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THE HIGH COURT OF MADHYA PRADESH
MCRC-10898-2021

Smt. Kamla @ Sarla Yadav Vs. State of MP

Gwalior, Dated : 25.02.2021

Shri Mahavir Pathak, Counsel for the applicant.

Shri Vinod Pathak, Panel Lawyer for the respondent/State.

Case diary is available.

This is sixth application filed under Section 439 of Cr.P.C. for grant of bail.

The applicant has been arrested on 07.08.2018 in connection with Crime No.368/2017 registered by Police Station Padav, District Gwalior for offence punishable under Sections 498-A, 304-B, 34 of IPC.

Fourth application was dismissed by this Court by order dated 29.07.2019 passed in M.Cr.C. No. 28730/2019, against which the applicant had preferred a SLP (Criminal) Diary No. 45740/2019 before the Supreme Court, which was dismissed by the Supreme Court by order dated 24.01.2020 with a direction to the Trial Court to complete the trial within a period of four months from the date of communication of the order.

The applicant has not filed the copies of the order-sheets of the Trial Court to show that the applicant is not responsible for the delay.

Furthermore, the disturbing fact is that the applicant has suppressed the fact of filing of SLP and its dismissal by the Supreme Court.

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Clause 2 of the bail application reads as under:-

“2. यहकि, वर्तमान आवेदन के अतिरिक्त आवेदिका का अन्य कोई समान आवेदन माननीय सर्वोच्च न्यायालय अथवा माननीय उच्च न्यायालय के समक्ष ना तो प्रस्तुत किया गया है, ना ही विचाराधीन है और ना ही निराकृत हुआ है।”

Even the applicant has not filed the copy of the order dated 24.01.2020 passed by the Supreme Court in the SLP. Thus, it is clear that in spite of the specific clause in the format of bail application, the applicant deliberately suppressed the fact of dismissal of SLP by the Supreme Court.

While deciding the previous bail application, this Court had mentioned the fact of dismissal of SLP by the Supreme Court in detail and the counsel for the applicant was so daring that in spite of filing the copy of last order-sheet of the Court, in which the details of the Supreme Court order were mentioned, did not declare that his SLP has already been dismissed by the Supreme Court. Even the during course of argument, this fact was not disclosed by Shri Pathak. When the fact of non-disclosure of dismissal of S.L.P. By Supreme Court was pointed out to Shri Pathak, then he did not show any remorse. Thus, it is a clear case of contempt by misleading this Court.

When this Court was inclined to issue Contempt Notice, then it was submitted by Shri Mahavir Pathak that contempt notice may not be issued and he is ready to submit his written apology.

Accordingly, dictation of the order was deferred for some time,

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in order to facilitate Shri Pathak to file his affidavit. Thereafter, Shri Pathak filed his affidavit, which reads as under:-

माननीय उच्च न्यायालय मध्यप्रदेश खण्डपीठ ग्वालियर

एम.सी.आर.सी 10898 / 2021

आवेदिका-----

कमला उर्फ सरला

बनाम

अनावेदक-----

म.प्र. शासन

शपथपत्र

नाम—महावीर पाठक पिता का नाम—स्व. श्री रघुराज किशोर पाठक
आयु—47 वर्ष, व्यवसाय—वकालत, निवासी—लाईन नम्बर—14 मकान
नम्बर—55 बिड़ला नगर, हजीरा जिला ग्वालियर म.प्र.

मैं शपथकर्ता शपथपूर्वक सत्य कथन करता हूं कि—

1. यहकि, माननीय न्यायालय के समक्ष मेरे द्वारा उक्त जमानत आवेदन पत्र प्रस्तुत किया गया था।
2. यहकि, मेरे द्वारा प्रस्तुत जमानत आवेदन में माननीय सर्वोच्च न्यायालय द्वारा पारित आदेश स्पेशल लीव पिटीशन दिनांक—24—01—20 (क्रिमिनल) डायरी नम्बर—45740 / 2019 का उल्लेख लिखने से रह गया है उक्त त्रुटि के लिए मैं क्षमा मांगता हूं यह मेरी त्रुटि है मेरे द्वारा उक्त त्रुटि जानबूझकर नहीं की गयी, भविष्य मे ऐसी त्रुटि नहीं करूंगा इसके लिए मैं क्षमा मांगता हूं। उक्त तथ्यों के समर्थन मे शपथपत्र प्रस्तुत है।

दिनांक:—25—02—21

हस्ताक्षर

स्थान—ग्वालियर

सत्यापन

मैं शपथपूर्वक सत्यापित करता हूं कि—उक्त शपथपत्र के पद क्रमांक—1 व 2 मे वर्णित समस्त तथ्य सत्य एवं सही है और ना ही कुछ छिपाया गया है।

दिनांक:—25—02—21

हस्ताक्षर

स्थान—ग्वालियर

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Section 52 of I.P.C. reads as under :

52. “Good faith”.—Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.

The factum of dismissal of S.L.P. by Supreme Court is specifically mentioned in the previous order of this Court, by which the 5th application of the applicant was dismissed. The Copy of the said order of the High Court has also been filed by the applicant. Thus, it cannot be said that non-disclosure of factum of dismissal of S.L.P. by Supreme Court was bonafide mistake of the Lawyer because the Counsel was aware of the fact of dismissal of S.L.P. by Supreme Court and he also cannot claim that he could not discover the information inspite of his due attention and care. Thus, the act of Shri Pathak is a glaring example of unfair means.

Further, this Court would like to mention about the duties of a lawyer towards the Court.

The Supreme Court in the case of **R.K. Anand Vs. Delhi High Court**, reported in **(2009) 8 SCC 106** has held as under :

“Role of the Lawyer

331. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Public Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation.

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The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct.

332. We have viewed with disbelief Senior Advocates freely taking part in TV debates or giving interviews to a TV reporter/anchor of the show on issues that are directly the subject-matter of cases pending before the court and in which they are appearing for one of the sides or taking up the brief of one of the sides soon after the TV show. Such conduct reminds us of the fictional barrister, Rumpole, “the Old Hack of Bailey”, who self-deprecatingly described himself as an “old taxi plying for hire”. He at least was not bereft of professional values. When a young and enthusiastic journalist invited him to a drink of Dom Perignon, vastly superior and far more expensive than his usual “plonk”, “Château Fleet Street”, he joined him with alacrity but when in the course of the drink the journalist offered him a large sum of money for giving him a story on the case; “why he was defending the most hated woman in England”, Rumpole ended the meeting simply saying

“In the circumstance I think it is best if I pay for the Dom Perignon.”

333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and

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whose members are monetarily accessible and affordable to the people.

334. We are glad to note that Mr Gopal Subramaniam, the amicus fully shared our concern and realised the gravity of the issue. In course of his submissions he eloquently addressed us on the elevated position enjoyed by a lawyer in our system of justice and the responsibilities cast upon him in consequence. His written submissions begin with this issue and he quotes extensively from the address of Shri M.C. Setalvad at the Diamond Jubilee Celebrations of the Bangalore Bar Association, 1961, and from the decisions of this Court in *Pritam Pal v. High Court of M.P. [1993 Supp (1) SCC 529]* (observations of Ratnavel Pandian, J.) and *Sanjiv Datta, In Re [(1995) 3 SCC 619]* (observations of Sawant, J. at pp. 634-35, para 20). We respectfully endorse the views and sentiments expressed by Mr M.C. Setalvad, Pandian, J. and Sawant, J.

335. Here we must also observe that the Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. Indeed the Bar Council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society.”

The Supreme Court in the case of **Amit Chanchal Jha v. High**

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Court of Delhi, reported in (2015) 13 SCC 288 has held as under :

“17. This Court has earlier acknowledged the falling standards of certain members of the Bar and it has become necessary to reiterate the said view on account of repeated instances which are being highlighted. In *R.K. Anand v. Delhi High Court*, this Court expressed its grave concern and dismay on the decline of ethical and professional standards among lawyers as follows: (SCC pp. 205-06, paras 331, 333 & 335)

“331. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Public Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct.

* * *

333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

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335. Here we must also observe that the Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. Indeed the Bar Council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society.”

18. We may also recall the observations of this Court in *Ministry of Information & Broadcasting, In re*, that the legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. The honour as a legal profession has to be maintained by its members by their exemplary conduct both in and outside the court. The lawyer has to conduct himself as a model for others in his profession as well as in private and public life. Society has the right to expect from him ideal behaviour. This Court observed: (SCC pp. 634-35, para 20)

“20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an

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individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.”

19. In *Bar Council of Maharashtra v. M.V. Dabholkar*, it was observed: (SCC p. 298, para 15)

“15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is

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unbreakable. 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 crystallised into rigid rules but *felt* by the collective conscience of the practitioners as right:

‘It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice, to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code which would drive irresponsible Judges from the profession. Without such a conscience, there should be no Judge’ [Hastings, Hon John S. : Judicial Ethics as it Relates to Participation in Money-Making Activities — Conference on Judicial Ethics, p. 8. The School of Law, University of Chicago (1964)].

—and, we may add, no lawyer. Such is the high, standard set for professional conduct as expounded by courts in this country and elsewhere.”

(emphasis in original)

The Supreme Court in the case of **P.D. Gupta Vs. Ram Murti**

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reported in (1997) 7 SCC 147 has held as under :

“A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as an officer of the court.”

The Supreme Court in the case of **D.P. Chadhu Vs. Triyugi**

Narain Mishra reported in (2001) 2 SCC 221 has held as under :

“24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reins, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reins, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called — and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.

25. An advocate while discharging duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client

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to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.”

The Supreme Court in the case of **O.P. Sharma Vs. High Court of Punjab & Haryana** reported in **(2011) 6 SCC 86** has held as under :

“17. The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation’s administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of a galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the court in the administration of justice.

* * * *

20. In *R.D. Saxena v. Balram Prasad Sharma* this Court held as under: (SCC p. 281, para 42)

“42. In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could

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be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country.”

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24. Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech. Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice. It plays its part in helping to secure the protection of other fundamental human rights, freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. But they equally owe countervailing duty to maintain dignity, decorum and order in the court proceedings or judicial processes. Any adverse opinion about the judiciary should only be expressed in a detached manner and respectful language. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary [vide *D.C. Saxena (Dr.) v. Chief Justice of India*].

38. An advocate’s duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client’s relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the

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public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system.

39. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules.

40. As a rule, an advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and actions rather than being adamant on an unwarranted and uncalled for issue.”

Thus, it is clear that a lawyer should act as an officer of Court and should not do anything which would erode his credibility. If a Lawyer has professional duty towards his client, then he has duty towards the Court by maintaining decorum and by refusing to indulge in any unfair means. Playing fraud on the Court is certainly an unfair means, which cannot be ignored at any cost.

Although in the light of Section 52 of I.P.C., the explanation given by Shri Pathak is not worthy of acceptance, however, by adopting a lenient view, the affidavit is taken on record and a **stern**

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warning is issued to Shri Mahavir Pathak not to indulge in such condemnable practice in future.

So far as the merits of the case is concerned, this Court while dismissing the last application of the applicant on 13.07.2020 had specifically observed “that the application is completely silent as to when the order of the Supreme Court was communicated to the Trial Court. Further, the order-sheets of the Trial Court have not been filed”.

Be that whatever it may.

Without there being any order-sheet of the Trial Court on record, it is difficult for this Court to adjudicate as to whether the applicant is responsible for the delay in trial or not.

As the applicant has tried to obtain the bail order by suppressing the factum of dismissal of SLP by the Supreme Court, accordingly, this application is **dismissed with cost of Rs.5,000/-** to be deposited in the Registry of this Court within a period of seven days from today.

**(G.S. Ahluwalia)
Judge**

Abhi