

**In Re: a Vakil**

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**Court :** Kolkata

**Decided On :** Jan-09-1928

**Reported in :** AIR1928Cal817,114Ind.Cas.490,114Ind.Cas.137

**Judge :** George Claus Rankin, C.J., ;Charu Chunder Chose and ;Mukerji, JJ.

**Appellant :** In Re: a Vakil

**Judgement :**

Rankin, C.J.

1. In this case a complaint was made to the Court informally by a letter dated 25th August 1927, from a lady who was appellant in a certain first appeal. It appears that the first appeal was ultimately dismissed because there was a sum of Rs. 200 for paper book costs in connexion, more particularly, with the list which had not been paid after time had been given upon various occasions. A very substantial amount of over Rs. 1,200 was paid into Court, but owing to the failure after many opportunities to pay in a further sum of about Rs. 200 the appeal was ultimately dismissed for default by a Division Bench. That having taken place, the complaint to which I have referred was addressed to this Court on 25th August 1927, and the main purposes of the complaint were two. One was to say that the appeal had been dismissed<sup>1</sup> without any notice to or demand from the appellant and although sufficient funds were placed with the vakil to meet his fees and other incidental expenses. It may be noticed there that there is no question of the lady's stating that money had been paid to be deposited which had, in fact, not been deposited.

The second element of complaint was that a sum of Rs. 624 had been withdrawn from the Court and no portion of the money had been returned to the appellant.

2. Now, that complaint having been lodged just before the long vacation a further complaint this time submitted by a vakil Babu Prafulla Chandra Ghose dated 14th December 1927, was sent to this Court by a letter. That letter refers to previous communications asking for an inquiry and goes on to ask that the Registrar should let the learned vakil know 'the result of your enquiry into the matter.' It further goes on to make a series of further charges and a series of further statements apparently by way of supplement to what had been made to the Court some months ago.

3. It is quite obvious that whatever observation or criticism these representations may be justly subject to, it was not possible for this Court to pass the matter over without taking proper steps both in the interest of the Court itself and in the interest of the learned vakil. It is of course quite unreasonable and absurd that a letter which is sent to know the result of an enquiry should go on to make a whole lot of new charges and in that respect this letter of December is thoroughly unreasonable and improper. It contains moreover a certain amount of indication that charges are made with too great lightness, because in one instance a charge is made that Rs. 170 was not paid to a certain learned pleader of this Court without 'any steps being taken to make certain there is any foundation for the charge.

4. It is extremely difficult to deal with complaints of this character without, on the one hand, omitting to enquire into matters which require to be investigated and without, on the other hand, being unfair to the learned vakil concerned. However, the Full Court thought it right to issue a rule calling upon the learned vakil to give his explanation on certain definite matters set forth in the rule, those matters being taken from the record of the case and the representations of the party complaining.

5. The learned vakil has very conveniently submitted his explanation first of all, in a written form and, secondly, by learned Counsel Mr. Sircar. It appears from his explanation first that there is no material before us at present which leads us to

think that there is any prima facie case against this vakil of having received money for the purposes of depositing it in Court and having failed to deposit the sama. Indeed, that charge is contrary to the case made by the lady herself when she applied to the Court to restore the appeal; and although that fact may not be conclusive against her, the position is, in my judgment, that we are not now presented with a substantial or reasonable case of that character which requires any further investigation. If the complainant still wishes to press any charge of that sort, she will do it at arm's length between party and party according as she is advised. There is nothing to require the Court to take of its own motion any further steps with respect to that.

6. The second matter is this : it refers to a sum of Rs. 624 which was withdrawn from the Court. Now, it appears that the cheque by which that money was repaid was a cheque made out to the learned vakil but that his name was written not by himself by way of endorsement on the cheque; and we now find that that was done by the clerk of the vakil who appears to have kept the money making a profession or pretence that he was keeping it in deposit with himself in order that it might be returned when the lady and her am-mukhtears were prepared to give a joint receipt. We are now told by the learned vakil that on discovery of this clerk's conduct he was immediately dismissed and we are further told that when he was dismissed his master was unable to obtain from him the account book which it was his duty to keep and which would show the transactions had by him on behalf of his master. That certainly is a statement of which, if true would put the learned vakil in a very awkward position when he comes to give a detailed explanation to the Court. We have no reason to think that that statement made in that way is untrue. I can only wish for myself that that matter had been fully and carefully stated in the original letter of explanation which was sent by the learned vakil on 21st September.

7. It cannot be too constantly or too emphatically stated that if a learned vakil leaves his money business to be conducted by his clerk he is responsible for what the clerk does for purposes of civil liability. At the same time if a learned vakil is deceived by his clerk or if his clerk does acts in fraud of him then of course it would not be right to hold that the learned vakil himself is guilty of professional

misconduct. In the present case it would appear that the explanation which has been tendered to this Court is full. It would not appear that it is open to this Court or necessary for this Court to institute any further enquiry as to the matters dealt with in this explanation. In my judgment, therefore, these proceedings have brought the Court to this position that, while the appellant may in this matter, if she likes, take steps civil or criminal against the clerk or even should she be so advised against the learned vakil, this Court in its disciplinary jurisdiction has received an explanation which no longer makes it any part of the duty of this Court of its own motion to prosecute this matter further as a matter of professional misconduct. The explanation has been received and so far as this Court of its own motion is concerned, that is an end of the matter. It is not necessary that we should issue a further rule on the vakil. On the other hand, nothing has been said by us which can prevent the appellant from taking further steps if she is so advised.

**C.C. Ghose, J.**

8. I agree.

**Mukherji, J.**

9. I agree.

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