

In Re: a Vakil

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Court : Allahabad

Decided On : Apr-06-1925

Reported in : AIR1925All641

Appellant : In Re: a Vakil

Judgement :

Mears, C.J.

1. There is no doubt that you and the counsel who have represented the respondent have acted wisely in the course which has been followed. We wish this case to be clearly understood and not to be twisted into something quite different from the reality. It is not a case in which we have asked the respondent to come forward and to justify a pleading which he had a perfect right to make; it is a case of quite a different nature. A client who consults a counsel and who requires a plaint or written statement to be drafted instructs the counsel as to the facts of the desired document. It unfortunately does not always happen that those facts are true, but from the counsel's point of view that is not a material matter, and indeed, if one looks at pleadings in cases generally, it is obvious that a plaint and the written statement cannot both be true because an issue or issues arise out of the denials of the truth of the averments on one side or the other and that enables the case to be fought upon clear lines. A counsel is entitled to accept the instructions of the client subject to this, that, as a matter of prudence and for one's own reputation, it is not well to associate oneself with reckless charges of fraud and criminality or to indulge in abuse; and counsel should explain to clients that these

charges, if unproved, gravely injure the case, and prejudice the Judge. Counsel is not supposed to go hunting here, there and everywhere to test by extraneous circumstances the veracity of his client. It cannot be done, nor is it the practice to do it. Counsel have to depend upon the statement that the client makes, the penalty being that, if the client is not telling the truth, he may probably lose the case. In those circumstances the rule is that the client is entitled to have the particular document drafted according to the instructions given. But that is not the case here in the slightest degree. This case is, as set out in the order calling upon the respondent to show cause, a charge that he maliciously drafted the third written statement at a time when he had the fullest and most abundant proof, as it happened, that those statements ought not to be repeated, and had to his knowledge no foundation in fact. It is part of the Crown's case that the respondent had some cause for feeling a grievance with Mr. Indar Prasad, and that he sought this method, under the protection of what he supposed to be a privileged document, for maliciously taking the opportunity of insulting and defaming Mr. Indar Prasad and alleging criminal acts against him. To our minds the written statement, although there has been a long discussion about it, except for the passage about the Fingerprint Bureau which may well be regarded as a dishonest statement, is not so important as the question put to Mr. Indar Prasad by the respondent as to Section 476. We think, however, that there is a good deal to be said on the ground of the written statement being a malicious document.

2. Mr. Indar Prasad went into the box for the third time in this series of cases, and for the fifth time on the question of promissory notes of husband or wife, and on the fifth occasion when he was in the box (he having been successful in all the four previous cases) the respondent, knowing perfectly well that there was not the slightest shadow of foundation for the allegation, said to this Mukhtar in open Court : 'Did you not have a notice served on you under Section 476 in Mt. Chillo's case?' Mr. Indar Prasad quite truthfully said, 'No.' That was a wicked thing to ask of a man of the same type of profession, in his own native town, a man who was probably finding it quite hard enough to make a livelihood, when Raj Bahadur knew full well that no notice had been served because he himself had been the counsel for Mt. Chillo in the execution proceedings and in the appeal out of which the notice was suggested to have been served.

3. That was an unprovoked, unfounded attack, an attack that no liberty of counsel justifies, and one which has not been attempted to be justified. That is the view that we have taken of his matter, and on that view our decision would have been given. When, however, a respondent comes in, even as late in the day as this respondent, and tells us that the apology which his counsel has read is a sincere apology (and that we hope includes a determination not to do this sort of thing again), it behoves us to take various matters into consideration. One matter undoubtedly that has to be borne in mind is the very unfortunate circumstance that nine pleadings out of ten contains reckless charges and terms of abuse which have nothing to do with the case. One must take that regrettable practice into account.

4. We have considered the whole matter. We certainly hope that it will be a lesson, not only to the respondent, but to everybody else, not to import personal ill-will into pleadings, and especially to refrain from making charges to witnesses for which there is no conceivable ground. It may become the positive duty of counsel to tear a man's character into pieces if his character is in issue, but only when the fullest and clearest material exists. It would have been the respondent's positive duty to have put the question about 8. 476 to Mr. Indar Prasad if the fact was true and he had proof of it; and he was entitled to ask Indar Prasad any further questions that would have destroyed Indar Prasad's credit and shown that Indar Prasad was a man whose word could not be believed provided always that he had good grounds for his questions. He had however, no grounds at all for attacking the entire honesty of Mr. Indar Prasad. No counsel is justified, for instance, in opening the Indian Penal Code and asking without the least information to support it : ' Were you not charged with bigamy? (No). Were you not charged with murder? (No); and so on. Where questions to credit are material, questions, however damaging, may be put and must be answered, but counsel must always safeguard himself by being able to show that he had reasonable ground for believing in the charges which he in his cross-examination makes against a witness. No questions attacking a witness' honour should be put, unless and until counsel by inquiry has satisfied himself that the damaging fact is well founded, and this he ought to do before he comes into Court. We have said enough, and we are content to accept the apology, and we trust, if there has been bad feeling between the parties in the

past, that there will be no further bad feeling and no further manifestations of enmity by or between the principal parties and their relatives. There will, therefore, be no order on this rule except that it will be recorded that the respondent made the apology through his counsel, and has to pay the costs.

5. The office will communicate with the respondent with regard to the payment of the fee of the Government Advocate and the costs of the attendance of Mr. Indar Prasad. The respondent undertakes, through his counsel, to pay whatever sum the office may fix within seven days from the receipt of the notice.

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