

In Re: an Attorney

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Court : Kolkata

Decided On : Jan-02-1914

Reported in : (1914)ILR41Cal734

Judge : Imam and ;Chapman, JJ.

Appellant : In Re: an Attorney

Judgement :

Imam, J.

1. This is an application for review of our order allowing Paresh Chandra Ghosh, an attorney of this Court, to appeal to His Majesty in Council against a sanction under Section 195 of the Criminal Procedure Code granted to the Public Prosecutor of Calcutta by three learned Judges of this Court to prosecute him for perjury.

2. The sanction was granted in a proceeding arising out of an enquiry, under Section 10 of the Letters Patent of 1865, into the conduct of the appellant as an attorney of this Court. It has been contended on behalf of the Public Prosecutor that an order, final or otherwise, made in a proceeding under Section 10 is not governed by Section 39 of the Letters Patent and thus no leave to appeal could be given by this Court in the present instance. This objection was not raised, and not even referred to, at the time we heard the application for leave to appeal. Our order granting leave proceeded on a misconception that the proceeding against

the attorney was in the suit out of which the enquiry into his conduct had arisen-- the misconception being due to the papers in the proceeding being marked as on the Ordinary Original Civil jurisdiction of the Court. Section 39 of, the Letters Patent empowers us to declare the fitness of an appeal in any matter not being of criminal jurisdiction if it is a final judgment, decree or order of the Court made on appeal or in the exercise of original jurisdiction. A proceeding under Section 10 does not fall under any of the jurisdictions specified in the Letters Patent and thus is not governed by Section 39.

3. On behalf of the appellant a preliminary objection to this application for review has been taken that the Public Prosecutor has not the status to ask for review of our order as, under the Civil Procedure Code, only a person considering himself aggrieved can apply for review and the contention is that the Public Prosecutor can have no grievance by reason of the leave granted. Several decisions of English cases have been referred to as bearing out the contention but it is difficult to accede to the argument, as the cases cited refer to particular enactments and proceed on the language of the law that they elucidate. In the present case the sanction was granted to the Public Prosecutor and an appeal against that sanction is an attack on his power to prosecute. The order granting leave is clearly an order affecting the authority he has under the sanction to prosecute the appellant. This application for review, therefore, is maintainable.

4. Having held that the proceeding in which the sanction was granted was not within any of the specified jurisdictions of the Court, this application must prevail. The order declaring the fitness of the appeal is accordingly vacated.

Chapman, J.

5. I agree. This Court is empowered under Section 10 of the Letters Patent to deal with professional misconduct by suspension or removal; but such a proceeding is not, in my opinion, in the exercise of original jurisdiction within the meaning of Section 39 which provides for appeal to the Privy Council. The word 'jurisdiction' ordinarily means the power of a Judge with reference only to a particular cause or causes and to matters arising out of their judicial determination. The word is used

also to mean the limits within which this judicial power is exercised. Except where extended by express definition, the word 'jurisdiction' is not used in English Statutes in the extended sense of any power of whatsoever kind legally conferred. 'Jurisdiction' in Section 39 of the Letters Patent does not, in my opinion, include the power of this Court to maintain professional discipline.

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