

and, to discharge the accused at a later stage, as contemplated under Section 227 of the Code. In this view of the matter, even if a case is triable by the Court of Session, where complaint has been made by a public servant, the case, in my view would be covered by clause (a) of proviso to Section 200 of the Code, and, not under proviso to Section 202 of the Code.

(14) Apart from that, I am supported on this point to a large extent by the authority in *Sanjay Gandhi's case* (supra), and, the Committing Court is not required to embark upon a regular inquiry by recording the evidence on the merits, or, demerits of the case. At any rate, mere omission on the part of the Committing Court not to record the evidence of the complainant, or, the witnesses cited in the complaint, and, summoning the petitioner and his other co-accused on the basis of the complaint, or, their commitment to the Court of Session in the instant case, would amount to mere irregularity, and, not an incurable illegality. The proceedings, referred to above, taken by the Committing Magistrate, thus, cannot be directed to be quashed at this stage.

(15) This petition is, accordingly, dismissed. The trial Court is directed to proceed with the trial and dispose of the case on merits expeditiously.

P.C.G.

Before G. R. Majithia, J.

JAGIR SINGH, SON OF PARSIN SINGH,—*Petitioner.*

versus

SWINDER SINGH AND ORS.,—*Respondents.*

Civil Revision No. 1395 of 1989.

30th November, 1989.

Code of Civil Procedure (V of 1908) O. 23 Rl. 1—Appeal dismissed as withdrawn on statement of Counsel—Application for restoration filed on the ground that Counsel was not authorised to withdraw appeal—Appellant confined in Jail on date of dismissal of appeal—In absence of express provision in Vakalatnama Counsel has no implied authority to withdraw.

Held, that on the facts of the instance case, the lower Appellate Court acted illegally in dismissing the application on the ground that

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the lawyer had the implied authority to withdraw the appeal. There is no express provision in the power of attorney enabling the Advocate to withdraw the appeal. The power to withdraw the appeal must be specifically given in the power of attorney and cannot be implied from the general words used therein that the counsel would conduct the appeal in the same manner as the principal would have done. The Advocate could not in the absence of a specific power given to him withdraw the appeal. He has exceeded his authority. A responsible counsel in normal circumstances would have acted more cautiously and would not have withdrawn the appeal in the absence of the client or his authorised agent appearing with the Advocate on the date of hearing. (Para 5)

Petition under Section 115 C.P.C. of Punjab Courts Act for revision of the order of the Court of Shri S. S. Grewal, Additional District Judge, Amritsar, dated 28th April, 1989, affirming that of Shri S. S. Arora, P.C.S. Additional Senior Sub Judge, Tarn Taran dated 3rd March, 1984, dismissing the suit of the plaintiff and ordering that, this will not however, affect the share of the plaintiff coming to him from his father and others and also ordering that the plaintiff will have no concern with the land sold by Bhan Singh in favour of Harbhajan Singh deceased,—vide sale deed dated 8th July, 1975. copy Ex. D-1 and leaving the parties to bear their own costs.

CLAIM:—*Suit for a declaration to the effect that the plaintiff is owner in possession of land measuring 44 Kanals 5 Marlas comprised in Khasra No. 21/8/1 (7-8) 8/2 (0-4) 13(8-0) 75/3/1 (5-14) 97/25/1 (1-12) 25/2 (5-10) 21 (8-0) 22/1 (1-12) 21/8/3 (0-3) 97/25/3 (0-18) 17/23/(2-13) 21/3/1 (4-18) 3/2 (3-2) as entered in the Jambandi for the year 1975-76 situated in village Dhunda Tehsil Taran Taran restraining the defendants from taking forcible possession of the said land on the basis of a forged and fictitious sale deed.*

CLAIM IN REVISION:—*For reversal of the order of both the courts below.*

Nemo, for the Petitioners.

Nemo, for the Respondents.

ORDER

G. R. Majithia, J. (Oral)

(1) This revision petition is directed against the order of the Additional District Judge, Amritsar whereby he dismissed the application filed by the petitioner for restoring the appeal against its original number and disposing of the same on merits.

(2) The petitioner (hereinafter referred to as the plaintiff) filed a suit for declaration to the effect that he was owner in possession of the disputed land. The suit was contested by the respondents and was dismissed by judgment and decree dated March 3, 1984. The plaintiff challenged the same in first appeal. The appeal came up for hearing before the First Appellate Court on March 20, 1986 and the following order was passed:--

“The counsel for the appellant has made a statement that he withdraws this appeal. In view of the statement of the counsel for the appellant, this appeal is dismissed as withdrawn. No order as to costs of this appeal.

(3) An application dated April 24, 1986, was moved by the petitioner for recalling the order,—*vide* which the appeal was dismissed as withdrawn. It was stated therein that on the date when the appeal was fixed for arguments, he was implicated in a case under section 302 IPC and he surrendered before Judicial Magistrate, Taran Taran on February 25, 1986 and was confined in Central Jail, Amritsar. He never authorised his counsel Shri H. S. Malhi to withdraw the appeal. The appeal was withdrawn by the counsel without his permission. The wife of the applicant and her father came to enquire from Shri H. S. Malhi about the fate of the appeal on March 24, 1986, when they were told that the same was dismissed on March 20, 1986. She applied for a certified copy of the order passed by the Appellate Court which was made available on April 15, 1986 and only then it was revealed that the appeal was dismissed as withdrawn on the basis of the statement of Shri H. S. Malhi and not on merit.

4. The factual averments made in the application were not controverted by the respondents. However, the order was justified on the ground that the counsel had authority to withdraw the appeal.

(5) On the facts of the instant case, the lower Appellate Court acted illegally in dismissing the application on the ground that the lawyer had the implied authority to withdraw the appeal. There is no express provision in the power of attorney enabling the Advocate to withdraw the appeal. The power to withdraw the appeal must be specifically given in the power of attorney and cannot be implied from the general words used therein that the counsel would conduct the appeal in the same manner as the principal would have, done. The First Appellate Court did not take another fact into consideration that the appeal was dismissed as withdrawn on March 20, 1986,

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as averred to in the application for recalling the order, the certified copy of the order,—*vide* which the appeal was dismissed as withdrawn was made available to the appellant's wife on April 15, 1986, and the application to recall the order was moved on April 24, 1986. This circumstance supports the appellant's version that the withdrawal was made without his consent. The Advocate could not in the absence of a specific power given to him withdraw the appeal. He has exceeded his authority. A responsible counsel in normal circumstances would have acted more cautiously and would not have withdrawn the appeal in the absence of the client or his authorised agent appearing with the Advocate on the date of hearing. I cannot commend the manner in which the application was disposed of by the first Appellate Court. It ought to have gone into the merits of the allegations made therein after recording evidence and then decided the same, of course on evidence he could have arrived at the same conclusion. The courts have to act cautiously while passing order of the kind as in the present case. I do not think it proper to comment upon the conduct of the lawyer which to say the least cannot be condescended.

(6) For the aforementioned reasons the revision petition is allowed. The order dated April 28, 1989 dismissing the application for recalling the order,—*vide* which the appeal was dismissed as withdrawn is set aside. The appeal is restored against its original number and the same will be disposed of expeditiously after notice to the parties.

R.N.R.

Before G. R. Majithia, J.

COUNCIL OF SCIENTIFIC INDUSTRIAL RESEARCH,—*Petitioner.*

versus

DILBAG SINGH SIAN,—*Respondent.*

Civil Revision No. 2354 of 1989.

20th December, 1989.

Administrative Tribunals Act—1985—Ss. 14, 19 and 29—C.S.I.R. filing suit for eviction of residential accommodation against