

C. Vamana Murthy Vs. the State

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Court : Orissa

Decided On : Mar-28-1955

Reported in : AIR1955Ori147

Judge : Panigrahi, C.J., ;Mohapatra and ;Misra, JJ.

Acts : [Legal Practitioners Act, 1879](#) - Sections 6 and 7; Orissa High Court General Rules and Circular Orders (Civil) - Rule 23

Appeal No. : Civil Reference No. 5 of 1954

Appellant : C. Vamana Murthy

Respondent : The State

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : A.L.J. Rao, Adv.

Disposition : Petition rejected

Judgement :

Mohapatra, J.

1. The petitioner Sri C. Vamana Murthy was practising as a pleader in the Court of the District Judge of Ganjam-Nayagarh from January 1947 to 23-6-1950. He was appointed as a Deputy Magistrate and Collector by the Government of Orissa and

joined his service on 24-6-1950 on account of which he had to suspend his practice after intimating the fact to the then District Judge at Berhampur. By an order dated 28-1-1954 of Sri N. Senapathy, Secretary to the Government of Orissa, Revenue Department, the petitioner was dismissed from service from 27-12-1953. The order shows that the petitioner was found guilty of submitting an answer paper in the Departmental Examination held in April 1952 on 'Translation from English to Oriya' which was written by somebody else. On 17-6-1954 the petitioner has submitted a petition out of which this reference arises for renewal of his license to practise as a pleader. As we thought it fit to dispose of his petition judicially after giving the petitioner an opportunity of being heard before us the petitioner was served with a notice to which he has filed a memorandum showing cause why his petition for renewal of the pleadership license should not be rejected.

2. It is to be noted here that before filing his petition for renewal of pleadership license the petitioner had applied for being enrolled as an Advocate which was dismissed -- the opinion of the Bar Council being against such enrolment. This petition is covered by the provisions of Rule 23 of the Rules framed by the Court under Sections 6 and 7, Legal Practitioners Act (Act 18 of 1879). The Rule appearing at p. 160 of the General Rules and Circular orders of High Court of Judicature, Orissa, (Civil) Vol. -I, 1949 Edn., reads as follows :

'Any person who having been suspended from practice at his own request, or under Rule 20 or 22, desires on relinquishing his appointment or other occupation or for any other reason, to be re-admitted to practise shall apply through the District Judge to the High Court for permission, and the High Court may before and as a condition precedent to the grant of such permission require him to furnish evidence of good conduct and character during, the period of his suspension, and may impose such other or further conditions as may be thought proper.'

It is absolutely clear from the rule that the High Court before granting a renewal of license after suspension may require as a condition precedent that the petitioner has furnished evidence of good conduct and character during the period of his suspension and may further impose any other condition as may be thought proper.

In the present case, the petitioner has annexed to his petition three certificates of character granted by the members of the Bar. Shri M. Subba Rao, an Advocate of the Cuttack Bar, has granted a certificate on 16-6-1954 to the only effect that he knows the petitioner and 'he bears a good character and is fit to be a pleader or Advocate.'

In our opinion, this is wholly insufficient for compliance with the provisions of Rule 23 which requires evidence of good conduct and character during the period of suspension. The other two gentlemen have certified to the effect that the petitioner was an honest and painstaking lawyer when he was practising prior to his appointment as Deputy Collector. These two certificates manifestly are not in compliance with the requirement of this Court as a condition precedent to the granting of renewal of license as required under Rule 23.

In short the position is that not only there is no evidence before us as to good conduct and character of the petitioner during the period of his suspension, but there is the order of dismissal dated 28-1-1954 of the Government of Orissa in the Revenue Department No. 54/V-8/54 Con. dated, Cuttack, the 28th/29th January, 1954) which shows that the petitioner was found guilty of submitting an answer paper which was written by somebody else in the Departmental Examination held in April 1952. This act is certainly one involving serious and grave moral turpitude. It is highly undesirable that the petitioner should be, after being guilty of such conduct, allowed to be in the midst of the members of a profession which requires a very high standard of honesty and integrity. A pleader is entrusted with the records of the Court and the documents of the parties which he may freely handle. The petitioner who was found guilty of having introduced an answer paper written entirely by another person in the Departmental Examination for testing his competency cannot be allowed to renew his license. It appears from the statement filed by the petitioner that before Sri V. Ramanathan, I. C. S., who had enquired into the conduct of the petitioner, three witnesses were examined --(i) The Handwriting Expert, (ii) The Secretary, Board of Examiners and (iii) a clerk of the Revenue Board in-charge of Departmental Examinations, We may note here that the petitioner had filed a petition under Article 226 of the Constitution before 'this Court against the order of dismissal and the petition had been rejected.

3. Mr. A.L.J. Rao, appearing on behalf of the petitioner, has however relied upon a few decisions. In the case of -- 'In re Mukunda Lal Dhar', 27 Cal WN. 528 (A), there was an application for renewal of certificate as a pleader. The applicant was appointed in the police service under the Eastern Bengal and Assam Administration and had therefore to suspend his practice during the period of service. Subsequently the applicant having been discharged from police service he filed a petition for renewal of his license. He was discharged from service because of the part he played in a criminal case. The petitioner who had been assaulted and stabbed in the house of a woman filed a complaint.

On investigation by the Magistrate it was found that the allegation of assault was well founded but that the circumstances under which the event had happened were not as narrated by the complainant in the witness-box. There was consequently a conviction of the accused in the case though not exactly on the basis of the story told by the petitioner. After determination of the criminal case, the Inspector-General of Police thought that on account of the petitioner's good service it was not necessary to dismiss him and that it would be sufficient to dispense with his services.

The finding of their Lordships is that the substance of the matter was that there was a divergence between the story outlined by him in the first information and his statement on oath in Court. The facts in that case appear to be entirely different from those before us. As is apparent, the petitioner in that case could never be found guilty of an act of serious moral turpitude as in the present case. Even then their Lordships did not allow renewal immediately but ordered the certificate to be renewed with effect from a subsequent date, as the petitioner had not disclosed the fact of his discharge from service in his petition for renewal.

4. The next case that was cited by Mr. Rao is of the Pepsu High Court decided by Teja Singh C. J. and Chopra J., reported in -- 'In re Ram Singh', AIR 1954 Pepsu 81 (B). There the petitioner, who was elected as a member of the local legislative assembly, and was later included in the Council of Ministers of Patiala and East Punjab States Union, was subsequently found guilty of corrupt practices by the Election Tribunal and his election was set aside, In an enquiry under Section 13,

Legal Practitioners Act, their Lordships held that the charges against the legal practitioner had not been proved that he was guilty of any misconduct. The charges against the legal practitioner before the Tribunal are quoted at p. 81 of the report. They are as follows:

'1. (a) Did respondent 1 employ Khanya Ram for remuneration to do canvassing in support of his party and not in support of his personal candidature? Was this expenditure illegal under Section 123(7), Representation of the People Act?

(b) Does his employment amount to a major corrupt practice under that section?

2. (a) Does petitioner prove that respondent 1 obtained or procured assistance of Ch. Mehtab Singh of Igra for furtherance of the prospects of his election?

(b) Should Ch. Mehtab Singh, as a member of Debt Conciliation Board, be deemed to have been in service of the Pepsu Government?

(c) Does the employment of Mehtab Singh of Igra as above, if proved, amount to a corrupt practice under Section 123(8), Representation of the People Act?

On a perusal of the charges, we find that the case is to be distinguished from the present one as none of those involved any act of moral turpitude to bring the case within the mischief of Sections 13 and 14, Legal Practitioners Act.

5. We should refer to the last case relied upon by Mr. Rao. This is case of the Calcutta High Court reported in -- 'In the matter of Puma Chunder Pal', 27 Cal 1023 (C). A Sub-Inspector of Police was committed for trial to the Court of Session on charges of bribery, forgery, and other offences, but was acquitted, He was, however, departmentally found guilty of misconduct and was dismissed from Government service. Two years after he obtained a certificate of good moral character from a pleader and gained admission to the muktarship examination which he passed and was allowed to practise as muktar. After six years of his practice in the district of Bhagalpore without any fault, the Sessions Judge of Bhagalpore made a reference under Section 14, Legal Practitioners Act recommending his dismissal as he was dismissed, on charges of misconduct, from police service.

On a difference of opinion between Chose and Rampini JJ., the case was referred to Hill J., who agreed with Rampini J., that Section 13 Clause (f), Legal Practitioners Act was intended to cover misconduct other than professional misconduct and to embrace all causes other than those previously enumerated in the section; an offence committed prior to admission may be made the foundation of proceedings under Section 13, Legal Practitioners Act. Agreeing with Ghose J., Hill J., opined that while a Sub-Inspector of Police had been departmentally found guilty of misconduct and not on legal proof, no case either for suspension or dismissal from the profession could be said to have been made out against him. Without expressing any opinion whatsoever as to whether we agree with the view taken by Hill J.. in agreement with Ghose J., we may simply observe that the decision has no bearing to the facts of the present case, as the case before their Lordships of the Calcutta High Court was one under Sections 13 and 14, Legal Practitioners Act for dismissal or suspension on account of previous conduct of the legal practitioner. But in the present case, we have to determine the real, position with reference to the provisions of Rule 23 of the Rules framed under Sections 6 and 7, Legal Practitioners Act.

6. As we have already mentioned, not only that there is a complete absence of any certificate of good conduct of the petitioner during the period of suspension but the staring fact that remains is his dismissal on having been found guilty of an act involving serious type of moral turpitude. We would, therefore, order that the petition for renewal be rejected, But we may observe at the same time that this order may not serve as a permanent bar to the petitioner to apply for renewal of his license in future, The petitioner may in future be permitted to renew his license provided he can satisfy the Court of his good conduct and character.

Panigrahi, C.J.

7. I agree.

Misra, J.

8. I agree.

