



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Case Comment: The Advocate's Conundrum: Is it Justifiable to Deny a Legal Brief? - The Analysis of the Judgment: A S Mohammed Rafi v State of Tamil Nadu

Khushi Agrawal^a

^aD.E.S. Shri Navalmal Firodia Law College Pune, India

Received 21 January 2024; Accepted 17 February 2024; Published 21 February 2024

INTRODUCTION

Every profession has its rules, norms, and regulations that are to be followed by everyone so that the integrity of the profession can be maintained. These rules and norms form the foundation of trust between the individual and the organization that leads to the authenticity of expertise and judgment. Advocacy is one such profession that has standard rules for professional ethics and duties towards not just court but also toward clients, and fellow advocates. In the realm of advocacy, the adherence to rules, norms, and regulations stands as the bedrock that upholds the integrity of the legal profession.

Bar Council of India outlines rules and regulations for each advocate under Chapter II, Part VI of the BCI rules.¹ One such duty is to accept the briefs of the clients; however, there are numerous

¹ 'Rules on Standards of Professional' (BCI) <<http://103.25.172.19/disjuris/rules-standard-prof.php>> accessed 15 January 2024

incidents where advocates deny accepting the briefs of the client. One such incident is *A.S. Mohammed Rafi v State of Tamil Nadu*², in which due to clashes between advocates and police, the Bar Association of Coimbatore passed a resolution not to accept the brief of any police officer. Whether the decision of the association justifies? Let us discuss this in brief.

FACTS OF THE CASE

A.S. Mohammed was an advocate who recently had brain surgery, lost his hearing capacity in his left ear, vision in his right eye, and suffered from facial paralysis, and Mrs. Sathiyabama was a police constable. Both were waiting at the bus stand and while boarding the bus crashed into each other, resulting in a heated altercation between them. Later Mrs. Sathiyabama along with four other constables assaulted A.S. Mohammed, resulting in further medical problems and long medical expenses for him.

After this incident, A.S. Mohammed Rafi & the Bar Association of Coimbatore filed a criminal case and a writ petition against the police personnel under Article 226³ for the issuance of a writ of mandamus. They also requested the court to direct the state of Tamil Nadu to compensate the petitioner for the expenses that occurred due to the assault and violation of his rights.

Apart from these, the bar association boycotted the courts and blocked the roads to protect against the incident; it also passed a resolution that no member of the Coimbatore Bar Association would defend any police personnel.

ESSENTIALS OF THE CASE

Rule 11 of Section 2 of Chapter II, Part VI of the BCI Rules:⁴ Every advocate must accept the brief of anyone willing to pay the fee consistent with his standing, or an advocate does not have a justified reason for such a denial.

² *A.S. Mohammed Rafi v State of Tamil Nadu* AIR 2011 SC 308

³ Constitution of India 1950, art 226

⁴ Rules on Standards of Professional (n 1)

Article 14 of the Indian Constitution:⁵ The Indian constitution guarantees every person equality before the law and equal protection of the law within the Indian territory except the classification done on a reasonable basis.

Article 21 of the Indian Constitution:⁶ The Indian constitution guarantees the right to protection of life and personal liberty that is every person is safeguarded against any arbitrary deprivation of his life and liberty except according to a procedure established by law.

Article 22(1) of the Indian Constitution:⁷ Under the Indian constitution, any person in custody has the right to be informed and consult an advocate of his choice.

ISSUE(S) IN THE CASE

The primary issue in the current appeal was related to the decision taken by the members of the Bar Association against all the Police Personnel, that is –

1. Whether the resolution passed by the Bar Association of Coimbatore of not representing any police personnel in the court of law is valid. Isn't it the advocate's duty to defend the person irrespective of the circumstances?
2. Whether a lawyer can deny a brief of a client willing to pay his fees and the lawyer is not busy otherwise.

ARGUMENTS BY THE PARTIES

Appellant's Arguments: It was argued that Mrs. Sathiyabama and four other police officers assaulted him at a bus stop and dragged him into a nearby all-women police station. Even after revealing that he is an advocate, he was beaten up by the constables which resulted in further injuries to him, and compensation for the same and mental agony was claimed. Petitioner - appellant added that registration of the police complaint was denied to him, and he was not

⁵ Constitution of India 1950, art 14

⁶ Constitution of India 1950, art 21

⁷ Constitution of India 1950, art 22(1)

provided proper treatment at the hospital. A false drunkenness certificate and A false complaint of outraging her modesty were also filed against him.

Respondent's Arguments: The respondent, while denying all the accusations, added it was the advocates who had delayed giving the complaint. The drunkenness certificate was not intentional and written by the doctor by mistake and they never issued it. Respondents claimed that after the clash between an advocate and a constable, the advocate stared at her, and on questioning, he responded aggressively and touched her inappropriately. Infuriated by the act of an advocate other police officers intervened by pushing him which led to his injuries. Thus, they denied the requested compensation. They also said that their rights were infringed as they have the right to be defended due to the resolution passed by the association.

JUDGMENT

Supreme Court without going into the merits of the controversy upheld that petitioner – appellant had a strong prima facie case for the award of the compensation of Rs. One lakh and fifty thousand as suggested by the amicus curiae of the case Mr. Altaf Ahmad.

However, against the resolution passed by the Bar Association of Coimbatore, the two judges' bench not only passed a judgment but also tried to set a precedent for all. By commenting on the act of association it was held that 'such resolutions are wholly illegal, against all traditions of the bar, and against professional ethics'. Every person, however, wicked, depraved, vile, degenerate, perverted, loathsome, execrable, vicious, or repulsive, may be regarded by society, has a right to be defended in a court of law and correspondingly it is the duty of the lawyer to defend him.⁸

The resolution of the association was declared illegal according to Article 22(1)⁹ and Rules of Chapter 2 of the 'Standards of Professional Conduct and Etiquette'¹⁰. Apart from these following are some historical examples quoted by the bench during the announcement of the judgment:

⁸ *A.S. Mohammed Rafi v State of Tamil Nadu* Crim App No 2310/2010

⁹ Constitution of India 1950, Art 22(1)

¹⁰ Rules on Standards of Professional (n 1)

One of the examples, that were quoted in this connection, was of Erskine who accepted the brief of Thomas Paine who was jailed and tried for treason for his revolutionary writing of 'The Rights of Man'¹¹. Erskine was the Attorney General of the Prince of Wales at that time and was warned to be dismissed if accepted Thomas Paine's brief. Still, he accepted the brief and was dismissed but his words are still alive that was 'From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in court where he daily sits to practice, from that moment the liberties of England are at an end. If the advocate refuses to defend from what he may think of the charge or of the defense, he assumes the character of the Judge; nay he assumes it before the hour of the judgment; and in proportion to his rank and reputation puts the heavy influence of perhaps a mistaken opinion into the scale against the accused in whose favour the benevolent principles of English law make all assumptions, and which commands the very Judge to be his Counsel.'¹²

*Powell v Alabama*¹³ was another case in which some black men were charged for the rape of a white girl. Due to hostility towards blacks, no attorney was ready to represent the defendant's side and they were declared convicted. As a result, the judge appointed a local attorney and challenged the decision, saying it was ex-prate, and the court agreed. In this case, Mr. Justice George Sutherland explained that 'It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice. Not only was that not done here but such designation of counsel, as was attempted, was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid.'¹⁴

Sixth Amendment in the U.S. Constitution, Mr. Justice Hugo Black's judgment in *Re Anastaplo*, and the act of fictional character Atticus Finch from the novel 'To Kill a Mockingbird'¹⁵ were also some of the cases mentioned during the pronouncement of the judgment.

ANALYSIS

¹¹ Thomas Paine, *The Rights of Man* (3rd edn, 1791)

¹² *A.S. Mohammed Rafi v State of Tamil Nadu* Crim App No 2310/2010

¹³ *Powell v Alabama* 287 US 45 1932

¹⁴ *Ibid*

¹⁵ Harper Lee, *To Kill a Mockingbird* (J.B. Lippincott, Philadelphia 1962)

From the decision of the Supreme Court and the words from the historical incidents, it is clear that advocates are bound to accept the briefs but why do they?

It is necessary to settle the dispute as early as possible and non-representation would drag on the case longer, it would never have been established that the one is wrong. Whenever any nation faces an incident that shakes everyone and still follows its own rules and laws, then that nation gives proof of being a civilized nation. In such situations, even the rest of the country cannot object that our nation did not conduct a trial properly. Following the rules and laws of the country irrespective of the circumstances increases the trust and authority of the law in the eyes of the citizens as well as in the eyes of foreign nations.

The duty of an advocate to accept briefs is a fundamental aspect of legal practice that encompasses ethical and professional considerations. Accepting brief is important as it facilitates access to justice and upholds the ideal of legal representation for all.

Rather than a strict duty, it is a duty with reasonable exceptions, that enables the advocate to perform for the good of not just people but himself too and provide access to justice, upholding the law, and individual ethical and professional standards.

CONCLUSION

In this case, the Supreme Court acknowledged that the Bar Association has the right to help one of its members, however, the method used to do the same must be reasonable and not against the professional duties and illegal in the eyes of the constitution. The court declared that the resolution of refusing a legal defense to an accused person, whether are policeman or an individual accused of various crimes, is null and void and emphasized the fundamental duty of lawyers to defend all accused persons regardless of the nature of the case or public opinion. The judgment stressed the importance of upholding democratic values and the rule of law. The decision of the Supreme Court in the case of *A.S. Mohammed Rafi v the State of Tamil Nadu* is a landmark judgment as it increases the credibility of the set rules and guidelines and sets a precedent for future incidents.