



2024:IO:KER:51

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

Friday, the 22nd day of November 2024 / 1st Agrahayana, 1946
WP(CRL.) NO. 1079 OF 2024(FILING NO.)

PETITIONER(S):

ABDUL WAHID TK, AGED 36 YEARS, THANIKKATT HOUSE, KAVANCHERY P.O,
KAIMALASSHERY, ALINGAL, TIRUR, MALAPPURAM, KERALA, INDIA REPRESENTED
BY POWER OF ATTORNEY HOLDER ASIF AZAD AGED 32, RESIDING AT
DARUSSALAM, PARAYATHUKONAM P.O., KIZHUVILAM, THIRUVANANTHAPURAM, PIN
- 676561.

BY ASIF AZAD (Party-In-Person)(power of attorney Holder of petitioner)

RESPONDENT(S):

1. HABEEBULLAH PT, POURATHODIYIL HOUSE, PARUTHUR PO, KODIKUNNU,
PALAKKAD, KERALA INDIA, PIN - 679305.
2. ABDULLAKUTTY PT, POURATHODIYIL HOUSE, PARUTHUR PO, KODIKUNNU,
PALAKKAD, KERALA, INDIA, PIN - 679305.
3. MUHAMMED SALIM ALIAS MAMBI, SON OF UMMER, PONNACHAM THODI,
PONNACHAMTHODI SALIM MANZIL, NELLAYA PO, MOSCO, POTTACHIRA,
PALAKKAD, KERALA, INDIA, PIN - 679503.
4. BAPPOOTTI, 9495094603, PATTAMBI, PALAKKAD, KERALA, INDIA, PIN -
679503.
5. STATION HOUSE OFFICER, THRITHALA POLICE STATION, THRITHALA,
PALAKKAD, KERALA, INDIA, PIN - 679534.
6. DEPUTY SUPERINTENDENT OF POLICE, DYSP OFFICE, SHORNUR, PALAKKAD,
KERALA, INDIA, PIN - 679121.
7. STATION HOUSE OFFICER, CHERUPPULASSERY POLICE STATION, KACHERIKUNNU,
CHERUPPULASSERY, PALAKKAD, KERALA, INDIA, PIN - 679503.
8. STATION HOUSE OFFICER, OLLUR POLICE STATION, OLLUR PO, THRISSUR,
KERALA, INDIA, PIN - 680306.
9. DISTRICT POLICE CHIEF, YAKKARA ROAD, NEAR KSRTC BUS STAND, PALAKKAD,
KERALA, INDIA, PIN - 678014.

BY PUBLIC PROSECUTOR FOR R5 TO R9 (served on)

This unnumbered Writ petition (criminal)..../2024 (filing
No.1079/2024) having come up for orders on 22.11.2024, the court on the
same day passed the following:

P.T.0



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"C.R."

BECHU KURIAN THOMAS, J.

Unnumbered W.P.(Crl.) of 2024
(Filing No.1079 of 2024)

Dated this the 22nd day of November, 2024

ORDER

The question that arises for consideration is whether the defect noted by the Registry that a private party cannot appear on the basis of a power of attorney without permission of the court is sustainable.

2. Sri Abdul Wahid T.K. filed the above unnumbered writ petition seeking directions for registering an FIR and completing the investigation. He has not engaged an Advocate, but Sri. Asif Azad, a private individual, who claims to have been appointed to represent the petitioner on the basis of a power of attorney asserts that he has a right to appear on behalf of the petitioner. Since the petitioner filed his case as a party in person, with Sri. Asif Azad as the holder of the power of attorney to represent and argue on his behalf, the Registry noted two defects initially. One defect related to the failure to produce the original of the alleged power of attorney, which was subsequently cured on production. The other defect that remains to be rectified and



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the reply given on behalf of the petitioner is as follows:

" Defect 1 – TO VERIFY WHETHER POWER OF ATTORNEY COULD APPEAR
AS PARTY IN PERSON (1999 (2) KLT 108) WITHOUT LEAVE OF THE COURT

REPLY GIVEN TO DEFECT 1 – I have already filed three writs, including a writ appeal, in this Honourable High Court of Kerala, using a power of attorney.

Party-in-person Representation: The right of an individual to represent themselves (party-in-person) in court is a recognized principle in Indian law, as guaranteed under Section 32 of the Advocates Act, 1961, which allows any person, with the permission of the court, to appear, plead and act in a case without an advocate. Therefore, you do have the legal right to represent yourself.

Power of Attorney: A power of attorney (PoA) is a legal instrument that allows one person to act on behalf of another.

Advocate's Role: It is true that advocates need a Vakalatnama (a document authorizing a lawyer to represent someone in court) to conduct a case. However, Vakalatnama is distinct from PoA. An advocate's role is defined by the Advocates Act, and they represent individuals in court under professional obligations."

3. Sri. Asif Azad appeared online and submitted that he should be permitted to appear on behalf of the petitioner. The petitioner has not engaged an Advocate, but has executed a power of attorney in favour of Sri. Asif Azad, who is not an Advocate. The Power of Attorney holder wants to appear and argue on behalf of the petitioner. Though he has not filed any application to that effect, Sri.Asif Azad orally pleaded that he should be granted permission to that effect.

4. The question whether the holder of a power of attorney can



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plead on behalf of a party in person has been considered in various decisions after interpreting Section 32 of the Advocates Act, 1961 (for short 'the Act').

5. In **T.C.Mathai and Another v. District And Sessions Judge, Thiruvananthapuram** [(1999) 3 SCC 614] it was observed that permission must be obtained by the parties from the court and there is no independent right for a power of attorney holder to appear for parties before any court. The observations in the said decision being relevant, it is necessary to extract them as below:

"8. The work in a court of law is a serious and responsible function. The primary duty of a criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

9. Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the Court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practise in all the Courts in India including the Supreme Court. Section 33 says that no



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person shall be entitled to practise in any Court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the Court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

10. But if the person proposed to be appointed by the party is not such a qualified person, the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause (Section 2(q) of the Code) that prior permission must be secured before a non advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned."

6. In **Harishankar Rastogi v. Girdhari Sharma and Another** [(1978) 2 SCC 165] which was referred to in **T.C Mathai's** case (supra), the Supreme Court observed that a party who is a private person and who is not an advocate must get prior permission of the Court and such a motion must come from the party himself. It was also observed that it is open to the Court to grant or withhold permission in its discretion or even withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission. The observations in the said decision



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are also relevant and they are extracted as below:

"If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly or blockheadly private representatives fling arguments at the Court. Likewise, the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the Court. Other situations, settings and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice."

7. No private person is entitled to appear on behalf of another party, a right vested only with licensed Advocate. There is a distinction between the right to appear on behalf of someone, which is given to only enrolled Advocates, and the discretion of the Court to permit a non-advocate to appear before it. Under S.29 and S.33 of the Act, the persons who have a right to appear and argue before the court are those who are enrolled as advocates while under S.32 of the Act, a power is vested in the court to permit, in a particular case, a person other than an advocate to appear before it and argue the case. A power of attorney holder cannot appear in Court on behalf of another, unless permitted by the Court under S.32 of the Act. The decision in **Goa Antibiotics and Pharmaceuticals Ltd v. R.K Chawla and**



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Another [(2011) 15 SCC 449] is also relevant in this context.

8. Thus a power of attorney holder must obtain the prior permission of the court on the basis of an application which must state the reason for such a requirement, the relationship between the parties, the bonafides of the cause requiring such an appearance by the power of attorney and other relevant details that may assist the court in arriving at a conclusion. The details of any other case in which the power of attorney holder has appeared on behalf of others must also be provided to enable the court to arrive at a decision.

9. In the instant case, as mentioned earlier, the petitioner has not sought any permission. No details are also forthcoming to enable this Court to take a considered view. The relationship, the antecedents or the circumstances which may enable this Court to arrive at such a conclusion have also not been stated. On the other hand, the power of attorney holder insists quite stubbornly, that he has a right to appear before the Court without providing any material to enable the court to consider granting such a permission. Therefore Sri. Asif Azad cannot be permitted to appear on behalf of the petitioner.

10. Moreover, in the reply to the defect pointed out by the Registry, it is stated that he has already filed three writ petitions using power of attorney. Though details in respect of those cases are neither



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available in the pleadings nor were they even attempted to be provided, the said statement indicates that Sri. Asif Azad may be indulging in the use of power of attorney for appearing in court on behalf of third parties.

Having regard to the above circumstances, I am of the view that the defect noted by the Registry is to be sustained. Petitioner cannot be permitted to be represented by the power of attorney holder. Ordered accordingly.

vps



Sd/-
BECHU KURIAN THOMAS
JUDGE