

In Re: Abinash Chandra Moitra

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Court : Kolkata

Decided On : Aug-17-1909

Reported in : (1910)ILR37Cal173,5Ind.Cas.406

Judge : Lawrence H. Jenkins, C.J., ;Chitty and ;Vincent, JJ.;Chitty and ;Vincent, JJ.

Appellant : In Re: Abinash Chandra Moitra

Judgement :

Chitty and Vincent, JJ.

1. This is an application to us to review our judgment of the 28th May 1909, by which we ordered the dismissal of the pleader; Abinash Chandra Moitra, who was charged with professional misconduct. The petition for review contains eight grounds, but none of these have been seriously pressed by the learned Counsel for the applicant. The first ground that the District Judge had no jurisdiction to hold the enquiry and report was given up. The learned Counsel did suggest that we had taken an erroneous view of the facts in one or two unimportant respects, principally with regard to the withdrawal of the suit against Bahadur Mollah by Abinash Chandra Moitra; but after hearing his arguments with regard to those points, we do not see any reason to go back upon the conclusions at which we arrived.

2. The main ground which was urged before us was that this Division Bench was not properly constituted and authorised to deal with this reference. It was suggested that this might be covered by the concluding words of the first ground, but it is evident that ground refers solely to the jurisdiction of the District Judge to make the reference. We permitted the learned Counsel, however, to say what he had to say on the point, and will now deal with it. It is argued that the Charter gives the High Court jurisdiction over only the vakils of the High Court and not over pleaders in the mofussil. That jurisdiction, it is said, is conferred only by the Legal Practitioners' Act, 1879, and can only be exercised in conformity with the provisions of that Act. Under Section 14 a report may be made by certain officers therein named to the High Court, and it is for the High Court to say whether the pleader shall be acquitted, suspended, or dismissed. It is argued that the High Court means the whole body of the Chief Justice and Judges, or such of them as have been authorised by rule or special order to deal with the matter. It was contended before us that the arrangement could be made only by the Full Court and not by the Chief Justice. But we find from the judgment of the learned Chief Justice, delivered when the matter was brought before him in his administrative capacity, that it was conceded before him that had this particular Division Court been specially nominated by the Chief Justice to deal with this case, no objection could have been raised. It thus appears that the same counsel for the same client adopted on the two occasions opposite lines of argument.

3. Before us it is conceded that for the past 30 years such references have been invariably dealt with by the Bench disposing of the civil business arising out of the group from a district of which the reference comes. It is argued that this assumption of jurisdiction cannot confer jurisdiction, and that, unless authorised by the Full Court, a Division Bench has no Jurisdiction to deal with such a reference. It is to be noted that although this reference was argued before us on two occasions (the 30th and 31st of March and the 17th of May last) by two different counsel for the applicant, no suggestion was made that we had no power to deal with the matter nor, indeed, was any such suggestion made in the application for review. It is true that up till now there has been no framed rule of this Court expressly allotting such matters to any particular Bench; but the practice of the past 30 years has been uniform, and has been well-known to the profession. It is

not precisely a question of jurisdiction, for undoubtedly the High Court has jurisdiction in the matter, but rather a question whether this particular Division Bench represented the High Court for the purpose. We do not feel disposed to entertain the suggestion, made at this late stage, that this Bench was altogether without jurisdiction, and that the proceedings before us are null and void. There is nothing, so far as we are aware, which requires these matters to be allocated to a Bench or Benches by a written rule or order, and we think that the established practice of 30 years, which is unquestioned, gave a sufficient authority, whether it be considered to emanate from the Full Court or from the Chief Justice.

4. The learned Counsel concluded with an appeal *ad misericordiam*. The sentence, he said, was too severe, and he pleaded for its reduction to a period of suspension. It was said that the pleader had in fact paid up the money which he was charged with having misappropriated. We allowed time for evidence of such payment to be produced, and required that it should be verified by the affidavit of the pleader of Monorama, to whom the payment was alleged to have been made. Two receipts purporting to be given by that pleader have been produced, but the affidavit in support is not sworn by the pleader to whom payment was made, not even by Abinash Chandra Moitra himself, but by his younger brother. The payments are said to have been made, Rs. 75 on the 9th December 1908, and the balance, Rs. 87-15-8, on 10th August 1909, that is after we heard counsel on the petition for review. This is most unsatisfactory. It is incredible that if the Rs. 75 had been paid, as alleged, last December, it should not have been stated at one or other of the hearings before us, especially as we laid stress on the fact that up to now nothing had been paid. The payment said to have been made last week after we were told that it had been paid does not improve matters.

5. At the same time we have no wish to press too hardly on the applicant. His offence is a very serious one and cannot be lightly regarded, and we adhere to the conclusions which we stated in our judgment; but after giving the appeal of his counsel our best consideration, we think the justice of the case will perhaps be met by an order of suspension. We accordingly revoke the order of dismissal and order that Abinash Chandra Moitra be suspended for four years, to commence from the date when he was first suspended by the District Judge.

