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VINOY KUMAR

v.

STATE OF U.P. AND ORS.

APRIL 16, 2001

B

[K.T. THOMAS AND R.P. SETHI, JJ.]

*Constitution of India, 1950 : Articles 226 and 136.*

C

*Writ Petition—Locus standi—Advocate filed writ petition challenging the transfer of his client's cases from one court to another—Maintainability of—Held : No person has locus standi if he is not personally affected by the impugned order—Only exception to this general rule is where the writ petition is for habeas corpus or quo warranto or filed in public interest—Hence, writ petition not maintainable.*

D

*Advocates Act, 1961 :*

*Section 30—Scope and ambit of—Held : Entitles an Advocate to practise the profession of law and not to substitute himself for his clients—Filing of writ petition in his own name is no part of the professional obligation of an Advocate.*

E

The District & Sessions Judge transferred a number of criminal cases for disposal to the Additional District & Sessions Judge/Special Judge. The petitioner-Advocate, representing the accused persons in three of such transferred cases, filed a writ petition in the High Court praying for quashing of the said order. The writ petition was dismissed by the High Court holding that the petitioner being an advocate had no *locus standi* to challenge the legality of the order by way of writ petition. Hence this Special Leave Petition.

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Dismissing the petition, the Court

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**HELD : 1.** Generally speaking, a person shall have no *locus standi* to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of the existence of a right in favour of the person invoking the jurisdiction. The

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exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or *quo warranto* or filed in public interest. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of person is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief. [1197-H; 1198-A-D]

2. Section 30 of the Advocates Act, 1961 only entitles an advocate to practise the profession of law and not to substitute himself for his client. The filing of the writ petition in his own name, being not a part of the professional obligation of the advocate, the High Court was justified in dismissing the writ petition holding that the petitioner had no *locus standi*. [1198-F]

*Chairman, Railway Board v. Chandrima Das (Mrs.)*, [2000] 2 SCC 465, held inapplicable.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 1253 of 2001.

From the Judgment and Order dated 23.2.2001 of the Allahabad High Court in Cr.L.M.W.P. No. 1056 of 2001.

U.R. Lalit, Sunil Kumar, Mukti Singh, Sunil Kr. Singh and Ms. Niranjana Singh for the Petitioner.

The Judgment of the Court was delivered by

SETHI, J. Aggrieved by the orders passed by the District & Sessions Judge, Varanasi dated 13.2.2001 transferring a number of criminal cases for disposal to the Additional District & Sessions Judge/Special Judge, the petitioner-Advocate, representing the accused persons in three of such transferred cases, filed a writ petition in the High Court praying for quashing of the said order. It was contended that by the transfer of the cases, the speedy trial of the accused has been hampered and that the order has been passed in a casual manner. The writ petition was dismissed by the High Court holding that the petitioner being an advocate had no *locus standi* to challenge the legality of the order by way of a writ petition.

Generally speaking, a person shall have no *locus standi* to file a writ

- A petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas-corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.

- In the instant case the petitioner had not filed the petition in public interest and did not disclose the circumstances which prevented the affected persons from approaching the court. In the discharge of his professional obligations, the petitioner-advocate is not obliged to file the writ petition on behalf of his clients. No circumstance was mentioned in the petition which allegedly incapacitated the affected persons from filing the writ petition. Section 30 of the Advocates Act, only entitles an advocate to practise the profession of law and not to substitute himself for his client. The filing of the writ petition in his own name, being not a part of the professional obligation of the advocate, the High Court was justified in dismissing the writ petition holding that the petitioner had no *locus standi*.

- The reliance of the learned counsel on *Chairman, Railway Board & Ors. v. Chandrima Das (Mrs.) & Ors.*, [2000] 2 SCC 465 is misplaced inasmuch as in that case the writ petition had been filed in public interest where it was found on facts that the affected person was not in a position to approach the court for the redressal of her grievances.

There is no merit in this petition which is accordingly dismissed.

H V.S.S.

Petition dismissed.