



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.389 of 2020

***Jata @ Sanatan
Hessa***

..... ***Appellant/
Petitioner***

*Mr. Nityananda Panda,
Advocate*

-versus-

State of Odisha

..... ***Respondent/
Opp. Party***

*Mr. P.B. Tripathy,
Addl. Standing Counsel*

*Mr. Bikash Chandra Parija,
Advocate for Gania Gagaria*

CORAM:

**THE HON'BLE MR. JUSTICE S.K. SAHOO
THE HON'BLE MR. JUSTICE CHITTARANJAN DASH**

ORDER

24.09.2024

Order No.

I.A. No.2788 of 2023

20. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

As per the order dated 19.09.2024, Mr. Nityananda Panda, Advocate, Mr. Danardan Sethi, Advocate's Clerk are present and Mr. Gania Gagaria is also produced from the jail custody by Mr. Umesh Dungdung, Havildar-1343, U.P.D. Cuttack. Mr. Bikash Chandra Parija, learned counsel, who has been engaged by the High Court of Orissa Legal Services Committee to assist Gania Gagaria in the matter, has filed an affidavit for Gania Gagaria wherein it is mentioned as follows:-

"2. That I am the Brother-in-law of the Appellant Jata @ Sanatan Hessa.



3. That the copy of the School Transfer Certificate which has been filed before this Hon'ble Court was not handed over by me to the conducting Counsel of the appellant and I had submitted the said certificate to the appellant at the time of 'Mulakat' while he was in custody in the year 2018.

4. That, as per the request of my Father-in-law and Mother-in-law I had taken that School Transfer Certificate from them and handed over the same to the appellant at the jail.

5. That, I have no knowledge regarding the Certificate from where my in-laws had collected the same and only on good faith I had taken the same from them and handed over it to the appellant.

6. That before handing over the School Transfer Certificate to the appellant I had never come in contact with the concerned Counsel conducting the appeal.

7. That only on belief and faith I had taken the certificate from my in-laws and had given it to the appellant, hence any mistake done in my part may kindly be pardoned by this Hon'ble Court.

8. That I undertake not to commit any such mistake in future.

9. That, I humbly beg unconditional apology with folded hands before your lordship.

10. That, the facts stated above are true to the best of my knowledge and belief."

It is pertinent to note that when the matter was taken up on 27.08.2024, Mr. Nityananda Panda, Advocate filed an affidavit which is dated 27.08.2024 in which he has mentioned that Gania Gagaria, the brother -in- law of the appellant handed over the School Transfer Certificate (for short 'S.T.C.') to him and accordingly, the same was



annexed to the interim application. When Gania Gagaria appeared before this Court on 03.09.2024, he stated before us that his mother-in-law handed over the said S.T.C. to him which he produced before the learned Advocate. However, in the affidavit in Paragraph-3 of the affidavit filed today by Gania Gagari, a completely different stand has been taken that the S.T.C., which was filed, was not handed over by him to the conducting counsel but he had handed over such certificate to the appellant at the time of 'Mulakat' while he was in custody in the year 2018 on the request of his parents-in-laws. Gania Gagaria submitted that his statement made on the affidavit is correct. However, Mr. Nityananda Panda, learned counsel for the appellant sticks to his earlier version that Gania Gagaria handed over the school transfer certificate to him for filing this interim application.

In view of the contradictory stand taken by Gania Gagari when he appeared before this Court on 03.09.2024 and in the affidavit filed today, we would have taken strong action against him but since he has tendered unconditional apology and further stated that his mother has died two days back, in support of which, an affidavit is filed today by Gania Gagari and further submitted that he is to perform the obsequies ceremony and that he has already remained in custody since 03.09.2024, taking a lenient view, we do not intend to proceed further with this contempt proceeding and accordingly, the same is dropped.

Punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but also the duty of the Court to uphold and maintain the dignity of Courts and majesty of law which may call for such extreme step. If for proper administration of justice, it is required to take strict view, it should not hesitate in wielding the potent weapon of contempt.

Before parting with the case, we want to make it clear that



sometimes forged medical documents, forged date of birth certificates and forged school certificates are being filed before this Court in different cases to get relief and most of the times, the Advocate's Clerks swear affidavit in filing such documents for which they are made accountable in case of any forgery. It has also been brought to the notice of this Court that Advocate's Clerk by reposing faith and trust on their advocates, swear affidavits and the Court trusts on the Advocates, who are the Officers of the Court and a duty is cast upon them to bring truth to this Court.

Against this backdrop, it is pertinent to remind the legal fraternity the immortal words of His Lordship Hon'ble Shri Justice Radha Charan Patnaik who, in the case of **Bhabani Shankar Tripathy -Vrs.- Secretary to the Government of Orissa, Home Department & Anr. reported in 1991 SCC OnLine Ori 165**, had cautioned the Advocates to desist from actions of cavalier fashion and to remain abided by the strong ethics and morality that the profession demands. His Lordship had likened the Court to a temple and the lawyers as its priests and observed as follows:

"1. The High Court, the Apex Court of the State, is not a mere lifeless edifice of bricks and mortar standing on a parcel of land. It is a living entity - the Bar being its heart and soul; the other adjuncts are its limbs assisting in dispensation of justice.

2. High Court is a temple; its presiding deity is Justice. Lawyers are its priests. Rest are votaries discharging their assigned role. x x x

3. The Bar is not a mere conglomerate of law Graduates. Its glory is its tradition which is not acquired but grows in course of time, over the ages by the consecrated and dedicated service rendered to the cause of justice by the members by their sweat, toil and tears."

It is most unfortunate when priests undermine the sanctity



and purity of the temple; disregard the virtues which bind together the entire religion, which is the legal profession in our case. Just like sacrileges committed by the priests are severest of sins, violation of the principles governing this noble profession by the Advocates is desecration of not only the Constitution but also the very legal edifice of this country.

The observations made by His Lordship Hon'ble Mr. Justice V.R. Krishna Iyer in the case of **Bar Council of Maharashtra -Vrs.- M.V. Dabholkar reported (1976) 2 Supreme Court Cases 291** never get old and worthwhile to be reproduced here:

“15...And the vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice - social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallized into rigid rules but felt by the collective conscience of the practitioners as right.”

It would not be out of context to also refer to the following observations made by the Hon'ble Supreme Court in the case of **J.S. Jadhav -Vrs.- Mustafa Haji Mohamed Yusuf reported in (1993) 2 Supreme Court Cases 562:**

8. Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and earnestness of endeavour are the two wings that will bear aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades. It will



be useful to quote what Sharaswood said of this profession:

"A lawyer, without the most sterling integrity, may shine for a while with meteoric splendour; but his light will soon go out in blackness of darkness. It is not in every man's power to rise to eminence by distinguished abilities. It is not in every man's power, with few exceptions, to attain respectability, competence, and usefulness. The temptations, which beset a young man in the outset of his professional life, especially if he is in absolute dependence upon business for his subsistence, are very great. The strictest principles of integrity and honor are his only safety. Let him begin by swerving from truth or fairness, in small particulars, he will find his character gone - whispered away, before he knows it. Such a one may not indeed be irrecoverably lost; but it will be years before he will be able to regain a firm foothold. There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well that it is so. The things we hold dearest on earth, our fortunes, reputations, domestic peace, the future of those dearest to us, nay, our liberty and life itself, we confide to the integrity of our legal counsellors and advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate above all things, truth, simplicity and candor. They are cardinal virtues of a lawyer. Let him always seek to have a clear understanding of his object: be sure it is honest and right and then march directly to it. The covert, indirect and insidious way of doing anything, is always the wrong way. It gradually hardens the moral faculties, renders obtuse the perception of right and wrong in human actions, weighs everything in the balance of worldly policy, and ends most generally, in the practical adoption of the vile



maxim, 'that the end sanctifies the means'."

Therefore an exacting standard is what is expected of an advocate."

Advocates are the officers of the Court. They are wheels of justice. Administration of justice mostly depends upon the fiduciary relationship shared by the Bar and the Bench. The trust which reposed on the legal professionals by the Court is of utmost good faith. Needless to say, let alone affidavits, the Courts do not think twice before presuming any document filed by an Advocate to be genuine. Justice is often metaphorically termed to be blind, but the officers of Courts must not dare to betray the trust of the Bench deeming the Judges to be sightless. They may not forget that it is this very justice delivery system which provides the Judges with farsightedness and confers extraordinary powers on their shoulders to ensure that blind-eye of the lady of justice does not make the society believe that the entire justice delivery system is visionless. Fraud played on this Court by an Advocate or for that matter by even an Advocate's clerk is a severe form of contemptuous attitude.

It is the responsibility of the Advocate and the Advocate's clerks to bring correct state of affairs before the Court and their attempt should not be to misguide the Court in any manner. If the Advocate or the Advocate's Clerk has no personal knowledge about a particular document which is produced by a party, then it is to be verified properly before bringing the same on record and it is also better to ask the concerned party to swear the affidavit. A Single Bench of this Court in the case of **Thabir Sagar -Vrs.- State of Odisha reported in 2021 SCC OnLine Ori 679**, had discouraged Advocate's Clerks from swearing affidavits and had also laid down certain guidelines to be adhered while swearing affidavits, which are as follows:

"21. This practice of advocate's clerks filing affidavits is



unacceptable. The Registry is directed to ensure that steps are taken forthwith to stop the practice of accepting such affidavits which form part of petitions/applications under the original jurisdiction of the Court, made in gross violation of Rule 26 of the Orissa High Court Rules.

22. A conjoint reading of the abovementioned Rules thereby lead this Court to an irresistible conclusion that:

i. An affidavit must strictly be restricted to the facts that the deponent is able to prove are within his own knowledge;

ii. In certain situations, i.e., in interlocutory applications, if the deponent chooses to rely on other sources on which he bases his belief, the details of such person, document, etc. must clearly be stated and it must be explained how the information was procured;

iii. An affidavit may be presented either by the petitioner, or the declarant or the Pairokar, or advocate or such person as duly appointed in writing only;

iv. If a petition is filed from the judgment or order of a Subordinate Court, where the facts are borne out by the records of the Court, an affidavit signed and dated by the Advocate's Clerk may be accepted as per Rules; and

v. Any affidavit not in complete compliance with the provisions shall not be relied upon or used."

Despite of such guidelines, Mr. Danardan Sethi, Advocate's Clerk has sworn the affidavit. Furthermore, Mr. Nityananda Panda, Advocate did not think it proper to mention the source of the document he sought to rely upon, i.e. the S.T.C. This omission on the part of the Advocate was indeed the root cause which ultimately led to this proceeding which could have been easily avoided.

Notwithstanding the aforesaid Mr. Nityananda Panda, Advocate so also Mr. Danardan Sethi, Advocate's Clerk assures this



Court that such type of mistakes/omission/commission shall not recur in the future and they will try their level best to uphold the majesty of the Court.

Since the relief sought for in this interim application is based on a forged document, we are not inclined to entertain this interim application.

Accordingly, the interim application stands dismissed.

A free copy of the order be handed over to the learned counsel for the State for compliance.

The Registrar (Judicial) shall communicate the order forthwith to the learned S.D.J.M. (Sadar), Cuttack, who shall release Gania Gagaria from custody forthwith.

(S.K. Sahoo)
Judge

(Chittaranjan Dash)
Judge

CRLA No.389 of 2020

21. Mr. Nityananda Panda, learned counsel for the appellant submits that he does not want to continue as an advocate for the appellant Jata @ Sanatan Hessa.

Let intimation be sent by Registrar (Judicial) of this Court to the learned trial Court to intimate the same to the appellant Jata @ Sanatan Hessa so that he can engage a new counsel. The appellant shall also be apprised that if he is unable to engage a counsel on his own, a counsel from the panel of the High Court of Orissa Legal Services Committee shall be engaged on his behalf to conduct this appeal.



A report to that effect be submitted by the learned trial Court to this Court within a period of two weeks from the date of receipt of a copy of this order from Registrar (Judicial).

(S.K. Sahoo)
Judge

(Chittaranjan Dash)
Judge

PKSahoo