

In Re: an Advocate

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Court : Mumbai

Decided On : Mar-01-1927

Reported in : AIR1927Bom517; (1927)29BOMLR1062

Judge : Amberson Marten, Kt., C.J., Fawcett and Blackwell, JJ.

Appeal No. : Application No. 9 of 1927

Appellant : In Re: an Advocate

Judgement :

Amberson Marten, Kt., C.J.

1. This is a petition under the Disciplinary Jurisdiction in respect of an Advocate of this Court. Counsel have agreed that the papers in the appeal paper book are to be taken as evidence in the case.

2. The matter arises out of an inquest which was held by the Coroner of Bombay on the death of one Umar Haji Yusuf Sobani. In his affidavit the advocate states: the deceased 'was an intimate friend of mine and his sudden death upset me. I did not however represent his brother Osman Sobani or any one else in my professional capacity at the inquest before the Coroner. I attended the inquest merely as a friend of the deceased'.

3. It appears from the advocate's explanation, Ex. F, that at the adjourned hearing on July 20, the Police Surgeon gave out that the Chemical Analyser's report

indicated that opium was found and that death was due to opium. The next day a certain letter was placed in the hands of the advocate, and on the following day, viz., July 22, he visited the Chemical Analyser. What took place between them is set out in the letters or documents Exs. C and D, the one being by the advocate, and the other by the Chemical Analyser. Substantially the advocate sounded the Chemical Analyser as to the accuracy of his analysis, and whether the Analyser was correct in thinking that the death was due to opium and not to morphine. The Analyser is clear in his statement that the advocate definitely suggested that the death might be due to morphine and not to opium. It is also common ground that the advocate asked if any of the viscera were left so that a further examination might be made.

4. I need not go into further details. The incident subsequently became prominent at the adjourned hearing of the inquest when the Chemical Analyser was called as a witness. It is sufficient to say that the pleader for Usman, the brother of the deceased, who was putting forward the suggestion of morphine, cross-examined certain witnesses to show that that was the real cause of death. I should here state that this brother Usman was represented by a solicitor Mr. Tricumdas Dwarkadas and by a pleader Mr. B.T. Desai. It would also appear from the advocate's letter, Ex. C, where he says to the Analyser 'But suppose we bring an order on you for re-examination, would you then properly examine', that the advocate was acting in concert with Usman.

5. Although the one is a Parsi and the other is a Mahomedan, we may take it that the advocate's statement that he was an intimate friend of the deceased is accurate. In his affidavit he has admitted that he was 'indiscreet in acting on the impulse and seeing' the Analyser, and he has expressed his sincere regret for having done so. Before us at the outset Mr. Munshi for the advocate once more repeated that statement.

6. We think, however, that we must go one step further here, and intimate our views on what the advocate did. The question of tampering with witnesses is a very serious one, and where, as here, the Analyser had made his report, anybody subsequently going to him and suggesting that he had not made his analysis

properly, and that really the cause of death was something quite different, viz., morphine and not opium, would lay himself open to the suspicion of tampering with the witness. As a barrister it was no part of his duty at all. Indeed it was entirely contrary to his duty to interview witnesses without the intervention of solicitors. That was a matter for solicitors. But as an advocate he would have the right outside this High Court to act as well as plead in our Presidency. Speaking for myself, I do not think he can be in any better position here by reason of the fact that he was not actually professionally engaged. On the contrary I think it is rather to his advantage to treat him as if he was professionally engaged. Even on that basis I think the way in which he went about this matter was improper from a professional point of view. If he wished to see any of the Crown witnesses, or the Police witnesses it would have been easy to ask for the consent of the Commissioner of Police, or alternatively of the Coroner. But to go in this way behind the backs, so to speak, of the persons in charge of the case and also incidentally of the legal advisers of Usman, was not, in my opinion, a proper course to take.

7. Having thus expressed my opinion, it follows that in my judgment his conduct is one deserving of censure. But, under all the circumstances of the case, we do not think that we need visit that conduct with any graver consequences to his professional career. I mean we think this is a case where we need not direct the advocate to be suspended.

8. Under these circumstances, I would hold that the advocate has been guilty of conduct which requires our censure, but that there will be no order except that he pays the costs of this petition.

Fawcett, J.

9. I agree.

Blackwell, J.

10. I agree.

