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**(1910) 04 CAL CK 0027**  
**In the Calcutta High Court**

Hari Charan Sarkar and Others

APPELLANT

Vs

The District Judge of Dacca

RESPONDENT

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**Date of Decision :** 15-04-1910

**Acts Referred:**

**Citation :** 6 Ind. Cas. 327

**Hon'ble Judges :** Mookerjee, J;Carnduff, J

**Bench :** Division Bench

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### **Judgement**

1. We are invited in this Rule to discharge an order made u/s 33 of the Legal Practitioners Act, 1879, as amended by the Legal Practitioners Act, 1896, by which the name of the petitioner has been included in a list of touts. The proceedings in the Court below have been attacked on the ground of multifariousness under the following circumstances: The District Judge of Dacca, on the 31st July 1909, drew up a proceeding under the section, in which he recorded that he had reason to believe that the persons named in the list habitually acted as touts, and he called upon them to show cause why they should not be proclaimed as touts. A separate notice was served upon each of these persons. On the 25th August, the petitioner filed a written statement and showed cause. On that very date, written statements were filed on behalf of most of the other persons who had been called upon to show cause. On the 3rd September, the District Judge directed that each of the objection cases was to be numbered and tried separately, and summonses were ordered to be issued on the witnesses named by the different persons. On the 17th September, the cases were taken up for hearing. The pleaders and the mukhtears, who had appeared to give evidence in support of the allegations that the persons called upon to show cause were habitual, touts, prayed that their evidence might be regarded as applicable to all the cases, so that they might be saved from the harassment of separate examination and cross-examination in the different proceedings. The District Judge acceded to this request. No objection was made to the procedure adopted by the persons who had been called upon to show cause. After the conclusion of the examination of the witnesses who appeared in support of the

enquiry directed by the District Judge, the witnesses on behalf of the opposite parties were examined separately. The Judge took time to consider the matter and on the 25th September, 1909, delivered a judgment, in which he dealt with the case of each person separately, examining in detail the evidence for and against him. The result was that he directed the names of several persons to be included in the list of touts published under the section. On behalf of one of these, Hari Churn Dey, the proceedings before the District Judge have now been assailed on the ground that they were multifarious and conducted in a manner unknown to legal procedure. It has further been contended that an order made under these circumstances ought to be deemed , as made without jurisdiction and discharged on that ground. In support of this proposition, reliance has been placed upon the cases of *Smurthwaite v. Hannay & Co.* (1894) A.C. 494 : 63 L.J. Q.B. 737 : 6 R. 299 : 71 L.T. 157 : 43 W.R. 113 : 7 Asp. M.C. 485; *Subrahmania Ayyar v. King-Emperor* 25 M. 61; *Sadler v. G W.R. Co.* (1895) 2 Q.B. 688 : (1896) A.C. 450 : 65 L.J. Q.B. 462 : 74 L.T. 561 : 45 W.R. 51 and *Gower v. Couldridge* (1898) 1 Q.B. 348 : 67 L.J. Q.B. 251. It has been argued on the other hand, by the learned Deputy Legal Remembrancer, who has appeared to support the order of the District Judge, that the cases relied upon have no application; that the procedure was perfectly regular ; and that, in any view, as no objection was taken in the Court below to the mode in which the enquiry was conducted, the objection, which is of an entirely technical character, ought not to be allowed to prevail, especially as there is no reason to suppose that the petitioner has, in any way, been prejudiced. The question raised is one of some novelty and apparently of first impression, and the validity of the objection must be determined with reference to the provisions of Section 36 of the Legal Practitioners Act.

2. The section provides, we quote so much only of it as applies to the case before us, that every District Judge, as regards his own Court and the Courts subordinate to him, may frame and publish lists of persons, proved to his satisfaction, by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

3. Sub-section (2) then lays down that the. name of no person shall be included in any such list, until he shall have had an opportunity of showing cause against such inclusion. It is manifest, therefore, that three elements are essential for the validity of the proceedings. In the first place, the enquiry must be held by the District Judge ; and with reference to this point, it has been ruled that the power of enquiry or of obtaining evidence cannot be delegated to a Subordinate" Court or officer [in the matter of *Madhu Pershad* 6 C.W.N. 289; In re *Praianna Knmar* 12 C.W.N. 843 and In re *Chandi Charan Dey* 12 C.W.N. 842]. In the second" place, the decision must be based upon legal evidence; so that, as was ruled in the case of In re *Siddeshwar Boral* 4 C.W.N. 36, it is not competent to a District Judge to act upon an unverified report from" the Secretary of a Bar Association, though, as pointed out by the Madras High Court in *Bavu Sahib v. District Judge of Madura* 26 M. 596, the Court may act upon affidavits and need not necessarily

hear oral evidence. In the third place, no order is to be made to the prejudice of any person until he has been afforded an opportunity to show cause against the inclusion of his name in the list so that, as observed in the case of *In re Omar Bahadur A.W.N.* (1896) 107, the Court should permit such person to give evidence in rebuttal of the case made against him. If these elements are established, it is difficult to appreciate how the legality of the order can be challenged. It has been strenuously argued, however, on behalf of the petitioner, that although no procedure is prescribed by Section 36 for the conduct of the enquiry, yet upon general principles, an enquiry which includes in its scope the case of more than one person, is open to the objection of multifariousness, and is on that ground alone illegal. The argument in substance is, that an enquiry u/s 36 must be confined to the case of one person, and one person alone. The learned Vakil for the petitioner has conceded that there is no authority which directly supports this proposition; that as a matter of practice, enquiries u/s 36 have been conducted against several persons simultaneously; and that in the cases to be found in our reports, though the legality of orders u/s 36 has been questioned on various grounds, no objection has apparently even been taken on the ground of multifariousness. The learned Vakil for the petitioner has, however, suggested that although the objection now taken has never suggested itself to the profession before, it may, nevertheless, be well founded and he has pressed us to consider the matter as one of principle.

4. Now, in the first place, it is quite clear that an enquiry u/s 36 does not partake of the nature of a suit under the CPC or of a prosecution under the Criminal Procedure Code. The cases, therefore, upon which reliance has been placed, are of no assistance to the petitioner. For instance the case of *Subrahmanya v. King-Emperor* 25 M. 61 merely rules that a Criminal trial, held in contravention of the express provisions of the Criminal Procedure Code as to the joinder of charges, must be treated as illegal, because conducted in a manner prohibited by the Code. In the same way, the case of *Smurthwaite v. Hannay & Co* (1894) A.C. 494 : 63 L.J. Q.B. 737 : 6 R. 299 : 71 L.T. 157 : 43 W.R. 113 : 7 Asp. M.C. 485. merely rules that if in a Civil case, causes of action are joined in a manner unwarrantable by any enactment or rule, such joinder is more than an irregularity, because it is the constitution of a suit in a way not authorized by law and the rules applicable to procedure". These decisions, obviously, have no direct bearing upon the question raised before us. It has been suggested, however, that although the proceeding u/s 36 of the Act of 1879, may not be a suit within the meaning of the CPC or a prosecution within the meaning of the Criminal Procedure Code, yet it is in the nature of a miscellaneous proceeding so that u/s 141 of the CPC of 1908, the procedure provided in regard to suits must be followed in so far as it can be made applicable. But this provision is clearly not conclusive, because even if it is assumed that an enquiry u/s 36 of the Legal Practitioners Act is a miscellaneous proceeding within the meaning of Section 141 of the Civil Procedure Code, all that is laid down is that the procedure is to be identical with that followed in suits, in so far as it can be made applicable. Now

there is obviously a fundamental distinction between the enforcement by the plaintiff of his claim against one or more defendants and a determination by a Court of Justice that a certain individual is an undesirable person who ought not to be admitted into the precincts of the Court. The Court in this matter exercises its disciplinary powers and takes suitable action to exclude from the precincts of the Court people, who instead of earning an honest livelihood by legitimate means, conduct themselves in such manner as to obstruct justice and destroy the purity of its administration. It would obviously be inappropriate to apply to an enquiry conducted for such a purpose any inelastic rule of procedure applicable to Civil suits or Criminal prosecutions. But if any similar rules are sought to be made applicable, we must look to the reasons upon which the rules are based, and apply them in so far as those reasons justify their application. Now, what is the reason upon which the objection of multifariousness is based? It is not necessary to review the authorities on the subject, because an examination of them will show that it is utterly impracticable to frame any comprehensive formula by which "we may determine, with unerring certainty, whether an objection on the ground of misjoinder or multifariousness is well taken in a particular case. But the principle deducible "from the decisions is, that the propriety of the frame of a suit or other proceeding must be decided with due regard to considerations of general convenience and the important object of advancing the administration of justice, by avoiding, on the one hand, the multiplicity of unnecessary litigation, and on the other hand, an imposition of needless and oppressive expenses upon suitors. As was observed by Lord Chancellor Cottenham in *Campbell v. Mackay* 1 Myl. & Cr. 603 : 7 Sim. 564, it is utterly impossible to lay down any rule applicable universally as to what constitutes multifariousness as an abstract proposition, and the Court must decide what is convenient in the particular circumstances of the case, rather than attempt to lay down any absolute rule. On the one hand, a party may be prejudiced, if the case against him is joined with the case against another, when the two cases are so entirely distinct and independent of each other that the proofs applicable to each, are liable to be confounded with each other and delay may be occasioned respecting matters ripe for hearing, by waiting for proofs as to some other matter not ready for hearing. On the other hand, the enquiry may be needlessly prolonged, and the same witnesses examined and cross-examined repeatedly, because the case against each person is conducted separately. The essence of the matter is to determine, when the objection of multifariousness is interposed, whether the Court can accord full and substantial relief to all parties, in interest without embarrassing the Chances for defence. To put the matter in another way, in dealing with this objection, the Court must look particularly to convenience in the administration of justice, and if this is accomplished by the mode of procedure adopted, the objection of multifariousness will not lie, unless the course pursued is so injurious to one party as to make it inequitable to accomplish the general convenience at his expense. The first question to be determined is, is the procedure proposed, likely to reach the end aimed at, in a convenient way for all concerned? If the mode

adopted does accomplish the end of convenience, the next question that arises is, is any one hurt by it, or so injured as to make it unjust for the proceeding to be maintained in that form? If there is no such injury or prejudice, no valid exception can be taken to the procedure. The rule is substantially one of convenience and it is to be applied or withheld according as the parties would be best accommodated. The position, therefore, reduces itself to this, Section 36 of the Legal Practitioners Act creates a special jurisdiction, but does not define the details of the mode in which that jurisdiction is to be exercised. What course is the Court to pursue? The obvious answer is, that the course to be adopted should be such as would do substantial justice to the parties brought before the Court. It is, therefore, impossible to lay down an inflexible rule, as we have been invited by the learned "Vakil for the petitioners to do, that an enquiry u/s 36 cannot include within its scope the case of more than one<sup>1</sup> person. On the other hand, it is quite conceivable that if an enquiry is simultaneously conducted as to numerous parties who are alleged to work in different Courts, subordinate to the same District Judge, the parties may be substantially prejudiced. For instance, it would be prima facie unreasonable to include within the scope of one enquiry the cases of persons who frequent different Subordinate Courts as touts and against whom entirely distinct sets of witnesses may have to be examined. In the case before us, however, the persons against whom proceedings were taken, were all alleged to work as touts in the Civil and Criminal Courts at Dacca, and almost all the pleaders and muhhtears examined as witnesses spoke of the business of several of these persons as procuring legal work for remuneration. Under such circumstances, it would have involved needless repetition if each witness had given his deposition separately against each person. It was sufficient protection to the alleged touts that each was afforded a separate opportunity to cross-examine the witnesses. We are unable to hold, therefore, that the proceedings are open to objection on the ground that they were illegal because multifarious.

5. It is "worthy of note that there is another answer, equally conclusive, to the validity of the argument on behalf of the petitioner. Even if it be conceded for a moment that the proceedings are open to objection on the ground of multifariousness, as the objection was not taken in the Court of first instance, it will not be entertained by a Court of appeal or of revision. As stated in Story on Equity Pleadings, Section 280, the ground, on which the doctrine of multifariousness rests, is the inconvenience of mixing up in one proceeding several distinct matters having no necessary connection with each other, thus embarrassing the Court as well as the defendants, such objections must obviously be taken at the earliest possible stage of the proceedings. . To allow the objection at the appellate stage or in revision, instead of being productive of convenience, would be productive of inconvenience, expense and delay, for the same question that has been decided, would have to be re-litigated upon the same allegations and evidence. The objection, therefore, when not taken in time must be deemed to have been abandoned or waived, but the position maybe different, if the Court is satisfied that there has been failure of justice. On these

grounds, it was ruled by this Court, in the case of *Sarala Sundari Dasi v. Sarada Prasad* Sur 2 C.L.J. 602, that Section 578 of the CPC of 1882, would cure an error of misjoinder of causes of action, unless Such error had either affected the merits of the case or the jurisdiction of the Court. The same view has been subsequently affirmed by their Lordships of the Judicial Committee in *Lala Rup Narain v. Gopal Devi* 10 C.L.J. 58 : 13 C.W.N. 920 : 36 C. 780 : 3 Ind. Cas. 382 L : 6 A.L.J. 567 : 5 M.L.T. 423 : 11 Bom. L.R. 833 : 19 M.L.J. 548 , 93 P.R. 1909 : 36 I.A. 103. On this ground also, the objection urged, on behalf of the petitioner must be overruled as of an entirely technical and unsubstantial character.

6. We may further add that the revisional jurisdiction, which we are invited to exercise is, as pointed out in the cases of *In re Siddeshwar Boral* 4 C.W.N. 36, *In re Madhoram* 21 A. 181 and *In re Kedar Nath* 31 A. 59 : A.W.N. (1903) 288 : 6 A.L.J. 22 : 1 Ind. Cas 143, of an exceptional character, and cannot be invoked except in the furtherance of justice. No doubt, as observed in the cases of *Bute Khan v. Emperor* 120 P.L.R. 1909 : 29 P.W.R. 1909 : Cr. 3 Ind. Cas. 982 and *Man Singh v. Emperor* 115 P.L.R. 1909 : 28 P.W.R. 1909 : Cr. 11 P.R. 1909 : Cr. 3 Ind. Cas. 977, an order declaring a person to be a tout is one which very seriously affects his character and prospects, and it is consequently competent to this Court to scrutinize an order of this description with the object of satisfying itself that there has been a compliance with the provisions of the law and that the person affected has been given full opportunity of meeting the charge brought against him. But when the proceedings have been regularly conducted and the order is manifestly justified by the evidence, this Court would as a rule decline to interfere with it on any technical ground. In the case before us, we are satisfied that the propriety of the order against the petitioner cannot be successfully questioned on the merits.

7. The result, therefore, is that this Rule must be discharged.

8. Rules Nos. 4575 to 4581 of 1909.

9. It is conceded that the principle of our decision in Rule No. 4574 of 1909 is applicable to these cases. These Rules, therefore, must, also, be discharged.