

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 23 of 2020

[@ Special Leave to Appeal (CrI.) No(s). 7102/2018]

ANJU BALA RAJPUT

Appellant(s)

VERSUS

THE STATE OF UTTARAKHAND & ORS.

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for the parties.

This appeal has been filed against the judgment and order dated 18.07.2018 passed by the learned Single Judge in Writ Petition (CrI) No. 975/2018, by which the writ petition was dismissed with costs of Rs.2 lacs. The learned Single Judge imposed costs of Rs.2 lacs observing that the writ petition has been filed for ulterior motive without there being any Power of Attorney in favour of Smt. Anju Bala Rajput. The writ petition was filed on behalf of two persons who were accused in FIR No. 92/2018 under Sections 354, 323, 504 of the Indian Penal Code.

It was stated in the affidavit filed in support of the writ petition that the deponent of the affidavit is the sister of writ petitioner No.1.

The learned Single Judge by the impugned judgment has dismissed the writ petition and imposed costs of Rs.2 lacs to be recovered from Smt. Anju Bala Rajput who has filed the affidavit in support of the writ petition.

Learned counsel for the appellant submits that vakalatnama was signed by both the writ petitioners whose signatures have been attested by the Jailor, sub-Jail, Haldwani where they have been detained. The affidavit in support of the writ petition was sworn by Smt. Anju Bala Rajput who was sister of writ petitioner No.1. Smt. Anju Bala Rajput, in her affidavit, has clearly stated that she being sister of writ petitioner No.1 is well acquainted with the facts and circumstances of the case. Learned counsel for the appellant further submits that the learned Single Judge committed an error in dismissing the writ petition and further imposing costs of Rs.2 lacs.

Learned counsel for the State refuted the submission and contends that the affidavit could not have been sworn through Smt. Anju Bala Rajput without there being a Power of Attorney executed by the writ petitioners in her favour. He submits that the learned Single Judge has rightly dismissed the writ petition.

We have considered the submissions of learned counsel for the parties and perused the record.

The writ petition was filed in the High Court on behalf of two petitioners namely Hitendra Singh and Ulhas Paul. The vakalatnama was signed by both the petitioners which was duly attested by the Jailor, sub-Jail, Haldwani which fact has also been noticed in para 5 of the impugned judgment of the learned Single Judge, which reads as under:-

"A perusal of Vakalatnama would reveal that the vakalatnama though have been signed by the accused petitioners and attested by the Jailor, sub-Jail, Haldwani but the name of the persons, on whose behalf Mr. Lalit Sharma is appointed to conduct the case is not

mentioned, rather name of Anju Bala is mentioned.”

The affidavit in support of the writ petition was sworn by Smt. Anju Bala Rajput in para 1 of the affidavit, following was stated:

“The deponent is the sister of petitioner No.1 is doing pairvi on behalf of the petitioners in the aforesaid writ petition as both the petitioners are in jail as such the deponent is fully acquainted with the fact and circumstances of the case and she is in a position to depose as under.”

The learned Single Judge in the impugned judgment had referred to Order III Rules 1, 2 and 4 of the Code of Civil Procedure, 1908. After referring to aforesaid Rules 1, 2 and 4 of Order III, the Single Judge had observed that the writ petitioners have not authorized Smt. Anju Bala Rajput to file a writ petition. The learned Single Judge has taken a view that unless she is appointed as Recognized Agent, she has no authority to file a writ petition on their behalf. Further, no Power of Attorney has been filed by her on behalf of the writ petitioners. The learned Single Judge went to observe that without any authority of law, Smt. Anju Bala Rajput had engaged Mr. Lalit Sharma, learned counsel to conduct the case who has filed vakalatnama on their behalf. Order III of the Code of Civil Procedure, 1908 deals with Recognized Agents and Pleaders.

Rule 1 of Order III deals with appearances etc., may be in person, by Recognized Agent or by pleader. It reads as under:

“1. Appearances, etc., may be In person, by recognized

agent or by pleader.- Any appearance, application or act in or to any court, required or authorized 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 recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person."

In the present case, the appearance in the Court was not in person or by his recognized agent but appearance before the High Court to make submissions in support of the writ petition was by a pleader. As per definition of Section 2(15) of the Code of Civil Procedure, 1908 , pleader means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court. Vakalatnama has been executed in favour of an advocate who was fully entitled to appear.

Order III Rule 2 deals with Recognized Agents. Present is not a case where there was any recognized agent of the parties. It is true that recognized agents can appear who hold Power of Attorney authorizing them.

Now, we come to Rule 4 of Order III which deals with appointment of pleader. Rule 4 (1) and (2) provides as under:-

"4. Appointment of pleader.

(1) 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 by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall, for the purposes of sub-rule(1), be deemed 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, 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.

Explanation-

For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit-

(a) an application for the review of decree or order in the suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit."

The present is not a case where vakalatnama has not been executed by the writ petitioners in favour of an advocate who appeared in the Court, both the writ petitioners being detained in jail. Both the writ petitioners signed the vakalatnama in jail which was duly attested by the Jailor of sub-Jail, Haldwani which fact has been noticed by the learned Single Judge himself in para 5 of the impugned judgment. Thus, an advocate was appointed by the petitioners to plead their case in the Court.

In para 8 of the judgment, following has been observed by the learned Single Judge:-

"Admittedly, the petitioners have not authorized Smt. Anju Bala Rajput to file the writ petition rather she

filed writ petition on their behalf, mentioning that she is doing pairvi on their behalf. Unless she is not appointed as recognized agent to the petitioners, she has got no authority to file the writ petition on their behalf. It is no where mentioned in the memo of the petition that she was filing the writ petition as an authorized agent. Neither any authority nor Power of Attorney has been filed by her on behalf of the petitioners. Firstly, Smt. Anju Bala Rajput has not been appointed as recognized agent by the petitioners and she has filed the writ petition claiming herself to their Pairokar. Secondly, without any authority of law she has engaged Mr. Lalit Sharma, Advocate to conduct the aforesaid case, who has filed vakalatnama on her behalf."

The writ petition was filed in the High Court and the relevant provisions which regulated the writ petitions are in Chapter XXII of Allahabad High Court Rules which are applicable in the writ petition filed in the High Court of Uttarakhand at Nainital.

Chapter XXII Rule 1 deals with application filed under Articles 226 and 227 of the Constitution of India. Rule 1(2) of Chapter XXII reads as under:-

"CHAPTER XXII

DIRECTION, ORDER OR WRIT UNDER ARTICLE 226A AND ARTICLE 227 OF THE CONSTITUTION OTHER THAN A WRIT IN THE NATURE OF HABEAS CORPUS

1. Application :-

(2) The application shall set out concisely in numbered paragraphs the facts upon which the applicant relies and the grounds upon which the Court is asked to issue a direction, order or writ, and shall conclude with a prayer stating clearly, so far as the circumstances permit, the exact nature of the relief sought. The application shall be accompanied by an affidavit (or affidavits) verifying the facts stated therein by reference to the numbers of the paragraphs of the application containing the facts.

All corrections and alterations in the application shall

be initialed by the Oath Commissioners before whom such affidavit (or affidavits) is (or are) sworn.

Such affidavit (or affidavits) shall be restricted to facts which are within deponent's own knowledge and such affidavit shall further state whether the applicant has filed in any capacity whatsoever, any previous application or applications on the same facts and, if so, the orders passed thereon."

The requirement as per above Rule is that the application shall be accompanied by an affidavit verifying the facts stated therein. Present is a case where affidavit was sworn by the sister of writ petitioner No.1 stating that she is acquainted with the facts and circumstances of the case. The requirements of Chapter XXII Rule 1 (2) were thus fulfilled.

The view of the learned Single Judge that there should be a Power of Attorney in favour of Smt. Anju Bala Rajput to swear the affidavit in support of the writ petition is not correct. The learned Single Judge committed an error in dismissing the writ petition and further by imposing costs of Rs.2 lacs.

Rule 2 of Chapter XXII of the Allahabad High Court Rules came for consideration in Dwarkanath, Hindu Undivided Family v. Income Tax Officer, Special Circle, Kanpur & Anr. [(1965) 3 SCC 536]. The writ petition under Article 226 of the Constitution was dismissed by the High Court, one of the ground was that the affidavit was unsatisfactory. This Court dealing with Chapter XXII 22 Rule 1(2) stated:-

"The High Court mainly dismissed the writ petition on the ground that the affidavit filed in support of the writ

petition was highly unsatisfactory and that on the basis of such an affidavit it was not possible to entertain the petition. In exercise of the powers conferred by Article 225 of the Constitution and of other powers enabling it in that behalf the High Court of Allahabad framed the Rules of Court. Chapter XXII thereof deals with the procedure to be followed in respect of a proceeding under Article 226 of the Constitution other than a writ in the nature of habeas corpus. The relevant rule is sub-r.(2) of r.1 of Ch. XXII, which reads:

"The application shall set out concisely in numbered paragraphs the facts upon which the applicant relies and the grounds upon which the Court is asked to issue a direction, order or writ and shall conclude with a prayer stating clearly, so far as circumstances permit, the exact nature of the relief sought. The application shall be accompanied by an affidavit or affidavits in proof of the facts referred to in the application. Such affidavit or affidavits shall be restricted to matters which were within the deponent's own knowledge.

The application filed in the High Court certainly complied with the provisions of sub-r.(2) of rule 1 of Ch. XXII of the Rules of Court of the Allahabad High Court. It set out concisely in numbered paragraphs the facts upon which the applicant relied, the grounds on which the Court was asked to issue the direction and the exact nature of the relief sought. But it is said that the affidavit filed in support of the application did not speak to matters which were within the deponent's own knowledge. Dhruva Das, the deponent of the affidavit, is a relative of the petitioner and he also looked after the case on his behalf as his pairokar and was fully conversant with the facts.

"Deponent's own knowledge" in rule 1(2) of chapter XXII of the Rules is wide enough to comprehend the knowledge of the appellant derived from a perusal of the relevant documents; and the affidavit in express terms disclosed and specified the documents, the source of the appellant's knowledge. He swore in the affidavit that the documents annexed to the affidavit were true copies of public documents. If they are certified copies of public documents, they prove themselves; if they are originals OF the orders sent to the appellant; the deponent, as his agent, speaks to their receipt. It is, therefore, not correct to say that the facts stated in the affidavit are not based on the deponent's knowledge. The other facts alleged in the affidavit are only introductory in nature and if they are excluded, the result will not be

affected. That apart, if the affidavit was defective in any manner the High Court, instead of dismissing the petition *in limine*, should have given the appellant a reasonable opportunity to file a better affidavit complying with the provisions of R. 1 of Ch. XXII of the Rules. We cannot, therefore, agree with the High Court that the petition was liable to be dismissed *in limine* in view of the alleged defects in the affidavit.

In view of the above discussion, the judgment of the learned Single Judge is set aside. In view of the fact that sufficient time has elapsed from the date of filing the writ petition, we grant opportunity to the writ petitioners to file a fresh writ petition in the High Court, if so advised. The appeal is allowed.

.....J.
[ASHOK BHUSHAN]

.....J.
[M.R. SHAH]

NEW DELHI;
January 8, 2020.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 7102/2018

(Arising out of impugned final judgment and order dated 18-07-2018 in WPCRL No. 975/2018 passed by the High Court Of Uttarakhand At Nainital)

ANJU BALA RAJPUT

Petitioner(s)

VERSUS

THE STATE OF UTTARAKHAND & ORS.

Respondent(s)

(IA No. 115322/2018 - EXEMPTION FROM FILING O.T.)

Date : 08-01-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN

HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s)

Mr. Divyesh Pratap Singh, AOR

Ms. Pratiksha Tripathi, Adv.

Ms. Deeksha Gaur, Adv.

Mr. Shantanu Sharma, Adv.

Ms. Shivangi Singh, Adv.

For Respondent(s)

Mr. Saurabh Trivedi, AOR

Mr. Ashutosh Sharma, Adv.

Mr. Pranab Prakash, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the reportable signed order.

Pending application, if any, stands disposed of.

(MEENAKSHI KOHLI)
COURT MASTER(RENU KAPOOR)
COURT MASTER

[Reportable signed order is placed on the file]