

(1938) 04 MAD CK 0004
In the Madras High Court

In Re: G.S. Pleader

Date of Decision : 19-04-1938

Acts Referred:

Citation : (1938) 2 MLJ 661

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The Court is called upon to consider a report of the District Judge of Vizagapatam in which he suggests

that the respondent, a pleader, should be censured for unprofessional conduct. The proceedings arise out of a petition filed by one Abbas Ali

Sahib, in which he complained that the respondent had neglected instructions given to him in connection with certain execution proceedings on the

6th September, 1937, and had failed to take effective steps until the 9th November, 1937. It appears that the complainant paid the respondent a

sum of Rs. 10-4-0 on account of out-of-pocket expenses and his fee of Rs. 2 and also paid to the respondent's clerk Rs. 3-12-0 of which one

rupee was to be the clerk's fee. A question arose when the case was before the District Munsiff who inquired into the complaint whether the Rs.

3-12-0 had been refunded to the petitioner, as alleged by the clerk. The District Munsiff held that the amount had not been returned, but this

question is of no importance. There is no charge against the respondent in respect of the moneys. The charge is one of having neglected his client's

interests. The District Munsiff held that there had been no neglect and that the delay was the result of the complainant not having seen the

respondent between the 13th September, and the 9th November, 1937. The District Munsiff accordingly held that the respondent was not guilty of

intentional neglect in the conduct of the execution proceedings.

2. It appears that the clerk was an unregistered clerk and when the report came before the District Judge this fact weighed greatly with him. He has

expressed the opinion that keeping the clerk after he had discovered that the Rs. 3-12-0 had not been returned to the complainant was

reprehensible, and he considered that the respondent had not paid due care to the complainant's business as he was bound to do. He also laid

stress on the fact that the respondent had not told the complainant that his clerk was unregistered. Holding these views he considered that the

respondent had been guilty of minor professional misconduct calling for a censure from the High Court.

3. It is quite clear that the learned District Judge misconceived the whole position. The charge was one of negligence and negligence had not been

proved. Even if it had been proved mere negligence does not found a petition for professional misconduct as was pointed out by a Full Bench of

this Court in *In re A Vakil* (1925) 50 M.L.J. 399 : I.L.R.1925 Mad. 523 (F.B.). There must be moral delinquency in addition to negligence. The

charge here is merely one of neglect. There is nothing unprofessional in a pleader employing an unregistered clerk. The law allows a pleader to

have two registered clerks but does not insist that any clerk should be registered.

4. It follows from what I have said that the report of the District Judge cannot be accepted. My learned brothers agree and consequently the

complaint will be dismissed. There is not the slightest foundation for a charge of professional misconduct against the respondent.