

In Re: a Pleader

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Court : Kolkata

Decided On : Mar-28-1929

Reported in : AIR1930Cal513

Appellant : In Re: a Pleader

Judgement :

Jack, J.

1. By this rule under Section 12, Legal Practitioners Act, S pleader, has been directed to show cause why he should not be suspended or dismissed, on the ground that he has been convicted of two offences of breach of trust and abetment of the same, implying a defect of character unfitting him to be a pleader. He does not dispute the accuracy of the recitals of the two judgments of the Chief Presidency Magistrate in the cases in which he was convicted.

2. From these, we find that G his co-accused in one of these cases, was previously prosecuted for embezzlement and had been declared an insolvent and prohibited by the Court from withdrawing money on behalf of clients from the Court. Knowing all this, 8 withdrew, in each of these cases, a large sum on account of a client of C by virtue of a power-of-attorney, in which his name was entered, unknown to the client. These sums were not paid to the clients and hence his conviction in these two cases. Further, it appears, that when asked for the money, he told various untruths to explain the delay in payment.

3. In his application to be allowed to resume practice in the Small Cause Court, he urged : (i) that he always acted bona fide under the direction of his senior (i.e., his co-accused in one case, little knowing that he would be put to such trouble, and now repents his extreme indiscretion ; (ii) that he has-paid up the amount of the defalcations; (iii) that he has already suffered considerably through his prosecution and conviction.

4. These pleas indicate that he scarcely seems to appreciate the extent of moral delinquency indicated by his conduct. Such conduct is not compatible, as beseems to imagine, with bona fides and is riot merely a matter of indiscretion. That he should have thought such pleas justified in the circumstances seems, in itself an indication that his present, character unfits him to be a member of an honourable profession and that he is not a man to whom the affairs of clients could be safely entrusted. His learned advocate very wisely does not now seek to justify his conduct, though he still seems anxious to put most of the blame on his co-accused.

5. He has, it is true, since he was convicted, paid up the amount of the defalcations and, putting the most favourable interpretation on this, some credit must be given to him for restoration of the-amounts embezzled. But the fact that he did not act in a straight forward manner, after the defalcations occurred, is very much against him. An order of dismissal seems almost to be demanded in the interests of the profession and of the litigant public. So much so, that it is with some hesitation that we refrain from ordering that his name be struck off the roll of pleaders and adopt the alternative course suggested in the rule. Both the Chief Judge of the Small Cause Court and the Chief Presidency Magistrate regard, as a mitigating circumstance, the fact that he was apparently led astray by C and in this view of the case we are disposed to treat him leniently,

in the hope that, when he resumes practice, he will have been so impressed with the heinousness of such conduct that nothing of the kind will recur. We accordingly order that S be Suspended from practice as a pleader for one year from this date.

Mitter, J.

6. This rule was issued by the Pull Court, by virtue of the powers vested on the High Court by Section 12, 3Legal Practitioners Act (18 of 1879), by which S, a pleader practising in the Calcutta Small Cause Court, was called upon to show cause why he should not be suspended or dismissed on the ground that the offence of which he was convicted imply a defect of character which unfits him to be a pleader.

7. It appears that the pleader was charged with aiding and abetting another pleader, C in committing breach of trust of a sum of Rs. 1,002 withdrawn on 14th November 1925, by the said G from the Court, the sum being due to one Bholaram Kundulal. He was convicted under Sections 406 and 109, I.P.C., by the Chief Presidency Magistrate and was sentenced to undergo rigorous imprisonment for six weeks. He was also charged under Section 409, I.P.C., with criminal breach of trust for misappropriation of a sum of Rs. 1,350 drawn on behalf of his client, one Sudarsan Chandra Mallik, and he was sentenced to another six weeks' imprisonment on this charge. The pleader moved the High Court and C.C. Ghose and Gregory, JJ. reduced the sentences, observing in their judgment that he has tried to make amends after his conviction. Mr. H.D. Bose has appeared on behalf of the pleader and has argued that the money misappropriated had been paid up and that, as the pleader was a junior pleader of only six years' standing and that as regards the first offence, the Presidency Magistrate observed in his judgment that he was to some extent the victim of the co-accused C a merely nominal punishment should be given.

8. When a pleader does an act, which involves dishonesty, it is for the interest of the suitors that the Court should interpose and prevent a man, guilty of such misconduct, from acting as a pleader of the Court. In this case, the pleader had been proceeded against criminally and has been convicted of breach of trust and abetment of the same and, upon those convictions being brought to our notice, it is the bounden duty of the Court to act. It is not permissible to us to go behind the conviction, nor has learned Counsel for the pleader asked us to do so. In our opinion, the convictions followed by the sentences were sufficient, without further enquiry, to justify the High Court in taking proceedings under Section 12 of the Act, for it is now firmly established that the pleader cannot be allowed to have indirect appeals against the judgment of the Chief Presidency Magistrate confirmed by the High Court : In the matter of Rajendra Nath Mukerji [1899] 22 All. 49. Where a pleader has been convicted of criminal offences, for misconduct committed strictly in his professional character, that prima facie, at all events, renders him unfit to be a member of the honourable profession. I do not, however, mean to say that wherever a pleader has been convicted of a criminal offence the Court is bound to strike him off the roll. The use of the word 'may' in Section 12 after the words 'the High Court' shows that the discretion of the Court in each particular case is absolute. In this connexion, the following observations of Lord Esher, Master of the Rolls, are instructive and may be usefully referred to:

Where a man has been convicted of a criminal offence, that prima facie, at all events, does make him a person unfit to be a member of the honourable profession. That must not be carried to the length of saying that, wherever a solicitor has been convicted of a criminal offence, the Court is bound to strike him off the roll. That was argued on behalf of the Incorporated Law Society in the case of *Re a Solicitor, Ex parte Incorporated Law Society* [1889] 61 L.T. 842. It was there contended that, where a solicitor had been convicted of a crime, it followed, as a matter of course, that he must be struck off; but Baron Pollock and Manisty, J., held that, although his being convicted of a crime prima facie made him liable to be struck off the roll, the Court had a discretion and must inquire into what kind of a crime it is of which he has been convicted, and the Court may punish him to a less extent than if he had not been punished in the criminal proceeding. As to striking off the roll, I have no doubt that the Court might, in some cases, say 'under these circumstances we shall do no more than admonish him', or the Court might say 'we shall do no more than admonish him and make him pay the costs or the application'; or the Court might suspend him or the Court might strike him off the roll. The

discretion of the Court in each particular case is absolute. I think the law as to the power of the Court is quite clear : see *In re, Weare* [1893] 2 Q.B. 439.

9. Bearing these observations in mind, let us consider what are the circumstances of mitigation in this case. There is the fact that he has paid the sums withdrawn by him. On the other hand, it is to be noticed that the repayment was after the discovery of the fraud. If he had spontaneously come forward and acknowledged the truth and of his own accord had made good the loss his clients had sustained through the embezzlement in question, I think that would have entitled him to much more favourable consideration than the mere fact of his payment on the discovery of the fraud. He paid the money more for the purpose of protecting himself from the consequences of his misconduct rather than from any contrition on his part and desire to make good the mischief he had done. But still, taking into consideration the facts that he has paid the money, that he was, to some extent, the victim of circumstances, in that he associated himself with his senior pleader, whose conduct was known not to be above board, that he has conducted himself well and had done nothing wrong since his last offence, that he, through his counsel, has expressed his repentance and has given us the assurance that he would lead an honourable life henceforth, we think we are not called upon to go to the extent of striking him off the roll; but we cannot pass the case over without marking our sense of the misconduct of the pleader in the two instances of misappropriation which are found to have taken place, The least that we can do is to say that he must be suspended from practising as a pleader for the period of one year from date. Per these reasons I agree with my learned brother in the order which he proposes to make.

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