

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24th DAY OF JUNE 2011

BEFORE

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

W.P. NO.22606 OF 2010 (GM-RES)

BETWEEN:

SRI K SOORYANARAYANA BHAT
S/O LATE SHANKAR BHAT
AGED 64 YEARS
ADVOCATE
MJM COMPLEX, GANDHINAGAR,
SULLIA TALUK
DK DISTRICT

... PETITIONER

(By Sri: K RAVISHANKAR, ADV.,)

AND :

- 1 UNION OF INDIA
REP BY ITS SECRETARY
DEPT OF HOME & PARLIAMENTARY AFFAIRS
NEW DELHI
- 2 STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF HOMES
AMBEDKAR VEEDHI
BANGALORE 560001
- 3 REGISTRAR GENERAL
HIGH COURT OF KARNATAKA
BANGALORE 560001

4 THE ASSISTANT REGISTRAR
HIGH COURT OF KARNATAKA
BANGALORE 560001

... RESPONDENTS

(By Sri: S KALYAN BASAVARAJ, ASG FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI & QUASH THE NOTIFICATION DT.28.4.10 & THE CIRCULAR DT.26.5.1997 BEARING NO.7/1997 WHICH ARE PRODUCED AS ANN-A & B.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner has sought for quashing the notification Annexure-A dated 28.4.2010 by which, Smt. Usha R.A., daughter of Late Annappa Gowda is appointed as Oath Commissioner conferring her with jurisdiction to attest the affidavits to be used in Civil Courts only. He has also sought for a direction to the respondents to confer power on Oath Commissioners to attest and administer oath in respect of the affidavits intended to be filed in

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Criminal Courts also. Certain other consequential reliefs are also sought for.

2. The records reveal that the petitioner is an advocate practicing in Sullya, Dakshina Kannada District. According to him, restricting the Oath Commissioners to administer oath and to attest the affidavits intended to be filed only in Civil Courts is erroneous and the same is in violation of Section 297 of Cr.P.C. Learned counsel for the petitioner submits that the High Court should have appointed Commissioner of Oaths to attest and administer oath in respect of the affidavits intended to be filed in Criminal Courts also in accordance with Section 297 (1) (b) of Cr.P.C.

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3. It is beneficial to refer to Section 297(1) of Cr.P.C., 1973 which reads thus:-

Authorities before whom affidavits may be sworn-

(1) Affidavits to be sued before any Court under this Code may be sworn or affirmed before-

- (a) any Judge or any Judicial or Executive Magistrate, or
- (b) any Commissioner of Oaths appointed by a High Court or Court of Session, or
- (c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

From Section 297(1) (b), It is clear that the affidavits to be used before the Criminal Courts may be sworn and affirmed before the Commissioner of Oaths appointed by the High Court

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or the Court of Session, which means, the High Courts are empowered to appoint Commissioner of Oaths for attesting and for administering oath in respect of affidavits to be used in Criminal Courts also.

4. It is also relevant to note Section 122 CPC and Rule 28-A of the Karnataka Civil Rules of Practice, 1967 in this context:-

Section 122 of The Code of Civil Procedure, 1908 reads thus:-

Power of certain High Courts to make rules:-

High Courts (not being the Court of a Judicial Commissioner) may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules

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(Provided that no person who has attained the age of thirty five years on the last date fixed for filing application shall be appointed as "Oath Commissioner".)

(2) The Oath Commissioner will be entitled for a fee of Rs.5.00 only per affidavit. He shall keep and maintain a register in the form prescribed below in which particulars of all affidavits shall be entered. The Oath Commissioner shall pass a written receipt to be deponent for the fee received in the form prescribed as hereunder. The receipt shall be in a printed form consisting of a foil and a counterfoil, the foil being handed over to the deponent and the counterfoil being preserved by the Oath Commissioner for production at an inspection."

Section 122 CPC empowers the High Courts to make Rules for regulating their own procedure and the procedure of other Civil Courts coming within their jurisdiction. In exercise of the said jurisdiction

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vested with it, the High Court of Karnataka has framed Karnataka Civil Rules of Practice, 1967 for regulating its own procedure and the procedure of Civil Courts within Karnataka State. Rule 28-A of Karnataka Civil Rules of Practice, 1967 deals with appointment of Oath Commissioner for the purpose of administering oath and affirmation in respect of the affidavits intended to be used in Civil Courts.

5. It is also relevant to note Rule 5A of Chapter XI of The High Court of Karnataka Rules, 1959, which reads thus:-

"5A. (1) The High Court may also appoint advocates as Oath Commissioners for the purpose of administering oath or affirmation in case of affidavits intended for use in the High Court. The number of Oath Commissioners to be appointed for Bangalore, and other places in the State may be as fixed by the High Court from time to



time. Advocates who have put in practice of not less than two years and not more than four years are eligible for appointment as Oath Commissioners. The appointment as oath commissioners shall be initially for a period of three years and may be extended for a period till the completion of practice of seven years. However, the appointment of an Oath Commissioner may be cancelled at any time by the High Court."

6. There cannot be any dispute that the procedure in the criminal matters is guided by the Code of Criminal Procedure, 1973 and procedure in civil matters is guided by The Code of Civil Procedure, 1908. Two Procedures are entirely different. They will not over-lap. The Civil Courts will follow the procedure as contemplated under Code of Civil Procedure, 1908 and whereas, Criminal Courts will have to follow procedure as contemplated under The Code of Criminal Procedure, 1973. In the



matter on hand, the High Court has chosen to appoint Oath Commissioner under the provisions of Rule 28-A of Karnataka Civil Rules of Practice, 1967 r/w Section 122 CPC and under Rule 5A of Chapter XI of the High Court of Karnataka Rules, 1959. It has not appointed Oath Commissioner under the provisions of Section 297 of Cr.P.C.

7. Rule 5A of Chapter XI of The High Court of Karnataka Rules, 1959 is in consonance with Rule 28-A of The Karnataka Civil Rules of Practice, 1967. Neither the High Court of Karnataka Rules, 1959 nor the Karnataka Civil Rules of Practice, 1967 emanate from Criminal Procedure Code and therefore the High Court can appoint Oath Commissioner independently and separately for Criminal Courts as well as Civil Courts. Based on the need, the High Court of Karnataka has thought fit to appoint Oath Commissioners for attesting and administering oath

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in relation to the affidavits to be filed before Civil Courts only. It has not exercised jurisdiction vested with it under Section 297 Cr.P.C. and therefore the Oath Commissioner now appointed in exercise of jurisdiction under Rule-5A of Chapter XI of the High Court of Karnataka Rules and Rule-28-A of The Karnataka Civil Rules of Practice, 1967 is not authorised to administer oath or affirmation in the case of affidavits intended to be filed in Criminal Courts. Unless and until the Oath Commissioners are specifically empowered to administer oath or affirmation in respect of affidavits intended to be used in Criminal Courts, by exercising jurisdiction under Section 297 Cr.P.C., Oath Commissioners cannot and shall not administer oath or affirm the affidavits intended to be used in Criminal Courts. Hence, no relief is granted.

8. No other point is urged.



Accordingly, writ petition fails and the same stands dismissed. Based on the need or requirement of the oath commissioners in respect of affidavits to be used in Criminal Courts, the High Court may appoint Oath Commissioners in future, if need be, in exercise of jurisdiction vested with under Section 297(1) (b) of Cr.P.C.

Sd/-
JUDGE

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