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In Re: First Grade Pleader

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Court : Chennai

Decided On : Jan-19-1931

Reported in : AIR1931Mad422; (1931)60MLJ393

Appellant : In Re: First Grade Pleader

Judgement :

Horace Owen Compton Beasley, Kt., C.J.

1. This matter comes before us under Section 13 (b) and (f) of the Legal Practitioners Act. The charge against the legal practitioner here is that on three different occasions he applied for adjournment in the Court of the Sub-Magistrate at Polur on the ground that the High Court would be moved for a transfer of the case and that he took no steps at all on those occasions either himself or by means of his client to move the High Court. It is charged against him that he applied for those adjournments with the deliberate intention of delaying the course of justice; I am quite satisfied that if it is proved against a legal practitioner that he deliberately for the purpose of impeding the course of justice makes a statement to a Court which he knows or believes to be untrue and thereby gains an advantage for his client, he is guilty of grossly improper conduct and as such renders himself liable to be dealt with by the High Court. In this case of course it is not suggested that he, has been guilty of fraudulent conduct in the sense that the word 'fraudulent' is usually used, but it is alleged that his conduct has been grossly improper. The three dates upon which the legal practitioner applied for adjournments are the 8th February, 1930, the 27th May, 1930 and the 24th June,

1930. His client was charged with the offence of criminal breach of trust. On the 4th October, 1929, appearance was entered on behalf of the accused person by the legal practitioner in this case. Previous to this the accused in Magistrate's Court had obtained an adjournment and actually presented a petition to the District Magistrate which was rejected. After the legal practitioner had entered his appearance on behalf of his client, the client applied for adjournments twice on his own behalf for the purpose of moving the High Court and one adjournment was granted and the other refused but on neither occasion were any steps taken to move the High Court and it is highly improbable that the practitioner was unaware of this. Then we come to the three occasions upon which the practitioner himself on behalf of his client presented petitions for adjournment. The first, as I have already stated, was on the 8th February of this year.' The reason assigned then for an adjournment for the purpose of moving the High Court was because it was contended on behalf of the accused that the offence with which the accused was charged was not one of criminal breach of trust but one of cheating under Section 420, Indian Penal Code, and that the Sub-Magistrate of Polur had therefore no jurisdiction to entertain that charge. An adjournment was granted for the purpose of taking that question up to the High Court but no steps were taken either by the legal practitioner or by his client. Then on the 27th May one of the defence witnesses was available in Court and ready to be examined. But the accused did not wish that witness to be examined as the other defence witnesses were not ready and an adjournment was asked for the purpose of having all the defence witnesses summoned and examined on the same day. That application was refused by the Magistrate. Then an adjournment was asked for by the legal practitioner for the purpose of making an application to the High Court against that order and it was granted. It does not seem to me to have been reasonable to ask for an adjournment of the case to some future date in order to examine all the defence witnesses. One of the defence witnesses was there and he could have been examined but it has been stated on behalf of the legal practitioner by Mr. L. A. Govindaraghava Aiyar that it was probably because it was thought more convenient to call the defence witnesses in a certain order. However that may be, no steps were taken to move the High Court in the matter so that we have here the second occasion on which the legal practitioner asked for an adjournment for a

purpose which was never carried out. The third occasion was, on the 24th June of this year. The case had been adjourned for hearing to the 21st June by the Sub-Magistrate and on that date the accused sent a telegram stating that he was ill and unable to attend Court. The Magistrate who had by this time formed a reasonable opinion with regard to the tactics being pursued by the accused would not accept that statement of the telegram or the excuse and ordered the accused to be brought to Court on a non-bailable warrant and he was produced in Court on the 24th June. With him came a medical certificate granted by a local dispensary showing that the accused had attended as an out-patient that dispensary on the 21st June, the very day when the case should have been taken up by the Magistrate; but the nature of the illness from which the accused in that case was suffering was not stated in the certificate. With that certificate before him and the previous history of the case in his mind, the Magistrate refused to grant bail to the accused. Thereupon he was again asked by the practitioner for an adjournment again for the purpose of moving the High Court. That he refused to grant but later on in the same day he granted an adjournment for fourteen days for the purpose of the High Court being moved. After thirteen days had elapsed and no steps whatever had been taken to move the High Court the practitioner withdrew from the case. That was on the 7th July, 1930.

2. The charge against the practitioner is that he was not acting bona fide in the matter and that he knew perfectly well when he asked for adjournment for the purpose of moving the High Court and obtained them that that purpose was not going to be carried out and that he therefore impeded the course of justice. This of course is not a matter of direct evidence at all. One cannot look into the mind of the practitioner and say how much he knew, how much he did not know of what his intention was. His intention has to be gathered from the circumstances of the case and if the inference is so strong that it leads us to the conclusion that he knew perfectly well when he asked for adjournment and obtained them that the purpose for which the adjournments were asked was not going to be carried out then he has been guilty of grossly improper conduct. The facts of the case here are that to the practitioner's knowledge obviously before he himself commenced asking for adjournments, his client had twice asked for adjournment for the purpose of moving the High Court but had taken no steps whatever in the matter.

Then he himself asked for an adjournment for a similar purpose and that purpose was not carried out. That was repeated a second time and it was repeated a third time. With the knowledge the legal practitioner had before him of what his client had done before he ever started making applications on his behalf and with the knowledge that on the first occasion on which he himself gained an adjournment no attempt was made to move the High Court nor on the second occasion; on the third occasion the inference is well-nigh irresistible that he knew perfectly well when he asked for the adjournment that he was putting forward a misrepresentation for the purpose of gaining a benefit for his client and that the High Court would never be moved by him. In his written explanation he says that he did this on the instructions of his client. He seems to think that it is the duty of a legal practitioner blindly to follow every instruction his client gives him. That is an entire misapprehension of the duty of a legal practitioner. He has not only got a duty towards his client but he has got a duty towards the Court and it is his duty to see that the case is fairly and honestly conducted. He must not trick or deceive the Court or attempt to gain for his client an advantage by dishonest means. To attempt to obtain adjournments by misrepresentations, and to put forward a purpose which the legal practitioner knows will never be carried out is to attempt to gain and to gain an advantage by a trick and a very dishonest one too. It is to be noted also that in his written explanation he says that he withdrew from the case because his client was-in want of funds and that his client's creditors were pressing him on towards insolvency. That must mean that if his client had not been in need of funds and his creditors had not been pressing him towards insolvency he would have remained in the case as his legal practitioner. Before the District Magistrate upon whose report this case has come before us, a totally different explanation was given, namely, that the practitioner then realised that his client's conduct was not bona fide. It need hardly be pointed out that these two explanations appear to be quite contradictory. In my view, the charge against the legal practitioner has been proved and amounts to grossly improper conduct and for that conduct he must be punished.

3. This is so far as I know the first case of this kind that has ever been before this Court and I do not think that we should make a very serious example of the pleader. I think that one very useful purpose will have been achieved by it being

brought home to some of the members of the legal profession that they are under a duty to the Court. They must not mislead the Court. They must not ask for adjournments for their clients when they know that the reasons they are putting forward are untrue or have reason to believe are untrue. They must only make applications which they believe to be well-founded. I think that this case will certainly serve a very useful purpose In bringing to the notice of legal practitioners, the majority of whom of course I feel sure do not require such a thing to be brought to their notice, that this is not conduct which can be tolerated by the High Court. The punishment which in my opinion should be inflicted upon the pleader Mr. K. Visvanatha Aiyar is that he be suspended from practice for a period of three months.

Reilly, J.

4. I agree.

Sundaram Chetty, J.

5. I agree.

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