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67 Ind. Cas. 985

Calcutta High Court

Case No: None

In Re: Rabindra Chandra Chatterjee — APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 23, 1922

Citation: 67 Ind. Cas. 985

Hon'ble Judges: Lancelot Sanderson, C.J; John Woodroffe, J; Asutosh Mookerjee, J

Bench: Full Bench

Judgement

Lancelot Sanderson, C.J.
This was a Rule granted by my learned brothers, Mr. Justice Chatterjee and Mr. Justice Pearson, calling upon

the District Judge of Dacca to show cause why the proceedings u/s 14 of the Legal Practitioners Act against the petitioner should not be quashed

or, in the alternative, why the proceedings should not be transferred to some other Court or why such other order should not be passed as to this

Court might seem proper. The Court made an order that, in the meantime, pending the hearing of the Rule, further proceedings u/s 14 of the Legal

Practitioners Act should be stayed. It appears that the learned District Judge of Dacca caused a notice to be served upon the petitioner u/s 14 of

the Legal Practitioners Act. That notice referred to certain matters, which, I think, may be classed under three heads: With regard to the first, the

allegation was that the petitioner, being a Pleader of the Court, was, on the 15th of June 1921, ""guilty of grossly improper conduct"" in the Court of

the Subordinate Judge, Babu Pashupati Basu, in that he addressed the Subordinate Judge in an offensive manner and repeatedly refused to submit

to his order in regard to the admission of a plaint that was insufficiently stamped and, after the Subordinate Judge had passed his order, repeatedly

interrupted him in a grossly improper and discourteous manner. The second matter, that was alleged, was that after this incident the petitioner

caused a meeting to be called of the members of the Bar Association, Dacca, and, that by the statements he made regarding the Subordinate

Judge, Babu Pashupati Basu, induced certain Pleaders of that Court to abstain from appearing in the Court of the Subordinate Judge on behalf of

their clients in cases in which they had been engaged. Then the notice went on to allege that, in consequence of such inducement, certain Pleaders

wilfully and without excuse and in contravention of their agreements with the persons who had engaged them to appear on their behalf in the Court

of the Subordinate Judge refused to appear in the Court of the Subordinate Judge and thus deprived their clients of the legal assistance they had

agreed to render them, and the third matter to which reference was made was that it was alleged that the petitioner had filed a complaint in the

Court of the Deputy Magistrate, Babu B.M. Ghose, against the Subordinate Judge, Babu Pashupati Basu, charging him with having, while in the

discharge of his duties as Judge, committed certain criminal offences; and by reason of these matters it was alleged that the learned Pleader was

guilty of grossly improper conduct and had rendered himself liable to be suspended or dismissed u/s 13 of the Legal Practitioners Act, The first

point on which the learned Pleader in support of the Rule has relied, is that the learned District Judge who directed the service of this notice had no

jurisdiction to institute these proceedings by reason of the fact that the misconduct relied upon did not take place in the learned District Judge''s

Court. There seem to me to be more than one answer to this argument. In the first place, the alleged misconduct on which the notice was based

did not take place altogether in the Court of the learned Subordinate Judge, It is true that the matters referred to under the first head, which I have

mentioned, took place in the learned Subordinate Judge''s Court; but the matters which are referred to under heads 2 and 3 namely, the alleged

inducement to abstain from appearing in the Court off the Subordinate Judge and the alleged complaint in respect of criminal offence did not take

place in the Court of the learned Subordinate Judge, Consequently, it cannot be said that the whole of the alleged misconduct, upon which the

notice was based, had taken place in the Court of the learned Subordinate Judge.

2. Apart from that, in my judgment, the learned District Judge had jurisdiction to deal with all the matters which were alleged in the notice,

inasmuch as the petitioner (the learned Pleader) was practising in the Court of the learned District Judge and it was within his jurisdiction, upon

proper materials being laid before him, to institute the proceedings in the manner in which he did.

3. The second point on which the learned Vakil relied was that the learned Judge had acted upon materials which were not sufficient and in a sense

improper in that he had stated that he had acquired some of the information upon which he relied from newspaper reports. It is clear from the

learned Judge''s answer to the petition that the only matters on which information from newspaper reports was attained, were, first, the

proceedings at the meeting of the Bar Association and, secondly, the institution of a criminal case against the learned Subordinate Judge. As

regards those two matters there is no dispute that there was a complaint in criminal proceedings laid, and there is also no dispute that a Resolution

was passed by the members of the association to carry out a certain course of conduct. The learned Judge has informed the Court of the materials

which he had with regard to the other matters and as to how he obtained those materials, and, in my judgment, this second point affords no reason

for making the Rule absolute.

4. The third point which the learned Vakil urged was that this case ought to be transferred from the file of the learned District Judge to the file of

the learned Additional District Judge. In this case the petitioner, (the learned Pleader), has set out in his petition his reasons why the case should be

transferred from the learned District Judge''s file. In my judgment, the allegations which have been made have been completely answered by the

explanation which the learned District Judge has given and I can see no reason for any reasonable apprehension on the part of the petitioner that he

will not get a fair and impartial hearing at the bands of the learned District Judge. In my judgment this Rule should be discharged.

5. In discharging the Rule, I am expressing no opinion as to the merits of the matter. My judgment is confined to holding that it is not possible at this

stage of the proceedings to say that none of the allegations, if proved, would amount to professional misconduct within the meaning of the Act.

John Woodroffs, J.

6. I agree. As stated in the judgment of the learned Chief Justice, the only matter before us now is whether the proceedings should be quashed or

transferred: and, with no other question we are now concerned. It may be that the facts charged did not happen or, if they did, those facts were

insufficient for proceeding against the applicant. On this I say nothing now. If it were shown that the facts charged, if proved, did not constitute

grounds for proceeding under the Act, then there would be a case for quashing the proceedings as asked; but is this case there is at least one

charge, namely, as regards ""the addressing of the Subordinate Judge in an offensive manner"" and ""repeatedly interrupting him in a grossly improper

and discourteous manner"" as to which, whatever may be said as regards the other charger, it is not possible to say that it may not in any case be a

ground for proceeding under the Act. Therefore, it seems to me that the proceedings cannot now be quashed and that the facts must be enquired

into. No doubt, as it was contended by the learned Vakil for the applicant, there must be a foundation for these proceedings as for any other; but I

am unable to say that there was no ground for such proceedings because details of the information which include a report submitted by the learned

Subordinate Judge himself, and other reports said to have been received, have not been set out in detail. Moreover, although there may be

difference as to what actually occurred in the case of some of the facts, many others appear to be well enough known.

7. On the question of jurisdiction, it is slid that Section 14 of the Legal Practitioners Act says ""charged in such Court."" It does not say that the

charge must be made only by that Court in which the alleged misconduct has taken place. Therefore, it does not by these wordings limit the charge

to the Court in which the alleged misconduct took place. Moreover, as already pointed out by the learned Chief Justice, the charge includes

matters which are said to have occurred subsequent to the proceedings in the Court of Babu Pashupati Basu which are the subject of the first

charge. It has been further held in the case of Babu Het Ram, In the matter of 188 P.L.R. 1901 that Section 14 of the Legal Practitioners Act

empowers any Court in which a Pleader practices to consider a charge of misconduct made against him in such Court and that the section does not

limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed, I see no reason for dissenting from the

opinion there expressed.

8. On the last point, namely, that of transfer, the grounds upon which it has been urged, have been met in the explanation of the District Judge. I do

not think that the applicant has established a case for the grant of the transfer asked for.

Ashutosh Mookerjee, J.

9. I agree that this Rule cannot be supported in either of its two branches.

10. As regards the first alternative, the contention of the petitioner that the proceedings should be quashed is based upon a two-fold ground, It is

argued, in the first plate, that the proceedings initiated by the District Judge are without jurisdiction, as the alleged incident did not take place in his

Court. This position if, in my opinion, founded upon a construction of Section 14 of the Legal Practitioners Act which is not borne out by its

language. Section 12 authorises the suspension and dismissal of Pleaders and Mukhtears convicted of criminal offences by the High Court. Section

13 then provides for the suspension and dismissal of Pleaders and Mukhtears guilty of unprofessional conduct even though the particular act of

misconduct has not led to conviction by a Court of Justice. Section 14, thereupon, provides that ""If any such Pleader or Mukhtear"" (that is a

Pleader or Mukhtear holding a certificate as mentioned in Section 13) ""practising in any subordinate Court or in any Revenue office is charged in

such Court or office with taking instructions except as aforesaid (i.e., as mentioned in Section 13) or with any such misconduct as aforesaid"" (i.e.,

as specified in Section 13) ""the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such

charge will be taken into consideration,"" This section plainly authorises a subordinates Court to institute proceedings against a Pleader or Mukhtear

practising in that Court. It is not restricted to cases where the alleged misconduct has been committed in the Court wherein the proceedings are

instituted. This was the interpretation adopted in the case of Babu Het Ram, In the matter of 188 P.L.R. 1901 and no good reason has been

assigned why we should please a narrow construction upon the section.

11. The second ground which forms the basis of the contention that the proceedings should be quashed is that they have no legal foundation. There

is, in my opinion, no substance whatever in this argument, Our attention has been invited to the case of Nabin Chandra Das Gupta, In re 35 C. 317

: 12 C.W.N. 381 : 7 Cr. L.J. 252 where proceedings instituted u/s 14 were quashed on the ground that if what was alleged against the legal

practitioner, namely, refusal to accept engagement, was established, it would not constitute a ground for a disciplinary order u/s 13. In the case

before us, such a position cannot be maintained. It cannot be disputed that some at any rate of the allegations against the legal practitioner may, if

established, constitute grounds for a disciplinary order u/s 13. It cannot consequently be maintained that there is no legal foundation for these

proceedings.

12. It has been urged, however, that the proceedings have been instituted on materials which cannot be treated as affording a legal foundation for

the initiation of an enquiry u/s 13, The contention is that as the District Judge has taken action on the basic of a confidential report by the

Subordinate Judge, on another confidential report by the Additional Superintendent of Police, on reports in a newspaper as to the proceedings at a

meeting of the Bar Association, on the fact of institution of a criminal case by the Pleader, and on certain information furnished by the ministerial

officers of the Court, the proceedings must be deemed to be without legal foundation. I am not prepared to accept this contention as well founded.

Section 14 does not specify the nature of the materials upon which the Court concerned may take action. It is plain, however, that if proceedings

are instituted, there must be an enquiry supported by legal evidence. That this is the correct view of the scope of Section 14, is clear from the

judgment of the Judicial Committee in Southekal Krishna Rao, In the matter of 14 I.A. 154 : 15 C. 152 : 12 Ind. Jur. 11 : 5 Sar. P.C.J. 96 : 7 Ind.

Dec. 685 where Sir J. Hannen made the following observation: ""It does not appear very clearly what led to the institution of those proceedings, but

it is necessary to inquire into their origin, as if it became known to an officer presiding in a subordinate Court that one of the practitioners before

that Court has been guilty of unprofessional conduct, it would be within the scope of his duties to take steps for the purpose of having that matter

adjudicated upon."" This is identical with the opinion expressed by the Supreme Court of the United States in Randall v. Brigham (1863) 7 Wal 523

: 19 Law Ed. 385 where Field, J., observed as follows: ""It is not necessary that proceedings against attorneys for malpractice, or any

unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed

in the progress of a cause; or from what the Court learns of the conduct of the attorney from his own observation. Sometimes they are moved by

third parties upon affidavit; and sometimes they are taken by the Court upon its OWN motion. All that is requisite to their validity is that, when not

taken for matters occurring in open Court, in the presence of the Judges, notice should be given to the attorney, of the charges made, and

opportunity afforded him for explanation and defence. The manner in which the proceedings shall be conducted, so that it be without oppression or

unfairness, is a matter of judicial regulation, The authority of the Court over its attorneys and counsellors is of the highest importance, They

constitute a profession essential to society. Their aid is required, not merely to represent suitors before the Courts, but in the more difficult

transactions of private life. The highest interests are planed in their hands and confided to their management. The confidence which they receive and

the responsibilities which they are obliged to assume, demand not only ability of a high order, but the strictest integrity. The authority which the

Courts hold over them, and the qualifications required for their admission, are intended to secure those qualities."" This view has been followed in

practise in many cases reported in the books; amongst them two may be mentioned here; Advocate, In the matter of an 4 C.L.J. 259 and

Advocate, In the matter of 4 C.L.J. 262 : 4 Cri. L.J. 241. In the first case, action was taken on the basis of an information communicated to this

Court by the Advocate-General in a letter addressed by him. In the second case, action was taken by this Court on the basis of a casual statement

in the deposition of a witness in a proceeding in a subordinate Court. What is essential however, is that the charge must be formulated with

precision so as to enable the legal practitioner concerned to meet the allegations against him, Ganapathi Sastry, In re 3 Ind. Cas. 344 : 19 M.L.J.

504 : 6 M.L.T. 253 : 11 Cri. L.J. 274. In the present case, the petitioner has not contended that the allegations contained in the charge are vague

and indefinite. On the other hand, the eighteen paragraphs of his written statement give a very full and complete account of his version of the case.

Indeed, up to the present moment there is nothing to show that the petitioner has been in any way embarrassed by vagueness or indefiniteness in

the charge against him. On these grounds, I hold that the first alternative branch of the Rule cannot be supported.

13. As regards the second alternative, it has been contended that there is a reasonable apprehension of miscarriage of justice in the mind of the

petitioner, I am not able to adopt this view and I cannot overlook that the ultimate order, if any, can be passed by this Court and this Court alone

on the materials supplied by the subordinate Court.

14. I hold accordingly that the Rule must be discharged.