HARISHANKAR RASTOGI A

v.

GIRDHARI SHARMA AND ANR.

March 13, 1978

[V. R. KRISHNA IYER, J.] B

(In Chambers)

Practice and Procedure—Proviso to O. IV, Rule—1 read with Order-I R. 2(1)(*a*) *and* (*b*) *of Supreme Court Rules,* 1966. *Advocates, Act* 1961 *Ss.* 2(*a*), 29 *and* 30(1) *and Criminal Procedure Code* 1973 *Ss.* 2(*q*), 302, 303 *and* 304 [*Civil Procedure Code, (Act* 5) 1908 *S.* 2(15) *read with Order IV*]—*Right to be represented by another person who is not an Advocate, whether and, if so when permissible—Meaning of "Provided the Court may, if for any special reason it thinks desirable to give permission for other person to appear before it in particular case". explained.* C

The petitioner appeared in person and sought permission to be represented by another person who is not an Advocate, falling within the meaning of S.2(a) of the Advocte, Act 1961 in the place of an Advocate *Amicus Curiae* appointed by this Court.

Allowing the petition, the Court D

HELD :

1. A private person who is not an Advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may even after grant of permission withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, and reasons for requisitioning the services of the private person and a variety E of other circumstances must be gathered before grant or refusal of permission. [49599 G-H, 496 A]

2. The Advocates are entitled as of right to practise in this Court under S. 30(1) of the Advocates Act, 1961 subject to the reasonable restriction provided under s. 29 of that Act viz. that the only class of persons entitled to practise the profession of law shall be advocates. Even so, it is open to a party, who is unable for some reason or the other to present his case adequately, F to seek the help of another person in his behalf. To negative such a plea may be denying justice altogether in certain cases, especially in a land of illiteracy and indigence and judicial processes of sophisticated nature. Ss.302, 303 and 304 of the Cr. P.C. are indicative of the policy of the Legislature to provide for such contigencies. This Court should not totally shut out representation by person other than the party himself in situations where an advocate is not appearing for the party. [494 D-G]

3. A comprehensive programme of free legal services, is, in a sense, a G serious obligation of the State if the rule of law were to receive vitality in its observance. Until then, parties should appear through advocates, and where they are not represented by one such, through some chosen friend. Such other person cannot practise the profession of habitually representing parties in Court. If a non-advocate specialises in practising in Court, professionally he will be violating the text of the interdict in the Advocates Act, which the Court cannot allow him to do so. Nevertheless it is open to a person who is a party to a proceeding to get himself represented by a non-advocate in a particular instance H or case. Practising a profession means something very different from representing some friend or relation on one occasion or in one case or on a few occasions or in a few cases. [494 G-H—495 A]

A CRIMINAL APPELLATE JURISDICTION : Criminal Misc. Petition No. 506 of 1978.

(Application for cancellation of the appointment of Amicus Curiae and for permission to be represented by another person)

Petitioner-in-Person.

B *R. L. Nain* and *M. V. Goswami* for the Supreme Court Bar Association (Amicus Curiae).

The Judgment of the Court was delivered by

KRISHNA IYER, J. The petitioner appears in person and seeks permission to be represented by another person, who is not an advocate, C falling within the definition in section 2(a) of the Advocates Act, 1961. On an earlier occasion Sri R. K. Jain, Advocate of this Court was requested to act as amicus curiae since the petitioner represented that he could not engage counsel. However, Sri Jain, for reasons which we need not go into here, has been discharged from the brief at his request. The short question that I have to decide here is whether a person who is not an advocate by profession, can be permitted to plead D on behalf of the petitioner ?

Advocates are entitled as of right to practise in this Court (Section 30(i) of the Advocates Act, 1961). But, this privilege cannot be claimed as of right by any one else. While it is true that Art. 19 of the Constitution guarantees the freedom to practise any profession, it is open to the State to make a law imposing, in the interest of the general E public, reasonable restrictions on the exercise of the right. The Advocates Act, by Section 29, provides for such a reasonable restriction, namely, that the only class of persons entitled to practise the profession of law shall be advocates. Even so, is it not open to a party who is unable for some reason or other to present his case adequately to seek the help of another person in this behalf ? To negative such a plea may be denying justice altogether in certain cases, especially in a land F of illiteracy and indigence and judicial processes of a sophisticated nature. That is precisely why legislative policy has taken care to provide for such contingencies. Sections 302, 303 and 304 of the Criminal Procedure Code are indicative of the policy of the legislature. I do not think that in this Court we should totally shut out representation by any person other than the party himself in situations where an advocate is not appearing for the party. A comprehensive programme of G free legal services is, in a sense, a serious obligation of the State if the rule of law were to receive vitality in its observance. Until then parties may appear through advocates, and where they are not represented by one such, through some chosen friend. Such other person cannot practise the profession of habitually representing parties in court. If a non-advocate specialises in practising in court, professionally he will be violating the text of the interdict in the Advocates Act. I cannot allow H him to do so. Nevertheless, it is open to a person, who is party to a proceeding, to get himself represented by a non-advocate in a particular instance or case. Practising a profession means something very different from representing some friend or relation on one occasion or in one

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case or on a few occasions or in a few cases. In the present instance, permission is sought for representation through a non-advocate. It is absolutely clear that any one who is not an advocate, cannot, as of right, force himself into this Court and claim to plead for another. Permission may, however, be granted by this Court taking the justice of the situation and several other factors into consideration for such non-professional representation. This approach accords with the policy of the Criminal Procedure Code (I am concerned with a criminal proceeding here) as spelt out in Section 2(q). A pleader, by definition, includes any person other than one authorised by law to practise in a court if he is appointed with the permission of the court, to act in a particular proceeding. This Court's power may well be exercised in regulating audience before it in tune with the spirit of section 2(q) of the Code.

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The petitioner has put in a written representation citing a number of decisions to justify his stand that private persons may be permitted by the court to appear, act and plead. He has cited a number of decisions in support of his position. Apparently, some legal hand has lent him help. I thought it fit to give notice to the Supreme Court Bar Association and Sri Nain has represented the Bar Association before me and assisted me with his brief but telling submissions. His experience as a senior member of the Bar and as a one-time judge of a High Court is an additional factor of assistance. Sri Nain persuasively stated that while a private person who is not an advocate by profession cannot, as of right, walk in the claim to argue before this Court, he may, in a particular case, be specially permitted by the court in exercise of its wise discretion. The wisdom of the discretion, in his submission, must be guided by a plurality of considerations. 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 fling 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. Indeed, the Bar is an extension of the system of justice; an advocate is an officer of Court. He is master of an expertise but more than that accountable to the Court and governed by a high ethic. The success of the judicial process often depends on the services of the legal profession.

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Having regard to this conspectus of considerations I hold that a private person, who is not an advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may, even after grant of permission, withdraw it half-way through if the representative proves himself reprehensible. The

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A antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission. In the present case I have noticed the petitioner and his friend who is to represent him, come together with mutual confidence. The party somehow has not shown sufficient confidence in advocates he has come by. This bodes ill for him. I should have suspected the association of the private person as B having sinister implications of exploitation of a guideless party but suspicion by itself should not be the basis of a conclusion. Therefore, I think it right to give the party, who appears to be unable to represent his own case, an opportunity to present his grievance through his friend. That friend, judging by the note prepared and put in, seems to be familiar with law, although quacks can prove fatal friends. I grant the petitioner permission to be represented by a private person as prayed C for, with the condition that if this latter proves unworthy, the permission will be withdrawn.

S.R. *Petition allowed.*