


***T.C. Mathai v. District & Sessions
Judge, Thiruvananthapuram
(1999) 3 SCC 614***



Facts:

- The appellant claims to be the power-of-attorney holder of a couple (husband and wife) living in Kuwait.
- He sought permission of the Sessions Court, Trivandrum to appear and plead on behalf of the said couple who are arrayed as respondents in a criminal revision petition filed before the said Sessions.
- The Permission was declined by the Sessions Judge and even by High Court and now the appeal before the Supreme Court to seek the same permission.

Issue

Can the appellant become a pleader for the respondent couple on the basis of power of attorney?

Contentions of the appellant:

The appellant submitted that he is the duly appointed attorney of the respondent-couple by virtue of an instrument of power of attorney executed by them and on its strength he contended that his right to represent the respondent-couple in the court would be governed by the said authority in the instrument.

Observations of the Court:

- The Court interpreted Section 2(q) of Cr.P.C.

“2.(q) ‘pleader’, when used with reference to any proceeding in any court, means a person authorised by or under any law for the time being in force, to practise in such court, and includes any other person appointed with the permission of the court to act in such proceeding;”

- As per above definition if the pleader is “any other person ”, it is essential requisite that such person should have been appointed with the permission of the court to act in such proceedings.

It is not necessary that the “pleader” so appointed should be the power-of-attorney holder of the party in the case. What seems to be a condition precedent is that his appointment should have been preceded by grant of permission of the court.

- But if the person proposed to be appointed by the party is not such a qualified person as an advocate, the court has first to satisfy itself whether the expected assistance would be rendered by that person.
- Section 2 of the Power of Attorney Act **cannot** override the specific provision of a statute which requires that a particular act should be done by a party-in-person. For that reason when the Code requires the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder appears for him. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case

Decision:

Court held that:

- An agent cannot become a “pleader” for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings.
- The respondent-couple have not even moved for such a permission and hence no occasion has arisen so far to consider that aspect.

Thank You