(1920) 04 CAL CK 0005

Calcutta High Court

Case No: None

In Re: Babu Chandi Charan Mitter — APPELLANT

Vs

RESPONDENT

Date of Decision: April 29, 1920

Acts Referred:

- Legal Practitioners Act, 1879 - Section 13(f)

Citation: 57 Ind. Cas. 931

Hon'ble Judges: Asutosh Mookerjee, C.J; Ernest Fletcher, J

Bench: Division Bench

Judgement

Asutosh Mookerjee, C.J.

This is a Reference, u/s 14 of the Legal Practitioners Act, by the District Judge of Rungpur, in the matter of Babu Chandi Charan Mitter, a Pleader practising in the Rungpur Courts. Proceedings were taken against the Pleader u/s 13(f) of the Legal Practitioners Act for misconduct set out in three formal charges as follows: "first, that taking advantage of his position as a Pleader, he, between the dates 17th to 20th September 1919 or there abouts, offered bribes to the record room staff to cause the disappearance of a word which was in all probability either ''Iswarbritti'' or ''Iswarkrishna'' from a deed, dated the 25th of Aswin 1136 B.S., executed by one Rajaram Nandi in favour of one Santiram Bairagi; secondly, that he attempted to remove the said word from the document between the dates 17th to 20th September or thereabouts; and thirdly, that in all probability he caused the disappearance of the said word from the document between the dates 17th to 20th September or thereabouts."

2. It is plain that the charges thus formulated, if established, show that the Pleader has been guilty of grave criminal offenses. Indeed, at one stage the District Judge considered whether criminal prosecution should not be commenced against the Pleader; but he name to the conclusion that the evidence available was of such a

character that a criminal prosecution was not likely to be successful He accordingly directed the institution of proceedings under the Legal Practitioners Act. We are of opinion that this was not the appropriate procedure to follow in the circumstances of this case. It was pointed by Sir Lawrence Jankins, C.J., in An Attorney, In re 19 Ind. Cas. 933 : 41 C. 113 : Cr. L.J. 305 that, where on an application by an aggrieved party to have an Attorney struck off the rolls of Attorneys, on the ground of professional misconduct, there was a positive sworn denial of the misconduct by the Attorney, coupled with an explanation which was not demonstrably false, even a strong case of suspicion would not justify disciplinary action against the Attorney on a summary proceeding. This view is substantially in agreement with the opinion expressed by Mr. Justice Louis Jackson in Nilkant Biswas, In the matter of 9 W.R. 29 Cr. In that case Mr. Justice Jackson observed that the matter alleged against the Mubhtar in fact amounted to a criminal offence; it seemed to be admitted by the Magistrate that the evidence would not have sufficed for a conviction and he did not think that it could be said that evidence which would not support a conviction on the criminal charge would justify a removal from the profession. It is not necessary to lay down an inflexible rule that there must in every case be a trial and conviction for criminal misconduct before disbarment will be ordered. That should be the ordinary rule where the misconduct alleged has no direct connection with the conduct of the Pleader in his practical and immediate relation to the Court. On the other hand, where the misconduct attributed indicates unfitness to discharge professional duties, a criminal conviction may not always be a prerequisite to the adoption of disciplinary measures; and, indeed, notwithstanding acquittal on the criminal charge, disciplinary measures may be successfully taken, as in the case of Second Grade Pleaders, In the matter of 6 Ind. Cas 313 : 34 M. 29 : (1910) M.W.N. 163 : 8 M.L.T. 22 : 20 M.L.J. 500 : 11 Cr. L.J. 310. The test to be applied in each case is, whether the person concerned will be prejudiced by the adoption of summary procedure for the investigation of what is in reality a grave criminal charge. There can be no doubt that if the procedure followed in the present case were approved, the result might be an obvious injustice to the parson concerned. If a criminal prosecution had been instituted against the Pleader, he would have had the benefit of a trial by Jury and might conceivably have been acquitted, as indeed was apprehended by the District Judge. In such circumstances, summary proceedings under the Legal Practitioners Act should not have been adopted. The view we take is supported by cases of high authority: Anon. (1834) 5 B. & A. 1088 : 110 E.R. 1095 : 39 R.R. 735, Anon. (1838) 3 389, Anon. (1833) 2 Dowl. P.C. 110 and Stephens v. Hill (1842) 10 M. & W. 28 : 62 R.R. 517 : 1 Dowl. (N.S.) 669 : 11 L.J. 329 : 6 Jur. 585 : 152 E.R. 368. The rule deducible from these cases may be briefly stated. An Attorney will be struck off the rolls if convicted of felony or if convicted of a misdemeanour involving want of integrity, even though the judgment be arrested or reversed for error; and also, without a previous conviction, if he is guilty of gross misconduct in his profession or of acts which, though not done in his professional capacity, gravely affect his character as an Attorney; but in the latter case, if the acts charged are

indictable and are fairly denied, the Court will not proceed against him until he has been convicted by a Jury, and will in no case compel him to answer under oath to a charge for which he may be indicted. A similar view has been approved by the Supreme Court of the United States, Wall, Ex parte (1882) 17 Otto. 265 : 107 U.S. xxvii 265.

3. We are clearly of opinion that this reference must be discharged and the ad interim order of suspension cancelled.

Fletcher, J.

4. I agree.