

In Re: in the Matter of an Advocate

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Court : Chennai

Decided On : Apr-08-1947

Reported in : (1947)2MLJ213

Appellant : In Re: in the Matter of an Advocate

Judgement :

Frederick William Gentle, C.J.

1. The petitioner was enrolled as an advocate of this Court in 1924. He practised at Tellicherry and from 1928 to 1939, or thereabouts he was the Official Receiver of North Malabar. On the 25th June, 1940, he was convicted by the Joint Magistrate of Tellicherry on charges under Sections 409 and 477-A of the Indian Penal Code in respect of defalcations amounting approximately to Rs. 2,200 in connection with three insolvencies which he was administering as Official Receiver; he was sentenced to terms of imprisonment aggregating to three years. On appeal, against the sentence to the learned District Judge the imprisonment was reduced to a total of two years and, on revision to this Court, it was further reduced to a period of one year. On the 27th October, 1941, he was struck off the roll of advocates. There is no doubt that his conduct and the offences he had committed called for severe condemnation, justified the sentence imposed upon him, amounted to a grave professional misconduct and merited his name being expunged from the roll of advocates. This is the petitioner's application to be restored to the roll of advocates.

2. His conduct while in jail earned the petitioner full remission and he was discharged after serving about 91/2 months of his sentence of 12 months. The Superintendent of the Cannanore Central Jail certified, upon his release, that his character and behaviour has been exemplary during the time he was in detention.

3. There are some relevant facts and circumstances connected with the offences charged against the petitioner which require reference. In one insolvency, which he administered, he continued to conduct a timber business with the permission of the Court. For this purpose he borrowed about Rs. 3,000 for which the lender required that he should make himself personally liable. The lender obtained a decree against the petitioner for the amount of the loan. At that time he was administering three other insolvencies in respect of which he was paid moneys but failed to record their receipt in the books. Instead of doing that, he utilised those moneys, to the extent of about Rs. 2,200, by making payments towards the decree obtained against him for money due in connection with the other insolvency. Those are the defalcations for which he was convicted and sentenced and ultimately struck off the roll of advocates.

4. Prior to the petitioner's prosecution, the learned District Judge, having ascertained that there was a deficiency of Rs. 775 in one insolvency, directed the petitioner to deposit that sum into Court. Thereupon the petitioner interviewed the learned District Judge, he made a complete and full disclosure of all defalcations in that and also in the other two insolvencies. Throughout the subsequent proceedings he made no attempt to escape from his responsibility, but, on the contrary, he acknowledged his guilt. He has made complete restitution.

5. It is to be observed that the petitioner did not utilise the proceeds from the defalcations for his own personal use and benefit, save that he devoted the moneys towards the discharge of the decree against him personally which, as above stated was in respect of an advance he obtained to carry on a business in another insolvency with the permission of the Court. Although that circumstance could not affect his guilt in respect of the offences for which he was convicted, nevertheless it is a factor to which consideration can be given in the present application.

6. Since his release from jail in 1941, the petitioner has been engaged in several spheres of activity and service. He has been employed by business people and others and placed in positions of trust. In some instances his work involved receiving and collecting sums of money, for all of which he has accounted in full. During one period he managed a hotel at Calicut and the monthly receipts paid into his hands amounted to between Rs. 10,000 and Rs. 12,000. The proprietors state that he was scrupulously honest and straightforward in all his actions and gave them every satisfaction. Other people who employed him or to whom he rendered service speak in high terms as to his integrity, and, when he received money on their behalf, he fully accounted for it.

7. A number of certificates given by those who utilised the petitioner's services since he was released from jail, the substance of which I have previously mentioned, were filed with the present application as well as other certificates from persons expressing opinions regarding the petitioner's character. Since it is not the practice of this Court to act upon certificates in applications of the nature of the present one, we required their contents to be placed in affidavits. This has now been done. Further, in these matters we do not pay attention to statements as to opinions but only to statements of fact regarding the applicant's conduct, behaviour and trustworthiness. For these reasons statements in affidavits as to opinion have not been taken into consideration.

8. Upon a review of the whole facts, including the statements in the several affidavits by people who have employed him or engaged his services since his release from jail in 1941, I have come to the conclusion that the petitioner has atoned for his past misconduct, has reinstated himself as an honest and upright member of society, has shown that he is now a person who deserves the trust and confidence of his fellow citizens and has regained the character which was formerly his but which he lost by reason of his misdeeds. For these reasons, in my view, this application should succeed and the petitioner should be readmitted to the roll of advocates-of this Court.

Lakshmana Rao, J.

9. I agree.

Happell, J.

10. I too agree.

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