

In Re: an Advocate Cawnpore

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Court : Allahabad

Decided On : Jan-21-1935

Reported in : AIR1935All425

Appellant : In Re: an Advocate Cawnpore

Judgement :

Thom, J.

1. On 24th January 1934, notice was ordered by this Court to go to Mr. C to show cause why he should not be proceeded against for professional misconduct.
2. For some reasons or other notice did not go to Mr. C. but the matter of the conduct was referred for enquiry to the Bar Council. The Hon'ble the Chief Justice appointed a Committee consisting of Mr. P.L. Benerji, Dr. N.C. Vaish and Mr. Mudi Manohar, to enquire into Mr. C's conduct. Mr. C's conduct in connection with a certain case had been adversely commented on by the learned Judge who directed that notice should go to him on 24th January 1934.
3. The facts may be briefly stated. They are fully set out in the report of the Bar Council Committee. Mr. W.C. de Noronha, a citizen of Cawnpore died upon 23rd November 1932. After his death an application for letters of administration with a copy of the will of the deceased, dated 20th November 1932, was made on 2nd May 1933, in the High Court by Mr. W.C. de Noronha, a son of the deceased. One Mrs. Peters, who, it appears, had nursed Mr. Noronha through the long

illness that preceded his death entered a caveat upon 17th July 1933. Mrs. Peters opposed the grant of letters of administration to the applicant, filed a written statement in support of her allegations against the grant of letters of administration. It is unnecessary at this stage to go into the history of this written statement. The learned Judge before whom the application was made did not consider that the written statement complied with the provisions of the Code of Civil Procedure and he directed that a proper written statement be filed by counsel for Mrs. Peters. In compliance with the direction of the learned Judge a written statement was filed upon 24th November 1933. In this statement there are certain charges made against the sons and son-in-law of the late Mr. Noronha and against Mr. Lyde who was then joint Magistrate in Cawnpore, and Mr. Bhasin, an advocate practising in Cawnpore. These allegations have been grouped under four heads : (1) Conspiracy, (2) Forgery, (3) Undue influence, and (4) Murder. In their report the Bar Council committee stated:

There can be no doubt that allegations of conspiracy, forgery, and murder were made against the sons and son-in-law of the late Mr. Noronha and that further undue influence was alleged against Mr. L.G. Lyde, Joint Magistrate of Cawnpore, and forgery against Mr. Bhasin an advocate of Cawnpore.

4. I do not consider it necessary to deal with the evidence upon which the charges of undue influence against the sons and sons-in-law of the late Mr. Noronha were based. In my opinion Mr. C, who was Mrs. Peter's legal adviser, and who accepts now full responsibility for the charges made in the written statement, had undoubtedly in his possession sufficient materials to entitle him to make allegations of undue influence against the sons and sons-in-law of the late Mr. Noronha. This Court is not asked at this stage to decide whether that evidence is sufficient to establish the allegation of undue influence, but, to my mind, there is no doubt whatever that Mr. C was in possession of information which entitled him to make an allegation of undue influence against the sons and sons-in-law of the late Mr. Noronha. The charge of undue influence against the joint Magistrate and the charge of murder against the sons and sons-in-law of the late Mr. Noronha and the charge of forgery against Mr. Bhasin stand however, in my judgment, in a different position.

5. It is not disputed that upon 20th November 1932, the joint Magistrate went to the house of the late Mr. Noronha, that he remained in the house for a number of hours and that, before he left, it was announced that Mr. Noronha had executed a will. Mr. C maintains that he was entitled to make the charge of undue influence against the joint Magistrate on the following facts, viz : firstly, Mr. Noronha had been an accused person shortly before the execution, of the will on 20th November, in the joint Magistrate's Court; secondly, he was on terms of friendship with Mr. Noronha's sons, thirdly, he remained for a long time in the house of the late Mr. Noronha on the date upon which the will is alleged to have been executed; fourthly, subsequent to the execution of the will he returned to the sons of Mr. Noronha the keys, the Bible and the despatch case, which he had taken from Mr. Noronha's house on 20th November 1932, and which he had upon that date or upon the following day deposited with the Chartered Bank in Cawnpore. These facts, which are not in dispute, constituted in Mr. C's view sufficient grounds upon which to prefer a charge of undue influence upon a judicial officer. Having given this matter my fullest considerations I am unable to agree. It has been assumed that there was some hostility on the part of Mr. Lyde towards Mr. Noronha because Mr. Noronha had been an accused person in his Court. I refuse to give judicial approval to the theory that a Judge must be presumed to entertain feelings of hostility to persons who appear before him either as civil litigants or accused in his Court. If that theory had any support in fact then His Majesty's Judges would probably constitute the most hostile section of the human race. Because an accused person appears before a Judge in his Court it is ludicrous to suggest that that Judge should be presumed to entertain towards him any feeling of hostility or that the Judge, impelled by malice, would pursue the party into his private life and use his influence to prejudice the party and undermine his interests or defeat his legitimate intentions.

6. It is true that Mr. Lyde remained for some considerable time in the house of this late Mr. Noronha on 20th November 1932, during which period, the will was executed. There does not appear however to have been, any attempt on the part of the joint Magistrate to conceal what he was doing whilst in Mr. Noronha's house. According to the evidence which was in the possession of Mr. C, the joint Magistrate sent for the Civil Surgeon in order that it might be ascertained whether

Mr. Noronha was in a fit state to execute a will. According to the evidence of Mr. C's own witnesses, two of them at least, if their statements be true, were actually in the room when the joint Magistrate and Mr. Bhasin were endeavouring to take down at Mr. Noronha's dictation the will which is alleged to have been executed on that date. It is a matter of admission that Mr. Noronha, was then in a very weak state. His death, occurred three days later and it is well known to those who have experience in the framing of wills, that, to take the instructions from a man who is upon the point of death, who is in a very weak condition and who has a large amount of property, is a task which cannot be completed within a short period, Mr. C himself 'knew that when Mr. Noronha's earlier will was executed in Simla on 30th September 1930, when Mr. Noronha was in full possession of his senses and faculties and when he was suffering from no incapacity, it took him four or five hours to convey the instructions in regard to the execution of the will.

7. It is a matter of admission that after the alleged execution of the will the joint Magistrate removed from the house the keys, the Bible and the despatch box already referred to. If he had been acting in concert with the sons, he would not have removed these articles. Not only does he remove them but he deposits them at the Chartered bank and he does it with the knowledge of the District Judge. According to Mr. C the despatch box was supposed to contain the will and the trust deed, which were executed on 30th September 1930, under which the sons of Mr. Noronha took no part of Mr. Noronha's estate. It is true that upon a subsequent date the keys and the despatch box and the Bible were returned to Mr. Noronha's sons. The joint Magistrate however did not act in this matter *ex proprio motu*; he acted under the direction of the District Judge. The District Judge held that he had no jurisdiction in the matter and suggested that these articles should be returned to those who were Mr. Noronha's legal representatives and who took his estate under the will which was executed on 20th November 1932.

8. Now upon these facts I find it impossible to hold that any responsible counsel was entitled solemnly to asseverate in a written statement that this judicial officer had been guilty of the offence of bringing undue influence to bear upon a weak and feeble old man who was on the point of death. Undoubtedly Mr. Lyde's conduct throughout quite legitimately could have been made the ground of cross-

examination. If he had been cross-examined upon his conduct on 20th November 1932, I have not the slightest doubt that he would have been able to give a satisfactory explanation of the facts. Counsel would have been entitled to cross-examine, but I am clearly of the view that counsel was not entitled to frame against him so grave and so serious a charge upon the information which was in his possession.

9. With regard to the charge of murder the position of Mr. C is weaker still. It is quite clear from the information which has been laid before HIS during the hearing of this matter that Mr. C himself entertained grave doubts as to the propriety of framing a charge of murder. So far as I am able to judge from the information before us, the only two persons who ever stated that Dr. Noronha and Dr. D'Silva murdered the late Mr. Noronha are Mrs. Peters and Mr. C himself. Mrs. Peters obviously could not speak of her own knowledge of what took place on the night before Mr. Noronha died. Her suggestion is that under the guise of an operation Dr. Noronha and Dr. D'Silva murdered the late Mr. Noronha. She was not present at the house at the time. Neither was Mr. C and when they make allegations of murder therefore they make them upon the evidence of witnesses who were able to speak of their own knowledge as to what took place upon 22nd November the day before Mr. Noronha died. Only two witnesses give first hand information upon this matter, firstly, Mr. Bhagwan Din Misra, and, secondly, a nurse Miss Sarah Thomas. In his statement to Mr. C Bhagwan Din Misra does not in terms state that he was present when any operation was performed. It is a fair inference from the expression which he does use however that he was present. The matter is however not free from doubt. He does say that an operation was performed and that shortly afterwards Mr. Noronha became unconscious and that he never recovered consciousness. Miss Sarah Thomas states that she was nurse in attendance upon Mr. Noronha and that Dr. Noronha and Dr. Silva performed an operation upon the late Mr. Noronha the night before he died. In her statement to Mr. C she does not suggest that these two doctors murdered Mr. Noronha.

10. There are two significant facts which tell very heavily against Mr. C. One is that he did not ask either Mr. Bhagwan Din Misra or Miss Sarah Thomas if they were present when the alleged operation is said to have been performed. The second is

that he did not ask either of these witnesses what was the nature of the operation which was performed. From Mr. C's statement to us it appears clear that he had entertained the suspicion, having taken the statements of these two witnesses that murder had been committed. Eventually he did make a charge of murder in the written statement. Before making it he did not consider it worth while to elucidate the matters to which I have referred. Before he framed the most serious charge which can be brought against any citizen, he did not think it worth while to send for these witnesses* and ask them if they were present when the operation was performed and what was the, nature of the operation. Mr. C explains that it was in the interests of the sons of Mr. Noronha that Mr. Noronha should die before he revoked the will which he is alleged to have-executed on 20th November, and he-further states that, according to the information which he had, Mr. Noronha was likely to revoke the deed which, he had executed upon that date. That may well be so, but upon so slender a foundation he is not entitled to prefer a charge of murder and I must frankly say that I am amazed that any responsible counsel could have, upon this flimsy evidence, framed so serious a charge.

11. Allegations of forgery were made in the written statement. These allegations were made against the sons and sons-in-law, of Mr. Noronha and against Mr. Bhasin, who was present when the will was alleged to have been executed. There is no doubt now that a document which purported to be a will was executed on 20th November 1932. It is further within our knowledge; that upon that date Mr. Noronha was in such a weak state that he was unable to affix his usual signature to the will and that instead of his signature his thumb mark appears-thereon. The only evidence or information upon which the charge of forgery was framed appears to have been a story that shortly after Mr. Noronha died his thumbs were found to be black, and further, that one of Mr. Noronha's sons was seen to have two foolscap pages which were blank but had thumb marks affixed to them shortly before Mr. Noronha died. Upon that evidence I am clearly of the view that Mr. C was not entitled to prefer a charge of forgery against a brother practitioner or indeed, against any one. In the course of their report the Bar Council Committee referred to a decision of a Full Bench of the Allahabad High Court in *In re Dwarka Prasad* 1924 All 253 and the Committee appear to have accepted the statement of the law in that case. The passage referred to by the Committee is as follows:

Members of the legal profession are under no duty to their clients to make grave and scandalous charges either against Judges or the opposite parties on the mere wish of their clients. They are not puppets compelled to obey the dictates of their clients where matters of good faith and honourable conduct are concerned. They are responsible to the Court for the fair and honest conduct of a case. They are not mere agents of the man who pays them, but are acting in the administration of justice, and in matters of this kind they are bound to exercise an independent judgment and to conduct themselves with a sense of personal responsibility. If they fail to act with reasonable care and caution they are unfit to enjoy the privileges conferred upon them by law and serious breaches must be visited with punishment.

12. So far as it goes, with respect, this appears to me to be a statement of the law which is unchallengeable. It is an axiom which no one will challenge that in the conduct of a case a counsel ought to act with caution and with circumspection. Mr. C however in support of his position referred to another Full Bench decision of this Court reported in Vakil In the matter of 1925 All 641 and relied especially upon a passage in the judgment of the learned Chief Justice which is as follows:

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.

13. In my judgment this statement of the law in no way conflicts with the earlier statement contained in the decision in the case reported in In re Dwarka Prasad 1924 All 253. Most assuredly a counsel is not expected to conduct an inquiry into the statements made by his client. But when the client makes a statement upon facts which cannot possibly be within his own knowledge, then it is undoubtedly the duty of counsel before he makes an allegation based on the information supplied by the client in a written statement to discover if there is evidence in

support of this allegation. He is entitled to accept his client's statement of facts so far as these facts may be within the knowledge of the client. But if his client desires him to frame serious and grave charges in a written statement then undoubtedly it is the duty of the counsel before he does so to satisfy himself that there is reasonable evidence forthcoming in support of these allegations. It is somewhat difficult to lay down a general rule which will operate fairly in every case, but I think this at least may be stated : no counsel is entitled to frame a serious charge against a party to a litigation unless he is in possession of admissible and relevant evidence upon which, if accepted, counsel could reasonably ask the Court to hold the allegations true. It may well be that the evidence in support of the allegations is untrue and it is certainly not the duty of a counsel in the ordinary course to test the truth of the witnesses whom he intends to put into the witness box but at the conclusion of the evidence which he has led he should be in a position to submit as a reasonable proposition to the Court that the evidence which he has led if accepted establishes the allegations for which he had made himself responsible. If he is not in possession of such evidence to support them he is not entitled to make grave and serious allegations, such as are contained in the written statement which was filed by Mr. C on behalf of Mrs. Peters. The Bar Council Committee upon a consideration of the information which was in Mr. C's possession when he framed the charges already referred to concluded by stating:

We are of opinion that Mr. C did not act recklessly and without sufficient care. On the contrary we are of opinion that having regard to the circumstances of the case and the instructions of his client he was justified in approving the written statement and that he could not consistently with his duty to his client and in her interests do otherwise.

14. So far as the charges of undue influence against the joint Magistrate, forgery against Mr. Bhasin and murder against the sons and sons-in-law of the late Mr. Noronha are concerned, I am unable to agree with the conclusion of the committee. Without reservation, and without qualification I must say that in my judgment the finding of the Bar Council committee upon these charges is not justified. I am aware that usually this Court will accept especially when there is no

objection preferred by the learned Government Advocate the finding of the Bar Council. This Court however is not bound by and, in my view, in this case the Court ought not to accept the finding of the Bar Council so far as that finding relates to the three charges mentioned above. Having given the matter my fullest consideration I am of opinion that as counsel for Mrs. Peters in her opposition to the application to the letters of administration upon the will of the late Mr. Noronha Mr. C did not act with that caution, circumspection and propriety with which he should have acted, especially having in view the very serious charges which were contained in the written statement which he filed. In my judgment Mr. C has not acted in this matter consistently with his duty to the Court and in consonance with the high traditions of the legal profession.

15. The Bar Council Committee hold that Mr. C has not been guilty of professional misconduct. I do not agree with that finding. I understand that my learned brothers are in agreement that in any event no punitive order should be passed. On this question I do not propose to dissent and having stated my view on the matter I do not suggest in the circumstances that this Court should take any action against Mr. C.

Iqbal Ahmad, J.

16. I regret I am unable to agree with the observations made by my learned brother who is presiding over this Bench as after giving the matter my best consideration, I have come to the conclusion that the finding recorded by the Bar Tribunal 'that Mr. C did not act recklessly and without sufficient care' is perfectly correct. Indeed having regard to the circumstances of the case, to which reference shall presently be made, I have no hesitation in holding that Mr. C was justified in drafting the written statement's on behalf of his client in the terms that he did, and that consistently with his duty to his client he could not do otherwise. The charge against Mr. C was that in the written statement drafted by him in testamentary suit No. 2 of 1933, on behalf of the objector Mrs. Peters he made accusations of conspiracy forgery and murder against the petitioner and certain others and the charge of undue influence against Mr. Lyde, the City Magistrate of Cawnpore, and the charge of forgery against Mr. Bhasin, an advocate of Cawnpore without

satisfying himself that there was any evidence to support the charges, and he was thereby guilty of professional misconduct.

17. In order to appreciate the finding recorded by the Bar Tribunal that the charge was not brought home to Mr. C it is necessary to state the facts in some detail. One Mr. W.C. de Noronha, a prominent citizen of Cawnpore died on 23rd November 1932, leaving properties worth about Rs. 10 lakhs. Mr. Noronha was at the time of his death an old man of over 70 years of age and was suffering from diabetes and it appears from the statement of Major Clyde the then Civil Surgeon of Cawnpore that he had two carbuncles and his condition was grave more than two weeks before his death. It is common ground that the relations of Mr. Noronha with his sons were very bad since 1924 and the sons, were living separately from the father. In this connection it may be pointed out that in the family Bible there are entries about the four surviving sons to the effect that they were disowned by Mr. Noronha 'as most unfaithful and ungrateful.' Mrs. Peters on whose instructions the written statements, the subject of charge, were prepared by Mr. C is proved to have been on terms of great intimacy with the late Mr. Noronha for several years, and she used to visit Mr. Noronha during his last illness till 14th November 1932 and was looking after and nursing him in his illness. It is admitted that the sons came to live in the house of Mr. Noronha on 14th November 1932 and continued to live in the house till the date of his death. The sons prevented Mrs. Peters from entering the house since they came to live there. We also find, that on 19th November 1932, the sons or the sons-in-law of Mr. Noronha took, possession of his keys and when Mr. Noronha came to know of this fact, he was upset, and desired that the Collector should come to his house. The parties in the testamentary case were at variance as to the reasons why Mr. Noronha desired to see the Collector but, for the purposes of the present case, it is immaterial to deal with the merits of the respective contentions of the parties on the point.

18. It is admitted on all hands that on 20th November 1932. Mr. Lyde came to the house of Mr. Noronha at about 12 noon and stayed there till about 7 p.m. and it is alleged that during this interval a will was prepared by Mr. Bhasin advocate on instructions received from the late Mr. Noronha and was faired out and signed by Mr. Noronha and attested by witnesses. The genuineness and validity of this will

was challenged by Mrs. Peters in the testamentary suit referred to above. Mr. Lyde took with him the attache case and the Bible from the house of Mr. Noronha and deposited the same in some bank. There is no evidence before us as regards the events that took place on the 21st November. On 22nd November one Major Tee who was a friend of Mr. Noronha visited him and it appears from his statement, that has been exhibited in the case, that during the course of the conversation that he had with Mr. Noronha the latter told Major Tee that he had never executed any will on the date on which he was alleged, to have done so. One of the sons of the late Mr. Noronha filed an application for letters of administration with a copy of the will of the deceased dated 20th November on 2nd May 1933, in this Court. A caveat was entered by Mrs. Peters and on 17th August 1933 a written statement was filed on her behalf. The written statement is very brief and is divided into 8 paragraphs. We are not concerned with paras. 1 to 7 of the written statement. It is stated in para. 8 that:

the affidavit dated 31st July 1933 contain all true facts in controversy and it may be treated as a part of my written statement.

19. The affidavit referred to in this paragraph is the affidavit of Mrs. Peters and in that affidavit the charges of conspiracy, forgery, murder and undue influence are set forth in great detail. The learned Judge who heard the testamentary case was of the opinion that the written statement and the affidavit were 'hopeless for the purpose for which they are filed.' The learned Judge accordingly granted leave to counsel for Mrs. Peters to amend the written statement or to entirely redraft it if he so wished. Several amended and additional written statements were thereafter filed on behalf of Mrs. Peters, and Mr. C takes full responsibility with respect to having drafted the same.

20. The question that we have to consider is whether Mr. C did act recklessly and without sufficient care in drafting the written statements mentioned above and whether he was guilty of professional misconduct in having drafted the written statements in accordance with the instructions given to him by his client. It is not disputed that the written statements were completely in accordance with the instructions given to Mr. C by Mrs. Peters. The question therefore remains whether

Mr. C did recklessly and without taking sufficient care embody the allegations of conspiracy etc., in the written statements and was thereby guilty of professional misconduct. After having considered the facts of the case I have no hesitation in answering the question in the negative.

21. It is abundantly proved from the materials, to which detailed reference has been made by the Bar Tribunal in its finding, that Mr. Noronha had got a will prepared at Simla in 1930 by Mr. Beven Petman a Barrister of Lahore and that he had by that will devised the major portion of his properties for charities and had bequeathed two houses and a sum of Rs. 50,000 and a further allowance of Rs. 100 for life to Mrs. Peters. In, the course of his submissions Mr. C suggested that that will was probably in, the attache case and was removed by the sons, and I am not prepared to say that the suggestions without force. There is also some evidence to show that along with the will Mr. Noronha executed a deed of trust for putting into immediate operation the clauses of the will as regards the bequest in favour of charity, so as to set at rest all objections to the validity of the will because of its non registration. It is worthy of note that that no portion of the property was devised by this will in favour of the sons. The disputed will of 20th November 1932, no doubt also purported to devise properties of considerable value for charities, but the suggestion on behalf of Mrs. Peters in the testamentary suit was - and there was considerable force in the suggestion - that the provision as to that charitable gift was illusory and designed to leave the entire estate of the deceased to the sons as the provision to charity was void.

22. It is also in evidence that the late Mr. Noronha was an accused in a case under Section 379, Penal Code, that was pending in the Court of Mr. Lyde till 17th November 1932. That case was compromised on that date. We further find from the affidavit filed by Mrs. Peters in this Court in the testamentary suit that one of the sons and a son-in-law of Mr. Noronha performed an operation on Mr. Noronha on 22nd November and Mr. Noronha died the next morning. The following undisputed facts were therefore before Mr. C before he drafted the written statements : (1) Mr. Noronha was displeased with his sons and had turned them out of his house and disowned them so far back as in the year 1924. (2) In the year 1930 he had executed a will with all due publicity bequeathing the major

portion of his property for charity and had also by the same will devised two houses and a sum of Rs. 50,000 to Mrs. Peters and had totally disinherited the sons. (3) There is absolutely no suggestion and much less any evidence of any reconciliation between the father and the sons prior to 14th November 1932. (4) The sons either effected an entry in the house of Mr. Noronha contrary to his wishes or came to live in the house with his consent on 14th November 1932. (5) From the time that the sons came to Live in the house of Mr. Noronha Mrs. Peters was not allowed to enter the house. (6) There is no evidence to show what led to Mr. Noronha to change his mind between the 14th November and 20th November the date on which the will is alleged to have been executed. (7) The will is alleged to have been executed at a time when a Magistrate of Cawnpore before whom only three days before the alleged execution of the will the testator figured as an accused in a case under Section 379, Penal Code, was present. (8) There is no explanation as to why Mr. Lyde had to remain in the house of Mr. Noronha for about 7 or 8 hours. (9) No attempt was made to deposit the will in the office of the District - Judge Cawnpore, during the lifetime of Mr. Noronha. (10) Even the ordinary precaution, that is usually taken when the testator is in such a weak sit at el -of health as Mr. Noronha was, of getting the will registered, was not taken. (11) A respectable man like Major Tee had given a statement in writing to Mr. C that the testator denied having executed a will in favour of the sons. (12) One day before the death of Mr. Noronha an operation was performed by one of the sons who was one of the legatees under the will and the testator did not survive the operation for more than 12 hours. (13) The operation was performed on a patient, who was suffering from chronic diabetes without taking the civil surgeon into confidence, who it is admitted, was treating the patient during his last illness. (14) After the death of Mr. Noronha his thumb was found besmeared with ink.

23. The facts noted above speak for themselves and comment is superfluous. Apart from these facts Mr. C had the statements in writing of Bhagwan Din Misra, the record-keeper, in Mr. Noronha's firm, and of Ghani, a personal servant of Mr. Noronha, and of Miss Thomas who was a nurse in attendance of Mr. Noronha during the relevant period, and these statements did support the charges of conspiracy, etc., embodied in the affidavits of Mrs. Peters. Over and above these statements there were the affidavits of Mrs. Peters clearly formulating the charges

of conspiracy, etc., mentioned above. In view of the facts and materials noted above Mr. C was, in my judgment not only justified, but clearly in duty bound to make the allegations that are embodied in the written statements. The measure of the responsibility of a counsel in drafting pleadings is set out in the Full Bench decision reported in Vakil In the matter of 1925 All 641. It was observed in that case that:

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 be 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.

24. In the case before us Mr. C went beyond the standard laid down by their Lordships in the case quoted above. He insisted on the statements of the personal attendants and of certain subordinates of Mr. Noronha being supplied to him before he consented to draw up the written statements. He took the trouble of going to Calcutta for the purpose of recording the statement of Major Tee. Mr. C read out all those statements to us and coupled with the facts stated above, those statements supplemented by the affidavits of Mrs. Peters did, in my judgment, afford complete justification for the charges of conspiracy, forgery, undue influence

and murder 'in law' embodied in the written statements. The fact that the will of 20th November 1932, was not executed till about 3 days before the death of the testator and was in favour of the sons who had been disowned by the testator as 'ungrateful' itself laid that document open to grave suspicions. The testator was at the time of the execution of the will admittedly extremely weak and almost at the point of death. Pie must have been, because of the carbuncle, in great physical and mental distress. The City Magistrate of Cawnpore before whom only three days before the testator was an accused in a theft case was present all through the time that the will is alleged to have been drafted, faired out and executed. In view of these facts Mrs. Peters insisted that the charge of undue influence should be embodied in the written statement, and I am not prepared to hold that Mr. C could, as a responsible counsel, refuse to comply with the instructions of his client in the matter.

25. Similarly there were materials that did justify the charge of forgery. The fact of the non registration of the will coupled with the assertion that the thumb of Mr. Noronha was found besmeared with ink at the time of his death did constitute ample material for the charge of forgery. Again the charge of murder 'in law' could not be characterized as reckless in the circumstances of the present case. It may be that there was no such evidence before Mr. C as could bring the charge of murder home to the sons of Mr. Noronha if they were prosecuted in a criminal Court on that charge. But I cannot overlook the fact that the written statement was being filed in a probate case and it may be that the allegation about murder 'in law' did not amount to more than this that the sons by performing an operation did precipitate the death of the testator and, as such, could not take benefit under the will. In this connection reference may be made to the decision in *Hall In the estate of Hall v. Knight an ter* (1914) P 1.

26. In my judgment the Full Bench decision in *In re Dwarka Prasad* 1924 All 253, has no application to the case before us. That was not a case in which this Court was concerned with pleadings drafted by a counsel, In that case a junior counsel made 'disgraceful charge of unfairness against the Magistrate,' who was trying the case. The charge against the Magistrate appears to have been made by the counsel concerned on his own responsibility. The observations of their Lordships

who decided that Full Bench case must therefore be taken with reference to the facts of the case before their Lordships and cannot govern the case before us.

27. I consider it imperative in the interest of administration of justice that too rigid a test of the conduct of an advocate in the matter of drafting pleadings should not be emphasized and that the test should be such as not to deter a counsel from fearlessly placing before the Court such allegations as their clients instruct them to make, so long as those allegations do not appear manifestly reckless and unfounded. It is no doubt the duty of counsel to use their own judgment, experience and discretion and not to make irrelevant or unduly insulting allegations in the pleadings but it is equally their duty to embody the case of their clients in the pleadings fearlessly provided the instructions received from clients justify the case embodied in the pleadings. While on the one hand a counsel is expected to be careful and not reckless in drafting the pleadings he cannot, on the other hand, assume the role of a Judge and refuse to embody allegations that his client instructs him to make unless and until he has examined the evidence on the subject. A counsel is in one sense the mouthpiece of his client, but he does not guarantee or pledge himself for his client's veracity. When I apply these tests to the present case I cannot but accept the finding recorded by the Bar Tribunal without any reservation.

28. Before parting with this case I may note that as a matter of practice this Court attaches greatest weight to the findings on questions of fact recorded by the Bar Tribunal and that in this case even the Government Advocate did not take objections to the findings of the Tribunal.

Allsop, J.

29. My learned brothers are agreed that no further action need be taken against Mr. C. The only question therefore which remains to be considered is whether his action in this matter as counsel for Mrs. Peters can be unreservedly approved. There seems to be no doubt at all about the law upon this question. On the one hand counsel must look to the interests of his client and not be deterred by fear or favour from making any allegations which in those interests it is necessary for him

to make. On the other hand, he cannot take shelter behind his client and claim to be an entirely irresponsible instrument in his client's hands. There remains in him a duty and an obligation to his fellow citizens and he is certainly not entitled to make scandalous and serious allegations against those fellow citizens unless he has some basis upon which the allegations can be grounded.

30. In the present case I understand that the question at issue about the validity of the will is still the subject of an appeal in this Court and I should therefore prefer to say nothing which may have a bearing upon the issue to be decided when the appeal is heard. I think it is sufficient for me to consider the allegation of murder which was made in the written statement which was put in by Mr. C on behalf of his client. I am not quite sure even now after hearing the arguments that Mr. C is really fully aware of the seriousness of the allegation that he made. It is surely no light matter to accuse a son of having hastened the death of his own, father with the motive that that father should not be in a position to vary or repudiate a will which he had made. I have to consider in this case what ground or basis Mr. C had for his terrible charge which he made against Mr. Noronha's son and against a son-in-law. There was before him the evidence of two witnesses, one a nurse and the other a personal servant. The statements made by these persons were merely these that Mr. Noronha's son and son-in-law, who were both medical practitioners, had performed an operation upon Mr. Noronha and that next morning Mr. Noronha was dead.

31. The only other matter which might give rise to an inference was that it was possible that it was to the interests of these two persons that the will which was alleged to have been made should not be repudiated or in any manner varied. It is not even quite certain, as far as I can see, that it was to the interests of the son or the son-in-law that the will should not be varied or repudiated. There has been a mention of a previous will and an alleged deed of trust but I do not think that there is any evidence anywhere that either of these documents was properly executed. In so far as the previous will related to a charitable bequest, there can be no doubt whatsoever that it had no validity. If the will had been executed and was a valid will, it might have resulted in the passing of a sum of Rs. 50,000 to Mrs. Peters but the remainder of the property which consists of several lakhs would, have passed

in any case to the sons and possibly to any daughters who might be living.

32. In the will which was sought to be proved there was also a charitable bequest and although that bequest apparently had no validity it cannot be said that there was any very much greater benefit to the sons under the latter will than under the former one. At any rate, there was not so much, difference that one could reasonably conclude that two respectable medical practitioners, namely, the son and the son-in-law of Mr. Noronha would commit a murder in order that the prior will should not have effect or that Mr. Noronha might make another will in more or less the same terms. It seems to me that there was no justification at all for the conclusion that so serious a crime had been committed and I must note that no attempt was made to call in the police to establish that a criminal offence had been committed.

33. In considering the terms of the allegation I must mention that the charge was that a legal murder had been committed. I am prepared to consider that perhaps Mr. C when he made the allegations really meant to say that there had been some action, which morally might amount to a murder and that he did not really intend to assert that a criminal offence had been committed. But taking the matter at its best it cannot be doubted that there was at least a hint and more probably an allegation that these two persons had deliberately hastened, the death of Mr. Noronha with the object of material gain to themselves.

34. Mr. C in my opinion was under an, obligation before he made a charge of this kind to be satisfied that there was some real basis for it. The mere fact that an operation had been performed and that Mr. Noronha died the, next morning could not possibly give rise to any collusion that the operation was an improper one performed, with the purpose of causing death.

35. There is no real evidence whatsoever in support of this charge. Mr. C did not even take the trouble to enquire-from the witnesses whose statements, were before him what the nature of the operation was. He knew also that Mr. Noronha had been under the treatment of the Civil Surgeon, a respectable medical officer who could have no-interest one way or the other in disputes between Mr. Noronha's sons and Mrs. Peters. It does not appear that, he ever enquired from

the Civil Surgeon whether any operation had been performed or what its nature was or whether it was an operation which hastened the death of the patient.

36. I do not propose, as I have already said to consider the charges of undue influence against the joint Magistrate Mr. Lyde and of forgery against an advocate Mr. Bhasin. I may only say that prima facie it appears to me that there was very little basis for any charges of this kind. In my opinion Mr. C was extremely reckless in framing the charges which he did. I give this opinion because I hope that he will not be set up in the light in which appears in this case as a pattern and an exemplar by the advocates practising in this Court and in the district Courts of this Province.

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