Kerala High Court
V. Muraleedharan Nair vs N.J. Antony And Anr. on 10 December, 1984
Equivalent citations: 1985 CriLJ 633
Author: V B Nambiar
Bench: V B Nambiar
ORDER V. Bhaskaran Nambiar, J.

1. Shri N.J. Antony is a member of the Kottayam Bar. Shri James Joseph is an Engineer. They were standing in the courtyard of a church compound on the side of a road. A young police Sub-Inspector came in his jeep, lie assaulted the Engineer and abused the Advocate. They were taken to the police station and wrongfully detained. This in brief is the case of the advocate : what followed is material.

2. Antony filed a criminal complaint against the police Sub-Inspector. S.T. No. 40 of 1983 before the Chief Judicial Magistrate. Kottayam, alleging that he committed an offence Under Section 342. Penal Code. The Bar Association, Kottayam, considered the incident as an assault on the profession itself. They passed a resolution to the following effect :-

The Bar Association. Kottayam unanimously pass the following resolutions for action.

1. That the Bar Association. Kottayam, strongly condemn the illegal and indecent conduct and action of the Sub-Inspector of Police, Kuravilangad taken against Sr. N.J. Antony, a member of this Bar on 23-7-1983. We request the authorities to initiate strong action against delinquent officer.

2. As a mark of protest against the highhanded and indecent behaviour of certain Police Officers, against some of the members of this Bar and particularly towards Shri N.J. Antony as reported at the General Body meeting, we, the members of Kottayam Bar Association shall boycott the Court proceedings for a day on 28-7-1983.

This resolution was communicated to the other Bar associations.

3. The petitioner, the Sub-Inspector, has filed this application for transfer of the case from the C.J.M's Court Kottayam to any court outside Kottayam District alleging that it is difficult for him to obtain wise counsel and competent advocates at Kottayam to conduct his case and defend him. The hostile attitude of the Bar does not assure, according to him, calm, cool climate even in court. He also submits that in fact he has approached several advocates at Kottayam who have refused to appear for him. He is thus denied even the basic right of a counsel to defend him.

4. Is an advocate bound to accept all briefs? Has he any discretion? If he has, is it uncontrolled and unguided? In view of the importance of these questions, my learned brother. Justice Bhat, issued notice also to the Chairman, Kerala Bar Council, President of the Kerala High Court Advocates' Association and President, Kottayam District Bar Association. Pursuant to the notice, Shri Siby Mathew appeared for the Bar Council and Shri T.R. Ramachandran Nair for the Kottayam Bar Association. I record my appreciation of their valuable assistance to Court.

5. The profession of advocacy has continuity in history. From time immemorial "Sukraniti" provided that a litigant could be represented by an advocate if he was not familiar with the practice pf law or if he was overburdened and thus unable to take care of himself in court. The advocate was paid for his services. It was, however, fixed in some graduated scale and acceptance of a higher remuneration was itself punishable.

6. In Athens, in Greece, it would appear, there was no specialised qualified class of advocates but even a relative or a friend could help a litigant in his misfortune. It was gratuitous service, offered willingly and voluntarily but confined to 'composing a speech which the litigant himself read'. These written arguments, "models of conciseness", could not however exceed the time limit prescribed by the Athenian courts.

7. In Rome, the lawyers held positions of pre-eminence in society. There were the non- official lawyers, "Responsa predentium", whose opinion was respected and adopted by the 'dispenser of justice'. There were the consultants, 'the juris consulti' who advised ; but did not plead or practice. They were paid for their services. The juris consulti "coached" the advocates who appeared before the Roman Tribunals. These advocates were called "orators". The advocates were styled as "Patronis" and their parties were known as "clintes". Justice Sundara Iyer says that "clintes" is the origin of the modern word, "client". These "Patronis" or "orators" set up practice only after they received intensive training under the 'juris consulti'. Any number of counsel may appear for the same client ; but a time limit for submission of arguments was fixed by the Court itself as in Greece. There was also a "curious ordinance" which imposed on the presiding judge to see that all the leading advocates were not retained by the same party. "Muffling retainers were thus forbidden".

8. In France, the advocates opposed the 'pretensions of the Pope of Rome in temporal matters' and thus engaged in political problems and earned the respect and regard of the King of St. Louis.

9. The earliest French Code that was ever published devoted one chapter to a consideration of the rights and duties of advocates. They were enjoined to present no cause to the court, which was not just and loyal and were required to practice courtesy and forbearance towards their opponents, while refuting their arguments, without using words of contumely or abuse. They were also forbidden to make any bargains with their clients respecting their fees during the conduct of a cause it was always to be settled beforehand. According to directions issued by some sovereigns advocates were compelled to take an oalh that they would, both in their oral pleadings and their opinions, upon cases submitted to them, discharge their duty with care, diligence and fidelity, and would support causes only so long as they believed them to be just, but abandon them when they discovered that they were not. The amount of their fees was to be regulated by the importance of the cause and the ability of the advocate, but it was in no case to exceed 20 livers".

10. In France, these advocates were known as "noblesse de-la-role".

11. In England and in the United States, the position of an advocate is a status of considerable responsibility and as a Rober H Jackson in his article in the American Bar Association Journal, 1950, correctly stated, "our system also throws upon the legal profession a certain guardianship of

our traditional liberties and our legal institution".

12. An advocate's robe is steeped in tradition and has a class of distinction. It is worn when one practices as an advocate, not before he is born in that profession or after he ceases to practice. It is not a casual wear. It is for serious occasion, Outside court, it has no place ; it shall have none. Inside court, it represents cause ; the cause of the client. When there is no counsel there is no robe. Therefore, when an advocate is the party appearing in court, he does not appear as an advocate. If so, he shall not be seen or heard in his robes. His right is to be heard as a party in person, voicing his grievances, a right personal to him, not as representative of his class.

13. The Association of the Bar of the City of New York adopted certain canons of ethics for the maintenance of justice "pure and unsullied so that the "public shall have absolute confidence in the integrity and impartiality of its. administration". Regarding "Responsibility for litigation" it read :

No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what employment he will accept as counsel, what causes he will bring into court for plaintiffs, what cases he will contest in court for defendants. The responsibility for advising as to questionable transaction, for bringing questionable suits, for urging questionable defences, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

14. In our courts, the Bar Council of India Rules framed under the Advocates Act provide in Section II, Rule 11 thus :

An Advocate is bound to accept any brief in the Courts or Tribunals or before any other authority in or before which he professes to practise at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

Possibly, this rule was adopted from the report of the English Bar Association in the beginning of this century which reads thus :

The following question was put by a barrister to the Council :- "I shall be glad if you would kindly inform me whether a barrister is bound to accept any brief which may be offered to him and, if so, what penalty or punishment would he incur in consequence of refusal?" The answer was thus :- "The General rule is that a barrister is bound to accept any brief in the courts in which he professes to practise at a proper professional fee. Special circumstances may, however, justify his refusal to accept a particular brief.

15. Justice Sundara Aiyar of the Madras High Court in his Lectures on Professional Ethics to Apprentices spoke thus :

We may say no client should be shunned, because he is opposed to a man of influence, or because he has incurred special approbrium, or is opposed to the officers of Government, or to society at large.

He may be a noted dacoit ; he may be one who has done disservice to the community in many ways. It may be that the client -- he or she -- may be an undesirable person. I have no hesitation in telling you that that alone should not be a reason for refusing your help to a litigant. You may sometimes incur social approbrium by doing so, but that is a misfortune which you must be prepared to face. At a meeting in Carnarvon some years ago a resolution was passed calling upon temperance men not to support any candidate who acts professionally as counsel for the liquor trade at licensing stations. This was condemned by the English Law Times as interfering with the duties of an advocate. The public unfortunately do sometimes identify an advocate with the client for whom he appears. He is bound by the solemn declaration he makes, when he undertakes the office of an advocate, to serve the client whose cause he agrees to advocate, and every advocate is entitled at the hands of all persons that they should not hold him responsible for what in the honest discharge of his duty he is hound to put before the Courts of Justice. It may happen to any one of you that you may lose private friends in the discharge of your duties. It may cost you close and intimate friendships. In my opinion, that would be no defence to your declining to undertake the task. There were circumstances in which you may he entitled to prefer one side to another. Friendship may be a reason for undertaking the advocacy of one side rather than another. But your friend may not be either of the litigants ; he may desire that one party should win rather than another, and his desire may be that you should not undertake to espouse one cause at all events, though you may not be engaged on the other side. I believe there can be no doubt that it would be wrong to refuse to accept a brief simply because certain persons in a position of influence or attached to you by ties of relationship or friendship, should desire that you should not lend your service to a particular litigant. The rule in England, which I have already referred to, is subject to some qualifications. If an advocate has previously advised one side, he is not bound to lake up nor indeed, would he be justified in taking up, a brief from the opposite side. If he does not get a proper professional fee, he would be entitled to decline. In England there are very elaborate rules as to what a proper professional fee is. We shall come to the conclusion, when we study that subject, that it is not a proper thing for an advocate to place an exorbitant value upon his own services or to rate his services as he likes on each occasion, simply because he is likely to get a larger fee. if he presses for it, than he would reasonably be entitled to.

XXX XXX XXX Of course, it would certainly be proper to refuse a brief on the ground that the advocate does not undertake cases of a particular kind. He may also plead, as justifying a refusal to accept a brief, that he does not practise in a particular court. In criminal cases in England the Crown is entitled to demand the services of any advocate. So, if the Crown requires his services, that would be a reason for not accepting the brief of an accused.

Of one thing, I believe, there ought to be no doubt, that if an advocate has personal knowledge, knowledge which would enable him to be a witness, though he may not be cited as one. the advocate should not accept such a case.

There are a few decisions also to which reference can be made in this connection. In Md. Inayat Ali v. Fazal-Ul-Rahman AIR 1929 A11 367, it was held thus :

A lawyer must as a general rule take up a case for any member of the public if (1) a fair and proper fee is tendered to him ; (2) adequate instructions are given and (3) the case is of a class which the lawyer is accustomed to do. No doubt he can legitimately decline to take up the case if, for instance, he has an out-station engagement, or is engaged in some social function, such as a marriage or is incapacitated by ill health or any reason which a sensible man would recognize adequate. But to refuse to take up a case simply and solely on the ground that the advocate will not appear against a brother practitioner, or to put forward untrue excuses when the real reason is a disinclination to appear against a brother practitioner, is. in each case, professional misconduct and should be dealt with as such. The reason for the rule is that if lawyers as a body refuse to act against lawyers, they would become a class standing above the law and justice would be denied to the public.

In Gokul Prasad v. Emperor AIR 1930 All 262 : 1929-30 Cri LJ 522 the head note says :

It is very important that men at the Bar should understand that they are members of a public profession. That is by their very calling they engage and undertake to act for anybody who fulfils certain conditions. Therefore if a client comes to them with proper instructions and prepared to pay a fair and proper fee and invites them to undertake a case of a kind, which they are accustomed to do and they refuse, such refusal amounts to professional misconduct and should be punished as such.

In In re Shyamapada AIR 1932 Cal 370 : 1932-33 Cri LJ 466, the relevant facts and the decision are correctly noted in the headnote thus :

A resolution was passed by the members of a Bar Association boycotting one of their members for accepting a brief in a criminal case against another member in contravention of a previous resolution of the Bar Association.

Held that in the above circumstances the proposer and seconder of the "boycott" resolution were guilty of misconduct and were liable to punishment in the exercise of the Court's disciplinary action.

This was so held because it was a fundamental right possessed by every legal practitioner that he might be allowed freely to exercise his profession and to appear in any case in which he might choose to appear without interference of any kind except where such interference was based upon some valid and legal ground. The claim of a Bar Association to enforce a resolution amounting to a professional boycott of one of their members could not be recognized as legitimate. If it were, the consequence would be that in any criminal case against a pleader of the Bar Association the services of a pleader could not be obtained for the prosecution. A Resolution of this kind and likely to have such consequence was open to serious objection. It was contrary to the best traditions of the Bar and to all accepted notions of forensic propriety. Nor was it in the interests of legal practitioners as a body that their liberty should be permitted to be circumscribed in this fashion. A pleader had every right to appear in any case whether it be against a fellow member of his Bar Association or not. Indeed, it was his duty to do so if engaged.

Held further : that legal practitioners had their duties towards the Courts and were expected to co-operate with them in the orderly and pure administration of justice. They could not be permitted to act, or to combine with others against such authority and in a manner calculated to impede or interfere with the administration of justice.

In Maneka Gandhi's case - Justice Krishna Iyer speaking for the Bench made these weighty observation (para 4) :

The sophisticated processes of a criminal trial certainly require competent legal service to present a party's case. If an accused person, for any particular reason, is virtually deprived of this facility, an essential aid to fair trial fails. If in a certain court the whole Bar, for reasons of hostility or otherwise, refuses to defend an accused person -- an extraordinary situation difficult to imagine, having regard to the ethics of the profession it may well be put forward as a ground which merits this Court's attention. Popular frenzy or official wrath shall not deter a member of the Bar from offering his services to those who wear unpopular names or unpalatable causes and the Indian advocate may not fail this standard. Counsel has narrated some equivocal episodes which seem to suggest that the services of an efficient advocate may not be easy to procure to defend Mrs. Maneka Gandhi. Such glib allegations which involve a reflection on the members of the Bar in Bombay may not be easily accepted without incontestable testimony in that behalf, apart from the ipse dixit of the party. That is absent here.

16. When Cicero was charged for defending Murena against his own friend, he declared.

The principle can never be admitted that we may not defend even our enemies against the accusation of our friends. The consequences of yielding to the accusation levelled would be that a man might be unable to find a counsel to undertake his cause in a State where the wisdom of the ancestors had provided that not even the lowest citizen should be without an advocate.

17. In Professional responsibility of the lawyer, edited by Nina Moore Galston, occurs the following passage :

Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of his profession and of the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

The image of the profession does not depend on the few at the top but on the many at the bottom. An advocate is a member of an honourable profession and is thus bound by the code of honour which he respects. He occupies a position of responsibility and thus he is accountable to the clients and to the court. His right to reject a brief "in special circumstances" should arise from a consciousness of his position and privilege as a member of the profession dictated by the social

obligation to render legal assistance and the constitutional right to counsel in appropriate cases.

18. It is not possible to enumerate all the circumstances under which an advocate can rightly reject a brief. It may be possible for him to reject a brief in the following cases ;

(1) when he is physically disabled from appearing for the client.

(2) when he may not be available to present the case in court.

(3) where his training in a special branch limits his usefulness in other branches.

(4) where the client is not prepared and able to pay him his reasonable fees.

(5) where he confines his practice in some courts and in some places only.

(6) when he is likely to be called as a witness in the same case.

(7) when he has already been consulted by the other side.

These illustrations are not exhaustive. It is too much to expect that a Bar Association, oblivious of its traditions and responsibilities will pass a general resolution exhorting its members not to appear for any party in a particular case or in particular classes of cases. I am glad to note that the counsel appearing for the Kottayam Bar Council has rightly and fairly conceded before court that the Association has not directed its members not to appear on behalf of the petitioner. The mere statement of the petitioner that he is not likely to get any assistance from any member of the bar at Kottayam cannot be accepted. The grounds urged for transfer of the case have only to be rejected.

19. But it is brought to my notice that in respect of the same incident, Sri James Joseph has filed S.T. 392 of 1983 in the Judicial First Class Magistrate's Court, Palai and the petitioner has also filed S.T. 396 of 1983 in the same Court. In the interests of justice, it is better that all the three cases are tried by the same Court and I therefore direct that S.T. 40 of 1983 pending in the court of the Chief Judicial Magistrate, Kottayam, shall stand transferred to the Judicial First Class Magistrate's Court at Palai.

Cri. M.C. disposed of as above.