such seats. So, the criterion is not whether there is any statutory provision of rule.

7. Has a member of the Bar any special status in the court room? In seeking answer to the question some understanding of what is meant by 'Bar' in relation to a court of law is necessary.

8. The term 'Bar' in legal parlance originated in England with the partition of bar fixed for dividing the court hall into two segments for the purpose of separating lawyers and officers of the court from suitors and other general public. (Encyclopedia Britannica Vol. 3 at page 92; also Black's Law Dictionary). Over the years the term 'Bar' as connected with law, denoted a dividing line though not made of any material, but yet identification which separated the public from the principals of the court. The term 'Bar' in a court room applied to the area impliedly reserved for the principals of the court i.e. the judge, the attornies, the court officer and members of the jury. (Encyclopedia Americana Vol. 3 at page 214). In Corpus Juris Secundum (Vol. 9 at page 1537) Bar is defined as a place which 'counsellors and advocates occupy' in a court room. In Bouvier's Law Dictionary the term 'Bar' is defined as a particular part of the court room where lawyers sit.

9. The above is the origin and evolution of how the bar was recognised and how members of the bar were treated in courts of law. It was not merely a theoretical profile of the bar, but it also gained acceptance in the practical functioning in courts.

10. In England, earlier and now, a person appearing as an attorney in a court has a special place and a special robe. The same was adopted in India. While Lord

Parker, C.J. Salmon and Winn, JJ. were presiding over Queen's Bench Division a junior barrister, wearing his robes, sat in counsel's row. When he rose to make an application to the court on his own behalf, Lord Parker, C.J. directed him to make the application later as an applicant in person and not as counsel. The junior barrister later returned to court unrobed and made his application from the well of the court. Vide 1961 (1) All ER 319.

11. In India, the position was the same before the Constitution. It happened once in the Allahabad High Court when the Official Liquidator (who himself was an advocate) addressed arguments from the Bar wearing robes, a Full Bench constituting of Edge, C.J. Oldfield and Brodhrst JJ., directed him not to address the court from advocates' table and in advocate's robes. He was asked to 'address arguments from the same place and in the same way as any ordinary member of the public'. The Bench pointed out that 'this was the universal practice in England and Ireland, and it should be followed here, vide 1888 ILR IX All 188.

12. After the Constitution, courts continued to recognize the same privilege for advocates in India. Supreme Court had occasion in Vidya Verma v. Shiv Narain, AIR 1956 SC 108 : (1956 Cri LJ 283) to consider the question whether a person (who himself was an advocate, but was appearing as next friend of a party) could be permitted to appear in robes. The Supreme Court asked him to clarify his position whether he was appearing in his private capacity as next friend. On the next day he appeared with an advocate on record sitting by his side. But their Lordships of the Supreme Court declined to hear him unless he discharged the advocate on record. This is clear indication that the practice followed in India was, where an advocate himself is a litigant and appears as a litigant in person he must not address the court from the advocates' table or in the robes of advocate, but from the same place and in the same way as any ordinary member of the public.

13. Before Mysore High Court an advocate filed a writ petition and appeared in person as he wanted to argue his own cause from the 'bar'. A Division Bench consisting of Govinda Bhat, J. and Malimath, J. (as he then was) directed him to disrobe himself and then address the court, but he insisted that he should be heard without being required to remove his gown. His point was that there was no

provision in any statute that an advocate appearing before the court arguing his own cause was subject to the disability to remove his gown. The Division Bench did not accept his stand and delivered a detailed judgment as per which he was finally directed to address the court 'from the same place and in the same way as any ordinary member of the public'. Vide *T. Venkanna v. Mysore High Court*, AIR 1973 Mysore 127.

14. A court room cannot be allowed to become a noisy crowding place. It is neither a casino nor a causerie room. It is apposite to remind all concerned the words of Francis Bacon that 'the place of justice is a hallowed place'. Decorum must prevail inside the court room and for that there must be rules of discipline to be observed albeit implied. Justice can best be administered when legal proceedings are conducted with decorum and certain degree of formality. Sartorial elegance or costume decorum is insisted on in the court room for maintaining the dignity of court proceedings. If the rule relating to costume insistence is relaxed, it is not unlikely that the trappings of the court room may be mutilated, a Division Bench of the Allahabad High Court expressed its concern that if the rule relating to the costume insistence is relaxed 'advocates may start dressing themselves more and more scantily and even indiscretely' (Vide *Prayag Das v. Civil Judge*, AIR 1974 All 133).

15. It must be remembered that an advocate is an officer of the court. This status has gained statutory recognition when Section 49 of the Advocates Act empowered Bar Council of India to frame rules, regulating standards of professional conduct. In the preamble to Chapter II in Part-VI of the Bar Council of India Rules it is mentioned thus; 'An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community'. Under Section 29 of the [Advocates Act, 1961](#) 'Advocate' is the only class of persons entitled to practice the profession of law. Section 33 forbids that any person other than a person enrolled as an advocate shall have a right to practise in any court. Section 23 confers special right of preaudience on those advocates occupying special position in the profession such as an Attorney-General, Solicitor-General, Advocate General and Senior Advocates.'

16. Thus, in a court room members of the Bar have certain privileges being officers of the court, and even among the members of Bar certain special privileges have been conferred on such among them as holding special position and ranking. Thus, when members of the Bar are to stand inside a court room due to lack of seating facilities, members of the public, even if they are litigants in the same court, cannot claim any right to occupy the seating facilities available inside the court. It is open to the presiding officer to direct such persons to vacate for accommodating members of the bar if there is no other seating facility available. The above must be regarded as a rule of practice to be followed in the court hall for the upkeep of discipline and decorum of the court proceedings.

17. Looking at the present case from the above angle learned Munsiff was right in asking the petitioner to move out of the seat in the front row as senior advocates were standing in the court without seating accommodation. As the petitioner openly defied obeying the said direction given by the court, his conduct amounted to the offence specified in Section 228 of the I.P.C.

18. Sri S. Vijayakumar invited my attention to a decision of the Mysore High Court in S.N. Murthy v. State of Mysore 1974 Cri LJ 211 in support of his contention that the courts taking action under the section ought not give room for the impression that they are unduly sensitive about their dignity. In the case a stenographer who was requisitioned by the Munsiff delayed in coming to the court hall, and the stenographer was proceeded against. Explanation of the stenographer was that he was typing the last sentence in a judgment already dictated and he thought that he could rush up after completing that judgment. The said explanation, was not accepted by the Munsiff and he proceeded to convict the delinquent under Section 228 of the IPC. Facts in this case have not resemblance with the facts in the said Mysore case. I am not inclined to hold that learned Munsiff in the present case was over sensitive in reacting to the contumacious conduct of the petitioner. The cussedness unabashedly and persistently displayed by the petitioner in open court warranted the steps adopted by the learned Munsiff.

In the result, I dismiss this Crl. M.C.

