

In Re: H, an Advocate

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Court : Allahabad

Decided On : Apr-15-1941

Reported in : AIR1941All280

Appellant : In Re: H, an Advocate

Judgement :

Braund, J.

1. This is a matter in which a complaint has been received by the High Court from a certain Abdullah Khan complaining of professional misconduct on the part of an advocate of Cawnpore. It has been referred to us to be dealt with under Section 10, Sub-section (2), Bar Councils Act, 1926. The complaint itself, to put it briefly, alleges the misappropriation by the advocate of some fifteen hundred odd rupees, being the balance of a sum received by the advocate on payment out of Court on behalf of his client, the complainant. If what the complainant says is true as to which, of course, we express no opinion, it would appear that the advocate may not only be liable in a civil Court to refund the money but may also be guilty of a criminal offence. We thought it right when the matter came before us on 23rd August last year to give the advocate an opportunity to tender any explanation he might wish to make. That he has done by a letter dated 19th February 1941 addressed to the Deputy Registrar of the Court. It amounts to a complete traverse of the complainant's allegation. In these circumstances, we have to consider what is the right course to take. Section 10(2), Bar Councils Act, 1926, gives the Court

power summarily to reject a complaint. If it does not summarily reject the complaint, the only other course open is to refer the case for inquiry either to the Bar Council or to the Court of the District Judge. We have, therefore, to consider whether this is a case in which we should summarily reject the complaint or whether it is one in which we should refer it to the Bar Council or to the District Judge.

2. As we have pointed out, the charge made by the complainant is one of simple misappropriation of money by the advocate. But for the accident of the person charged being an advocate, this is a matter which would normally be dealt with by the ordinary criminal or civil Courts of the province. It is only because he happens to be an officer of this Court that the procedure prescribed by the Bar Councils Act is available to the complainant. In our view, the jurisdiction under the Bar Councils Act, 1926, is one which ought to be circumspectly exercised. It is true that the Act by Section 10(1) gives to the High Court a very wide field of misconduct over which to exercise its jurisdiction. Its jurisdiction extends over 'any advocate of the High Court whom it finds guilty of professional or other misconduct.' Though it is true that a deliberate fraud of a criminal character committed on a client must necessarily amount to professional misconduct in an advocate, it does not follow, we think, that the special tribunal created by the Bar Councils Act is one which ought necessarily to deal, at any rate, in the first place, with every case in which an advocate is charged with committing a fraud or other crime in relation to his professional practice. We think that a distinction should be drawn between that species of misconduct which is of a purely professional-character and misconduct which also lies within the ambit of the criminal law. In the former case, we do not doubt that a special tribunal such as that which is contemplated by the Bar Councils Act is a proper one to deal exclusively with purely professional delinquencies. But we doubt whether it was the intention of the Act that a tribunal under it should in all cases usurp the functions of a criminal or civil Court merely by reason of the accident of the person complained against being an advocate and the subject-matter of the complaint being a matter connected with his professional practice. We find this view expressed by the Judicial Committee of the Privy Council in a case of this Court in *Thakur Har Prasad Singh Vakil v. The Judges of the High Court of Judicature at Allahabad* in these words:

Their Lordships think it right to add that, while they do not take the view that it is incompetent for the High Court to deal under Article 8, Letters Patent, with charges of a criminal nature against a practitioner unless and until these have been investigated by a criminal Court, they regard it as eminently fitting that in such cases the criminal prosecution should precede any disciplinary decision.

3. With great respect what their Lordships have there said accords with our own view. In a simple case, such as this, we do not think it right ourselves to exercise the normal functions of a criminal or civil Court. To do so in every case would, we think, lay the jurisdiction of the Act open to grave abuse. In all the circumstances, we think that this is a matter which should be dealt with under Section 10, Bar Councils Act, 1926, after the complainant has taken such steps, if any, as he may be advised to take to establish either the guilt of the practitioner in question in a criminal Court or his liability in a civil Court. Should either of those proceedings be taken and terminate in the framing of the charges levelled by the complainant against the advocate in question, then it will be possible for him to approach this Court again under the Bar Councils Act. We, therefore, think, that this is a case in which we should summarily reject the complaint. We accordingly reject it.