

2022 LiveLaw (SC) 490

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

ABHAY S. OKA; J.

May 13th, 2022

MISCELLANEOUS APPLICATION NO.1242 OF 2021 IN SPECIAL LEAVE PETITION (CRL.) No.7628 of 2019
SURESH CHANDRA & ORS. v. STATE OF UTTAR PRADESH

SIYA RAMAPPLICANT

Supreme Court Rules, 2013; Order IV Rule 7(b)(ii) - If the client has not signed the Vakalatnama in his presence, the AOR must ensure that it bears his endorsement as required by clause (b)(ii) of Rule 7- It is not an empty formality and therefore, it is the duty of AORs to ensure that due compliance is made with the said requirement. (Para 14)

Supreme Court Rules, 2013; Order IV Rule 7(b)(i) - If the Vakalatnama is executed in presence of the Advocate- on- Record himself, it is his duty to certify that the execution was made in his presence. This certification is not an empty formality. If he knows the litigant personally, he can certify the execution. If he does not personally know the litigant, he must verify the identity of the person signing the Vakalatnama from the documents such as Aadhaar or PAN card. (Para 14)

(Arising out of impugned final judgment and order dated 23-082019 in SLP(Crl) No. No. 7628/2019 passed by the Supreme Court of India)

For Petitioner(s) Mr. Vikas K Singh, Adv. Mr. Vikram Singh, Adv. Mr. Sham Chand, Adv. Mr. T. N. Singh, AOR; For Respondent(s) Mr. Ankit Goel, AOR Mr. Satyam Pandey, Adv.

ORDER

The Special Leave Petition was filed by showing the applicant – Siya Ram as the first petitioner along with four other petitioners, for taking exception to the judgment and order dated 26th October 2018 passed by the High Court of Judicature at Allahabad in Criminal Appeal No.1815 of 1986. The Sessions Court had convicted the petitioners under Section 302 r/w 149 of the Indian Penal Code, 1860. The High Court, by the impugned judgment, scaled down the offence to the one under Section 304-Part-I of the Indian Penal Code. The petitioners were sentenced to undergo rigorous imprisonment for ten years and pay a fine of Rs.15,000/- each.

2. By the order dated 29th April 2019, the learned Chamber Judge rejected the application for grant of exemption from surrendering. The learned Chamber Judge, by the order dated 15th July 2019, granted time of two weeks to the applicant (first petitioner in the Special Leave Petition) to surrender, failing which the Special Leave Petition *qua* the first petitioner/applicant herein, was to stand dismissed for non-prosecution without further reference to the Court.

3. The applicant did not surrender within the extended time, and therefore, the Special Leave Petition stood dismissed insofar as the applicant is concerned. By the order dated 23th August 2019, the said Special Leave Petition was dismissed *qua* the other petitioners.

4. After the application for grant of exemption from surrendering was rejected by this Court on 29th April 2019, the applicant/first petitioner did not surrender. Therefore, the Sessions Court, Etawah, Uttar Pradesh passed an order directing the petitioners to be taken into custody. As disclosed in the Affidavit filed by the Jail Superintendent of the District Jail at Ghaziabad, State of Uttar Pradesh, the applicant was taken into custody on 04th October 2019. The applicant, through his present advocate, filed Special Leave Petition bearing Diary No.20835 of 2020 against the same judgment. The Registry of this Court brought to the notice of the advocate that the applicant/first petitioner along with four others had earlier filed the Special Leave Petition (Crl.) No.7628 of 2019 (Diary No.11324 of 2019) for challenging the same judgment. According to the case made out in this application, the present advocate for the applicant enquired with the applicant through his son whether he had filed the Special Leave Petition (Crl.) No.7628 of 2019. The applicant informed his advocate that he had not filed any such petition. Therefore, the advocate for the applicant addressed a letter on 18th January 2021 to the Superintendent of Jail at Etawah, requesting him to enquire. According to the applicant, the Superintendent of Jail at Etawah informed the Advocate by his letter dated 27th January 2021 that after enquiring from the second to fifth petitioners in the Special Leave Petition (Crl.) No.7628 of 2019, it was revealed that the applicant – Siya Ram had not filed the Special Leave Petition (Crl.) No.7628 of 2019 along with other petitioners.

5. On the application made by the advocate for the applicant, the learned Chamber Judge permitted the advocate to inspect the file of the Special Leave Petition (Crl.) No.7628 of 2019. On 30th June 2021, when the advocate inspected the file, he noted that the signature of the applicant appearing on the Vakalatnama filed in the Special Leave Petition (Crl.) No.7628 of 2019, was in Hindi language. The applicant has stated that he being an illiterate person, used to put his thumb impression. Reliance is placed on Vakalatnama in Special Leave Petition (Crl.) Diary No.20835 of 2020 filed by the applicant which bears his thumb impression. Even a reliance is placed on the Custody Certificate dated 20th December 2019, issued by the Jail Superintendent of District Jail at Etawah, which bears the left thumb impression of the applicant. In short, the contention is that the Special Leave Petition (Crl.) No.7628 of 2019 was not filed by the applicant and therefore, a prayer has been made for recalling the order dated 15th July 2019 passed in the Special Leave Petition (Crl.) No.7628 of 2019.

6. On 07th January 2022, the learned Chamber Judge noted the contentions raised by the applicant and passed the following order:

“.....This court has no difficulty in recalling the order if the Applicant/petitioner- Siya Ram has not filed the special leave petition and has also not authorized filing of the same. It is however, necessary to find out the true facts under which Mr.S(*name masked*), Advocate-on-Record came to file the special leave petition. This is necessary to protect him as well as other Advocates-on-Records who could be approach by unauthorized persons for filing the special leave petitions. Under these circumstances, we would direct the Registry to enquire into the matter and submit a report. As notice has not been issued in the matter, we do not have the advantage of asking the Counsel for the State of U.P. to enquire into the matter and get information. Let a copy of the SLP paper book with the Interlocutory applications be served on the standing counsel of Uttar Pradesh for getting the necessary information.

The enquiry officer shall also discuss the matter with the President of Supreme Court Advocates on Record Association.

List these I.A's after report from the Registry.”

7. Accordingly, Mr Mahesh T. Patanakar, Additional Registrar of this Court, was appointed as an Inquiry Officer. He recorded statements of Mr.S(*name masked*), AOR who had filed the Special Leave Petition (Crl.) No.7628 of 2019 and his advocate colleague Mr.R(*name masked*). The Inquiry Officer also interacted with the office bearers of the Supreme Court Advocates-on-Record Association (SCAORA) on the issue. The conclusion drawn by the Inquiry Officer vide his report dated 29th January 2022 is that it does not seem probable that somebody impersonated accused – Siya Ram in presence of the other four co-accused. However, the Inquiry Officer noted that the only fact in favour of the applicant is that the vakalatnama bears his signature and not his thumb impression. He has taken a note of various suggestions made by the President and the Vice-President of SCAORA to avoid such controversy in future.

8. By the order dated 08th April 2022, this Court sought the assistance of the learned counsel representing the State of Uttar Pradesh. Accordingly, the affidavit dated 04th May 2022 of the Jail Superintendent of District Jail at Ghaziabad has been filed on record by the learned counsel appearing for the State of Uttar Pradesh. After the applicant was taken into custody on 04th October 2019, he has been detained in the said District Jail at Ghaziabad. Along with the affidavit, the Jail Superintendent has annexed a photocopy of the statement of the applicant dated 25th April 2022 as well as the statement of the second to fifth petitioners in the Special Leave Petition (Crl.) No.7628 of 2019. The statement of the applicant bears his thumb impression, in which he has clearly stated that he has not filed the Special Leave Petition (Crl.) No.7628 of 2019. He has also stated that he is an illiterate person.

9. Thus, after making an inquiry, there is an affidavit filed by the Jail Superintendent at Etawah. The statement of the applicant annexed to the affidavit records that he being an illiterate person, is unable to sign and therefore, he is affixing his thumb impression on documents.

10. I have perused the statement of Mr.S, AOR recorded by the Inquiry Officer, in which he has stated that the applicant had met Mr.R, an advocate working with him and that he had not met any of the petitioners. I have also gone through the statement of Mr.R, who claims that the petitioners had approached him through their local advocate at Allahabad. He stated that all of them visited his office-cum-residence and signed the Vakalatnama in his presence. He stated that the applicant signed the affidavit in support of the Special Leave Petition as he was the first petitioner. It is not the case made out by Mr.R that he knew the applicant or for that matter, any other petitioners. He has not stated that anyone personally known to him had introduced the applicant to him. He has not stated that he had verified the identity of the applicant after perusing his Aadhaar or PAN Card. He has not stated that the affidavit in support of the Special Leave Petition was affirmed by the applicant in presence of a Notary Public.

11. When Mr.R did not personally know the petitioners and when they were not accompanied by a local advocate or anyone who was known to him, it was his duty to verify the identity of the petitioners who came to his office on the basis of the documents such as Adhaar card or PAN card.

12. At this stage, it is necessary to note clauses (a) and (b) of Rule 7 under Order IV of the Supreme Court Rules, 2013 (for short, 'the said Rules'), which read thus:

"7.(a) An advocate-on-record shall, on his filing a memorandum of appearance on behalf of a party accompanied by a *vakalatnama* duly executed by the party, be entitled—

(i) to act as well as to plead for the party in the matter and to conduct and prosecute before the Court all proceedings that may be taken in respect of the said matter or any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review; and

(ii) to deposit and receive money on behalf of the said party.

(b) (i) Where the *vakalatnama* is executed in the presence of the Advocate-on-Record, he shall certify that it was executed in his presence.

(ii) Where the Advocate-on-Record merely accepts the *vakalatnama* which is already duly executed in the presence of a Notary or an advocate, he shall make an endorsement thereon that he has satisfied himself about the due execution of the *vakalatnama*."

(underline supplied)

13. I have perused the Vakalatnama in the Special Leave Petition (CrI.) No.7628 of 2019. As required by sub-clause (ii) of clause (b) of Rule 7, it was the duty of Mr.S to make an endorsement on the Vakalatnama that he has satisfied himself about the due execution of the Vakalatnama. It was his duty to make an endorsement as required by clause (b)(ii) of Rule 7 of the said Rules.

14. Thus, if the Vakalatnama is executed in presence of the Advocate-on-Record himself, it is his duty to certify that the execution was made in his presence. This certification is not an empty formality. If he knows the litigant personally, he can certify the execution. If he does not personally know the litigant, he must verify the identity of the person signing the Vakalatnama from the documents such as Adhaar or PAN card. If the client has not signed the Vakalatnama in his presence, the AOR must ensure that it bears his endorsement as required by clause (b)(ii) of Rule 7. Compliance with Clause (b)(ii) of Rule 7 of the said Rules is very important. It is not an empty formality and therefore, it is the duty of AORs to ensure that due compliance is made with the said requirement. Though we find that in many cases, hypertechnical objections are being raised by the Registry, non-compliance with clause (b)(ii) of Rule 7 is being completely overlooked. The Vakalatnama of the applicant, in this case, did not bear certification as required by sub-clauses (i) or (ii) of clause (b) of Rule 7 of the said Rules.

15. In view of the aforesaid discussion, the contention raised by the applicant that he did not sign the Vakalatnama in the Special Leave Petition (CrI.) No.7628 of 2019 and that he did not sign the affidavit in support thereof, will have to be accepted. However, the action of taking the applicant into custody cannot be nullified. Accordingly, the application is disposed of by holding that the Special Leave Petition (CrI.) No.7628 of 2019 was not filed by the applicant and that the same shall be treated as a Special Leave Petition filed only by second to fifth petitioners.

16. It will be advisable if the Registry issues a Circular inviting the attention of the Advocates-on-Record to this order as well as to the requirement of making compliance with clause (b) of Rule 7 of Order IV of the said Rules.

17. The Miscellaneous Application is disposed of in the above terms.

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