

(1958) 02 MAD CK 0023
In the Madras High Court

Collector of South Arcot

APPELLANT

Vs

An Advocate

RESPONDENT

Date of Decision : 28-02-1958

Acts Referred:

Evidence Act, 1872 — Section 126

Citation : (1958) 2 MLJ 305

Hon'ble Judges : Ramachandra Ayyar, J

Bench : Single Bench

Judgement

Ramachandra Ayyar, J.—The respondent is an advocate practising at Cuddalore, South Arcot District. He was appointed to the office of

the Public Prosecutor for a period of three years from 1952 and in February, 1955, his term was extended for a further term of three years. In the

year 1956 certain differences arose between the respondent and the Collector of the District. The respondent appears to have felt that by an

unwarranted interpretation of the Rules the fees for the work done by him was reduced, and on 9th August, 1956, he tendered the resignation of

his office. The resignation was accepted by the Government in C.O. No. 2585, Home, dated 13th September, 1956, with effect from 9th August,

1956.

2. While the respondent was in office as Public Prosecutor the Deputy Registrar of Co-operative Societies (Prosecution) consulted him on 7th

September, 1955, on the advisability of launching a prosecution against certain office-bearers of the Srimushnam Co-operative Society for alleged

defalcation. Records relating to the alleged misappropriation of the society's funds were placed before the respondent who gave a written opinion

advising a complaint to the police for investigation and prosecution. Prosecution was launched against the office-bearers of the society, and the

accused were duly committed to Sessions by the Additional First Class Magistrate, Cuddalore, on 31st May, 1956. The case was originally

posted before the Sessions Judge, but later it was transferred to the Court of the Assistant Sessions Judge II, Cuddalore, to be tried on 22nd

August, 1956. As stated already the respondent had sent in his resignation by then. But the State Government had not passed orders accepting the

same. The Collector, therefore, requested the respondent by his letter, dated 14th August, 1956, to attend to the current work till his resignation

was accepted and till he was relieved. By another letter of the same date the Collector requested the respondent to conduct prosecution in the

Srimushnam Co-operative Society defalcation case in S.C. No. 38 of 1956 on the file of the Assistant Sessions Judge II, Cuddalore.

Unfortunately the respondent, without any regard to the dislocation of public work which would result as a consequence of his stopping away

suddenly, wrote to the Collector the very next day, declining to take up the case on the ground he had resigned already (although the resignation

was not accepted then) and that he had "committed himself to other engagements". We cannot help feeling that the respondent could have

displayed a greater sense of responsibility by attending to the duties of office held till his resignation was accepted by the proper authority.

Differences of opinion or even a feeling that he had not been justly treated (assuming it was warranted) cannot justify the precipitate action resulting

in the abandonment of a duty he owed to the State and to the Court. Thereupon the Collector directed the handing over the papers to the

Additional Public Prosecutor, who was placed in additional charge as Public Prosecutor. On 21st August, 1956, the respondent accepted the

engagement on behalf of the second accused is S.C. No. 38 of 1956, the case in which he had given opinion for the prosecution. The Deputy

Registrar of Co-operative Societies filed "an objection memo." before the Assistant Sessions Judge to the respondent's appearing for one of the

accused in the case, as he had intimate knowledge of the facts on the side of the prosecution. The fact of the respondent's having given an opinion

advising the prosecution does not appear to have been brought to the notice of or relied on before the learned Judge, as the objection was based

only on certain alleged confidential communications. Accepting the assurance of the respondent that he did not come across any confidential

records, the Assistant Sessions Judge overruled the objection and allowed the respondent to appear for the 2nd accused. In the trial that

proceeded, the accused were acquitted. The Collector thereupon reported the conduct of the respondent to the Government, who moved the High

Court for taking action u/s 10 of the Bar Councils Act. A second complaint in regard to the conduct of the respondent was also made by the

Government, charging that the respondent while he was the Public Prosecutor appeared before the Sessions Judge, South Arcot, in Criminal M.P.

No. 119 of 1956 in S.C. No. 52 of 1956 on behalf of the State, but that after ceasing to hold office he accepted the engagement on behalf of the

accused in that Sessions Case. On receipt of the complaints the explanation of the Respondent was obtained and the two following charges were

framed against him.

1. That you, an advocate of the High Court of Madras, while holding the office of Public Prosecutor, Cuddalore, had access to the records relating

to alleged defalcation in Srimushnam Co-operative Society, acquired the confidence of the Co-operative Sub-Registrar (Prosecution) in

connection therewith, gave legal opinion and advised the prosecution of the then office-bearers of the said society in pursuance of which the

prosecution was launched and the accused later committed to Sessions, that you attended to the case so committed, viz., S.C. No. 38 of 1956

while it was pending before the Sessions Court, South Arcot, but subsequently after resigning the office of Public Prosecutor when the case stood

transferred to the Court of the Assistant Sessions Judge you declined to appear for the prosecution in S.C. No. 38 of 1956 in the said Court

though requested to do so by the Collector of South Arcot, and accepted the engagement of one of the accused therein and conducted the

defence at the trial before the Assistant Sessions Judge despite the objections taken by the prosecution to your appearing for the defence.

2. That you as Public Prosecutor of South Arcot, after having access to the prosecution records, receiving instructions and appearing for the

prosecution in the bail application C.M.P. No. 119 of 1956 preferred by the accused in S.C. No. 52 of 1956 subsequent on resigning the office of

Public Prosecutor appeared for the accused and conducted their defence in the trial of S.C. No. 52 of 1956.

3. It must be stated that the 1st charge, in so far as it said that the respondent appeared in S.C. No. 38 of 1956 while it was pending in the

Sessions Court, is factually incorrect. The matter was enquired into by the Tribunal of the Bar Council. There was, however, no controversy in

regard to the facts set out above. Before the Tribunal the respondent expressed unqualified regret for his conduct and stated that it was foolish on

his part to have appeared for the accused in the Sessions Case. The Tribunal held that the respondent suppressed the fact of his having given an

opinion on the side of the prosecution when his right to appear was challenged in S.C. No. 38 of 1956, and that he was guilty of the two charges

of misconduct. We do not, however, agree with the Tribunal that the respondent was guilty of any suppression of facts before the Assistant

Sessions Judge. The only question then raised was about certain alleged confidential communications, and the question of the respondent having

given an opinion was not relied on as disqualifying him from appearing for the accused. But we find, however, that the respondent is guilty of

improper conduct in having taken up engagement on behalf of the accused in the cases in which he, as Public Prosecutor, gave an opinion or

appeared at the time of the bail application on behalf of the prosecution. Whatever may be the position in civil cases, we are of the view that an

advocate who has given an opinion for one side in a criminal case should not accept an engagement at subsequent stages of the case for the

opposite side. That employment places him in a position of confidence and imposes on him a duty not to use the information so gained, unwittingly

in otherwise, to the detriment of his client. That duty continues even after the relationship of advocate and client has ceased, and therefore this

prohibition cannot be made to depend on the fact whether the party engages him in the subsequent stages of the case or not. Higher interests of the

administration of justice and the preservation of the noble traditions of the Bar, of which he is a member, should dictate him to reject the preferred

brief for the other side. The question of propriety cannot depend upon the existence of any confidential communication. Indeed it would not be

possible to investigate whether in fact there was confidential communication or not having regard to the provisions of Section 126 of the Indian

Evidence Act. The office of a Public Prosecutor is one of considerable prestige and responsibility, and nothing should be allowed to be done which would have the effect of impairing the confidential advice which he is often called upon to give or of undermining the confidence of the public in the purity of Criminal Law administration. Such officers carry with them a retaining fee. But whether the question is viewed merely on the basis of a contract of service or from the higher standards of professional morality, which in our opinion should be the guiding principle, it is improper for an advocate who held the office of a Public Prosecutor or was engaged as a Special Public Prosecutor to accept an engagement for the defence in a case in which at an earlier stage he advised or gave an opinion to the prosecution or appeared on behalf of the prosecution at the stage of interlocutory applications like applications for bail, etc. We have already found that the charges against the respondent have been substantially proved. Considering the fact that even from the early stage of the case the respondent realised his error and expressed unqualified regret and the publicity which these proceedings inevitably involve we take no further action in the matter except to express our displeasure at his conduct.