

In Re: S, a Vakil

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SooperKanoon Citation : sooperkanoon.com/869258

Court : Kolkata

Decided On : Aug-15-1928

Reported in : AIR1928Cal820

Appellant : In Re: S, a Vakil

Judgement :

Rankin, C.J.

1. Prasanna Kumar Sen, in May of this year, presented in person a petition to this Court complaining of the conduct of S, a vakil of this Court. By an order dated 28th May 1928, a rule was issued calling upon the vakil to submit to this Court an explanation of his conduct in respect of the matters complained of. At the hearing of this rule it was on 17th July 1928 ordered by the Court that a rule should issue calling on the vakil to show cause why he should not be suspended from practice or otherwise dealt with for professional misconduct : (1) in failing to file the second appeal, Prasanna Kumar Sen v. Hiralal Roy Choudhuri and (2) in failing thereafter to make proper explanation to the Court of the circumstances with reference to such failure in order that time might be extended for the filing of the said second appeal. This rule was issued under the powers conferred by Clause 10, Letters Patent 1865, which empowers the Court to remove or suspend from practice on reasonable cause any advocate, vakil or attorney.

2. In November 1927, the petitioner came to Calcutta being desirous of presenting two second appeals. The vakil was at that time absent from Calcutta and the

petitioner approached his clerk, one Nando Lal Sarkar. The vakil having returned to Calcutta soon afterwards, the petitioner saw him upon the matter of the two proposed appeals. As regards one appeal, the vakil got Dr. Nares Chandra Sen Gupta to look into the papers and to draw up the memorandum of appeal. This appeal was duly filed and later on was duly admitted, Dr. Sen Gupta having argued it successfully under Order 41, Rule 11. The other appeal is the matter with which this rule is more particularly concerned. The proposed respondents were Hiralal Roy Chaudhury and others. Before the petitioner left Calcutta on or about 19th December 1927, the vakil himself had prepared the memorandum of appeal and the petitioner had signed and handed over a vakalatnama.

3. Nothing in this case turns upon any question of payments made by the petitioner to the vakil. It is quite clear that the vakil was not acting out of charity and fully intended to be paid for his services. The petitioner made certain payments before he left Calcutta in respect of both appeals. He says that for the first appeal he paid in all Rs. 33 and for the second appeal Rs. 30, but he had not paid the whole of these sums by the time he left Calcutta. After the petitioner had left for his home he wrote a letter on 16th January 1928 to the vakil's clerk complaining that he had not been given any information about the numbers of the two appeals or copies of the grounds or accounts. He assured the clerk that he would do his best to get the necessary money and expressed a wish that the dates of hearing in the two appeals might be close together. On 8th February the clerk wrote informing the petitioner that the number of his appeal was 2513. This refers to the first of these two appeals which had in fact been filed on 19th November. On 15th March this appeal was admitted under Order 41 and the vakil's clerk wrote to the petitioner asking him to send money for service of notices upon the respondents and Dr. Sen Gupta's fee. The petitioner on 21st March wrote to the vakil saying that he was unable to pay Dr. Sen Gupta's fee and complaining that the clerk had not sent him any accounts of expenses and had not given him the number of the second of these two appeals, namely, the one against Hiralal Chaudhury. He enquired what was the number and what was to be the date of hearing of this appeal. By that time the latest date for filing this appeal had long gone by, namely the 15th February 1928. The reply to this is a letter from the clerk to the petitioner whereby the petitioner is told that this last-mentioned appeal was

second appeal No. 2860 and that it had been dismissed summarily. The clerk refused to send copies of documents unless money was forthcoming and pressed for Rs. 28 for service of notices in the other appeal which had been admitted. The petitioner on 18th April wrote to the clerk complaining that he had been given no information as to whether there was any remedy by review or otherwise against the dismissal of the appeal against Hiralal Chaudhury and no information as to the pleader who appeared in the case or the reason for which the appeal was not admitted. Complaint was also made that no accounts had been given to the petitioner for the sums of money which he had paid. On 20th April the clerk wrote in reply to the petitioner that the vakil had been present, that there was no chance of a review and that the rejection of the appeal could not be helped. It was also stated that it had been argued by the son-in-law of the Judge who heard it. Demand was at the same time made for Rs. 8 for the other appeal and also for the vakil's fees. There is another letter on the following day (21st April) from the clerk to the petitioner. This letter makes out that the vakil has been very much displeased at the petitioner's complaints and apparent lack of confidence. It says that the appeal which was dismissed was argued before a certain Judge of this Court and that the petitioner was represented by a relative of that Judge. It calls upon the petitioner to make further payments.

4. In these circumstances the petitioner not unnaturally became highly dissatisfied and suspicious and came to Calcutta. He there learnt that no appeal had ever been filed in the case against Hiralal Chaudhury and he went to another vakil to see what could be done in the circumstances. The clerk wrote to his master requesting him to come to Calcutta at once and before the end of the month Section returned.

5. The case for the respondent vakil is that he has very little practice in the High Court, but that he has extensive landed properties in the Rajshahi and Pabna Districts over which he had been having considerable trouble involving his presence and personal supervision; that on account of this he was obliged to be in the mufassil for substantial periods, going there before the payment of the January kist and staying on till the payment of the March kist of Government, revenue. It is admitted that he took from the petitioner the papers and the vakalatnama for the

proposed appeal in the case against Hiralal Chaudhury. He says that he left Calcutta on 18th November 1927 and that before leaving Calcutta he had himself drawn up the grounds of appeal and had received Rs. 20 for costs in that connexion; that when he left Calcutta he left instructions with his clerk to file the two appeals on getting the requisite costs from the petitioner. Leaving the matter thus, the vakil, according to his own case, left for the mufassil, relying apparently upon instructions given by him to his clerk to file the appeals when the balance of the sum due had been paid by the petitioner. From that point onwards he does not appear that the vakil took any further trouble in the matter and he did not return to Calcutta until the first week in March. He states that he then made enquiries of his clerk and was informed by his clerk that both the appeals had been filed; that shortly afterwards he left Calcutta again having given his clerk instructions to arrange for some one to argue the second of the two appeals if it came up for hearing under Order 41, Rule 11 during his absence; that he returned to Calcutta about the end of April and was told by the clerk that the second of the two appeals had not been filed, and that the clerk had been falsely representing to him and to the petitioner that it had been filed and dismissed.

6. The petitioner says that the vakil himself had written him a letter dated 20th April, but I find that this is not proved. I further accept the statement of the vakil that his clerk, had in March informed him that the appeal had been filed and that he knew nothing of the clerk's deception until he returned to Calcutta at the end of April 1928. At this time, however, it is clear that the negligence, trickery and lies of his clerk were made fully known to him. The petitioner complains that the vakil at first agreed to apply for extension of the period of limitation and to make an affidavit for that purpose, but that he afterwards refused to file any such petition. The petitioner says he could get no other vakil of the High Court to do this for him; that he was asked to take back his papers and Rs. 30 but refused to do this and that in these circumstances he was obliged to apply to the Court in person.

7. The vakil's case, on the other hand, is that he consulted Dr. Sen Gupta and that Dr. Sen Gupta drew up a draft affidavit to be sworn by the clerk for the purpose of obtaining an extension of time. That draft affidavit is in evidence, having been produced by the vakil. In para. 3 it states that the appeal in the case against Hiralal

Chaudhury was not immediately filed as the money paid by the appellant was not sufficient to cover all the expenses; that when the vakil left Calcutta he left instructions with the clerk to arrange for all his work, including the filing of the appeal in time; that the clerk's wife fell seriously ill at the time, so that the clerk had to leave Calcutta suddenly and in great mental distress, without making any arrangements for all the cases, and had to stay away from Calcutta; and that in the midst of the worry and trouble the fact that the petitioner's case had to be filed escaped the clerk's memory. The draft affidavit goes on to say that the clerk discovered his mistake on receiving a letter from the petitioner, but was filled with so much fear on account of his failure of duty that he did not venture to tell the petitioner or his master what had happened. It also states that when his master was informed of the true state of affairs, the clerk was instructed by him to make over the papers to the client to take such action as he thought fit.

8. The respondent vakil in his affidavit says that when he learnt the true state of affairs, he informed the other vakil to whom the petitioner had gone in his absence, that he would himself move an application under Section 5, Lim. Act, with an affidavit of his clerk in support of the application; that he informed the petitioner that this was all that he could now do for the petitioner under the circumstances, that the petitioner asked him to explain the affidavit in Bengali, that, after hearing it, the petitioner said that he was not agreeable to file an affidavit in these terms; and that on the next day the petitioner asked for his papers and was given back the papers without being required to sign a receipt as he said that he was unable to write. The petitioner's case is that he had never received his papers back. The draft memorandum of appeal and the draft affidavit of the clerk were certainly not given to the petitioner because they were produced before this Court by the vakil, but on the evidence in this case I do not think it would be safe or right to hold as against the vakil that he had retained the other papers in the case.

9. It appears to me, however, that on the vakil's own showing he has been guilty of grave misconduct. I find it amply proved that he undertook before he left Calcutta to file both the appeals. I am not at all impressed by the suggestion that this undertaking was in any way conditional upon the payment of further money by the petitioner. The affidavit of the vakil discloses defective notions on his part as to his

responsibility for his clerk's monetary transactions with his clients and a statement in para. 17 of the vakil's second affidavit appears to me to be particularly wrong and disingenuous:

I say farther that the client had apparently specially entrusted my clerk with the business of looking after this cases and that ray clerk carried on the entire correspondence with him on his own responsibility and without my knowledge.

10. In my judgment the petitioner has established conclusively that before he left Calcutta, in November 1927, the vakil had accepted his vakalatnama and undertaken his case. He had promised to file the appeal in the case against Hiralal Chaudhury and had never at any time made a stipulation that unless the petitioner supplied him with a particular sum of money he would not act for the petitioner. Instead of doing his duty by the petitioner in these circumstances the vakil left Calcutta for several months, leaving everything to his clerk a person obviously of the lowest instincts and utterly unfit to be trusted in any matter of importance. I cannot find that the vakil took any steps to enquire what the clerk was doing, whether the appeal was filed, and whether the petitioner had paid more money or not. He says that in March he asked the clerk whether the appeal had been admitted, but even on his return to Calcukta he did nothing more. In the meantime apparently the clerk was con ducting correspondence with the petitioner after his own fashion.

11. This is in my judgment no ordinary case of negligence. It is in itself grave professional misconduct and a complete disregard of the client's interest. Persons who are admitted to practice in this Court cannot be allowed to share in a valuable monopoly and at the same time to neglect their duties in a manner so unconscionable.

12. I regret to say that my view of this vakil's conduct, when he discovered the consequence of his own unparalleled neglect of duty, is that it was neither frank as regards the Court, nor just to the petitioner. An affidavit is drafted which consists of nothing but shabby and absurd excuses made upon the footing that the petitioner was partly to blame for not making further payments and that the clerk was partly excused by domestic troubles. In his second affidavit the vakil says that the

statements made in paras. 6 and 7 of the affidavit of the clerk were based upon statements made by his clerk which he believed to be true. This statement I do not accept, and I am clearly of opinion that the petitioner has proved that because he would not identify himself with this thoroughly treacherous and disingenuous document, the vakil would have nothing more to do with the petitioner. In my judgment the petitioner was entirely in the right to refuse to be any party to an application made to the Court after this manner. I cannot too strongly condemn the contention that the vakil was making any reasonable endeavour to retrieve his client's case' or to accept the responsibility for the loss suffered by his client by the vakil's neglect of duty.

13. Mr. A.N. Chaudhury on behalf of the vakil, while admitting that his client is plainly guilty of professional negligence, has urged us to hold that the case is not one which calls for an order suspending the vakil from practice. I regret to say that I cannot take this view. It is most necessary that conduct such as is disclosed in this case should be visited with severity, and the most lenient order which it is open to us to make is that S be suspended from practice in this Court for a period of six months from to-day.

C.C. Ghose, J.

14. I agree.

B.B. Ghose, J.

15. I agree.

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