

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).5609/2009

(From the judgement and order dated 10/11/2008 in CRMMO No.
73/2008 of The HIGH COURT OF H.P AT SHIMLA)

ATUL JAITY

Petitioner(s)

VERSUS

MANOJ BALI & ANR.

Respondent(s)

(With appln(s) for stay)

Date: 24/01/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr. Ravi Bakshi, Adv.
 Mr. Yash Pal Dhingra, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Despite service, no one has entered appearance on behalf of the respondent. Accordingly, we proceed to dispose of this petition. Having heard learned Counsel for the Petitioner, we are of the view that the following observations in the impugned Judgment were not warranted for the disposal of the Petition before the High Court.

"At the very outset, I would like to say that Shri Atul Jaitly Advocate has acted in a highly unprofessional manner, which cannot be expected from a person who has been educated, trained and taught the legal ethics in the academics. If he was so incompetent in his profession as admitted by him that he could not have either watched the interest of his client, he should have returned the brief with an advice to engage some competent lawyer. On the top

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of it, he was so negligent that he misplaced the important documents so entrusted to him by his client on which his entire case and career depended. For his this unprofessional approach and negligence, some action need be taken by the Bar Council as it deserves but the accused cannot be allowed to suffer, despite the fact that the case before the learned trial court has traveled beyond stages of recording evidence, examination of the accused under Section 313 Cr.P.C. and reached at the stage of final

arguments."

"A corollary of latches or mistakes during the conducting of a case by the counsel who acted in an highly unprofessional manner cannot be understood as a lacuna which a court cannot fill up which has caused the inherent weakness or a latent wedge in the matrix of the defence case. Thus, no party in a trial can be foreclosed from correcting errors committed by the Advocate due to his misconduct. If proper evidence was not adduced or a relevant material was not brought on record due to his negligence, the Court is required to be magnanimous, in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

"Let an authenticated copy of this order be sent by the Registry to the Bar Council of Himachal Pradesh to take any action against Shri Atul Jaitly Advocate, Solan as it deserves in the circumstances aforesaid. The accused petitiioner is also at liberty to seek damages from the said Advocate for the loss, if any caused to him due to the deficiency in services or his inefficiency."

Accordingly, we expunge the aforeextracted observations.

The Special Leave Petition stands disposed of
accordingly.
(DEEPAK MANSUKHANI) (KUSUM GULATI)
Court Master Court Master