

In Re: Pleader

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Court : Chennai

Decided On : Dec-13-1907

Reported in : (1908)18MLJ184

Appellant : In Re: Pleader

Judgement :

1. In this case two charges have been preferred against a Pleader under Section 14 of the Legal Practitioners Act. The first charge alleged professional misconduct against him in connection with the alteration of the date in a certain petition which was presented to the Sub-Magistrate of Tiruvadi and which I came before Mr. Jackson on appeal when he was the Joint Magistrate of the Tanjore Division. Before the date named in the charge as the day on which the charge would be taken into consideration, Mr. Jackson ceased to be the Joint Magistrate of the Tanjore Division and became the Joint Magistrate of the Kumbaconam Division.

2. The District Magistrate made an order transferring the charge to the Joint Magistrate of the Kumbaconam Division on the ground that he had dealt with the matter in the first instance.

3. Section 14 of the Legal Practitioners Act provides that, if any Pleader practising in any Subordinate Court is charged in such Court with professional misconduct, the presiding officer shall send him a copy of the charge and a notice that, on a day named, the charge will be taken into consideration. It further provides that on that day the presiding officer shall receive and record all evidence produced in

support of the charge, and if he finds the charge established, shall report to the High Court. We think that under the section the charge must be dealt with by the presiding officer of the Court in which the pleader was charged. Mr. Jackson is no longer the presiding officer of that Court, and there is no provision of law under which the case can now be transferred to him by the District Magistrate. We must accordingly set aside the order of transfer and direct that this charge be dealt with by the presiding officer of the Sub-Divisional Magistrate's Court at Tanjore.

4. The second charge against the pleader, with regard to which the facts are not in dispute, was in connection with a written statement attached to a warrant which had been issued by Mr. Jackson as Joint Magistrate of Kumbaconum for the arrest of the pleader. The statement alleged that Mr. Jackson in issuing the warrant had acted 'maliciously, vexatiously, and with a vindictive spirit' against the pleader.

5. The warrant was issued after the pleader had failed to appear to a summons which had been previously issued with reference to the first charge. The Public Prosecutor has been unable to call our attention to any provision of law, and we know of none, which would authorize the issue of either a summons or a warrant against a pleader who fails to appear in answer to a charge preferred against him under Section 14 of the Legal Practitioners Act. Under the Act, if the presiding officer finds the charge proved he reports to the High Court and the penalty to which the pleader is subject is that provided by the Act, viz., suspension or dismissal by the High Court. The penalty for not appearing in answer to the charge is that a report may be made without the pleader being heard in his own defence.

6. As regards the question whether the use of the language to which we have referred amounts to 'fraudulent or grossly improper conduct in the discharge of his professional duty,' we are of opinion that it does not. The language was no doubt to the last degree improper, but when the pleader used it he was not discharging his professional duty. He used it not in his capacity as a pleader, but as a party against whom a warrant had been issued.

7. In *Inre Wallace* (1866) L.R. 1. P.C. 283 the Privy Council held that the writing of a letter to a Judge by a Barrister and Attorney which, having regard to the terms of the letter, amounted to contempt of Court, was not 'professional misconduct,' since

the letter was written in the Attorney's capacity as a suitor in respect to a supposed grievance as a suitor and having no connection with his professional character or anything done by him professionally. The principle of this decision of the Privy Council was acted on by this Court in *In The Matter of A first Grade Pleader I.L.R. (1900) M. 17.*

8. As, in our opinion, the admitted facts on which the second charge was based do not constitute 'grossly improper conduct in discharge of professional duty' within the meaning of the section, we must annul the charge.

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