
(1928) 11 CAL CK 0001
In the Calcutta High Court

Harendra Narayan Chaki

APPELLANT

Vs

Secretary, Bar Association

RESPONDENT

Date of Decision : 27-11-1928

Acts Referred:

Legal Practitioners Act, 1879 — Section 36

Citation : AIR 1929 Cal 196

Hon'ble Judges : Suhrawardy, J; Jack, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This rule is directed against an order of the District Judge of Mymensingh declaring the petitioner Harendra Narayan Chaki, a tout u/s 3, Legal Practitioners Act. The point taken on his behalf and seriously pressed by Mr. Talukdar is that there is no evidence and that according to the definition of "tout" as given in Section 3, the petitioner procures, in consideration of any remuneration, moving from any legal practitioner, the employment of the legal practitioner in any legal business ; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business.

2. The matter has come before us in revision and we have to see if the order of the Court below is unsupportable there being such absence of evidence as to induce us to hold that the order was passed without jurisdiction or with material irregularity.

3. We have in this case a resolution of the Jamalpore Bar Association declaring the petitioner a tout. Such resolution has now been made evidence of general repute by the amendment in 1927 of Section 36, Legal Practitioners Act. If this resolution is good and in conformity with the requirements of the law, there is evidence-in support of the Judge's order that the petitioner is a tout ; but it is argued by Mr. Talukdar that the resolution passed was not duly passed and cannot be validly treated as evidence in the case. The findings of the Munsiff who

originally dealt with the matter and of the learned District Judge are that a special meeting was convened for the purpose of considering the matter of the petitioner and out of 43 members of the association 29 members were present and they passed a resolution declaring the petitioner a tout. There does not seem to be any irregularity in the proceeding by the Bar Association; but Mr. Talukdar says that the meeting at which such a resolution was passed was not one of the entire body of the members of the association inasmuch as only 29 out of 43 members were present at the meeting. The law does not require that all the members should be present at the meeting but requires that a meeting of the association should be convened for the purpose of considering, whether a certain person is a tout : and if by a majority of the members present at such a meeting a resolution is passed it is to be considered as a resolution of an association of persons entitled to practice as legal practitioners in Court. The Courts below have also proceeded upon certain facts in order to hold that the petitioner is a tout within the meaning of the law. Undoubtedly there is no direct evidence to show that the petitioner received remuneration from any legal practitioner. But certain facts were placed before the learned District Judge from which the learned District Judge has observed that the irresistible inference to be drawn from his admitted conduct is that he is a tout and received remuneration from legal practitioners. In this connexion the learned advocate for the petitioner has drawn our attention to the case of *Ugam Prasad Pandey and Another Vs. King-Emperor*, : . In that case the resolution of the Bar Committee was held not to have been legally passed. In that case the Bar Association appointed a small committee of seven persons to enquire into the matter of the petitioner in that case and this small sub-committee held that the petitioner was a tout. The learned Judges remarked that such a resolution was not a resolution within the meaning of the law. I am not called upon to consider whether in that case the view expressed there is correct but I am not prepared to say in this case that the view taken by the Judge is wrong. The next point upon which the judgment in that case proceeded was that there was no direct evidence that the petitioner received any remuneration from a legal practitioner. The learned Judge who delivered the judgment had accepted the arguments of the counsel for the petitioner in that case that the mere fact that a person makes it his business to act as general agent and to find legal practitioners for those who want legal aid without being bound as clerk or otherwise to any one legal practitioner does not constitute such person a tout. As a bare proposition of law the argument looks unassailable. But there may be circumstances from which the Court is entitled to draw a legal inference. The Legal Practitioners Act, as it originally stood before its amendment in 1927 made it obligatory upon the prosecution to prove that the person accused receives remuneration from legal practitioners. Even at that time it was held in some cases that this proof may be supported by circumstances leading to the inference that the person accused was in the habit of receiving remuneration from legal practitioners.

4. It was held by Walsh, J., in the case of *Kalka Prasad v. Emperor* [1918] 40 All.

153 that it is a reasonable and legitimate inference of fact that if a man is shown to spend the greater portion of his working hours in canvassing and introducing clients to members of the profession, he is not rendering gratuitous service such as a casual friend or acquaintance may do. The learned Judges in Ugam Prasad Pandey and Another Vs. King-Emperor, : also did not lose sight of this principle and observed... while remanding the case...to the Court below that there might be evidence on the record showing that remuneration moved from legal practitioners, or giving rise to a reasonable inference that it so moved. It is ordinarily difficult for the prosecution by evidence of the legal practitioners to prove moving of remuneration from them and in order to facilitate the proof of such conduct on the part of the person accused the legislature thought it fit to amend Section 36 by making evidence of a general repute admissible against the person accused. There can be no doubt that the Courts below were within their rights to draw legitimate inference from the facts before them as to the probability of the petitioner receiving remuneration from legal practitioners and this is in accordance with the definition of "proved" in the Evidence Act.

5. In the present case the facts, as succinctly stated by the Munsiff in his judgment are that it has been admitted and proved by the evidence on both sides that Harendra Narain Chaki attends Courts regularly every day from 11 a. m. to 6 p. m., looks after cases of clients, even pays to pleaders and realizes costs and engages pleaders and realizes also fees for pleaders. From these facts we cannot say that the inference drawn by the Courts below was unjustifiable. The result is that this rule fails and must be discharged.

Jack, J.

6. I agree.