

In Re: a Vakil

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Court : Allahabad

Decided On : Dec-22-1924

Reported in : AIR1925All247

Appellant : In Re: a Vakil

Judgement :

Mears, C.J.

1. A Vakil appears before us to show cause why he should not be removed from the roll of vakils or otherwise dealt with for that he, on the 10th of April, 1923, drafted and presented to a Criminal Court a complaint in which he suppressed certain facts then professionally known to him, which would, if stated, have shown that one Nand Kishore had not committed the offence alleged against him or any criminal offence.

2. It appears that there are two rival firms in Cawnpore who import betel leaves from the District of Midnapur in Bengal. Consignments are sent from one of two stations, Denteen or Nikersen. Both these firms employed the same claims agent, one Nand Kishore, and in December 1922, the firm of Baldeo Prasad Lachman Prasad had a claim against the Railway Company in respect of a consignment of betel leaves which had, according to them, gone bad, by reason of some default of the Railway. At this date or later the other firm also had claims on several consignments against the Railway Company. All these matters were in the hands of Nand Kishore for settlement. Some confusion arose about the respective

claims, due as we now know to the mistake of the Railway Company, over way bills No. 58 and 59, and the demands of one firm were intermixed with the demands of the other. Eventually, however, Nand Kiahore advised his principals, Baldeo Prasad Lachman Prasad, to sue the Railway Company, and they did so on an allegation that the consignment was despatched from Denteen. As a fact it appears to have been sent from Nikersen, but this was in reality immaterial. At all events when Baldeo Prasad Lachman Prasad took action, the Railway Company looked into the matter and discovered the payment for the damage done to this consignment had been made to the other firm of Babu Lal Munna Lal.

3. Mr. Hoon, Barrister of Cawnpore, appeared for Baldeo Prasad Lachman Prasad, and when on the 15th of January, 1923, the case was called on, announced that there had been a mistake, but that he had received the money, and the action might be dismissed. At that date he in fact had received the money from the firm of Babu Lal Munna Lal, who had recognized that the payment was not intended for them.

4. For some reason not apparent, some or all the members of the firm of Baldeo Prasad Lachman Prasad were dissatisfied with Nand Kishora and wished to harass him with criminal proceedings. Some if not all the members of that firm were perfectly aware that their own Counsel had described the suit instituted by them as based upon a mistake, and they knew that it had been said in Court by Mr. Hoon that he had received the money and the case could be dismissed.

5. Nothing has been shown to us to suggest that Nand Kishore acted in the slightest degree dishonestly, and indeed the Railway Company may have paid the money direct to the firm of Babu Lal Munna Lal. If, however, they paid it through Nand Kishora, it is evident that Nand Kishore paid it over to the firm of Babu Lal Munna Lal, as it was from that firm that Mr. Hoon had in fact received payment.

6. It must have been obvious to the firm of Baldeo Prasad Lachman Prasad that neither Mr. Hoon nor the two other gentlemen who appeared for them in the Civil Court would lend themselves to a criminal prosecution, and it was equally obvious to them that it was desirable for them not to run any personal risk of counter criminal proceedings when the vexatious nature of any criminal charge become

apparent. Therefore they obtained a man of no position to act as their special agent in the intended prosecution of Nand Kishore. The person willing to do their bid-, ding was Haider Husain. The next essential was a lawyer who had to be a person of dishonest methods or grossly careless and credulous.

7. Their choice fell on the respondent before us. He has told U3 that he discussed the matter with the members of the firm as well as with Haidar Hussain, and also that he inspected the file of the Civil Court. He proved to be all that the most unscrupulous client could desire, for notwithstanding that he had read that plain statement endorsed on the claim by the Court that Mr. Hoon had said that the money was paid and the suit might therefore be dismissed, he became a party to the drafting of a complaint alleging criminal breach of trust against Nand Kishore. In the complaint he distorted the words used by Mr. Hoon, and in particular added the half truth that 'the principals of the complainant have not yet received the money on the parcel.' Yet he knew that the Counsel acting for Baldeo Prasad Laohman Prasad had asserted that the money had been paid to him, and he made himself a party to the request that the matter might be further enquired into by the police.

8. The complaint is manifestly a most improper document. What we have to decide is whether it was brought into existence by deliberate dishonesty on the part of the respondent, in which case he is unfit to remain a member of the profession, or whether it had its origin in carelessness, incompetence and a lack of sense of responsibility.

9. There are circumstances which go some way to exclude any other theory but that of dishonesty, but the respondent in questions put to him by the Court somewhat lightened the gravity of the case and led us to the conclusion that in reality he had no appreciation of the fact that he had any responsibility to the Criminal Court when presenting the complaint to it. We need not say that this is a wholly erroneous view of the duty of a legal practitioner and the respondent was bound before presenting the complaint to make due enquiries of the clients and to act with such care and prudence that his good faith could never successfully be questioned. His caution should have been awakened at once when he found a

man whom he knew to be of no position had been chosen to present the firm of Baldeo Prasad Laohman Prasad for this particular case. Moreover, he knew from the inspection of the file of the Civil Court the statement which had been made by Mr. Hoon, and it was his positive duty to have required the clients to tell him:

1. The date on which they alleged that Nand Kishore had received the money.
2. The person from whom the money was received.
3. The amount of such money.
4. On whose behalf it was received.
5. In whose hands the money was at the moment of drafting the complaint.

10. These questions would, in our opinion, have been put by a careful and cautious practitioner and they were also essential facts which should have been set out in the complaint. Had these questions been asked it would at once have become apparent to the respondent that they could not be satisfactorily answered and it would then have become evident to him that he was being invited to involve himself in a very doubtful and dangerous transaction. He has asserted before us that he had no dishonest intentions but he admits that he now realises that he acted at least with great foolishness. We express the strongest disapproval of the conduct of the respondent in this matter and it is advisable for him to remember in future the serious responsibility which a practitioner assumes in invoking the criminal law on behalf of a client. He seems to have regarded his function as that of a mere machine and his only duty to transmit to the Court any half truths and insinuations which his clients desired him to record. We commend Mr. Mir Ali Raza, the Deputy Magistrate, for bringing this matter to the notice of the Court, but we are surprised to find that when an application came up before Mr. K.G. Banerji, District and Sessions Judge, he made observations which showed that he entirely overlooked the manifest duty of a legal practitioner to the Court and regarded the matter as one exclusively between the client and the lawyer. In this he was undoubtedly wrong. With some hesitation we give the respondent the benefit of the doubt and allow him to remain a vakil of this Court. His conduct, however,

deserves censure, and though we discharge the rule issued against him, we order him within 21 days to pay to the Registrar the sum of Rs. 230 being the costs incurred by the Government in this matter. If default in payment is made, such default is to be communicated to the Court.

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