

(1988) 11 KL CK 0043

High Court Of Kerala

Case No: C.R.P. No. 3136 of 1984

M/S Marikar Motors (Ltd)

Trivandrum

APPELLANT

Vs

M.I. Ravikumar and Others

RESPONDENT

Date of Decision: Nov. 4, 1988

Acts Referred:

- Bar Council of India Rules, 1975 - Rule 13

Citation: (1988) 2 KLJ 792

Hon'ble Judges: K.P. Radhakrishna Menon, J

Bench: Single Bench

Advocate: T.S. Venkiteswara Iyer, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.P. Radhakrishna Menon J.

1. A very interesting question can a counsel representing a party in a suit or any legal proceedings akin thereto," be directed by the Presiding Officer to relinquish vakalath, so that he can be summoned as a witness by the opposite party. The court below by the order under challenge has directed the counsel representing the defendant in the suit to relinquish vakalath. entering the finding that he has been cited as a witness by the plaintiff.

2. Interpretation of Rule 13 of Chapter II of Part VI of the Bar Council of India Rules gives answer to the question. This rule reads:-

An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should: not continue to appear as an advocate if he can retire without jeopardising his client's interest.

The first part of the Rule provides that if an advocate has reason to believe that he will be a witness in a case, he shall not accept a brief or appear in that case. The decision not to accept the brief or appear in the case thus is based on his own belief that he is likely to be a witness in the case. But on his being engaged in a case, it becomes apparent that he is a witness on a material question of fact, then he should not continue to appear as an advocate, if he can retire without jeopardising his client's interest.

Regarding the second aspect, that is, in a case where he has already accepted the brief, it is not as if he shall automatically relinquish vakalath if it becomes apparent that he is going to be a witness on a material question of fact. In such cases he need relinquish his vakalath only if it is further found that his retirement from the brief will not jeopardise his client's interest. This in short is the content of the second part of The Rule. The Rule, in my view, is not only to protect the interest of the advocate but to safeguard the rights of the party whom he represents in a proceeding.

3. The judicial authority before which a party, initiates proceeding to summon the advocate representing the opposite side, as a witness, shall keep the above provision in view before any order requesting the counsel to relinquish vakalath. so that he can be summoned as a witness, is passed; else, it is not unlikely that the service of an efficient and competent counsel will be denied to the party who has engaged him.

4. The above Rule is contained in Chapter II of The Bar Council of India Rules, captioned, "Standards of professional conduct and etiquette". If any counsel functions in contravention of any of the Rules in Chapter II, he can be hauled up by the Bar Council, for misconduct. After the coming into force of the Advocates' Act, proceedings for professional misconduct can be dealt with only by the Bar Council constituted under that Act. In this regard I would observe that the Advocates' Act is a self contained code and therefore the authority of the courts to interfere with these matters is subject to the Advocates Act and The Rules framed thereunder.

5. Considered in the light of the principles highlighted in the preceding paragraphs I am of opinion that the order of the court below directing the counsel to relinquish his vakalath is without jurisdiction. The order therefore is set aside.

6. Regarding the question as to whether the advocate who represents a party in a legal proceeding, is a witness on a material question of fact, no finding in this regard can be had without considering the pleadings contained in the plaint as also the written statement. In otherwords the court, or the authority concerned, as the case may be, shall find in no uncertain terms that no other witness but the advocate alone is competent or in any event capable of speaking on that "material question of fact". While considering this aspect of the matter the court or the authority concerned shall always have in view the condition prescribed by the Rule namely that, the retirement of the advocate from the case shall not jeopardise the interest

of the party for whom the advocate appears. It therefore follows that if the court or the authority concerned after the enquiry in the lines suggested above, is of opinion that the disengagement of the advocate from the case would jeopardise the interest of the party for whom the advocate appears, then the advocate shall not be asked to relinquish vakalath. Suffice it to say that in the absence of this Rule, a party to the proceeding can effectively deprive the opposite party of the services of a competent counsel by summoning that counsel as a witness.

7. If the court or the authority concerned after enquiry finds that an examination of the advocate as a witness is indispensable and hence the disengagement of the advocate from the case would not jeopardise the interest of the party for whom he appears, then the court or the authority concerned can ask the advocate to relinquish the vakalath. It should in this connection be remembered that courts in this country are bound by the solemn declaration "FIAT JUSTITIA. RUAT COELUM" Let justice be done, though the heavens should fall. The advocate therefore is bound to honour the request and relinquish vakalath. But in case he fails to relinquish vakalath, and withdraw from the case in spite of expression of opinion by the court that the trial otherwise would be embarrassed by the continued appearance in the case, the court undoubtedly has inherent jurisdiction to require him to withdraw. The aggrieved party has also the right to bring to the notice of the Bar Council the above conduct of the advocate which runs counter to the high traditions of the profession. The Bar Council then is bound to enquire into the said conduct of the advocate. The court below in my judgment has not considered the question in the right perspective. The order on I.A. 1935/84 therefore is vacated. For the reasons stated above the C.R.P. is allowed.

It is however made clear that if the court below after considering the question in the light of the observations contained in this order is of the view that the advocate requires to be examined as a witness, the advocate can be asked to relinquish vakalath so that he can be summoned as a witness.