

In Re: M.P.N., a Second Grade Pleader

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Court : Chennai

Decided On : Nov-19-1935

Reported in : AIR1936Mad318

Appellant : In Re: M.P.N., a Second Grade Pleader

Judgement :

Beasley, C.J.

1. The respondent is an applicant for the renewal for the year 1935 of a second grade pleadership certificate. This application he sent to the High Court through the District Judge of South Malabar. In his application he stated that he was a second grade pleader, that his certificate was last renewed on 1st January 1921, that he was unable to apply for the renewal of the certificate because on 10th September 1921 he was arrested under the orders of the District Magistrate of South Malabar under the Moplah Outrage Act and kept as a detinue and subsequently was charged with the offence of waging war against His Majesty, tried by the Special Court at Calicut presided over by Mr. Pakenham Walsh and convicted and sentenced to transportation for life on 25th September 1922 and that he was released only on 1st October 1934. His application is dated 14th March 1935. On 17th October 1935 the High Court issued a notice to him of proceedings under Section 12, Legal Practitioners' Act, calling upon him to show cause why he should not be dealt with under that section. When the matter first came before a Full Bench of this Court the respondent was absent and the matter was adjourned in order to give him an opportunity of appearing; and at the

adjourned hearing he appeared in person, and, in addition to presenting a written statement, he also addressed the Court, after the learned Advocate-General had presented the legal aspect of the case and cited reported cases touching upon the matter.

2. A brief outline of the history of the respondent's conviction is necessary and the judgment of the Special Judge of Malabar, Mr. E. Pakenham Walsh, is before us. The respondent was charged before him with the offence of waging war against the King, an offence under Section 121, Penal Code. In his judgment the learned Judge says that in addition to a general charge that the respondent assisted in the non-co-operation and khilafat movements in the Ernad and Walluvanad Taluks, which the Crown alleged were made in preparation for, and with a view to, rebellion, and that he associated himself in these proceedings with notorious rebel leaders, who subsequently were either killed in fighting the forces of the Crown or were convicted for waging war, the prosecution alleged four specific acts, two before the rebellion which broke out on 20th August 1921 and two after its outbreak. Of these four specific acts the learned Judge held that only one of them had been made out, and that was that on 24th August 1921, after the rebellion had broken out, the respondent delivered a speech at Manjeri. The rebel leader Kunhayammad Haji had come to Manjeri and for two days ruled the town. As a mark of the establishment of his Khilafat kingdom he returned the jewels pledged; to the Nambudri Bank there without payment of the amounts owing. The respondent was there at the time, alleged to be assisting him, and made a speech in which he said:

The rule of the white man has come to an end. Moplahs have been known to be brave-men. They alone drove the white men from Tirurangadi. If we all unite and stand together we will accomplish our cause. White men have only a few soldiers. If we withstand them for a few days we will get help from outside. I believe you will do it. Those who work against Khilafat are our enemies. They should not be spared;

or words to this effect. Convicting the respondent in respect of that charge the learned Judge sentenced him to transportation for life. The question now is

whether under Section 12, Legal Practitioners' Act, the criminal offence of which he has been convicted implies a defect of character which unfits him to be a pleader. In considering this question two principles have first to be stated. One is that in such proceedings the respondent is not [entitled to question the correctness of his 'conviction. Apart from the reported cases to which reference is not necessary, this has been the established practice of this High Court. I have stated this principle because in his written statement the respondent states that he is absolutely innocent of the offence of which he has been convicted and sentenced; and practically the whole of his written statement relates to that issue. Furthermore, when he appeared before us he contended that he was entitled to show that he had been convicted wrongly. We however refused to entertain any such argument, but the respondent was told that the Court would listen to any argument by him that, although convicted of this criminal offence, it did not imply that he had a defect of character which unfits him to be a pleader. The second principle is that the High Court has jurisdiction to take disciplinary action against a pleader though the criminal offence was not one committed in his (professional capacity. We have therefore only to address ourselves to the question whether a legal practitioner who has been convicted of the offence of waging war against the King has a defect of character which unfits him to be a pleader. The gravity of the offence is so obvious that it is hardly necessary to refer to the punishment which can be inflicted in respect of it. Does this offence imply a defect of character, and if it does, does it unfit the respondent to be a pleader Clearly a person convicted of so serious an offence against the State as this has a defect of character. How does his conduct affect his position as a legal practitioner and his relations to the Court Here I cannot do better than refer to a passage from the judgment of Beaumont, C.J., in *Jamshed Byramji Kanga v. Kaikhushru Bomanji Bharucha* 1935 36 Bom LR 1136 namely:

Advocates however are a privileged class enjoying a monopoly of audience in the Courts, and their position gives them considerable opportunities for good or evil. It is of the highest importance that the High Court should; be invested with power to ensure that only advocates of good character shall be upon the roll, but it is also important that that power be in no way abused. In cases of misconduct involving moral turpitude the Court has to see whether the advocate has shown himself to

be unworthy of the confidence of the Court, or unfit to be entrusted with the business of his client, or a person with whom his professional brethren cannot be expected to associate. But in our opinion cases involving moral turpitude are not the only ones in which the Court may be called upon to take disciplinary action. The Court has a right to expect a high standard of loyalty to the Court and co-operation from the advocates on its roll. Cases may arise in which it is proved that an advocate has been engaged in revolutionary activities designed to destroy the system of which this Court forms part, or activities likely to hamper or embarrass the administration of justice by this Court or any of the Courts subordinate thereto. Courts of law can only function under a stable Government, and the destruction of Government by revolutionary and unconstitutional means must of necessity involve the destruction of the Courts, or the grave impairing of their efficiency... This Court will not tolerate upon its rolls an advocate who is endeavouring to destroy or undermine the authority of the Courts.

3. What were the circumstances in the present case The learned Special Judge says:

The outbreak of the rebellion was caused by the attempt of the District Magistrate to arrest Ali Musaliar, the Khilafat Secretary at Tirurangadi, and other prominent Khilafatists there on 20th August. The events are too well known to need repetition. Mr. Rowley, the Assistant Superintendent of Police, and Lieutenant Johnston were killed and the District Magistrate with Special Police had to retreat via Parapanangadi to Calicut, and had to walk to Feroke, as the rails had been torn up. The rebellion blazed out at once all over the Ernad and Walluvanad Taluks. Almost every police station was destroyed as well as Government buildings and Government administration. was paralysed for six months.

4. It appears also that on the night of the 20th August at Nilambur, 16 miles. from Manjeri, seventeen Hindus and a Police constable at Edavanna, were murdered and at Tirurangadi, in addition to Mr. Rowley and Lieutenant Johnston, 9 other persons were murdered. The police station at Manjeri was attacked on the night of the 21st; public offices at Manjeri on the 22nd. On the 24th August Kunhayammad Haji, who is described as the notorious rebel leader, arrived at Manjeri. All these

incidents had occurred when the respondent made the speech already referred to, and it was in such dangerous surroundings that he made it, and the reference to Tirurangadi in that speech has, in consequence, a particular significance. Subsequent events are that on the 26th August a retired Police Inspector was brutally murdered at Anakayam near Manjeri by Kunhayammad Haji and his followers, and on the 30th August his head was paraded on a spear; and it was common ground that the respondent was at Manjeri from the morning of the 21st August until the 30th August. It is not necessary, in my view, to refer to any other facts. The respondent assisted by words proved to have been spoken by him a revolutionary and unconstitutional movement having for its object the destruction of Government, involving of necessity the grave impairing of the efficiency of Courts if not their total destruction. In the course of the rebellion many people were brutally murdered and others lost their lives and many of the active participants in the movement subsequently were executed. A legal practitioner who has been guilty of such conduct is, in my view, unfit to remain in the ranks of the profession and the respondent must accordingly be dismissed from practice. The order of the Court is that M. P. N. be dismissed from practice.

King, J.

5. I agree.

Lakshmana Rao, J.

6. I too agree.

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