IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL REVIEW No.327 of 2018

In

Letters Patent Appeal No.1311 of 2017

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Gita Devi D/o Parama Ram, W/o Manoj Kumar Ram Resident of Village - Barahoga Yadu Ram Ray Ke Tola, P.S. - Goriyakothi, District -Siwan presently resident of Village - Chandi, P.O. - Sikandarpur, P.S. - G.B. Nagar, Tarwara Block - Barahariya, District - Siwan.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Mission Director, Bihar Mahadalit Vikas Mission, Bihar, Patna.
3. The Deputy Director, District Welfare Department, Siwan.
4. The Deputy Development Commissioner, Siwan.
5. The District Magistrate, Siwan.
6. District Programme Officer-cum-District Welfare Officer, Siwan.
7. Sub-Divisional Officer, Siwan
8. Block Development Officer, Barahariya, Siwan.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S. Azeem, Adv.
Mr. Akshay Lal Pandit, Adv.

For the Opposite Party/s : Mr.Gyan Prakash Ojha GA 7
Mr. Gopal Krishna, AC to GA 7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-03-2019

satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The review application shall be treated to be within time.

C. Review No.327 of 2018

After we heard the matter at length, we pointed out to Shri Azeem, learned counsel for the applicant, that there was no error apparent on the face of the record, yet he insisted that the judgement in the L.P.A. has been delivered against record and the same error existed in the judgement of the learned Single Judge where also the review petition was rejected. However, at the insistence of Shri Azeem, we have examined the records thoroughly.

From the record of the writ petition, we find that the petitioner Gita Devi in her pleadings has clearly asserted that she had not filed any Matriculation or Intermediate certificate and that she had claimed her appointment as a Vikas Mitra only on the strength of a Class-8th certificate. The State came up with a counter affidavit and categorically brought on record as Annexure-E a copy of the application form filled up by the petitioner bearing her photograph which was also counter-

and Intermediate. The averment to that effect was made in paragraph 8 of the counter affidavit.

The petitioner filed a rejoinder and in paragraph Nos.3, 4 and 9 of the rejoinder, while giving a reply, stated that she was only Class-8th pass and that the certificates of Matriculation and Intermediate had been interpolated and were not her certificates. In effect, she denied the Matriculation and Intermediate certificates, but nowhere in the entire rejoinder, including the aforesaid paragraphs, has she denied the application form which is the first document of Annexure-E at page 60 of the counter affidavit filed by the State.

We are, therefore, more than convinced that the application form was moved by the applicant fraudulently mentioning her educational qualification in the application form as Matriculate and Intermediate, inasmuch as, she has not denied the said application form to be that which had been moved for the purpose of engagement. We may further add that the qualifications required were Matriculate and Intermediate and in the event a female candidate was not available with the said qualifications then the same was relaxable in respect of a

opinion, will not inure to the benefit of anyone except the applicant. She appears to have attempted to obtain her employment on the basis of such certificates. Later on, it appears, she has changed her stand and started claiming her qualification to be on the basis of a Class-8th pass certificate. In either of the two events, it was the applicant who was the beneficiary of the manipulations. The intention, therefore, was to somehow or the other secure the employment which was noting else but a clear motivated fraudulent act, the beneficiary whereof was the applicant herself. The plea that someone else had interpolated or inserted the documents along with the application form is an imaginary plea which is not founded on any evidence or any material on record.

We had also pre-warned Shri Azeem that in the event we ultimately hold that there was a clear manipulation on the part of the petitioner, we may propose to take appropriate action in the matter, yet he insisted on justifying the cause. However, after having realized that the insistence may invite penalty, Shri Azeem along with Shri Akshay Lal Pandit prayed that they may be permitted to withdraw the application.

before the Court suffice would be to mention the illustrative article written by A.S. Cuttler **"Is a Lawyer Bound to Support an Unjust Cause"**. The said article is reproduced hereinunder for the benefit of all:

> "A.S. Cutler was born at Cohoes, New York, in 1895. By the time he was eighteen he had attended Brooklyn Law School and received bachelor of laws and master of laws degrees from St. Lawrence University.
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> A New York trial lawyer by profession, Mr. Cutler also serves as a co-moderator and lecturer in the Law Science Institute at Austin, Texas.
>
> He has contributed numerous articles to legal and other publications and has written three books: Cutler's Instant Case Quoter, 1940; Successful Trial Tactics, 1949; and How to Win a Negligence Case (with Harry A. Gair), 1956.
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> One of the questions most frequently asked of any lawyer is how he can defend a client in whose case he does not believe. The question deserves the frankest answer, and Mr. Cutler's observations on this problem in ethics extend their interest and value far beyond the profession.
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> THE LAYMAN'S QUESTION which has most tormented the lawyer over the years is: "How can you honestly stand up and defend a man you know to be guilty?"
>
> Or, as to civil cases: "How can you defend a case when you know your client is wrong and really owes the money sought?"
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> At the outset we must remember that in a democratic country even the worst offender is entitled to a legal defender. If a person accused of crime cannot afford a lawyer, the court will assign one to defend him without cost.
>
> Many lawyers, however, believe the right to defend means the duty to employ any means, including the presentation of testimony the lawyer knows to be false.
>
> Such an attorney argues the lawyer has no right to judge his client to be guilty or to appraise a civil action by deciding his client is in the wrong. Such a lawyer argues that before one knows a person to be guilty in a criminal matter or wrong in a civil action there must be a judgment of the court to that effect. Judgments are notoriously uncertain when applied to conflicting evidence.
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> In support of this position, advocates enjoy reciting the following colloquy attributed to Samuel Johnson by his

JOHNSON: Sir, you do not know it to be good or bad till the judge determines it. You are to state facts clearly; so that your thinking, or what you call knowing, a cause to be bad must be from reasoning, must be from supposing your arguments to be weak and inconclusive. But Sir, that is not enough. An argument which does not convince yourself may convince the judge to whom you urge it; and if it does convince him, why then, sir, you are wrong and he is right. It is his business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion.
BOSWELL: But, Sir, does not affecting a warmth when you have no warmth, and appearing to be clearly of one opinion when you are in reality of another opinion, does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask in common life in the intercourse with his fiends?

JOHNSON: Why, no, Sir. Everybody knows you are paid for affecting warmth for your client, and it is therefore properly no dissimulation: the moment you come from the Bar you resume your usual behaviour. Sir, a man will no more carry the artifice of the Bar into the common intercourse of society, than a man who is paid for tumbling upon his hands will continue to tumble on his hands when he should walk upon his feet.

It is argued that what a lawyer says is not the expression of his own mind and opinion, but rather that of his client. A lawyer has no right to state his own thoughts. He can only say what his client would have said for himself had he possessed the proper skill to represent himself. Since a client is deemed innocent until proved guilty, a lawyer's knowledge that his client is guilty does not make him so.

As one attorney put it:

The lawyer is indeed only the mouthpiece and prolocutor of his client, and the underworld, in their characteristically graphic manner, indeed call their lawyers the mouthpiece. It is well to remember that an advocate should never become a litigant, as it were, and must never inject his own thoughts and opinions into a case.

It is asked:

How can a lawyer, or any person for that matter, know whether a person is guilty before his guilt is established? "To be guilty" under our concepts of due process means to be so adjudged after a trial by a jury or court as due process in the particular case may require. A person charged with crime might be completely deprived of counsel. For all the lawyers in the community might

considers a trial an idle ceremony? True, to be strung up by the lynch mob without a trial may be somewhat more embarrassing to the victim than to submit to a trial without counsel, but, if defense counsel plays the important role which lawyers like to think he does, a person charged with crime is indeed in an unhappy position if he has to rely on his own knowledge of the law and wits to counter an experienced prosecutor bent on conviction and whose success is measured by his percentage of convictions.

Another lawyer contends:

On undertaking a client's cause, he must wipe out the villainy of the defendant with all the resources at his command. Are not the facts that are unfavourable to his client to be left for the prosecution?

If the lawyer may see the better way and approve (not to foster claims that are wrong) the circumstances that compel him, especially in criminal cases, to follow the lesser. Thus the lawyer lives with the maxim: "*Video meliora proboque deteriora sequor*."

Such an attitude we submit entirely overlooks the bifurcated robes of a lawyer. The duty is not simply one which he owes his client. Just as important is the duty which the lawyer owes the court and society.

Great as is his loyalty to the client, even greater is his sacred obligation as an officer of the court. He cannot ethically, and should not by preference, present to the court assertions he knows to be false.

The Cannons of Professional Ethics of the American Bar Association are clear, succinct and unambiguous:

The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong.

His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

The American Bar Association recommends this oath of admission:

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the

It is only when a lawyer really believes his client is innocent that he should undertake to defend him. All our democratic safeguards are thrown about a person accused of a crime so that no innocent man may suffer. Guilty defendants, though they are entitled to be defended sincerely and hopefully, should not be entitled to the presentation of false testimony and insincere statements by counsel.

It is too glibly said a lawyer should not judge his own client and that the court's province would thus be invaded. In more than 90 per cent of all criminal cases a lawyer knows when his client is guilty or not guilty. The facts usually stand out with glaring and startling simplicity.

If a lawyer knows his client to be guilty, it is his duty in such case to set out the extenuating facts and plead for mercy in which the lawyer sincerely believes. In the infrequent number of cases where there is doubt of the client's guilt and the lawyer sincerely believes his client is innocent, he of course should plead his client's cause to the best of his ability.

In civil cases, the area of doubt is undoubtedly considerably greater. At a guess, only one-third the cases presented to a lawyer are pure black or pure white. In only one-third of the cases does the lawyer indubitably know his client is wrong or right. In the other two-thirds gray is the predominant color. It is the duty of the advocate to appraise the client's cause in his favor, after giving due consideration to the facts on the other side. In such a case, it is of course the duty of the advocate to present his client's case to the best of his ability.

Where the lawyer is convinced, after studying the law and the facts, that his client cannot succeed, his duty is to obtain the best settlement he can, fairly and expeditiously.

Every hour of the day, the lawyer is a persuader. His success must be measured by the ability he possesses to make others see situations in the same light that he does.

That does not mean, however, that the lawyer should fool himself. He should not be such a partisan that he blinks at the true facts and views the situation through the rose-colored glasses of hopefulness, partisanship, or his own self-interest.

A lawyer should worship truth and fact. He should unhesitatingly cast out the evil spirits of specious reasoning, of doubtful claims, of incredible or improbable premises.

Truly, the best persuader is one who has first really persuaded himself after a careful analysis of the facts that he is on the right side. Some assert that lawyers must be actors. That is only partially true. An actor can portray abysmal grief or ecstatic happiness without having any such corresponding feeling in his own heart. A young actor

The good lawyer cannot make such quick changes as the actor.

The true lawyer can only be persuasive when he honestly believes he is right. Then the able advocate is invincible. His persuasiveness is so powerful that it can pierce through rock and steel. Indeed, it is so strong that it can change the mind of a judge who has already decided to find to the contrary.

Ofttimes a lawyer has argued against his better judgment, has allowed himself to be persuaded against himself. Sometimes too, he has won. Yet, no matter how great the man, the true lawyer cannot dissemble. If he has no confidence in his own facts and in the truth and righteousness of his client's cause, then no matter how hard he tries and how good an actor he may be, his auditors will perceive that he himself does not really believe what he utters. That way lies disaster.

In his search for the ascertainment of the truth, however, the lawyer should not hypnotize himself. Merely because his client retains him for a fee, the lawyer should not permit himself to be overpersuaded.

It has often been suspected that the more gold with which you cross the palm of the fortunetelling gypsy, the better might be the fortune she would predict.

It hardly need be said that lawyers, however, should be above the itinerant and nomadic status of gypsies. Their power to look the facts in the eye should not be affected or weakened merely by the size of the fee involved.

It is to be noted that in this discussion, the lawyer always acts with sincerity and honesty. His partisan position predisposes him to believe in his client's cause. He is not insincere enough, however, to tender facts that he knows to be false or take a position in which he does not believe sincerely.

A lawyer who signs his name to a set of papers, should in effect vouch for the honesty and fairness of his client's cause. Otherwise, strike and blackmail suits based upon improper motives would clutter up the court calendars to such an extent that honest and fair causes would be seriously delayed in trial.

It is as much the lawyer's duty to brush off and refuse to participate in cases that are mouldy and can only add destructive fungus growth to the tree of justice, as it is to refuse to assist in the subornation of perjury. A lawyer should strive to do his bit toward pruning and keeping alive the indispensable flower of justice as the gardener tends and nurtures his plants.

All lawyers know everyone is entitled to the best defense he can muster. This does not mean every lawyer must take every case, including those in which he has no belief in his client's contention. For instance, a well-

The matter of duty and personal preference is not to be confused. A lawyer has the right to represent in civil courts the husband or wife accused of adultery. He does not have to do so unless he sincerely believes that his client is innocent of the offense charged.

Of course, when a lawyer is assigned by the court, he must fulfill his obligation to the court. This does not include, however, presenting false or improper testimony. Nor does it justify dissimulation and insincerity, even where the lawyer is consummating a court order to act in defendant's behalf.

Rather, it is the duty of such an advocate to present all the relevant facts and circumstances. If he can show the prosecution is mistaken and his client is innocent, that is his duty. If he knows his client to be guilty, then it is his duty merely to present the extenuating facts and circumstances on his client's behalf.

Chicanery and insincerity should be no part of a lawyer's make-up in any case.

Let us return for a moment to the delightful dialogue between Boswell and Johnson. It makes wonderful reading. Is it a real answer to the question posed at the beginning of this article?

Do you, Mr. Lawyer, or indeed any human being possess the ambivalence to dissimulate in the courtroom, and to "resume your usual behaviour" when you come from the Bar? Can you throw off insincerity and dissimulation in the courtroom as though it were a cloak, subdue that dishonest portion of your thinking and resume being a man of integrity when you return to your office?

Inevitably the two character traits contained in the one body would tend to merge. Obviously, dissimulation and insincerity will eventually overcome integrity.

Whether he walks upon his hands or feet, as Samuel Johnson argues, may not affect the character or soul of the walker. Pleading earnestly a cause which the lawyer knows to be untrue cannot but perniciously affect his character.

Whatever the situation was in Johnson's day, there should be no artifice at the Bar. Nor should a man "resume his usual behaviour" the moment he comes from the Bar. The lawyer's usual behavior both in his office, and at the Bar and in society should be that of a man of probity, integrity and absolute dependability.

The argument that a lawyer should be a mouthpiece for his client, indelicate as that connotation may be, is specious and only logical to a limited extent. A lawyer should not be merely a mechanical apparatus reproducing the words and thoughts and alibis of his client, no matter how insincere or dishonest. Rather the lawyer should refuse to speak those words as a mouthpiece, unless the utterances of his client are filtered and purified by truth

We would have proceeded to take appropriate action in the matter, but on account of their prayer, we hereby dismiss the review application as withdrawn.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16.03.2019
Transmission Date	N/A