

RAJIV DAWAR

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v.

HIGH COURT OF DELHI

(Criminal Appeal No. 51 of 2007)

JULY 26, 2017

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[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

*Contempt of Courts Act, 1971:*

*ss. 2(c), 10 and 15 r/w. Art. 215 of Constitution of India – Complaint before subordinate Court – By an accused undergoing trial in criminal case under NDPS Act – Against his advocate – Alleging that the advocate had charged exorbitant fees and had also withdrawn from the case – The complainant prayed for refund of part of his fees – Reference to High Court – High Court held him guilty of criminal contempt – On appeal held: In view of the facts that contemnor was completely absolved of the allegations by disciplinary authority; that procedural safeguards were not followed; and that the contemnor had complied with the direction to refund the fee, conviction and sentence imposed on the contemnor, set aside – Appeal allowed.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 51 of 2007.

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From the Judgment and Order dated 02.01.2007 of the High Court of Delhi at New Delhi in CrI. C. Ref. No. 2 of 2005.

K. V. Vishwanathan, Sr. Adv., Ashok Mathur, Ms. Nidhi Agrawal, Sameer Dawar, Dhananjay Ray, Advs. for the Appellant.

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C. K. Sucharita, Adv. for the Respondent.

The Judgment of the Court was delivered by

**KURIAN, J.** 1. The appellant is before this Court aggrieved by the conviction and sentence under section 2(c) read with Section 10 & 15 of Contempt of Courts Act and under Article 215 of the Constitution of India. Under the Contempt of Courts Act a fine of Rs.2,000/- was imposed and under Article 215 of the Constitution of India the appellant was suspended from practice for a period of two months.

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A            2. The main contention of the learned senior counsel appearing  
for the appellant is that the whole conviction is based on the unilateral  
version of the complainant before the Additional Sessions Judge, New  
Delhi. Either before the Additional Sessions Judge at the time of reference  
to the High Court or at the stage of the proceedings in the High Court,  
B the appellant was not given an opportunity to adduce evidence, or at  
least cross examine the de facto complainant. We find that the learned  
amicus before the High Court had also requested the High Court to  
comply with the procedural formalities giving full opportunity to the  
appellant to disabuse the allegations against him. In contempt proceedings,  
the contemnor has to be given an opportunity to establish his innocence.  
C From the proceedings it is seen that the appellant was not granted such  
an opportunity except the opportunity of filing an affidavit. On the facts  
of this case, unless the allegations made by the de facto complainant  
who was an accused in a criminal case under the N.D.P.S. Act, had  
actually been established or proved in accordance with law, there could  
not have been a conviction based solely on the allegations. The situation  
D could have been different had at least at the time of reference by the  
Additional Sessions Judge, the appellant had been given an opportunity  
to participate in the enquiry and cross examine the complainant.  
On facts, we do not find that any such exercise had been undertaken  
even by the Additional Sessions Judge while making a reference to the  
E High Court.

3. It is a case where the de facto complainant made an allegation  
that the appellant had charged exorbitant fees to the tune of Rs.7.05  
Lacs, without any active assistance to the accused and also withdrawn  
from the case and, therefore, he prayed for a direction to the Additional  
Sessions Judge for refund of at least Rs.6 Lacs. However, it was the  
F case of the appellant that for professional services rendered to the de  
facto complainant appropriate fees had been charged and it was not as  
if the amount received was for any other purpose as alleged by the  
complainant.

G            4. It is seen that the Bar Council of Delhi had also looked into this  
complaint and in the order dated 30.09.2006, at paragraph 12, it has  
been held as follows:-

H            “12. An advocate should not ordinarily withdraw from  
engagements, once accepted, without sufficient cause and unless  
reasonable and sufficient notices is given to the client. Upon his

withdrawal from a case, he shall refund such part of the fee as A  
has not been earned.

It is substantially a matter of withdrawal by Respondent from B  
the case and not one of misconduct involving any misrepresentation,  
deliberate receipt of money by falsification or false assurances.  
The complainant is also not seeking any disciplinary action. His B  
prayer is confined to the refund of Rs.6 lacs and we feel that to  
the extent of Rs.4 lacs, the prayer of the complainant is justified,  
which would be covered under clause 12 of Bar Council of India  
Rules.

The present matter according to us is, therefore, one of C  
withdrawal from the case and for the deficiency of professional  
services, the ends of justice would be met, if we order refund of  
part of payments made to the Respondent. No prejudice will be  
caused to the complainant. For the reasons stated above, issue C  
No.1 and 2 are decided against the complainant insofar as the  
misconduct is concerned. In view of the observations and findings, D  
however, the refund of Rs.4.00 lakhs would be justified. There is  
neither a claim for interest nor would be justified, as such no interest  
will be payable.”

5. The Disciplinary Authority having completely absolved the E  
appellant and in view of the procedural safeguards having not been  
followed in this case and also having regard to the fact that the appellant  
has complied with the direction to refund the money, the conviction and  
sentence imposed on the appellant is set aside.

6. The appeal is, accordingly, allowed.

7. Pending application(s), if any, shall stand disposed of. F