

In Re: Three Vakils of Jhansi

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Court : Allahabad

Decided On : May-23-1928

Reported in : AIR1928All396; 110Ind.Cas.686

Appellant : In Re: Three Vakils of Jhansi

Judgement :

1. The District Magistrate of Jhansi has reported against one pleader and two vakils, with a view to disciplinary action being taken against them under the Legal Practitioners Act. It appears that a riot case was pending in the Court of the Joint Magistrate of Jhansi which had arisen out of some communal dispute. On 21st March 1928 an application was made to the Joint Magistrate requesting him to adjourn the case on the ground that the accused wanted to move the High Court for a transfer. In spite of the imperative provisions of Section 526, Criminal P.C., the Joint Magistrate refused to adjourn the case, but forwarded the application with his order to the District Magistrate for information. On 22nd March 1928 a fresh application was made to the District Magistrate for transfer of the case from the Court of the Joint Magistrate. The learned District Magistrate disposed of both the applications on 26th March 1928. In a long and considered order he declined to transfer the case, but, to quote his own words.

gave certain directions to the Joint Magistrate; amongst these directions there was a special admonition that every opportunity should be given to the accused to engage counsel from outside, if they desired to do so.

2. On 27th March 1928 a fresh application under Section 526 of the Code was filed in the Court of the Joint Magistrate, signed by a number of accused persons, praying that the case be adjourned so as to give time to the accused to apply to the High Court for a transfer. The Joint Magistrate adjourned the case till 10th April 1928. The pleader and one of the vakils, accompanied by one of the accused, Kanhaiya Lal, came to the High Court to consult lawyers here, and they were advised that, in view of the instructions, which had been given by the District Magistrate, it was not advisable to apply for a transfer at that stage. The pleader and the vakil accordingly returned to Jhansi, and on 5th April 1928 the Joint Magistrate was informed that the accused did not propose to apply to the High Court for a transfer. There was, however, a request that the case should be taken up on 12th April instead of 10th April, to enable the accused to bring counsel from outside. This request was granted. The case was eventually heard and decided on 30th April, and a large number of the accused persons were convicted.

3. On 3rd May 1928 the District Magistrate, apparently without ascertaining which particular lawyers were concerned in the application of 27th March 1928, issued notices to all the vakils, about nine in number, who were appearing for the various accused persons in the case, to show cause why steps should not be taken under the Legal Practitioners Act, against them. It is to be noted that neither the application of 21st March, nor that of 27th March bore the signatures of any of these vakils.

4. On 5th May 1928 explanations were filed by the pleader and the two vakils, whose case is before us, and were considered. The learned District Magistrate has thought that there was no case of misconduct against the other six practitioners, but has reported the case of the three persons mentioned.

5. It appears to us that the learned District Magistrate did not look up Section 14, Legal Practitioners Act, under which he had jurisdiction to act, before reporting the case of the pleader. 8. 14, Sub-clause (c) requires in express terms that a report against a pleader shall be made through the Sessions Judge. The District Magistrate therefore should not have reported the case of the pleader direct to us. That section also requires that there should be a clear finding recorded stating the

grounds on which the recommendation for suspension or dismissal of a pleader is made. There are no categorical findings in the order of the District Magistrate, though, taken as a whole, the order may be said to contain a finding that the pleader was guilty of misconduct, in connexion with the application of 27th March. We also think that it would have been preferable if the suspected misconduct had been enquired into by the Joint Magistrate himself, in whose Court the application was made. The provisions of Section 14 indicate that ordinarily an enquiry should be made by the presiding officer of the Court where the misconduct has been committed. Here the enquiry was made, not by the Joint Magistrate but by the District Magistrate. We however have jurisdiction under Section 13 to act in the matter and we do not think that these irregularities should, in the present case, be allowed to stand in the way of our enquiring into the matter, because we have to examine practically the same facts in connexion with the case of the two vakils.

6. The application of 27th March 1928. which is the main basis of the charge merely contains a prayer that the case should be adjourned in order that the accused persons might have an opportunity to move the High Court. The learned District Magistrate seems to be of the opinion that it was misconduct on the part of the practitioners to allow this application to be filed, when he himself had considered the case and had issued directions on 26th March 1928 to the Joint Magistrate to give greater facility to the accused persons in their defence. The learned District Magistrate might consider his own order just and fair, but it does not follow that the accused persons would also have the same opinion about it. There is no complaint that the application made to the District Magistrate for transfer was an improper application, and its filing amounted to professional misconduct. If there was no impropriety in filing that application, it may be difficult to see how it would be improper to move the High Court on the same grounds. The application of 27th March 1928 was signed by the accused persons and was presumably granted automatically, but it can be assumed that it was argued by the persons reported against. Although every application for adjournment for the purpose of a transfer indirectly implies that there is a belief in the mind of the accused person that he would not have a fair trial, an application for adjournment under Section 526 does not always amount to an allegation of partiality made by the vakil against the trying Magistrate. To hold that every application of this kind

necessarily casts an aspersion on the Magistrate personally, would be to handicap the defence and curtail the right to apply, which the legislature, by the amendment of Section 526, has thought fit to confer on accused persons. It is the duty of Courts, not only to be impartial, but also to inspire confidence in the administration of justice. It is therefore not necessary, when supporting an application for transfer, to establish that there is any actual bias in the mind of the Magistrate concerned. Incidents which are calculated to raise a reasonable apprehension in the mind of an ordinary accused person that he will not get a fair trial may justify a transfer although no actual bias in the mind of the trying Magistrate can be proved. It is the cumulative effect likely to be produced on the mind of an ordinary reasonable accused person that has to be seen. The question whether sufficient grounds are made out for a transfer is often a matter of opinion, and depends on inferences to be drawn from facts that have happened. If the application is made in good faith, the mere fact that it turns out subsequently that there are not sufficient grounds for transfer would not lead to a necessary inference that there was misconduct on the part of the practitioners who were responsible for such an application.

7. The District Magistrate seems to be under the impression that as soon as the accused persons insisted on filing the application, it was the duty of the practitioners to withdraw from the case, and that the conduct of two practitioners in coming to Allahabad to instruct counsel for the purpose of filing an application for transfer, after the District Magistrate had considered the whole question and given necessary directions, did itself show that they were not acting in good-faith. We think that this act on their part rather suggests that they honestly believed that a case had been made out for a transfer. As soon as they were told that it was not advisable to file an application, they went back to the Joint Magistrate and informed him that they did not propose to move the High Court. There was no delay in this respect, and it is therefore obvious that the application for adjournment had not been filed with a view to utilizing the adjournment for any other purpose.

8. The concluding portion of District Magistrate's order shows that there had been some irregularities, which, though not sufficient in his opinion for ordering a transfer, did occasion some ground for complaint. One of these was that when the

accused applied for copies of depositions of the prosecution witnesses, the Joint Magistrate ordered that copies should be granted if an application was made within four minutes, and also directed his orderly to go to the vakils and make sure that the application was made within the time.

9. The learned District Magistrate has referred to the pronouncements of this Court in several recent cases on the abuse of Section 526, Criminal P.C. But it has never been laid down that an application under Section 526, merely because it subsequently turns out to be not well founded, is necessarily a reckless application involving professional misconduct.

10. The case of Dwarka Prasad, Pleader, In the matter of A.I.R. 1924 All. 253 was a very special case. The only ground on which the application for transfer was sought to be justified was that on a previous occasion the District Magistrate had refused to commit the case to the sessions Court. The vakil, who had himself filed it could not show that he had not made that application on his sole responsibility. He was not able to name even the accused who had instructed him to do so. There was considerable delay in moving the High Court, and even after the vakil was advised that there was no sufficient ground for a transfer, he did not take care to inform the Magistrate that there was no longer any idea of applying for a transfer. The evidence disclosed that the adjournment, which was obtained for the purpose of a transfer, was deliberately utilized for a totally different purpose, and that the application was made recklessly, and the charge of impartiality against the Magistrate was totally unfounded. The language used in that case is to be understood with reference to the facts of that case.

11. In the present case we are of opinion that it cannot be said that the practitioners reported against were acting dishonestly in this matter, or that the application for adjournment was made for any other ulterior motive. We accordingly direct that the proceedings against the three practitioners' be dropped and that no notice to show cause be issued to them. Let the record be returned.