

**In Re: R, a Mukhtar**

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**Court :** Allahabad

**Decided On :** Oct-16-1936

**Reported in :** AIR1937All50; 166Ind.Cas.818

**Appellant :** In Re: R, a Mukhtar

**Judgement :**

ORDER

1. This is an application by R, who was at one time a 'mukhtar' and revenue agent, practising at Budaun. His name was struck off the roll by an order of this Court, passed on 30th May 1929, on the ground that he had been convicted of criminal breach of trust under Section 409, I.P.C., and sentenced to four months' rigorous imprisonment and a fine of Rupees 500, to which the sentence was reduced by the Sessions Judge on appeal. The present application was made by him on 24th January 1935 for reinstatement on the allegation that he has reformed himself in the interval and, in spite of trying circumstances, he has steadfastly maintained a high standard of honesty. In support of his allegation he has produced a large number of testimonials given by leading men, official and non-official, of his district testifying to his upright character and honesty. He also relies on the judgment of the Munsif of Sahaswan in Civil Suit No. 15 of 1929, which was instituted shortly after his conviction in the criminal case. The Munsif found in his favour on the identical issue which was involved in the criminal case.

2. That this Court has power to reinstate a legal practitioner dismissed for misconduct can admit of no doubt and the learned Government Advocate, who

appeared to oppose this application, did not contend that, if this is a proper case, the Court is prevented by any rule of law from reinstating the applicant. We have before us several records of cases in which legal practitioners previously dismissed were allowed to resume practice. The main question therefore which requires consideration is whether, in the circumstances of the present case, the Court should reinstate the applicant in the exercise of its undoubted inherent power in that behalf. The case was originally heard by a Division Bench, and it seems to have been contended before it that the practice of this Court has been to reinstate a dismissed practitioner after a sufficient length of time during which his conduct was reported to be above board. To examine the correctness of that contention and to have an accurate idea of the practice which has prevailed in this Court, the Division Bench ordered that a statement of all past cases be prepared and the records of such cases with such statement be laid before the Full Bench to which the case has been referred in view of its importance. Counsel on both sides have commented upon a number of cases in which an application for reinstatement was granted or refused. We may say at once that the decided cases do not show any such practice as is contended for by the applicant and that no general rule has ever been laid down by this Court. Each case was considered on its own merits, and whenever it appeared to the Court that, having regard to the gravity of the offence or misconduct for which a legal practitioner was dismissed and to his subsequent good conduct, he was a fit and proper person to be re-admitted to the legal profession, he was reinstated. In several instances the Court refused to exercise its power to reinstate a dismissed legal practitioner.

3. We consider it necessary to dwell on this aspect of the case to dispell the impression which appears to be gaining ground that dismissal of a legal practitioner merely implies his suspension only temporarily and that he is to be reinstated as a matter of course after a certain length of time if his conduct during that time is not called in question. While on the one hand we are clearly of opinion that a legal practitioner, who has been convicted of an offence implying moral turpitude or who has been found guilty of some misconduct, may so reform his character in course of time as to justify his re-admission to the legal profession, we think, on the other hand, that the mere fact that he has not repeated his offence and has not shown any tendency to misconduct himself in his dealings with others

during a given period is not always sufficient for reinstatement of a dismissed legal practitioner. The nature of the offence or misconduct for which he was disbarred, the length of time which has elapsed since his dismissal, the extent to which he has been tried in other walks of life, the opportunities he had of acting honestly in the face of temptations and the opinions of respectable persons who have had personal experience of his honesty are the important determining factors. Where the circumstances in which a legal practitioner deviated from the path of rectitude are not of a recurring nature or do not suggest a deep-rooted criminal tendency, a few years of unblemished life may justify the belief that he has turned a new leaf. Where however the offence or misconduct proved against him was of such gravity as to indicate an inherent defect of character and moral depravity, very cogent proof ought to be forthcoming to satisfy the Court that he has completely reformed himself.

4. In this view, it is necessary to consider the gravity of the offence of which the applicant was convicted and the evidence showing that he has so reformed himself after his release from jail that he can be safely trusted to behave honourably. To obtain an accurate idea of the former, it is not enough to say that he was found guilty of having misappropriated three hundred rupees odd belonging to his client. We have examined with some care the judgment of the trying Magistrate and the Sessions Judge in the criminal case in which the applicant was convicted, and we are constrained to say that the applicant was convicted of a very serious offence and that probably it was not the first of its kind. He was engaged by one Nehali for withdrawing Rs. 814-2-0 standing to his credit in the Government Treasury. The applicant accordingly withdrew that amount but did not pay it immediately to his client, who, after waiting for some days, came to him to demand the money. He then paid Rs. 508 and retained the balance of Rs. 306-2-0 claiming it to be his remuneration for his services. This happened on 30th April 1908. These facts were found by the criminal Court not on the mere testimony of Nehali but in view of the dramatic development which followed the incident. Nehali at once approached the District Magistrate and complained to him of what had happened. The District Magistrate took a very prompt action and questioned the applicant as to whether Nehali's allegation was true. The applicant said that he had paid the entire sum of Rs. 814-2-0 to Nehali on the preceding

Friday and taken a receipt therefor. The District Magistrate asked the names of the persons who were present when he made the payment. He mentioned the names of three persons who did not support him.

5. The District Magistrate had a search made of the applicant's house for the receipt which he said he had obtained from Nehali. No such receipt was found then, nor did he produce one. Subsequently he produced a receipt purporting to have been scribed by the man who was never examined and attested by persons other than those whose names he had mentioned as witnesses to the District Magistrate. The receipt bore the date 27th April 1928. The applicant's case was that the money was paid and a receipt executed on that date. Nehali's case, on the other hand, was that the sum of Rs. 508 was paid to him on 29th April. Nehali was able to prove at the trial that he was at Sahaswan on 27th April 1928, where he had gone to give evidence in the Court of the Munsif 'of that place, though he was not actually examined. The record of the case in which he had been summoned to give evidence satisfactorily demonstrated that Nehali had attended the Court at Sahaswan on 27th April 1928, when he was discharged and diet money paid to him. His thumb-impression in proof of that fact appeared on the record of that case. We are omitting all controversial matters and referring only to such features of the case as cannot be doubted. It is perfectly clear that the applicant's offence was a good deal more than misappropriating part of his client's money. It included a deliberate fabrication of the receipt, as was found by the trying Magistrate and the Sessions Judge on appeal.

6. After the termination of criminal proceedings, when the applicant was in jail, notice under Section 12, Legal Practitioners' Act was issued to him to show cause why he should not be dismissed. He instituted a civil suit for a declaration that the receipt in -question in' the criminal case was genuine and for another relief which it is not necessary to mention. The Munsif of Sahaswan, who decided that case, found in his favour. In the meantime, proceedings under the Legal Practitioners' Act resulting in his dismissal had terminated. He then applied to this Court for reinstatement, relying upon the civil Court decree and a certificate of good character by Mr. Nethersole, who was at one time the District Magistrate of Budaun. That application was disposed of by the same three Judges who had

dismissed him, and they held in an elaborate judgment that the civil Court decree had been obtained collusively and for the purpose of supporting his application for re-instatement. The learned Judges observed:

We are satisfied that the civil Court decree can be of no assistance whatever to B, In fact if it indicates anything at all, it indicates that he was merely preparing false material with a view to influencing this Court, if possible, at a later stage.

7. This order was passed on 26th February 1932. After a lapse of three years R. renewed his application for re-instatement, which was made on 24th January 1935. All the testimonials he has produced bear dates before 24th January 1935. The testimonials are too numerous to allow of their being dealt with one by one. R. is able to produce certificates from the District Magistrate and the District Judge of Budaun and from almost all the Magistrates, the civil Judge and the Munsif of that District. He has also produced certificates given by leading citizens of the town and its neighbourhood. Briefly 'stated, everyone sympathizes with him for the unfortunate circumstances in which he lost his practice and has to face privation and hardship of life. Everyone also says that his character is generally considered to be irreproachable and that he is perfectly reliable. Some of them go to the length of saying that the litigants have every confidence in him. With the exception of one of these gentlemen, whose testimonials we shall presently consider, no one has had any dealings with him or personal experience of his integrity. Boiled down, their opinion comes to this that they know nothing against his character. The only exception is Mr. Jyoti Prasad of Shahjahanpur, who, is a gentleman of position and possessed of extensive zamindari. The applicant was in his employment as a manager 'for some time' during which he gave entire satisfaction to his employer. Mr. Jyoti Prasad says that he found him 'honest and straightforward' in his dealings and that he is 'repentant and-feels deeply the stigma attached to him as a consequence of the criminal case.'

8. Though the certificate is not duly proved, we have no reason to doubt its authenticity. It does not, however, appear why Mr. Jyoti Prasad had to deprive himself of the services of the applicant. The applicant himself stated before us that he left his service, because he had to live near a certain jungle and his health

broke down. The certificate is dated 16th April 1934, and the applicant may be taken to have conscientiously worked as the manager of the estate for sometime after his release from jail; but this is all that can be said with any amount of certainty about his character during the time which has elapsed since his release from jail. We are not prepared to say that, having regard to the gravity of the offence of which he was convicted and which we have mentioned in some details, sufficient proof is forthcoming to warrant the view that his is a proper case for reinstatement as a mukhtar. Accordingly we reject his application.

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