

Court No. - 88

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2835 of 2024

Applicant :- Shakti

Opposite Party :- State of U.P.

Counsel for Applicant :- Dheeraj Pandey, Nand Kishor Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and Sri Kamlesh Singh, Oath Commissioner.

1-A. In the present case on 14.03.2024, a supplementary affidavit dated 24.02.2024 was filed on behalf of counsel for the applicant. The supplementary affidavit filed on behalf of the applicant did not contain signature of deponent, as well as, of counsel for the applicant, however, the affidavit has been executed by the Oath Commissioner-Sri Kamlesh Singh.

2. The Oath Commissioners are appointed by the competent authority under Chapter IV Rule 1 of the Rules of the Court. The Oath Commissioners are required to maintain highest standard of professional ethics and working.

3. In the past, it is found by this Court that the Oath Commissioners are executing the affidavits without properly scrutinizing the same. The affidavits on the previous occasion also come up before this Court where signature of the deponent was absent in the affidavit, however, the Oath Commissioner has executed the same. Such illegal act was pointed out to the members of the bar on the previous occasions and the members of the bar were also requested to ensure that the affidavits being filed before the court are executed in a proper manner. In some of the case the Oath Commissioners also appeared before the court and they were also requested to ensure that the affidavits are executed in proper manner. Despite request of this Court on several occasions to the members of the bar the position has not changed.

4. On previous occasion, this Court had referred one matter to the competent authority when it was found that the affidavit was not executed in accordance with law and there was negligence on the part of Oath Commissioner, however, despite reference to the competent authority it has been informed that action has not been

taken in the previous matter. The inaction on such acts of Oath Commissioners has resulted in blatant defiance by the Oath Commissioner in executing the affidavits. The present matter is a glaring example of how the Oath Commissioners are acting in execution of the affidavit. It is duty of competent authority to maintain highest level of standard of Oath Commissioners and to weed out dead wood timely before it is too late. The Registrar General of this Court on previous occasions has also been informed about the conduct of some of the Oath Commissioners.

5. The purity and sanctity of judicial proceedings are required to maintain by members of the bar. The Bar Association has an important role to educate its members with regard to common errors being found in the affidavits being filed before the Court. One of the objects of the Bar Association is to uplift the working of the members of the bar to the highest standard of legal service. In the past some of the office bearers of the Bar Association was requested by the Court to examine and take steps in this respect so that affidavits are filed before the court in a proper manner, however, this court has not been informed as to the steps taken by the said office bearers or the Bar Association.

6. The filing of improper and incorrect affidavits before the Court interferes in the administration of justice and also delays the proceeding of the cases as the cases are being adjourned on the ground that the affidavits are not being properly sworn. This Court has no other option but to initiate action. The primary responsibility of filing proper affidavits is upon the litigant and the counsel engaged by the litigant. The Oath Commissioners are also enjoined with the duty to execute the affidavits in the proper manner.

7. In view of the fact that the affidavit was executed by Oath Commissioner without signature of deponent and without identification and signature of the counsel for applicant, this Court by order dated 14.03.2024 directed the Oath Commissioner to file his affidavit to show cause why he should not be removed from the office of Oath Commissioner.

8. In pursuance to the aforesaid order, Oath Commissioner-Sri Kamlesh Singh has filed his explanation/affidavit dated 21.03.2024 before the Registrar General of this Court. Para-4 of the aforesaid affidavit is quoted herein below:

"That, on 24.02.2024 the clerk to Shri Nand Kishor Mishra the counsel for the applicant came along with a supplementary

affidavit to be sworn by Yogesh son of Tejpal Singh before the deponent and after pursuing the supplementary affidavit when the deponent found that the same did not have the signature of Yogesh/deponent as well as the counsel Sri Nand Kishor Mishra, the deponent asked the clerk firstly to get sign the supplementary affidavit by Yogesh/deponent s/o Tejpal and the counsel for the applicant, then the clerk to the counsel for the applicant told that he is in a hurry and would get signed the supplementary affidavit immediately after executing the affidavit by the deponent/Yogesh and on believing statement of the clerk the deponent executing the affidavit."

9. It is to be seen that in the affidavit of Oath Commissioner-Sri Kamlesh Singh, it has been stated that prior to executing the affidavit he had seen that the deponent had not signed the affidavit, however, the clerk of the counsel for the applicant told him that he is in a hurry, therefore, he would get the supplementary affidavit signed by deponent after execution of the affidavit by Oath Commissioner and on believing the statement of the clerk of counsel for the applicant, the affidavit was executed by the Oath Commissioner.

10. A perusal of the aforesaid affidavit of the Oath Commissioner would certainly demonstrate that the deponent was not before the Oath Commissioner at the time when the affidavit was sworn. As per procedure, the deponent is required to appear before the Oath Commissioner and signature are made by the deponent and thereafter the Oath Commissioner should execute the affidavit and put his seal and signature confirming the affirmation of the affidavit before him. In the present case the Oath Commissioner was having knowledge that the affidavit did not contain the signature of the deponent and despite having knowledge of the same, the Oath Commissioner signed and sealed on affidavit which is not only illegal but is a fraud on the Court.

11. Sri N.K. Mishra, learned counsel for the applicant has also appeared before this Court and admits that there is a mistake on the part of Sri Deepak Mishra, who works in his office as clerk. On the affidavit there was neither signature of the deponent nor of counsel for the applicant.

12. Oath Commissioner-Sri Kamlesh Singh has admitted that he had knowledge of the fact that prior to executing the affidavit, the affidavit did not contain the signature of the deponent, however, despite knowledge he has proceeded in executing the affidavit without there being signature of the deponent. Such a conduct of

the Oath Commissioner-Sri Kamlesh Singh is not warranted under law. Sri Kamlesh Singh has proceeded in executing the affidavit knowingly the fact that the affidavit does not contain signature of the deponent. Sri Kamlesh Singh has misconducted himself as Officer of the Court. This Court has no other option except to direct removal of Sri Kamlesh Singh as Oath Commissioner.

13. As Sri Kamlesh Singh has not proceeded in accordance with law, accordingly, Sri Kamlesh Singh is hereby removed from the designation of Oath Commissioner with immediate effect. It is further directed that for the next three years his name would not be considered to be entered in the list of Oath Commissioner.

14. Sri Kamlesh Singh is hereby directed to submit the Seal and Registers related to Oath Commissioner with the Registrar General of this Court within ten days from today, if already not submitted.

15. Sri N.K. Mishra, learned counsel for the applicant has fairly submitted that the affidavit did not contain signature of the deponent, as well as, signature of the counsel for the applicant and the mistake was on the part of his office.

16. It is to be seen that the supplementary affidavit dated 24.02.2024 is not a proper affidavit and does not contain the signature of the deponent as such the aforesaid supplementary affidavit is hereby rejected with cost of ₹ 10,000/-. The aforesaid cost is required to be deposited within 15 days from today with the Registrar General of this Court.

17. The directions contained in the order dated 14.03.2024 directing the registry for scrutinizing the affidavits and with regard to appointment and removal of Oath Commissioners shall continue and the administrative authorities of the High Court shall also act in aid of the directions contained in order dated 14.03.2024.

18. Let the compliance report be submitted by learned Registrar General.

19. Let the matter be come up again on 20th May 2024, as fresh.

Order Date :- 2.5.2024

S.Prakash