

T.C. MATHAI
v.
THE DISTRICT SESSIONS JUDGE,
THIRUVANANTHAPURAM, KERALA

MARCH 31, 1999

[K.T. THOMAS AND M.B. SHAH, J.]

Power of Attorney Act, 1882—Section 2—Power of Attorney holder of a couple arrayed as respondents in a criminal revision petition seeking permission to appear and plead on behalf of the and couple Permissibility of—Held, a Power of Attorney holder cannot become a "pleader" for a party in criminal proceedings, unless the party secures permission from the Court to appoint him to act in such proceedings—This is in tune with Section 32 of the Advocate Act, 1961 which empowers a Court to permit any person, who is not enrolled as an Advocate to appear before it in any particular case- Court to verify the level of equipment of such person for pleading on behalf of the party concerned before granting such permission—Code of Criminal Procedure, 1973—Sections 2(q) ; 303—Advocates Act, 1961—Section 32.

Agent—Appointment of—Held, the common law principle that every person who is suit juris has a right to appoint an agent for any purpose whatsoever, does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation—Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires a particular act to be done by a party in person—Personal attendance of the accused may be dispensed with under provisions of Code of Criminal Procedure and he may be permitted to appear through counsel—But in no case can the appearance of the accused be made through a power of attorney holder—Code of Criminal Procedure, 1973—Sections 205, 27.

Advocates Act, 1961—Sections 30; 33—Representation through Advocates—Held, no party is required to obtain prior permission of the Court to appoint an Advocate to represent him in court—An advocate is the officer of the court and is hence accountable to the court—Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

A *Words and Phrases—"Pleader"—"Power of Attorney"—Explained.*

The appellant was the power of attorney holder of a couple living in Kuwait who were arrayed as respondents in a criminal revision petition filed before the Sessions Court, Trivandram. He sought permission of the Sessions Court to appear and plead on behalf of the said couple which was declined on the ground that the request for such permission did not emanate from the respondent couple themselves. Thereupon, the appellant preferred a writ petition in the High Court for issuance of a direction to the Sessions Judge to grant the permission sought for, which was dismissed by a Single Judge. Writ appeal filed against the order of the Single Judge was dismissed by a Division Bench. Hence the present appeal.

On behalf of the appellant, it was contended that a power of attorney holder has all powers to act on behalf of his principal. It was contended that his right to represent the respondent-couple in the Court would be governed by the authority conferred by the instrument of power of attorney executed by the respondent - couple in his favour.

Dismissing the appeal, this Court

HELD : 1.1. An agent cannot become a "pleader" for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. [312-E]

M. Krishnammal v. T. Balasubramania Pillai, AIR (1937) Madras 937, referred to.

1.2. Section 2 of the power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party in person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. In no case can the appearance of the accused be made through a Power of Attorney holder. [311-G-H; 312B]

2.1. Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceeding pending against them. No party is required to obtain prior permission of the court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every

Advocate whose name is entered in the roll of Advocates maintained by a State Bar Council to practise in all the Courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any Court unless he is enrolled as an advocate under that Act. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession. [310-C-D]

2.2. If the person proposed to be appointed by the party is not a qualified Advocate, the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for the Parliament for fixing such a filter in the definition clause [Section 2 (q) of the Code] that prior permission must be secured before a non-Advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such person for pleading on behalf of the party concerned. [310-E-F]

Harishankar Rastogi v. Girdhari Sharma & Anr., AIR (1978) SC 1019, referred to.

3.1. The definition of 'pleader' as given in Section 2 (q) of Code of Criminal Procedure, 1973 envelopes two kinds of pleaders within its ambit. The first refers to legal practitioners who are authorised to practise law and the second refers to "any other person". If it is the latter its essential requisite is that such person should have been appointed with the permission of the court to act in such proceedings. This is in tune with Section 32 of the Advocates Act 1961 which empowers a Court to permit any person, who is not enrolled as an Advocate to appear before it in any particular case. But if he is to plead for another person in a criminal court, such permission should be sought for by that person. [309-E-F]

3.2. It is not necessary that the "pleader" so appointed should be the Power of Attorney holder of the party in the case. What seems to be condition precedent is that his appointment should have been preceded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case. [309-G-H]

3.3. The work in a court of law is a serious and responsible function. The primary duty of criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case,

A can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides. [310-A-B]

B 4. Under the English Law, "every person who is sui Juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right. " But, the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation. [311-E-G]

C *Ravulu Subba Rao and Ors. v. Commissioner of Income-tax, Madras*, AIR (1956) SC 604, referred to.

Jackson & Co. v. Napper, (1986) 35 Ch. D. 16, referred to.

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 354 of 1999.

From the Judgment and Order dated 10.12.98 of the Kerala High Court in W.A. No. 2613 of 1998.

E Major K. Mathews, Power of Attorney holder for petitioner-in-person.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

F Appellant claims to be the power of attorney holder of a couple (husband and wife) now living in Kuwait. He sought permission of the Sessions Court, Trivandrum to appear and plead on behalf of the said couple who are arrayed as respondents in a criminal revision petition filed before the said Sessions Court (they will be referred to as the respondent-couple). But the Sessions Judge declined to grant permission as the request for such permission did not emanate from the respondent-couple themselves. Thereupon appellant moved the High Court of Kerala under Article 226 of the Constitution for issuance of a direction to the Sessions Judge concerned to grant the permission sought for. A Single Judge of the High Court dismissed the original petition against which appellant filed a writ appeal which too was dismissed by a

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H Division Bench of the High Court.

Undeterred by the successive setback in securing a right of audience on behalf of the aforesaid couple the appellant travelled the long distance from the southern end of the country right up to the National Capital to personally argue before the apex Court that he is entitled to plead for the respondent-couple in the Sessions Court. We heard the appellant-in-person though we are still now unable to appreciate why he, instead of incurring so much expenses and strain, did not advise the respondent-couple to engage a counsel for pleading their cause before the Sessions Court.

Appellant, during the course of his arguments, referred to a commentary on Criminal Law to support his contention that a power of attorney holder has all powers to act on behalf of his principal. We would assume that the respondent-couple would have executed an instrument of power of attorney empowering appellant to act on their behalf. Can he become a pleader for the respondent-couple on the strength of it?

Section 303 of the Code of Criminal Procedure (for short "the Code") entitles a person to the right of being defended by a "pleader" of his choice when proceedings are initiated against him under the Code. "Pleader" is defined in Section 2(q) as this:

"Pleader", when used with reference to any proceeding in any Court, means a person authorised by or under any law for the time being in force, to practise in such Court, and includes any other person appointed with the permission of the Court to act in such proceedings".

The definition envelopes two kinds of pleaders within its ambit. The first refers to legal practitioners who are authorised to practise law and the second refers to "any other person". If it is the latter its essential requisite is that such person should have been appointed with the permission of the court to act in such proceedings. This is in tune with Section 32 of the Advocates Act 1961 which empowers a Court to permit any person, who is not enrolled as an advocate to appear before it in any particular case. But if he is to plead for another person in a criminal court, such permission should be sought for by that person.

It is not necessary that the "pleader" so appointed should be the power of attorney holder of the party in the case. What seems to be condition precedent is that his appointment should have preceded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case.

A The work in a court of law is a serious and responsible function. The primary duty of criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in
B civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

C Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the roll of advocates maintained by a State Bar Council to practise in all the Courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any Court
D unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

E But if the person proposed to be appointed by the party is not such a qualified person the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for the Parliament for fixing such a filter in the definition clause [Sec.2(q) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of
F equipment of such person for pleading on behalf of the party concerned.

V.R. Krishna Iyer, J. had occasion to deal with a similar matter while considering a plea like this in a chamber proceeding in the Supreme Court. In that case, a party sought permission to be represented by another person in a criminal case. Learned Judge then struck a note of caution in the following
G terms in *Harishankar Rastogi v. Girdhari Sharma & Anr.* AIR (1978) SC 1019):

H "If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter-productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or

blackguardly or blockheadly private representatives filing arguments at the Court. Likewise the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the Court. Other situations, settings and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice."

Appellant submitted that he is the duly appointed attorney of the respondent-couple by virtue of an instrument of power of attorney executed by them and on its strength he contended that his right to represent the respondent-couple in the court would be governed by the said authority in the instrument.

In Stroud's "Judicial Dictionary", power of attorney is described as "an authority whereby one is set in the turne, stead, or place of another to act for him". In Black's Law Dictionary it is described as the instrument by which a person is authorised to act as an agent of the person granting it. Section 2 of the Power of Attorney Act, 1882 empowers the donee of a power of attorney to do anything "in and with his own name and signature" by the authority of the donor of the power. Once such authority is granted the said Act recognises that everything done by the donee "shall be as effectual in law as if it had been done by the donee of the power in the name and with the signature' of the donor thereof."

Under the English Law, 'every person who is sui juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right', vide *Jackson & Co. v. Napper*, (1986) 35 Ch.D.162 at page 172. But this Court has pointed out that the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation, vide *Ravulu Subba Rao and Ors. v. Commissioner of Income-tax, Madras*, AIR (1956) SC 604.

Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party in person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons

- A or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with "the personal attendance of accused, and permit him to appear by his pleader" if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when
- B personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power of attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.

- C In this context reference can be made to a decision rendered by a Full Bench of the Madras High Court in *M. Krishnammal v. T. Balasubramania Pillai*, AIR (1937) Madras 937, when a person, who was the power of attorney holder of another, claimed right of audience in the High Court on behalf of his principal. A Single Judge referred three questions to be considered by the Full Bench, of which the one which is relevant here was whether an agent with the power of attorney to appear and conduct judicial proceedings has
- D the right of audience in court. *Beasley, C.J.*, who delivered the judgment on behalf of the Full Bench stated the legal position thus:

- E "An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of principal, either in the appellate or original side of the High Court. There is no warrant whatever for putting a power of attorney given to a recognized agent to conduct proceedings in court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney which is confined only to pleaders, i.e. those who have a right to
- F plead in courts."

- G The aforesaid observations, though stated sixty years ago, would represent the correct legal position even now. Be that as it may, an agent cannot become a "pleader" for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. The respondent-couple have not even moved for such permission and hence no occasion has arisen so far to consider that aspect.

The appeal is accordingly dismissed.