

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA. No. 18 of 2019

Date of Order: 25.02.2020

The Union of India &Ors.

Vs. Shri. Balbir Singh Yadav

Coram:

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Debnath, CGC

For the Respondent(s)

: Ms. S.A. Shallam, Adv

Mr. A. Kumar, Advocate General

1. During the course of arguments, it transpired that Miss. Shirley Amity Shallam, learned counsel who appears for the respondent has filed her own affidavit, stating certain facts on oath and claiming them to be based on her personal knowledge.

2. Although an advocate representing his/her client can give legal advice to him/her but he/she is not supposed to file an affidavit on the basis of personal knowledge about the case. The affidavit filed by Miss Shirley Amity Shallam therefore cannot be accepted. We, in taking this view, are supported by the decision of the Gauhati High Court reported in ***Raj Kumar Prasad vrs. State of Arunachal Pradesh & Ors. (2006) 2 GLR 597*** in paras 36-40 of which, it was held as under:-

“36. In T.K. Krishnaswamy v. Smt. Maniyamma AIR 2001 AP 37, the Supreme has observed as follows:

In fact, as held in the case of Sutharsana v. Samarapuri AIR 1928 Mad. 690, a Division Bench of Madras High Court observed that though vakils and other practitioners of the Court, when they are called upon to speak to facts known to them by way of evidence in any litigation, are not different from other witnesses and would have to depose like all other witnesses, still a well recognized practice has grown up in all Courts of accepting the statements from the

Bar of - practitioners with regard to matters in connection with the very litigation in which they are engaged as practitioners. It is further observed that for that purpose, they were really regarded as officers of Court owing a duty to the Court and it was expected that such statements would be truly made with a full realization of the sense of responsibility and that it was not necessary to insist upon their making an affidavit. (Para 9) Thus, a statement made by an advocate across the bar in respect of the matters which are in his personal knowledge on the question before the Court can be accepted. There is no reason why an affidavit sworn to by him could not be accepted. (Para 10)

37. There is no doubt that any person acquainted with the facts of the case may give an affidavit as a deponent. A statement made by an advocate (in a matter before the Court) verifiable from records or statement across the Bar in respect of matter which are in his personal knowledge, could be accepted by the Court and such advocate may not be insisted upon to support such statement by affidavit, however, there is no reason why are affidavit sworn by him could not be accepted.

38. The advocate on being engaged by a party on Vakalatnama is entitled to plead, argue and assist the Court as an officer of the Court, fairly, honestly without identifying himself with the cause or party. The advocate is not to personify the party/client and is not expected to involve himself stepping into and moving through the shoes of party/client becoming a party interested, fomenting the litigation, to achieve the end as cherished by the party. The advocate as officer of the Court when called upon to address on the facts relating to the case in which he is engaged should not be asked to file affidavit and his statements should be accepted but the advocate of Bar Council whose name is entered on State roll by virtue of becoming a different class, alone is entitled to practice, subject to the restrictions, norms and provisions of the Advocates Act as well as the rules framed by the High Court and/or by the Bar Council of India and/or by Bar Council of States; however, the Court/authority at its pleasure and in the interest of justice may permit any person (not even as an advocate) to appear in a particular case. Though not specifically provided in Advocate Act, or rules of Bar Council of India, or rules of State Bar Council, the advocate, however, has to maintain the status and role and dignity of profession of advocate. Judicial

propriety requires that advocate should not file an affidavit himself for a party as deponent in support of the averments of a petition in which he is engaged as an advocate as the affidavits are stated to be correct on facts, records, to the best of the knowledge, the nature and source of knowledge and information are to be disclosed. If the nature or knowledge of information are not disclosed the affidavit would not be as per law. The affidavit has to be made by a person or party or agent or pairokar or authorised person or power of attorney holder having cognizance of facts deposed to an affidavit disclosing clearly the status of deponent and the manner and capacity how he is authorised to swear the affidavit besides that affidavit must be in proper pro forma giving details, statements of facts, information, records, knowledge, declaration, legal advice, verification and identification. One such pro forma is provided in amendment of Allahabad made in Order 19, Rules 4 to 15, CPC.

39. An affidavit in support of writ petition must be in consonance to the provisions of Order 19, Rule 3, CPC and unless the affidavit is properly verified and is not in conformity with the rule, it may be rejected by the Court and when the matter deposed to is not based on personal knowledge but on information, the source of information should clearly be disclosed.

40. In view of the above observations and in the facts and circumstances, the affidavit in support of the present writ petition is neither in proper form nor Shri Jaiswal as an advocate is entitled to swear the same. This court is not inclined to invoke its extraordinary discretionary jurisdiction to entertain the writ petition under Article 226 of the Constitution, therefore, without commenting anything on merits, it is dismissed, however, the petitioner is at liberty to file a fresh writ petition if so advised, in consonance to the rules and law with the support of proper affidavit of relevant person.”

3. We have come across various affidavits that are generally filed by advocates before this Court on behalf of their clients and also by the litigants themselves, which contain statement of facts and the laws, both affirmed on oath, but such affidavits do not contain any verification.

4. At this stage, Mr. A Kumar, learned Advocate General pointed out that the Meghalaya High Court Rules, 2013 deals with affidavit from Rules 22 to 33, but none of them refer to the requirement of verification.

5. It is settled proposition of law that in the absence of rule framed, an application or petition filed under Article 226 of the Constitution of India, must be drawn in conformity with the provisions of the Civil Procedure Code. It is also trite that affidavits should be confined to statement of facts and should not be used as vehicle of argument. Order 6 Rule 15 CPC mandates about filing of verification which reads as under:-

“O6 R15 (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.”

6. The Supreme Court in para 17 of **A.K.K. Nambiar vrs. Union of India: AIR 1970 SC 652 (V 57 C 125)**, highlighted the importance of verification in the following terms:-

“The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In absence of proper verification, affidavits cannot be admitted in evidence.”

7. In view of the above, the Registry is directed to henceforth insist on the affidavit by the parties themselves and not by their advocates and also on the requirement of a separate verification at the foot of the affidavit, which should specify as regards the statement contained in various paragraphs of the affidavit, with reference to paragraph number, as to the following:-

- (1) which paragraph is based on personal knowledge of the party.
- (2) which paragraph is based on the information derived from the records.
- (3) which paragraph is based on the legal advice tendered to the party by his/her advocate.

8. A copy of this order may be endorsed to the Registrar General, High Court of Meghalaya, for taking required steps to bring about necessary amendment in the Meghalaya High Court Rules, 2013.

9. Since the learned counsel in the present case has filed the affidavit as per the practice prevalent in this Court, which is being followed by several other advocates, nothing said or observed in this order should be taken as a reflection on her conduct.

10. Learned counsel for the respondent prays for and is granted four weeks' time to file a fresh affidavit of the respondent himself.

11. Matter to come up on 30-03-2020.

(W.Diengdoh)
Judge

(Mohammad Rafiq)
Chief Justice



Meghalaya
25.02.2020
"Samantha PS"