

BRIJESH KUMAR

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v.

STATE OF UTTAR PRADESH, THROUGH ITS SECRETARY

(Special Leave Petition (Criminal) No.773 of 2020)

MARCH 22, 2021

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**[MOHAN M. SHANTANAGOUNDAR AND
AJAY RASTOGI, JJ.]**

Legal Services Authorities Act, 1987 – Counsel for the Petitioner in this matter was appointed as amicus curiae for the Petitioner – He brought attention to the Court that in this, as well as other matters he was appointed as amicus curiae, he was only provided with the copies of the impugned judgment and the trial Court judgment preceding it, severely hampering effective representation – Held: This, from the frequent grievances raised by advocates appearing, seems to be reflective of a general practice, particularly in criminal matters – This practice only serves to handicap those advocates who seek to do a commendable service to the legal institutions by offering themselves as legal aid lawyers and amicus curiae for the cause of those otherwise unrepresented – In the absence of being provided with the full record of a particular matter, the promise of “free and competent legal services” made by the 1987 Act can only remain unfulfilled for those in the greatest need for justice and representation – For better and more effective legal representation, following directions are issued: a) The Secretary, National Legal Services Authority shall, with immediate effect, instruct all concerned authorities under the 1987 Act to make available all documents (along with official translations) pertaining to a matter to the concerned legal aid counsel; b) The Supreme Court Legal Services Committee, and all the High Court and Taluk Legal Services Committees are also instructed to ensure that the legal aid counsel is provided all relevant records of the matter (along with official translations of any documents in vernacular language); c) By way of ample caution, this Court also clarifies that these documents would include, but are not limited to, pleadings, affidavits, applications filed in civil proceedings; and the First Information Report, Charge Sheet and annexed documents including witness

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- A *statements, record of the trial proceedings, testimonies, and exhibits brought on record in criminal proceedings.*

Rakesh v. State of Madhya Pradesh, (2011) 12 SCC 513; Shaik Mukthar & anr. v. State of Andhra Pradesh, (2020) SCC OnLine SC 1091 – referred to.

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Case Law Reference

(2011) 12 SCC 513 referred to Para 6

CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Criminal) No.773 of 2020

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From the Judgment and Order dated 29.08.2018 of the High Court of Judicature at Allahabad in Jail Appeal No.3220 of 2011.

Gagan Gupta, Adv. for the Appellant.

The Order of the Court was passed by

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MOHAN M. SHANTANAGOUDAR, J.

On merits, we have heard the learned *amicus curiae* on the matter and gone through the material on record. The Trial Court as well as the High Court have gone into, in detail, and meticulously examined material on record, and came to the conclusion that the Petitioner be convicted.

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The Petitioner is a habitual offender. He is involved in robbery, murder cases, etc. We have also gone through the material on record and we do not find any ground to interfere in the impugned judgments. Hence, the Special Leave Petition fails and is dismissed.

2. However, before parting with the matter, we want to make

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certain observations based on the submissions repeatedly made by the learned advocate representing the Legal Services Authority both in civil and criminal matters. Generally, reputed advocates are being appointed as advocates for the Legal Services Authority or *amicus curiae*. They feel handicapped as they are not making any grievance against the

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Authority except the grievance that they are not provided with necessary assistance to effectively represent the matter. In this context, we want to make certain observations as under:-

3. The right to legal representation sits at the core of not only the right to life and liberty conferred by Article 21 of the Constitution, but at the very foundation of the entirety of our justice system, be it civil or

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criminal. For this right to be meaningful, it is imperative that it does not make distinctions between the rich and the poor, the haves and have-nots. The right to legal representation, as necessitated by the demands of justice and equity, must be unfazed by the economic class or financial resources of the accused.

4. To this end was enacted the Legal Services Authorities Act, 1987 (hereinafter, ‘1987 Act’), setting for itself the following object and purpose:

“...to provide free and competent legal services to the weaker sections of the society, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.”

5. Having secured for itself the above hallowed purpose, the Act has created a nationwide network of Legal Services Authorities (at the national, state, district, and taluk level) for framing policies for legal aid and services, as well as a network of Legal Services Committees (within the Supreme Court, the High Court, and the taluk level) for the on-ground implementation of the legal services programme at various levels.

6. In further recognition of the need to fill a dire gap in access to justice for the poor, it has also become a well-settled position that, that where an accused comes before the Court without legal representation, the Court is duty-bound to either appoint an *amicus curiae* or refer him to the appropriate Legal Services Committee who shall then appoint an advocate to represent the accused (*Rakesh v. State of Madhya Pradesh*, (2011) 12 SCC 513; *Shaik Mukthar & anr. v. State of Andhra Pradesh*, (2020) SCC OnLine SC 1091).

7. The above developments mark significant leaps forward in making justice accessible to each Indian citizen. However, the present matter has brought to our notice a disconcerting trend in the workings of legal aid institutions.

8. Learned Counsel for the Petitioner in this matter, Mr. Gagan Gupta, was appointed as *amicus curiae* for the Petitioner herein, vide letter from the Assistant Registrar, Supreme Court dated 3.12.2019. Mr.

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- A Gupta has brought to our attention that in this, as well as other matters he was appointed as *amicus curiae*, he was only provided with the copies of the impugned judgment and the trial court judgment preceding it, severely hampering effective representation. This, from the frequent grievances raised by advocates appearing before us, seems to be reflective of a general practice, particularly in criminal matters.
- B 9. This practice only serves to handicap those advocates who seek to do a commendable service to our legal institutions by offering themselves as legal aid lawyers and *amicus curiae* for the cause of those otherwise unrepresented. In the absence of being provided with the full record of a particular matter, the promise of “free and *competent* legal services” made by the 1987 Act can only remain unfulfilled for those in the greatest need for justice and representation. The right to legal representation must, if it is to mean anything, encapsulate the right to *effective* legal representation.
- D 10. Thus, to ensure that the great progress we have made in establishing legal aid institutions does not remain a paper tiger in the struggle against unequal access to justice, we direct as follows:-
 - a. The Secretary, National Legal Services Authority shall, with immediate effect, instruct all concerned authorities under the 1987 Act to make available all documents (along with official translations) pertaining to a matter to the concerned legal aid counsel.
 - b. The Supreme Court Legal Services Committee, and all the High Court and Taluk Legal Services Committees are also instructed to ensure that the legal aid counsel is provided all relevant records of the matter (along with official translations of any documents in vernacular language).
 - c. By way of ample caution, we also clarify that these documents would include, but are not limited to, pleadings, affidavits, applications filed in civil proceedings; and the First Information Report, Charge Sheet and annexed documents including witness statements, record of the trial proceedings, testimonies, and exhibits brought on record in criminal proceedings.
- H 11. It is our expectation that these directions will be complied with immediately and the *status quo* changed for better and more effective legal representation.

12. A copy of this order is directed to be served by the Registry of this Court on the National Legal Services Authority and all the State Legal Services Authorities for necessary action. A

13. Pending application(s), if any, stands disposed of accordingly.

Ankit Gyan

Directions issued.