

(1923) 08 MAD CK 0020

In the Madras High Court

In Re: An Advocate of the High Court

Date of Decision : 20-08-1923

Acts Referred:

Citation : AIR 1924 Mad 265 : (1923) ILR (Mad) 903 : 76 Ind. Cas. 873 :
(1923) 18 LW 823 : (1923) 45 MLJ 639

Hon'ble Judges : Walter Salis Schwabe, J;Krishnan, J;Coutts Trotter, J

Bench : Full Bench

Judgement

Walter Salis Schwabe, K.C., C.J.—Mr. M.A. was called to the Bar by the Hon'ble Society of Lincoln's Inn in January, 1913. He was

admitted as an Advocate of this Court under the which includes among the qualifications for such admission a call to the Bar in England. After his

call to the Bar he remained in England for sometime and practised there. Unfortunately he became involved in matrimonial disputes arising out of

his relations with two English ladies, one of whom he married and with the other of whom he went through a form of marriage. According to him it

was valid under the Muhammadan Law, but it was clearly invalid according to the law of England. It was alleged by the first of these ladies that he

ill-treated and deserted her, and she in some way having got into communication with the Editor of a Newspaper, one Horatio Bottomley, the latter

published a series of articles reflecting seriously on the character of M.A. He brought and himself conducted an action for libel based on these

publications. At the hearing of that suit he gave evidence and was cross-examined by Horatio Bottomley, a very skilled cross-examiner, who also

conducted his case in person. The evidence given did not commend itself to the jury and M.A. lost his case. He was subsequently prosecuted for

perjury, in respect of the answers alleged to have been given under that cross-

examination. He was convicted and sentenced to six months"

imprisonment and on appeal the conviction was upheld. The matter came before the Benchers of his Inn, and after a full enquiry it was decided by

reason of that conviction he had been proved unfit to remain a member of that Honourable Society and he was disbarred and expelled therefrom.

He appealed to His Majesty's Judges and his appeal was dismissed. The Lord Chancellor stated that ""it was impossible to allow a man who had

been convicted of perjury to remain a member of the Bar, and, although he hoped that the appellant having learnt his lesson and received his

punishment might be able to lead an honest and successful life in the future, the tribunal could not interfere with the Benchers' decision."" No steps

were taken at the time to remove M.A.'s name from the roll of Advocates of this Court, and after a lapse of some years, he commenced practice

as an Advocate in Madras. The attention of the High Court having been called to these facts, he was called upon to show cause why his name

should not be removed from their roll and he now appears to show cause.

2. In such cases the Court will not allow the propriety of the conviction and sentence to be questioned, but can and will enquire into the facts to

ascertain the degree of moral turpitude involved and to form an opinion whether the legal practitioner in question should be removed or suspended

or be otherwise dealt with. It has been argued before us that the rule as to not allowing the propriety of the conviction and sentence to be

questioned does not apply where the conviction took place in England and the application to the Court is in this country. I do not consider it

necessary to consider how far this rule is applicable to cases of convictions in another country, though I concede that it is possible that, where the

Criminal Law of the two countries differs in respect of the matters charged or in a case where it is alleged that there had not been a fair trial in

some foreign country, the rule might be held not to be applicable. But, in this case, the law of the two countries is the same, and it is quite clear that

M.A. received a full and fair trial at the hands of the English Judge and jury. Indeed, his own submission to the contrary is based on the admission

of certain shorthand-notes of his cross-examination as evidence of answers given in respect of which the charge of perjury was brought, lie

suggested that such shorthand-notes were inaccurate and that the inaccuracy

was intentional and due to corruption of the shorthand writers by Horatio Bottomley. It is a matter for regret that, in the stress of argument, he should have chosen to make such allegations which are entirely unsupported by evidence and which I am quite clear are unfounded. I am satisfied that he was rightly convicted, and it is therefore immaterial to consider whether or not we are bound without enquiry to accept the conviction as correct. If it is a matter upon which it is open to me to express an opinion, I must also say that I am quite satisfied as to the propriety of the decision of his Benchers and of his Majesty's Judges. If an application had been made soon afterwards, in my judgment, on the facts of this case, no other order could have been properly made than that his name should be struck off from the roll of Advocates. I wish to guard myself from saying that this Court is bound to follow the decision of the Benchers of the Inns of Courts. I think it has, by the Letters Patent a discretion vested in it, and it must in every case exercise that discretion itself, giving of course due weight to the views of the Benchers of a man's Inn in England.

3. But this case has not come before us immediately, but after the lapse of some years, and, in my judgment, it is open to this Court to consider the matter as it now stands, and to take into consideration such matters as would be relevant on an application to reinstate a man who has been disbarred. The law, I think, is quite clear that an order of disbarment is not necessarily final or conclusive for all time and that it is open to Court to readmit a practitioner after the lapse of time, if it is satisfied that the practitioner has in the interval conducted himself honourably and that the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty, so that he might be safely entrusted with the affairs of his clients and admitted to an honourable profession without it suffering degradation, and in such a case it is open to the proper tribunal to restore a man to the rolls whether he be a Barrister, Advocate or Attorney See *Ex parte Pyke* (1865) 6 B. & S. 703 and the judgment of Mookerjee, J., in *re Abiruddin* 12 Cal. L.J. 625. In this case we might strike off the name from the rolls and leave it to the practitioner to qualify himself again for admission by applying to his Inn for reinstatement. But M.A. is here and not in England, he desires to practice here and not there and I do not think it would be right for us to avoid

the responsibility of considering the matter for ourselves by leaving the burden of the decision to the Benchers of his Inn. We have before us a considerable body of testimony that M.A. has led an honourable and reputable life since his return to this country. I think too we may take into consideration the fact that, although this crime of perjury did involve moral turpitude as a practitioner, at the time he was young, and that he swore falsely under the stress of his severe cross-examination, and that in a case where he was in fact defending himself from a very serious attack upon his character, and that he probably became somewhat unbalanced by reason of his matrimonial affairs in a foreign country, and his being involved in a mass of personal litigation resulting therefrom.

4. On the whole the justice of the case will be met by the order that M.A. shall be suspended from practice as Advocate for a period of 12 months, such time to run from the 26th February, 1923, the date when he first appeared before this Court to show cause. The order will not be retrospective in effect and his suspension will be from now until February 26th, 1924.

Coutts Trotter, J.

5. My Lord the Chief Justice has set out the facts in relation to this gentleman, and I need not repeat them. But I think it is right that I should state in my own words my reasons for concurring in the course he has proposed, and I fully realise the serious responsibility which is cast upon us in this matter. It was at one time suggested that we were relieved of that responsibility on the ground that one of the qualifications necessary for the enrolment of an Advocate in this Court was that the applicant should be a member of the English Bar, and that, as it is not suggested that Mr. M.A. has or had any other qualification, on ceasing to be a member of the English bar he must ipso facto be removed from the roll of Advocates of this Court as being a person without qualification. I do not think that we are entitled so to evade the responsibility of determining for ourselves whether reasonable grounds exist for taking the step that we are invited to take by the Advocate General in the name of the Bar, and I think that we are invested with a discretion which, however reluctantly, we must exercise for ourselves.

6. I agree that the actual conviction of Mr. M.A. for perjury is a thing which AVC

cannot allow him to go behind, and AVC must take it that he committed the crime for which he was tried and convicted. But I think we are entitled, indeed are bound to look into the facts in order to form an opinion as to the degree of moral turpitude involved in a conviction on those facts. In doing so I am not called upon to express any opinion as to his relations with the two women in whose lives he involved himself. With regard to the first, there seems reason to believe that he infected her with gonorrhoea soon after their marriage. There also seems reason to think that at the time of the marriage he quite honestly believed himself to be free from taint With regard to Miss. Ling, I confess myself unable to see that she had any legitimate cause of complaint against him. On her own admission she seems to have known all the facts relating to him and all the risks she ran in going through a form of marriage with him at the time when she commenced her association with him. But there can be no possibility of doubt that when cross-examined in the libel action which he brought against Mr. Bottomley he committed deliberate perjury by swearing that he was not the father of Miss Ling's child. He was foolish enough in this Court to suggest that the shorthand writers who recorded those answers were tools in the employment of Mr. Bottomley and that he never gave the answers they swore to. Such a suggestion cannot be entertained for a moment and I think it is quite clear that he did what is sometimes spoken of as "swearing by the card". I entirely and respectfully agree with Avory, J., that the sooner that "swearing by the card" is recognised and punished as perjury the better, and indeed there is a very old instance in the books where it was so punished.

7. At the same time I think that we are entitled to look at this man's position and see what he actually did. He was being persecuted by a ruffian who conducted a black mailing journal whose activities are the more revolting because they were conducted in the hypocritical guise of a censor morum. Mr. M.A. was practically a ruined man unless he could vindicate his character in an action for libel against that journal or its editor or both. He throughout maintained and maintains now that he regards Miss Ling as being according to the law of his own people and by every moral law his wife. These are the circumstances in which he took the foolish and wrong, step of swearing that he was not the father of Mis Ling's child. It was

because as he said he regarded her not as Miss Ling but as Mrs. M.A. There is this to be said in extenuation for his doing so, namely, that he was goaded and harassed by a relentless persecutor, and that so far as I can see it was perjury committed not deliberately in furtherance of any fraudulent aim or so as to cause any injury to anybody else., but solely in self defence. No doubt its tendency was to prevent justice; and it even might have tended to put damages in his pocket to which his character did not entitle him but I do not think that this consideration actuated him or was present to his mind. It was also I think inspired by that desire not unexpectedly found in an Indian barrister of trying to make by a verbal quibble a score off his opponent. I think his conduct is not inaptly described in the document which is signed by an Indian gentleman of position who has written on his behalf as "conceit and legal lunacy". Perjury is an offence the gravity of which I do not seek to minimise especially when committed by a member of the bar who knows its full import. At the same time it has many degrees of gravity, and I think there is much to be said in extenuation of the offence committed by Mr. M.A. I am the more inclined to take this view as in the latter part of his address to us Mr. M.A. practically abandoned the foolish attempt to argue against the propriety of his conviction and in effect threw himself upon the clemency of the Court.

8. The much greater difficulty which has pressed upon me throughout and presses upon me still is the gravity of the position of our appearing to act contrary to the action of the Benchers of Lincoln's Inn who disbarred him and the very eminent judges who confirmed that sentence. In view of certain arguments that were addressed to us by Mr. M.A., arguments to my mind both injudicious and pernicious, I wish to make my attitude on one point as clear as I can make it. I utterly dissent from the view that any different standard of conduct or character is required from a barrister of Indian race to a barrister of English race. I equally strongly dissent from the view that a different standard of honour should be held to exist for a practitioner at the English bar of whatever race and the practitioners of this Court whether barristers or Vakils. I am jealous of the honour of the bar which practises before me as I am proud of what I believe to be its high standard of professional conduct and I resent as keenly as I feel

convinced that that bar would resent any suggestion that the standard of honour that it strives to maintain and which it would wish this Court to

uphold is in any respect lower than the standard demanded of practitioners at the English Bar. So far from thinking that any prejudice was imported

into any of the proceedings in England by reason of Mr. M.A.'s race, I think that all those who investigated the case were clearly actuated by an

insistent desire to make such allowance both for his race and his religion as probably told considerably in his favour.

9. My reasons for taking the undoubtedly strong course we are taking of allowing this gentleman to continue to practice in these Courts are the

following: In the first place I think that he has been very severely punished already for what he did. I think it is to his credit that for a number of

years he has acquiesced in that punishment and has only recently sought once more to seek his livelihood in what he tells us - I see no reason to

question his statement - is the only vocation in which by his training and associations he is able to earn a living. In the next place it does weigh with

me very greatly that Viscount Cave, a lawyer of the greatest eminence and now Lord Chancellor, when Home Secretary, thought fit to order his

release immediately on the rejection of his appeal against his conviction. It also weighs with me greatly that a very large number of documents have

been put before us including a memorial signed by a large number of well known practitioners of this Court, men mostly of a different race and

creed to his own, who all concur in the view that he has sufficiently purged his conduct, that this episode is a blot on a previously honourable

career, that he is fit to be associated with them in their profession, and that therefore they recommend him to the favourable consideration of this

Court. Finally I do not conceal my view that it is much extenuation of his most reprehensible conduct that it was committed under the goad of a

relentless persecution for the mere purpose of public notoriety by one of the foulest pests that has ever infected English society. Perhaps I may

make my position clear by putting it in this way. If this Court were invested with jurisdiction to re-admit him as a member of the English bar, which

it is not, I should consider that he had purged his offence and was fit to resume the privileges which he justly lost. As that is my opinion it logically

follows that I must say as I do that he is entitled under the conditions which my Lord has laid down to be permitted once more to practice as an

Advocate of this Court.

Krishnan, J.

10. In this case the learned Advocate General has applied to us to exercise our disciplinary powers under the Letters Patent and to remove the

name of Mr. M.A. an Advocate of this Court from the roll of Advocates for the reason that he was convicted of perjury by the Central Criminal

Court in London, a conviction which was confirmed on appeal and he was disbarred subsequently by the Benchers of his Inn (Lincoln's Inn) by

reason of that conviction, their order being confirmed by His Majesty's Judges on appeal.

11. Mr. M.A. was called upon to show cause why this application should not be granted. He did not deny the facts stated by the Advocate

General but he raises certain contentions in answer which I shall consider. The first point he tried to make was that he was wrongly convicted and

that we should examine the facts of the perjury case against him and decide for ourselves whether his conviction was right or wrong. Now it was

laid down by the Privy Council in *In the matter of Rajendro Nath Mukherjee* ILR (1899) A. 49 : that in an enquiry into the conduct of a

practitioner under the Letters Patent the propriety of a conviction and sentence could not be questioned though the facts of the case might be

considered to see whether the culpability of the individual concerned was such as to disqualify him for his profession. Sir Richard Couch who

delivered their Lordships' judgment in that case quotes and follows the following observations of Lord Mansfield in *In re Brounsell* (1778) 2 Cow

Rep. 829. "This application is not in the nature of a second trial or a new punishment. But the question is whether after, the conduct of this man it is

proper that he should continue a member of a profession which should stand free from all suspicion...and it is on this principle that he is an unfit

person to practice as an Attorney. It is not by way of punishment, but the Courts in such cases exercise their discretion whether a man whom they

have formerly admitted, is a proper person to be continued on the roll or not." The Court would not as a matter of course strike a man off the rolls

because he has been convicted but will examine the case to see in what manner its discretion should be used. It will not however examine the

propriety of the conviction on the merits.

12. It was argued in answer by Mr. M.A. that these principles could not be applied to his case as he was convicted not by a Court in India but by an English Court which according to him is in the position of a foreign tribunal. I am unable to accept this argument. No authorities have been cited in support of it. In a matter of disciplinary jurisdiction which we are now exercising the English Court cannot in my opinion be put on the same footing as a foreign Court. It is because Mr. M.A. was a Barrister of England that he was admitted as an Advocate here. The question whether he should be continued as an Advocate here stands on much the same footing as the question whether he should be allowed to continue as a Barrister in England and if for the purpose of deciding the latter question the principles stated in *In re Rajendra Nath Mukherjee* I.L.R.(1899) All. 49 applies to judgments of English Courts as they clearly do there is no reason not to apply them for the purpose of deciding the former question. The question whether these principles will apply when the judgment relied on is really that of a foreign tribunal and if so, subject to what conditions they will apply is a difficult one on which I express no opinion as it has not been properly argued before us.

13. Even assuming that we should go into the facts and decide if Mr. A's conviction for perjury was right there can be no doubt that it was. The only substantial argument addressed to us on the point to suggest that his conviction was wrong was that he did not utter the words regarding which he was charged with perjury but what he swore to was somewhat different in effect. If there was any substance in this suggestion it would have been put forward as the main ground of defence in the perjury trial. On the other hand the Shorthand writers who were called as witnesses to prove what Mr. A had sworn to in the libel action and who proved the words used by him were not cross-examined at all. The suggestion now made therefore appears clearly to be an afterthought and cannot in my opinion be accepted for a moment.

14. Finding that Mr. A did commit perjury what action should we take against him? The learned Advocate General in the course of his argument suggested that as Mr. A was admitted as an Advocate here solely on the ground of his being a Barrister in England his disbarment in England should as a matter of course lead to his being removed from the list of Advocates. He contended that the continuance of his qualification as a

barrister was necessary for the continuance of his status as an Advocate, he not having any other qualification for it.

15. The point is an important one but was not properly argued by either side. No authorities or precedents were cited Giving it the best

consideration I can, I have come to the conclusion that the Advocate General's argument is not sound. No doubt it is true that it was the fact that

he was a Barrister that enabled Mr. A to get enrolled as an Advocate here and that if he were now to apply to be enrolled he could not be

admitted as he is not a Barrister now. But on being enrolled here in 1913 we must hold that he obtained the status of an Advocate here; and under

the Letters Patent we can interfere with that status by removing or suspending him only for sufficient cause shown. We have to exercise our

judgment in each case on the facts placed before us and decide whether sufficient reason has been made out to take action and if so what action

we should take. To adopt the Advocate General's suggestion would be to allow the Benchers in England effectively to control our discretion in the

matter though indirectly. That does not seem to me to be right. We are not bound by the action of the Benchers any more than they are bound by

ours. Though in most cases we should and would follow the action taken by the Benchers I cannot accede to the argument that we should do so in

every case.

16. In the present case we have to consider not merely the facts which existed when the Benchers took action 4 years ago but also all that has

transpired since. As pointed out by the learned Chief Justice the position now is very much the same as if Mr. A had made an application for re-in-

statement as a Barrister. It is settled that such applications are competent even if a man has been altogether struck off the rolls. See *Ex parte Pyke*

(1865) 6 B. & S. 703, *In re Abiruddin Ahmed* 12 C.L.J. 625 and *In re Hara Kumar Chatterjee* 14 Cal. L.J. 113. In that view we must see how

(he matter stands. Perjury is a serious offence and undoubtedly involves great moral turpitude; it is all the greater in the case of practitioners as it is

their duty whether Englishmen or Indians to maintain the purity of the administration of the law. There can be no difference in this matter between

the English and the Indian practitioner or between England and India. The standard of conduct expected from the practitioner is of course the same

in both the countries be he an Advocate, a Barrister or a member of any other branch of the profession. I therefore agree with the learned Chief

Justice in thinking that if the facts of this case had been brought to our notice at the time when the Benchers took action our proper order would

have been to strike off Mr. A's name from the roll of Advocates. But as I have already observed the position is not the same now and we have to

consider whether it is necessary now to adopt the extreme measure of striking him off the roll or whether a more lenient order will not meet the

ends of justice and the exigencies of the situation.

17. More than 4 years have passed since Mr. A was disbarred in England. During all these years there is reason to suppose that he has led an

honourable life. He has been able to obtain and place before us numerous certificates from eminent persons both here and in England testifying to

his good conduct. He has also produced a memorial signed by a large number of his brother practitioners saying that he is a fit person to continue

at the Bar and asking that he may be so continued. At the end of the argument he acknowledged his error and threw himself on the mercy of the

Court and it may be reasonably inferred that he can be trusted to behave honourably hereafter. In spite of all this I should have hesitated to take

too lenient a view of the case as the offence is such a serious one. But the learned Chief Justice has taken a lenient view of the case and in a matter

like this of the exercise of our disciplinary jurisdiction I do not feel called upon to differ from his Lordship and to insist on more drastic action being

taken. I therefore concur in the order proposed by my Lord the Chief Justice.