

State Vs. Lalit Mohan Nanda

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SooperKanoon Citation : sooperkanoon.com/524076

Court : Orissa

Decided On : May-02-1960

Reported in : AIR1961Ori1; 1961CriLJ124

Judge : R.L. Narasimham, C.J., ;S. Barman and ;J.K. Misra, JJ.

Acts : [Bar Councils Act, 1926](#) - Sections 15; Orissa High Court Bar Council Rules - Rules 15 and 16; Code of Criminal Procedure (CrPC) - Sections 107 and 145

Appeal No. : Misc. Judicial Case No. 8 of 1958

Appellant : State

Respondent : Lalit Mohan Nanda

Advocate for Def. : P.C. Chatterji and ;S. Acharya, Advs.

Advocate for Pet/Ap. : Adv. General

Judgement :

Barman, J.

1. This case arises out of proceedings under Sections 10 and 12 of the Indian Bar Councils Act (Act XXXVJII of 1926), wherein an enquiry was made regarding the professional misconduct of Mr. Lalit Mohan Nanda, Advocate, Bolangir, for appearing against his former client in a directly connected litigation, arising out of a

family dispute between step-brothers of a Hindu family in the circumstances hereinafter stated.

2. One Dirba Mahakur (deceased) had two sons, Nilagiri and Jageswar, by his first wife and Pareswar by his second wife. In a family dispute between Pareswar on the one side and his stepbrothers Nilagiri and Jogeswar on the other, over possession of certain land, Mr. Lalit Mohan Nanda, Advocate, had been engaged by the said Pareswar in connection with, the said dispute in which proceedings under Section 145 of the Code of Criminal Procedure against his brother Nilagiri were initially contemplated; but subsequently proceedings under Section 107 of the Criminal Procedure Code were instituted against the said Nilagiri; that having been unsuccessful in the criminal case, Pareswar brought a suit for declaration of title, engaging another Advocate to represent him, in respect of the land, which was the subject matter of the said criminal proceedings and in the said suit Pareswar succeeded.

At the trial stage of the suit, Mr. Nanda was not engaged by either party. Pareswar's brother Nilagiri filed an appeal against the judgment and decree in the said suit through Mr. Nanda who is Nilagiri's Advocate, appeared against his former client Pareswar in the said appeal. It was at the instance of the said former client Pareswar that the present disciplinary proceedings had been initiated on the allegation that Mr. Nanda had accepted engagement in the said appeal by Nilagiri with a view to cause loss to Pareswar and further that Mr, Nanda had utilised his knowledge of Pareswar's case in the earlier original proceedings, based on the documents and papers used and confidential instructions received by Mr. Nanda from his former client Pareswar.

The defence taken by Mr. Nanda to the charge against him is that, while admitting that in Section 107 Criminal proceedings he had appeared for Pareswar, there was neither occasion nor reason for him (Mr. Nanda) to see any document relating to land in that connection and further that if he ever saw any document and received any confidential instruction in that connection he had no recollection, after so many years had passed since that time. Mr. Nanda further states that he had no knowledge of the facts in the civil suit and denies any mala fide intention on his

part to cause loss to his former client Pareswar as alleged; and further pleads that his engagement by Nilagiri was bona fide and in the ordinary course of professional work; and that Pareswar's application to move for taking disciplinary proceedings, after two years was by way of after-thought, improper and mala fide.

3. The point for consideration in this case, is whether Mr. Nanda is guilty of professional misconduct for breach of rules relating to professional conduct of Advocates made under Section 15(a) of the Indian [Bar Councils Act, 1926](#), applicable, to this High Court. The relevant rules in connection with this case are, for convenience of ready reference, set out below:

'Rule 15: In the absence of instructions to the contrary from his first client an Advocate may act, appear for, or advise the opposite party in a subsequent or other legal proceedings which is not directly connected with, or in continuation of the first proceeding.

Rule 16: These rules are not exhaustive of the subject of professional etiquette, even as regards the specific matter with which they deal'.

The penalty for breach of rules of professional conduct is provided under Section 10(1) of the Indian [Bar Councils Act, 1926](#) which provides that the High Court may reprimand, suspend or remove from practice any Advocate of the High Court whom it finds guilty of professional or other misconduct. Section 12 lays down the procedure in enquiries providing that the High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts respectively, in the conduct of inquiries under Section 10, We are called upon to decide this case within the ambit of the Indian Bar Councils Act and the rules made thereunder.

It is also noticed that in some of the High Courts, including Calcutta High Court, no rules appear to have been framed so far, regarding professional conduct of Advocates under Section 15(a) of the Indian Bar Councils Act; and each case is decided on its merits (or 'de-merits' -- as the case may be) on general principles. In the High Courts where rules relating to professional conduct have been framed, the rules, though, in some cases, differently worded, are, in spirit the same. Keeping in view this aspect, it will appear that many of the decisions of the High

Courts where no rules appear to have been framed, have no application in the present context.

4. This leads us to the consideration of the case on merits, in the light of the rules relating to professional conduct applicable to an Advocate of this Court. The background in which Mr. Nanda was engaged by his former client Pareswar and subsequently by his opponent Nilagiri is this: It appears that there was a partition between two branches of the family during the life-time of the father Driba Mahakur under which there was certain arrangement by which certain lands were allotted to respective branches of the family, namely that Schedule B was allotted to Pareswar and his son Tikamani jointly; Schedule C to Nilagiri and Schedule D to Jogeswar. Apparently the trouble among the step-brothers did not end there.

When ultimately about 1950 the matter was brought to an issue, it was at this stage that Pareswar had engaged Mr. Nanda for filing Section 145 Criminal Proceedings and in that connection made over certain documents and also gave certain confidential information; but ultimately, -- presumably on the advice of Mr. Nanda that Section 145 Criminal Proceedings would not succeed, -- Pareswar proceeded under Section 107 Cr. P. C. in which also he did not succeed. The order of the Magistrate dated 12-3-1951 clearly indicates the nature of the dispute between the parties which ultimately became the subject matter of the civil litigation in the suit hereinafter mentioned.

The learned Magistrate, however, with the observations made in his order, found that it had not been proved that it was necessary, for keeping the peace, that the persons, complained against, should execute a bond; and accordingly they were discharged. On 31-3-1952 a suit was filed by Pareswar and his son against his step-brother Nilagiri and eleven others being Title Suit No. 13/22 of 1952 in the Court of the Subordinate Judge of Bolangir. In the suit, however, as aforesaid, Mr. Nanda did not appear for either side. On 8-12-1952 the Subordinate Judge passed his judgment in favour of Pareswar decreeing the suit against his step-brother, defendant Nilagiri and others. Thereafter in 1952 Nilagiri, who had lost the suit, is stated to have approached Pareswar's former Advocate Mr. Nanda to file an appeal and Mr. Nanda accepted engagement on the side of Nilagiri against his

former client Pareswar and filed an appeal being Title Appeal No. 6 of 1953. The said appeal was disposed of On 23-7-1955.

It appears from the judgment of the appellate Court that the appeal was allowed and the judgment of the Subordinate Judge was set aside and the suit was remanded to the Court below for disposal afresh in accordance with law in the light of the observations made therein. Soon thereafter, Pareswar made a petition for taking necessary disciplinary action against Mr. Nanda to this Court on the basis of the allegation made therein that he had taken brief for the other side knowingly and out of a sense of determination to oppress him which, according to Pareswar, was unlawful practice of appearing on the side of one party and thereafter taking up the brief of the other side. On 4-1-1956 this Court made a reference of the matter to the District Judge, Bolangir-Kalahandi, Bolangir, requesting him to enquire into the matter and forward the result of enquiry to the Court for necessary action.

In the proceedings before the learned District Judge, evidence was adduced on both sides, on the basis of which the learned District Judge gave his finding that the materials which had been given to Mr. Nanda in connection with the earlier criminal proceedings can in no way be said to give any information, confidential and within the knowledge of Pareswar alone, to Mr. Nanda, and accordingly the District Judge found that the charge against Mr. Nanda had no substance. The learned District Judge gave his report on 7-11-1956. Thereafter the matter was pursued by the High Court under Section 10 of the Indian Bar Councils Act and the matter was referred to the Bar Council for enquiry on 12-12-1956.

The finding of the Bar Council was given on 18-11-1957 as contained in their report, where it was found that there was no loss or prejudice caused to the former client Pareswar by the appearance of Mr. Nanda for the opposite party Nilagiri at the stage of the appeal; and accordingly the Bar Council's view was that no case was made out by Pareswar in his petition for disciplinary action against the said Advocate Mr. Nanda.

5. It will be sufficient to observe that neither the learned District Judge, to whom the reference was made for enquiry and report, nor the Bar Council considered the

matter in the light of the provisions of the rules applicable to this Court, made under Section 15(a) of the Indian Bar Councils. Act relating to professional conduct of Advocates. What apparently weighed with them was that they found that there was no actual prejudice or any loss caused to Pareswar by reason of the appearance of Mr. Nanda for the opposite party Nilagiri. They both over-looked the clear provisions of the rules relating to professional conduct made under the Bar Councils Act. It is on this ground alone that the findings of both the learned District Judge and the Bar Council cannot be relied upon for decision of the case, with the consequence that we have to consider this case independently of their findings,

6. On behalf of Mr. Nanda, it was strongly urged that there is no evidence of any confidential instructions having been given to Mr. Nanda by his former client Pareswar. In this context, certain significant observations in the judgment of the lower appellate Court in Title Appeal No, 6 of 1953 were noticed by us in course of argument in this case. We do not however propose to make any observation relating to the merits of the appeal, except that it was the question of possession of plots of lands included in B Schedule properties allotted to Pareswar as aforesaid, which initially was the subject matter of criminal proceedings and subsequently of the civil litigation.

It is not that an Advocate can, in no case, appear for the other side such as, for instance he can certainly appear in a case not directly connected with the earlier litigation. An Advocate may also so appear, irrespective of the position whether or not the first proceeding was directly connected with the subsequent or other proceedings, if he had obtained release with prior consent of his former client. In this case it appears that, at the appellate stage, some new points had been raised and argued by Mr. Nanda which were not raised during trial in the lower Court. We think it is a legitimate grievance, on the part of his former client Pareswar, that, but for Mr. Nanda's appearance for the opposite party Nilagiri in the appeal Court, where Mr. Nanda is alleged to have made use of the confidential instructions given to him of which Mr. Nanda is alleged to have taken undue advantage successfully, in order to have the decree of the lower court set aside, the result of the litigation could have been otherwise.

The principle underlying the ban, prohibiting an Advocate from appearing for the opposite party against his former client, is that there is the likelihood or possibility of misuse of the instructions given to him by his former client. It is not a question whether the misuse has been actually made; the mere possibility of such misuse in a matter, which is connected with the previous litigation, is sufficient. What weighed with us, in this particular case, is the position that proceedings under Section 145 were initially contemplated and Section 107 Criminal proceedings were ultimately taken recourse to. In either case the question of possession of the land in dispute is involved and it is this possession of the very same plots of land which became the subject matter of the subsequent civil litigation. In both the criminal and civil cases possession of B schedule properties was directly involved as aforesaid.

7. From authorities of the different High Courts in India, cited on the point, we get some light for guidance for interpretation of Rule 15 of our Rules.

The Patna High Court in *Emperor v. Bir Kishore Rai*, 3 Pat LJ 390: (AIR 1918 Pat 265) (SB) held that the conduct of a pleader in acting for both sides in the same case is grossly improper conduct, within the meaning of Section 13(b) of the Legal Practitioners' Act, 1879; when a pleader negligently or intentionally disobeys the rules of his profession, he is guilty of grossly improper conduct and it is no excuse that his action does not involve a moral stigma or that it has not resulted in actual injury to his client. In that particular case Mr. Pugh, on behalf of the pleader, urged that grossly improper conduct within the meaning of Section 13 means conduct involving moral turpitude and that it does not extend to cases of negligence of the rules of the profession such as that with which the pleader had been charged.

The Full Bench of the Patna High Court did not accept this argument made on behalf of the pleader and held that whatever the rule may be with regard to the other branches of the legal profession, so far as pleaders are concerned the matter seems to have been settled that although the pleader may not have acted out of any improper motive, gross carelessness and disregard of the rules of the profession cannot be overlooked, and constitute gross misconduct in the discharge of professional duties within the meaning of Section 13(b); nor did the

Full Bench accept the contention that in order to make a pleader liable to punishment under Section 13 it is not sufficient to prove that he had intentionally disobeyed the rules but that there must be some act involving a moral stigma or proof of actual injury to a litigant; that, in their Lordships' view, is not the law as interpreted in the Patna High Court.

The Madras High Court in *Subrammania Dasika v. Rathanasabapathy Thambiran*, AIR 1928 Mad 592 held that where it is sought to restrain a Vakil from appearing for the opposite side, it must be shown that the party who desires to prevent the Vakil from appearing should have offered the engagement in the first instance and the Vakil should have refused the engagement on insufficient or improper grounds: the mere fact that instructions were obtained in other proceedings, which arose out of a right claimed in the proceedings under consideration, gives only a professional right to the party to engage the Vakil and if he is prepared to engage him, the Vakil has a duty to appear for him and not to appear on the other side. This case was decided in the context of Rule 277 of Madras High Court Rules (Civil), on the basis of which it was argued that the rule did not cast upon the respondent the duty of offering an engagement to the Advocate in question and giving an opportunity to adopt or reject the engagement.

On that point, the Madras High Court expressed the view that if the rule did not cover it then the Court has to fall back upon the general principles; that where the party wants to restrain a Vakil from appearing, he must show that he has made reasonable attempt to secure his services, as otherwise the result will be that a party who engages a Vaki] in some collateral proceedings can successfully prevent his appearing without offering an engagement to him; if the petitioner thought that the information which he gave was material to his interests it was his duty to have engaged the Advocate in question. Accordingly the High Court concluded that sufficient reason had not been shown for preventing the Advocate from appearing. Considered from this aspect, in the present case, it is clear that Mr. Nanda should have got release from his former client before appearing for the other side. If Mr. Nanda had given notice and got, such release, the case would have been different.

Chief Justice Jenkins, presiding over a Full Bench of the Bombay High Court in *Damodar Venkatesh v. Bhavanishankar*, ILR 26 Bom 423 observed that with regard to its disciplinary jurisdiction over pleaders, the High Court of Bombay will follow the rule laid down by Blackburn J. in the case of *Re Cutts*, (1867-16 LT 715) which was as follows:

'Those tilings which an attorney learns from his client or in consequence of his employment by his client, he is forbidden to disclose, and any betrayal of his confidence would be visited by the Court as gross misconduct. But if he learns matters relating to his client under such circumstances, that if questioned about them in a Court of Justice he could not refuse to answer them, he is not within our jurisdiction.'

Then the learned Chief Justice proceeded to observe that this rule should not be taken by pleaders as the standard by which to regulate their professional behaviour; it serves only to indicate the extreme low water mark of professional conduct. This case was decided as early as 1902 when the Indian Bar Councils Act was not there. In fact, the Act did not come into force until 1926. It is however clear from the said Bombay decision that the Court expressed its expectation of high standard of conduct from pleaders and advocates in charge of litigation in the courts of justice in this country.

The Full Bench of the Lahore High Court in *In the matter of Ramlal Anand*, AIR 1946 Lah 301, held that change of sides as such by counsel is not forbidden by law; change of sides is forbidden if there are confidential communications by one side which may be made use of when the lawyer represents the opposite party -- it is forbidden if the lawyer obtains his own discharge and acts for the opposite party; it is also forbidden if the lawyer accepts a retainer from the opposite party without first offering his services to his original client.

In the particular case, it was held that there were no confidential communications in possession of the counsel, which had not already become public property when he accepted the brief for the opposite party; further the counsel did not obtain his own discharge; the proceedings in which he was engaged by the party had terminated and the party had refused to avail himself of the services of the

counsel; in those circumstances, the counsel was not guilty of professional misconduct in accepting the brief of the opposite party. It appears from the facts of that case, that the Advocate gave a notice to his previous client to retain his services who declined to do so.

It was conclusively established that the Advocate offered his services to his former client and that he was not prepared to accept brief of the opposite party until his former client refused to retain him. This case is clearly distinguishable from the present case, where there is no evidence of even a gesture, on the part of Mr. Nanda to offer his services to his former client before taking up the case of the opposite party. This case does not support Mr. Nanda's contention.

Mr. L. K. Das Gupta, learned counsel for Mr. Nanda, relied on a decision of the Allahabad High Court in *Saharanpur Grain Chamber Ltd. v. Maharaj Singh*, AIR 1940 All 233, where it was held that an Advocate who has been consulted by one party is perfectly free to accept a brief against him, if he has not received from him any information of a confidential nature which would be of use against the party in the litigation; the law is not that once an Advocate has been consulted by one party, he may not accept a brief against that party, no matter what may have been the nature of the information conveyed to him during the course of the consultation; no doubt litigants are entitled to protection against the unscrupulous members of the legal profession -- but the members of the legal profession are equally entitled to protection against unscrupulous litigations and if the law were that once a counsel was consulted by one party, he could not under any circumstances accept a brief against him, the position of the legal profession would be parlous indeed; the onus of proving that confidential information was conveyed lies heavily upon the applicant.

Apparently, at the time when this case was decided, the Allahabad Bar Council Rules containing Rule 5 of Chapter IV on 'Unprofessional Conduct' made under Section 15(a) of the Indian Bar Councils Act were not in force. It was only since June, 1952, that the Allahabad Bar Council Rules appear to have come into force. Prior to that, the cases on professional conduct of Advocates of Allahabad High Court appear to have been decided on general principles. Accordingly the said

Allahabad decision is not applicable to the present case, which has to be decided in the light of our own rules relating to professional conduct. The same comments would also apply to another decision, --relied on -- on behalf of Mr. Nanda, -- in *Bajinath v. (S) an Advocate of Unao*, AIR 1934 Oudh 58 (SB) where it was held that in order to prevent counsel appearing for other party, he must have a definite retainer, with a fee paid, or he must have such confidential instructions from one of the parties as would make it improper for him to appear for the other party.

Thus, before the appropriate rules came into force, the cases used to be decided on general principles relating to retainer. On the basis of such general principles it was also held that a great deal has to take place before a counsel can be said to be engaged by a party to a suit, so as to be unprofessional for him to appear on the other side; in order to prevent counsel appearing for the other party, he must have a definite retainer with a fee paid or he must have such confidential information from one of the parties as would make it improper for him to appear for the other party. Thus, in another Allahabad case in the context of a letter, --written by one Mr. H to a Barrister who later on appeared for his wife (Mrs. H), engaging him in the case and giving him confidential information, as alleged, which might prejudice Mr. H if the Barrister continued to act for Mrs. H in her petition for dissolution of marriage on the ground of adultery, it was held that there was nothing in the letter alluding to the husband's defence upon charge of adultery and that he merely referred in the letter to complaints that he has against his wife and he desired to take action so that he might obtain custody of the children; that it is not sufficient if a client writes a letter in which there is nothing Which will prejudice him, if that particular Advocate appears for the other side; that such a letter does not definitely engage counsel's services; there is nothing to prevent that particular Advocate from appearing for the opposite party. *E. M. O. Hardless V. II. R. Hardless*, AIR 1932 All 536.

While deciding on general principles, charges of professional misconduct must be clearly proved and should not be inferred from mere ground far suspicion, however reasonable, or what may be mere error of judgment or indiscretion; an appropriate guide may be found in the appropriate provisions of the Legal Practitioners Act and also of the Bar Councils Act under which a lawyer concerned may be

reprimanded, suspended or dismissed who is guilty of a fraudulent or grossly improper conduct in the discharge of his professional duty. The position of the members of the legal profession is very high, but at the same time delicate; they must take scrupulous care that nothing is done by them which leaves room for any accusation being made against them, when, for instance, a pleader finds that he or any member of his family living jointly with him is likely to be mixed up in an affair which is adverse to the claim of his client which he has been advocating in a court of justice, or when a pleader intends appearing against a man in a case which is directly against the case which he was advocating for him before, it is desirable that he -should give a formal notice to his late client and bring the matter to the notice of the Court, if for no other reason, at least to save himself from being charged by the client in future.

It appears that prior to the rules relating to professional conduct came to be introduced in different High Courts in India, such cases used to be decided on general principles applicable to them. Thus, when a Hindu Pleader allowed his father to purchase the very property he was working for Ms client, the transaction took place with the knowledge and consent of his client; but in spite of this knowledge, the client allowed the same pleader to continue to work for him; further, when the pleader appeared for his father against him in a case arising out of the same transaction, he did not raise any objection against the conduct of the pleader for more than 18 months. On such facts, it was held that though the pleader did not act up to the standard of propriety which was expected of a member of the legal profession, who must enjoy the complete confidence of the litigant public and the Court, and though technically his appearing subsequently against him Was improper, yet no disciplinary action was justified in the absence of rules relating to professional conduct prohibiting such appearance for his former client. (A, a pleader v. Judges of the High Court of Madras, AIR 1930 PC 144; In re Qurban Ali Khan v. G., a pleader, AIR 1338 Pat 28).

8. We are thus, ultimately, to consider this case on the interpretation of Rule 15 of the Rules relating to the professional conduct of Advocates quoted above. In this context, we shall also, for comparative study, examine the corresponding rules of the other High Courts, so far available to us. The rule of the Patna High Court

corresponding to Rule 15 of this Court is exactly in the same language being Rule 15 thereof. The corresponding Allahabad Rule is Rule 5 which, though in different form, is substantially the same and is quoted as follows:

'It is not professional misconduct where in the absence of any instructions from the first client an Advocate appears for the opposite party in a subsequent proceeding which is not directly connected with or in continuance of the first proceeding. Briefs may not be accepted in execution proceedings or in appeals following engagement in the suit itself, or in Sessions Court following engagement in original trial or commitment proceeding'.

The corresponding Madras Rule being Rule 28A reads as follows;

'No Advocate shall accept a brief in respect of any proceeding in which his own conduct is likely to be impugned or in which he is likely to be called as a witness other than a purely formal witness. If an Advocate accepts such a brief without knowing that his conduct is likely to be impugned or that he is likely to be called as a witness other than a purely formal witness, he shall return the brief as soon as the circumstances come to his knowledge'.

The Andhra Rule being Rule 288 is exactly the same as the Madras Rule. Reading all these rules of the different High Courts, it is apparent that the spirit of the rules is essentially the same. On the interpretation of Orissa Rule being Rule No. 15, applicable to Mr. Nanda, as an Advocate of this Court, Mr. L. K. Dasgupta contended that by R, 15 an enabling provision is made whereby an Advocate may act, appear for or advise the opposite party in the absence of instructions from his first client in a subsequent or other legal proceeding which is not directly connected with or in continuation of the first proceeding.

According to him, the converse of it cannot arise. That is to say it cannot be interpreted to mean, -- according to him, -- that if the subsequent or other legal proceeding is directly connected with or in Continuation of the first proceeding, he necessarily is prohibited from acting, appearing for or advising the opposite party under the said Rule. The learned counsel argued that as the Rule was meant to be only an enabling provision, then certainly the Advocate could appear if the

subsequent or other legal proceeding was not directly connected with the first proceeding and that no prohibition was implied in the Rule. I am unable to accept this interpretation of Rule 15. The plain reading of Rule 15 is that it is both enabling and disabling rule. Viewed from one aspect, it is enabling in respect of cases subsequent or other legal proceeding which is not directly connected with or in continuation of the first proceeding. But the Rule is at the same time disabling, in respect of subsequent or other legal proceeding which is directly connected with or in continuation of the first proceeding.

Mr. L. K. Dasgupta's argument overlooks the dual aspect of Rule 15, namely that it is both enabling and disabling at the same time -- enabling in respect of some and disabling in respect of others. Thus there is an apparent failure in Mr. Dasgupta's argument that Rule 15 is only enabling rule. The express or implied meaning of Rule 15, when analysed, appears to be this :-- (a) If a former client so consents, an Advocate may act, appear or advise for the opposite party in a subsequent or other legal proceeding irrespective of the position whether or not directly connected; (b) if the former client does not so consent, then the Advocate may act, appear or advise in subsequent or other proceeding not directly connected; but the Advocate cannot so act, appear etc. in a subsequent or other proceeding if directly concerned with or in continuation of the first proceeding. This our interpretation of Rule 15, is further supported by Rule 16, which provides that these Rules, relating to professional conduct of Advocates, are not exhaustive of the subject of professional etiquette even as regards the specific matters with which they deal.

9. Thus, from a plain reading of Rule 15 we are satisfied that Mr. Nanda is guilty of breach of this Rule. On certain admitted facts, Mr. Nanda falls within the mischief of this Rule, It is clear that the subsequent civil litigation was directly connected with or in continuation of the first proceeding under Section 107 Cr. P. C. relating to possession of B schedule property which was the subject matter of both the first and subsequent or other legal proceeding. That apart, the words 'subsequent or other legal proceeding' in the Rule widen the scope of the ban, by reason of which Mr. Nanda was prohibited from acting, appearing for or advising the opposite party Nilagiri at the appellate stage of the civil litigation which followed. It is significant that the lower appellate court in Title Appeal No. 6 of 1953 noticed that the learned

counsel appearing on behalf of the plaintiffs including Pareswar (former client of Mr. Nanda) contended that the major defendants including Nilagiri did not raise any manner of dispute with regard to the aforesaid lands during trial and confined their case only to some lands.

This is clearly indicative of the consequence of Mr. Nanda appearing for the opposite party Nilagiri at the appellate stage. In any event, his former client Pareswar can legitimately take exception to Mr. Nanda's appearing for the opposite party in the subsequent proceeding, directly connected with or in continuation of the first proceeding under Section 107 Cr. P. C. It also appears that Mr. Nanda did not give his former client Pareswar any notice,-- before his appearing for the opposite party Nilagiri, --thus giving his former client an opportunity to engage him, if he needed his services.

In course of the argument, It was seriously commented, (contended?), on behalf of Mr. Nanda, that his former client Pareswar did not raise any objection for about two years, until the appeal was decided against him by the lower appellate Court, Even so, this omission, on the part of his former client, does not exonerate Mr. Nanda as an Advocate of this Court from his obligation or duty to observe the rules of professional conduct made under the Bar Councils Act.

10. A high standard of conduct is expected of an Advocate; and with that end in view, certain conventions are followed. The Bar Council Rules are only a statutory recognition of these traditional conventions to be followed by members of the Bar. Necessarily, the convention relating to professional conduct of an Advocate cannot be all written law. The fundamental idea is that an Advocate must so behave that his conduct may not be questioned in any manner.

The Bar Council Rules are rules of conscience, which can only be illustrative and not exhaustive as our Rule 16 clearly states. The ideals of professional conduct, as contained in unwritten moral code, based on conventions and long established tradition of the Bar, have an equally binding force as written law. These essentially are rules which inner conscience dictates from within. Thus, these rules, relating to professional conduct cannot necessarily be wholly written. This is the inner implication of our Rule 16 which provides that these rules are not exhaustive. It is,

presumably, from this conception that some High Courts have not so far framed rules relating to professional conduct under Section 15(a) of the Bar Councils Act; they have thought fit to leave such cases under disciplinary jurisdiction to be decided by general principles of unwritten moral code of professional conduct, unwritten rules of conscience, conventions and traditions of the Bar, as a professional community with public ideals.

11. The conventions,-- having the binding force of law,-- as to professional conduct of Advocates have their deep seated roots in the principles of English law, which is the foundation of our legal system in this country. In this connection our attention was drawn, during the hearing of this case, to certain passages in Halsbury's Laws of England, Third Edition, Vol. 3, pages 47-63. It is well settled that counsel ought not to appear for the clients whose interests may conflict. Thus it is not the actual conflict but the possibility or likelihood of conflict of interest with his former client, which matters; and such possibility is sufficient consideration which should prevail with counsel not to appear for the opposite party, as in the present case.

English law goes so far as to say that counsel ought not to accept a brief against a party, even though the party refuses to retain him, in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by that party.

Furthermore, counsel cannot be required to accept a retainer or brief or to advise or draw pleadings if he has previously advised another person on or in connection with the same matter, and he ought not to do so if he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by such other person or if his acceptance of a retainer or brief or instructions to draw pleadings or advise would be inconsistent with the obligation of any retainer held by him; and if he has received any such retainer, brief or instructions inadvertently, he should return the same. He ought not to accept brief against a former client even if the client refuses to retain him, if he by reason of his former engagement knows of anything which may be prejudicial to the client in the later litigation (Halsbury's Laws of England, Third Edition Vol. 3 pages 47, 55 and 59). These rules of conduct are based on certain absolute principles, which are applicable to all branches of the legal

profession in every country.

12. So, when an Advocate has reason to believe that his appearance for the opposite party may be prejudicial to his former client in the later litigation, as in the present case, it is unconscionable to appear for the opposite party in such litigation. In such matters it is not the actual prejudice which should decide the conduct of the Advocate. It is the tendency to prejudice his former client which is sufficient. In the present case, there can be no doubt that, -- when Mr. Nanda had advised and appeared in first proceeding ending in Section 107 Criminal Proceedings as aforesaid, -- Mr. Nanda must have obtained certain instructions from his former client on the basis of which he initially advised or contemplated proceedings under Section 145 Cr. P. C. and ultimately instituted proceedings under Section 107 Cr. P. C. with the result as aforesaid. The nature of the said criminal proceedings, as is well known, relates to possession of land in dispute. Such disputes are directly connected with the subsequent civil litigations that are to follow.

In most cases, as we know, these earlier proceedings, -- either under Section 145 or 107 Cr. P. C. --are merely prelude to the subsequent civil litigation. In fact the earlier 145 or 107 Criminal Proceedings are often made use of as device to create evidence for the civil litigation that ensued. Thus viewed, there can be no doubt that in the present case, the subsequent civil litigation was directly connected with or in continuation of the first proceeding under Section 107 Criminal Procedure Code. As we have already discussed, the words 'subsequent or other legal proceedings' in Rule 15 have been used not without any purpose. They are meant to widen the ambit of the Rule to cover such cases as the present one, namely litigation starting from Section 107 or 145 Criminal proceedings resulting ultimately in civil litigation, to which parties are often relegated by Criminal Court for decision of disputes which are found to be of civil nature.

13. After carefully considering the back-ground of this case, in the light of the law applicable herein, the general principles of professional conduct of an Advocate and the statutory rules made under the Bar Councils Act with particular reference to Rule 15, we find that Mr. Nanda is guilty of professional misconduct for breach

of Rules relating to professional conduct of Advocates made under Section 15(a) of the Indian [Bar Councils Act, 1926](#) for reasons aforesaid.

14. As to punishment, Section 10 of the Indian Bar Councils Act provides that an Advocate found guilty of professional misconduct may be reprimanded, suspended or removed from practice. In the present case, it appears that Mr. Nanda was at the time a young Advocate, having been enrolled as a pleader in July, 1947; his age was then only 23 years; he became Advocate of this Court in January, 1955. Mr. Nanda pleads in an affidavit made by him that he had no knowledge of the Bar Council Rules till late. He, however, is supposed to know the Bar Council Rules as an Advocate. We must make it clear that ignorance or lack of knowledge of the rules of the Bar Council can be no defence to such charge of professional misconduct.

However, having regard to Mr. Nanda's inexperience, young age and the whole life in front of him, we desire to take a lenient view as to punishment; and we, accordingly, reprimand Mr. Nanda for his conduct. We also warn him that in future he must not be indiscreet in his professional relation' ship with his clients and should not act recklessly, as he did in the present case. There will be no order as to costs in these proceedings throughout.

Narasimham, C.J.

15. I agree.

Misra, J.

16. I agree.

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