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indar Dass Vs. State

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Court : Himachal Pradesh

Decided On : Oct-05-1950

Reported in : AIR1951HP31

Judge : Chowdhry, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 4(1) and 498; ;Punjab High Court Rules - Rule 1; ;Punjab High Court Orders

Appeal No. : Bail Appln. No. 24 of 1950

Appellant : indar Dass

Respondent : State

Advocate for Def. : Bakshi Sita Ram Adv.

Advocate for Pet/Ap. : Raghunath Sahai, Adv.

Disposition : Application dismissed

Judgement :
ORDER

Chowdhry, J.

1. This is an application for bail by one Indar Dass who is said to have been arrested on 28-9-50 at a village within P. S. Kumarsain, and who is now under

detention in P. S. Theog. The offence alleged against him is one under Section 409, Penal Code.

2. A preliminary objection was taken by the learned Government Advocate that the learned counsel who has presented this application not having been appointed his Pleader by the accused the application should be thrown out. As this was a matter of some importance for guidance of future practice in this Court, I heard the learned counsel on it at some length. Now there is nothing in the Criminal Procedure Coda corresponding to Order 3, Rule 1, Civil P.C., requiring an accused to be represented by a duly appointed Pleader. For that reason it has been the invariable practice in at least one High Court, viz., the Patna High Court, to allow advocates to appear and act for accused persons in criminal cases WITHOUT any authority in writing Subda Santal v. Emperor, A. I. R. (13) 1926 Pat. 296 : (27 Cr. L. J. 666). The omission from the Criminal P. C., of a rule corresponding to the aforesaid rule in the Civil P. C. seems obviously to be founded on the principle that the accused in a criminal case should have as unrestricted a right to defend himself as possible.

3. The above conclusion is further borne out by a reference to the definition of pleader in Section 4 (1) (r), Criminal P. C., which runs as follows :

'Pleader, used with reference to any proceeding in any Court, means a pleader or a mukhtar authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any other person appointed with the permission of the Court to act in such proceeding.'

It is clear from the above definition that the term pleader has been used in the Criminal P. C. in a very wide sense. The definition divides pleaders into two categories: category one refers to an advocate, a vakil and an attorney of a High Court, and category two to any other per-son besides these. It is only with regard to the persons belonging to the second category, i. e. to the category of persons other than an advocate, a vakil or an attorney of a High Court, that the conditions of his appointment and of the permission of the Court to act have been laid down. No such restriction or condition has been laid down in the case of the first category

of pleaders. It follows, therefore, that a pleader of the first category need not be appointed as such by the accused.

4. It is possible, however, for a High Court to lay down rules requiring the representation of an accused in criminal cases by a duly appointed pleader. In fact, the learned Government Advocate cited the Rules and Orders of the Punjab High Court, which have been made applicable to this Court also, in support of his contention that the learned counsel appearing for the applicant should have been a duly appointed pleader by means of a Mukhtarnama or a Vakalatnama contemplated by Article 10, Schedule II, Court-fees Act. The rule cited by him is R. I, Chap. 25 A in vol. III of the said Kales and Orders. This rule runs as follows :

'A petition of appeal or revision on behalf of a person convicted by a criminal Court or an application for transfer shall not be admitted by a criminal Court, unless it is either submitted through the jail authorities, or is presented by the convicted person himself, or by some person authorised by a duly stamped power of attorney to present it on his behalf; and a petition for revision by a complainant shall not be admitted unless it is presented by the complainant or by some person authorised by a duly stamped power of attorney to present it on behalf of the complainant : Provided that a person confined to jail shall be allowed to appoint his pleader, whether falling under Clause (1) or Clause (2) of Section 4 (r), Criminal P. C., by means of a printed form, signed by him, and attested by the superintendent of the Jail, and that no stamp shall be required on this form.'

There is no doubt that the above rule does require that a petition of appeal or revision on behalf of a person convicted by a criminal Court of an application for transfer cannot be admitted by a criminal Court, if presented through a pleader, unless the pleader has been duly appointed by means of a Mukhtarnama or Yakalatnama duly stamped either under Article 10, Schedule II, Court-fees Act, or a power of attorney under, Article 50, Clause (b), Stamp Act.

5. This rule, however, is necessarily in the nature of an exception to the general rule cited above exempting an accused person in a criminal trial from the necessity of filing a vakalatnama. That being so, the rule must be restricted in it a application to only the cases to which it purports by its terms to apply. In other words, it should

be taken as applying only to a petition of appeal or revision on behalf of a person convicted by a criminal Court and to an application for transfer, but to no other proceeding. I, therefore, hold that the applicant Indar Daas is properly represented in the present bail application by Shri Raghunath Sahai, advocate, although he has not been appointed as pleader by the applicant by means of a Vakalatnama. 6. Another objection taken by the learned Government Advocate was that an application for bail, like a petition in revision, should not be allowed to be filed direct in the High Court without the party concerned first availing him-self of that remedy in the lower Courts, unless there be some special reasons justifying such an action. This principle, based on the analogy of revision petitions, is certainly well-founded: See, for instance, the ruling in Pir Mohi-Ud-Din v. Emperor, A. I. R. (25) 1938 Lah, 762: (40 Cr. L. J. 127), where it was laid down as follows:

'Although there is no hard and fast rule, it is desirable that the ordinary practice should certainly be that the lower Court should first be moved and this ia particularly desirable in a bail application, where the appropriate. Court to deal with the matter is the Court which is going to try the case and where an expression of opinion by a superior Court is likely to prejudice the trial in the lower Court.'

The learned counsel for the applicant cited to me a number of rulings, particularly that of Emperor v. H. L, Hutchinson, A. I. R. (18) 1931 ALL. 356: (32 Cr. L. J. 1271), in support of the contention that the High Court's power of granting bail under Section 498, Criminal P. C., is entirely unfettered by any condition. That is however, not the point under consideration. What ha has to show is whether there were any special circumstances which justified his not moving the lower Courts but coming direct to this Court for bail. In this connection, he was able to give only two reasons for filing this application in this Court without first movingthe Magistrate or the Sessions Judge concerned.The first reason was that Chamba, the placewhere the applicant would be tried, is a longway off from the place of hie arrest. This reasonhas no force inasmuch as the applicant will inany case have to go to Chamba for his trial. Theother reason given by him was that if the applicant be enlarged on bail and allowed to go toChamba as a free man he would be in a betterposition to defend himself and engage a counsel. This also does not appear to me to be asound reason since the arranging of defence andengaging of a

counsel will have to be done atChamba and not while the applicant is beingescorted from the place of arrest to the place ofhis trial. The proper thing for the applicant todo is to apply for bail before the Magistrate and,if necessary, before the Sessions Judge of Chamba.If that application succeeds, there would be noimpediments to his making the necessary arrangement for his defence. If, however, his application for bail at Chamba proves infructuoua, hecan move this Court at a proper stage beforehis right of defence is jeopardised in any way,and then it will be for this Court to dispose ofhis bail application on merits. On the principlethat only in exceptional circumstances shouldan application for bail be moved direct in thehighest Court, and on the finding that no suchcircumstance has been shown to exist in thepresent case, I reject the present application.

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