

Sikkim High Court Safal Rai vs State Of Sikkim on 28 May, 2001 Equivalent citations: 2002 CriLJ 856 Author: A Deb Bench: A Deb ORDER Anup Deb, J. 1. Heard Mr. B.K. Rai, ld. advocate appearing for the accused and Mr. S.P. Wangdi, ld. Public Prosecutor appearing for the State. 2. On instructions from the S.P. (West) and I.O. Mr. S.P. Wangdi, ld. Public Prosecutor submits that they have no objection if the accused is allowed to continue on interim bail on the same conditions till 31st July, 2001. 3. The accused shall remain on interim bail till 31st July, 2001 or till disposal of the matter, whichever is earlier. Other conditions shall remain unchanged. 4. Disposed of. 5. Criminal Misc. Appln. No. 53 of 2001. By filing this application the accused Safal Rai has prayed for relaxation on the conditions of the bail. Mr. Rai, ld. Advocate has made a prayer that the accused shall report to the Sadar Police Station once in a fortnight instead of daily. 6. Heard Mr. S.P. Wangdi, ld. Public Prosecutor. On instructions from the S.P. and the I.O. Mr. Wangdi submits that they have no objection if the accused Safal Rai reports in the Sadar Police Station once in a week instead of daily. While on interim bail, the accused Safal Rai shall report to the Officer-in-charge or any other officer authorised by the Officer-in-charge, Sadar Police Station once in a week. Other conditions imposed vide order dated 30-1-2001 passed in Bail Application No. 6 of 2001 shall remain unchanged. 7. Criminal Misc. case disposed of accordingly. 8. Criminal Misc. Appln. No. 59/2001. Heard Mr. B.K. Rai, ld. advocate appearing for the accused and Mr. S.P. Wangdi, ld. Public Prosecutor appearing for the State. 9. By filing this application, Mr. B.K. Rai, ld. advocate submits that on 26th May, 2001 the Investigating Officer (in short the I.O.) was cross-examined and as the cross-examination could not be completed by the ld. Counsel appearing for the accused persons, the I.O. has to be cross-examined again. Mr. Rai submits that since it was already 4.00 p.m., the cross-examination could not be completed. 10. It is the duty of the lawyers conducting the case for the prosecution as well as accused to see that if the examination or cross-examination of witnesses is not completed on a particular day, it should continue on the next working day and in the present case, time was granted till 27th June, 2001. The ld. trial Court should not have granted such long adjournment, particularly when the I.O. will have to be cross-examined. 11. The Supreme Court in the case of N.G. Dastane v. Shrikant S. Shivde and Anr. (Civil Appeal No. 3543 of 2001 arising out of S.L.P. (Civil) No. 11809 of 2000) (reported in AIR 2001 SC 2028) observes as follows :- In R.D. Saxena v. Balram Prasad Sharma (2000) 7 SCC 264 : AIR 2000 SC 2912, this Court has quoted the above definition rendered by Darling, J., which was subsequently approved by the Privy Council in George Frier Grahame v. Attorney General AIR 1936 PC 224 and then observed thus : Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression “misconduct, professional or otherwise.” The word “misconduct” is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct. 12. Advocate abusing the process of Court is guilty of misconduct. When witnesses are present in Court for examination the advocate concerned has a duty to see, that there examina-

tion is conducted. We remind that witnesses who come to the Court, on being called by the Court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend for eking out livelihood. They cannot be treated as less respectables to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who is present in Court. Seeking adjournments for postponing the examination of witnesses who are present in Court even without making other arrangements for examining such witnesses is a dereliction of advocate's duty to the Court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the Court procedures. Tactics of filibuster, if adopted by an advocate, is also professional misconduct. 13. In the present case, it could not be said that the advocates have abused the process of Court, but they have failed in their duties in not making an application for cross-examination of the I.O. on the next working day. 14. However, an application has been filed on behalf of the accused for fixing an early date for further cross-examination of the I.O. 15. The accused and the I.O., present in the Court, are directed to appear before the ld. District and Sessions Judge (Special Division) on 31st May, 2001 and ld. trial Court shall do well to complete the proceeding as early as possible.