

In Re: Madura

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Court : Chennai

Decided On : Mar-24-1943

Reported in : AIR1943Mad475; (1943)1MLJ396

Appellant : In Re: Madura

Judgement :

Alfred Henry Lionel Leach, C.J.

1. The respondent is a pleader who was practising in Madura. On the 18th November, 1942, he was convicted by the City Magistrate of Madura of an offence under Rule 34 (6) (c) of the Defence of India Rules and was sentenced to undergo rigorous imprisonment for a period of eight months. Rule 34 (6) defines what is a prejudicial act and Clause (c) says it is a prejudicial act to render a member of His Majesty's forces or a public servant incapable of efficiently performing his duties as such, or to induce a member of His Majesty's forces or a public servant to fail in the performance of his duties as such. Rule 38 (1) (a) says that no person shall, without lawful authority or excuse, do a prejudicial act and Sub-rule (5) says that if a person contravenes any of the provisions of the rule, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

2. On the 12th October, 1942, the respondent wrote to the District Magistrate of Madura enclosing a pamphlet, which was headed ' the duty of a faithful and responsible British Official of the Government of India.' The pamphlet called upon the British Government to quit India 'here and now.' In the covering letter the

respondent said,

I hereby intimate to you that I am going to carry on the ' Quit. India' propaganda on the lines contained in the leaflet herewith annexed and for the reasons stated' therein, I request you to ' Quit India ' here and now.

The Ramnad District Board had been suspended and a special officer appointed to carry out its duties. The respondent also sent a copy of the pamphlet to the special officer and wrote to him the following letter:

The leaflet herewith sent will show how necessary it is that power should be transferred to the people of India. The District Board which passed the resolution disapproving the act of the Government in having arrested the leaders responsible for the passing of All India Congress Committee resolution has been superseded. Your taking charge of the administration as appointee of the Government in the place of the people's representative will only aggravate the anti-Government feeling and I therefore request that you resign your post immediately.

The prosecution was based on the pamphlet and these letters. The Magistrate held that in sending the pamphlet and letters the respondent had done a prejudicial act which was punishable under the Defence of India Rules. The validity of the conviction is not open to question in this Court. The conviction having been brought to its notice this Court called upon the respondent under Section 13 (f) of the Legal Practitioners' Act to show cause why disciplinary action should not be taken against him.

3. When the pamphlet was sent to the officers mentioned many parts of India were in a very agitated state. Riots had broken out and there was considerable destruction of Government and Railway property. In addition there was threat of an invasion of India by Japan. The Court is not concerned with political opinions unless the expression of them involves the committing of an offence, or constitutes conduct improper on the part of a legal practitioner, who is a part of the machinery for the administration of justice. The object of writing these letters, and sending copies of the pamphlet was to induce responsible officials to leave their posts and thereby contribute to the breakdown of the machinery of Government. It would

have been a very serious matter so far law and order was concerned if the District Magistrate of Madura had at this juncture quitted his post and the same remark applies to the special officer appointed to carry on the duties of the District Board. In my opinion there is no doubt that the respondent did something which he should not have done as a member of the legal profession and that he is liable to disciplinary action under the Legal Practitioners' Act. If there were any doubt on this question, it would be set at rest by two decisions of this Court, one being In the matter of a Second Grade Pleader : (1923)45MLJ684 and the other In the matter of K.M., First Grade Pleader (1924) 92 I.C. 214 . In both these cases action was taken under the Legal Practitioners' Act against pleaders who had participated in the civil disobedience movement of 1921-22. In the first of these cases, the pleader had delivered speeches in which he instigated people not to pay taxes and in one case not to pay taxes till there had been a meeting of the Congress, the decision of which, the respondent apparently advised, should guide the population as to whether they should or should not pay the taxes to the recognised authorities. He had also stated that he had objected to English Courts and their methods and recommended the people to eschew them and to set up Courts of their own. The Court held that the pleader had brought himself within the mischief of Section 13 (f) of the Legal Practitioners' Act. This case was decided by a Full Bench of this Court consisting of Schwabe, C.J., and Coutts-Trotter and Krishnan, JJ. I find myself in entire agreement with what Coutts-Trotter, J., said in that case and will quote the following passage from his judgment:

But while the Courts will always uphold the liberty of the subject in thought or speech, an applicant, who comes to ask for the issue or renewal of a sanad, is applying to be treated as a part of the machinery, for the maintenance of law and order in the body politic and to take an active part in administering, for the other subjects of the Crown, the benefits that may be supposed to result from the upkeep of law and order. It is intolerable and illogical that a man should seek to be put in that position, while at the same time he is saying that law and order should be (disobeyed, that taxes are not to be paid and that all public offices are to be abandoned, in order to paralyse the very life of the body politic, apart altogether from any other views he may entertain, as to the desirability of the personnel or the particular members of the Government he attacks, or the particular character

of the transactions carried on, in these Courts.

As I have already indicated the object of the respondent in the present case was to bring about a breakdown in the machinery of Government just as it was the object of the pleader in that case. In the matter of K.M., First Grade Pleader (1924) 92 I.C. 214 was decided by the same Full Bench and there Coutts-Trotter, J., observed:

He may be a perfectly honourable man; he may act from conscientious motives; he may in conceivable circumstances be a patriot. It may be imagined that he should not be punished or even prosecuted for holding or expressing these opinions. All our business is to say that, however admirable a person he may be, he cannot consistently with his professions ask to be considered and to be adopted as part of the machinery of this Court for enforcement of law and order.

With these observations Schwabe, C.J., agreed, as I do here.

4. There are two judgments of the Privy Council which also show that in circumstances such as we are considering, the Court has power to take action under the Legal Practitioners' Act. In *Shanker Ganesh Dabib v. Secretary of State for India* (1922) 44 M.L.J. 32 : 1922 L.R. 491 IndAp 319 : I.L.R. 49 Cal. 845.(P.C.) a pleader practising in the Court of the Judicial Commissioner, Central Provinces and Berar, had his sanad taken away under Section 13 (f) of the Legal Practitioners' Act until such time as he satisfied the Court by his conduct that he was fit for re-admission. This pleader had taken part in an agitation against a local tax. Lord Buckmaster said:

The offence which he had committed was connected with an agitation against payment of the Mahar Baluta, and it appears that in the course of such agitation he did not confine himself to protests, however vehement, against the tax, or against its injustice, but that he urged an organised resistance to payment, and attempted to establish a system which would have impeded and might have defeated its recovery with the grave danger to the public peace. These considerations led to the conviction to which reference has been made, and caused his conduct as a pleader to be brought before the Court in their jurisdiction

under the Legal Practitioners' Act of 1879. Their Lordships are of opinion that the circumstances to which they have referred were sufficient to find jurisdiction under Section 13, Sub-section (f) of that Act, which is not confined to acts done in a professional capacity.

In *Advocate-General of Bombay v. Phiroz Rustomji*; *Advocate-General of Bombay v. Minocher Rustomji*; *District Government Pleader, Kolaba v. Pitambardas Gokuldas*; *District Government Pleader, Broach v. Motilal Hargovandass* the Judicial Committee declared that misconduct, though not committed in a professional capacity entitled the Court to take disciplinary action under Section 10 (1) of the Bar Councils Act. Lord Blanesburgh there observed:

It was for the Court to decide whether conviction, of having been a member and having assisted and managed the operation of an unlawful association having for its object interference with the administration of the law or with the maintenance of law and order and constituting a danger to the public peace, was evidence of such misconduct on the part of an advocate as to render him unfit for the exercise of his profession, or to call for the Court's censure. It was for the impugned advocate to adduce any considerations which might induce the Court to refrain from taking disciplinary action.

The respondent has expressed no regret for his conduct. His learned Counsel had made it clear that he does not intend to express regret. It has merely been suggested that the conduct of the respondent is such that disciplinary action is not called for. I certainly disagree. I have said sufficient to indicate that the respondent's action does in my opinion constitute misconduct and misconduct of such a nature that this Court is justified in taking disciplinary action under Section 13 of the Legal Practitioners' Act. This is the first case which has come before the Court since the civil disobedience movement of 1921-22 and I consider that it will here be sufficient if the respondent's sanad is suspended for the period of two years from the date on which he comes out of prison.

Mockett, J.

5. I entirely agree and it is only because of two arguments which Mr. S. Ramaswami Ayyar addressed to us that I desire to add a few words. Mr. Ramaswami Ayyar argued that we were being invited to take into account the political views of a member of the Bar and that additional punishment was sought to be inflicted upon him for an offence for which he had already been punished. There is no foundation for these contentions. In the 'case to which my Lord referred--In the matter of a Second Grade Pleader : (1923)45MLJ684 --Coutts-Trotter J. as he then was stated as follows:

I want to make it as clear as I can that, speaking for myself, the last thing that I think that we should consider ourselves concerned with in the ordinary way is what the political opinions of anybody are whether they are members of the legal or any other profession.

These observations express my views entirely and I do not think that it can ever be doubted that this is the attitude of the Court towards an expression of opinion but if owing to these opinions or for any other reason an individual does an act which brings him within the disciplinary provisions of the Legal Practitioners' Act or the Bar Councils Act, then the Court, whose duty it is to deal with these matters has to consider the act of the individual. His reasons for the act. in my opinion' are of secondary importance. In this particular case what the pleader did was to call upon two responsible officers to abandon their posts without any form of notice to their superiors. He did it at a time when this country was in a state of unrest and in peril. Of those facts, they being notorious, I can take judicial notice. What the results would have been one does not like to contemplate because it must be remembered that though this was the act of this individual pleader if it was a proper act, it could have been done by innumerable other persons. For this He was convicted under the Defence of India Rules and his case now comes before us and we are dealing with it not with a view to give him additional punishment but purely from the point of view of whether it is a breach of the discipline of the Bar A cursory perusal of the Defence of India Rules shows that there are offences which on the face of them seem to involve no moral turpitude. There are offences within those rules which may well be committed without any intention of offending This case comes before us because by committing an offence within the Defence of

India Rules the pleader has been guilty of conduct which we have to consider in relation to his professional status. Remembering that a member of the Bar owes his rights and privileges to his association with the administration of justice I am satisfied, whether it was an offence under the Defence of India Rules or any other provision of law, or whether it was no offence at all, that for a member of the Bar to call upon a judicial officer in the position of a District Magistrate an officer on whom lies a large measure of responsibility for the administration of criminal justice and law and order in the District, to abandon his duties, shows that he is not fit to be associated (at least for a time) with a profession which is bound to support the administration of justice. The two positions seem to me inconsistent and irreconcilable.

6. For these reasons which are already contained in my Lord's judgment I agree with the order proposed. ,

Krishnaswami Ayyangar, J.

7. I also agree in the order pronounced by my Lord. It is enough to say that by writing the two offending letters the pleader has brought himself within the mischief of Section 13 (f) of the Legal Practitioners Act.

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