

(1932) 05 AHC CK 0007
In the Allahabad High Court

In Re: matter of and Advocate of Benares

Date of Decision : 26-05-1932

Acts Referred:

Citation : AIR 1932 All 492 : (1932) ILR (All) 912

Hon'ble Judges : Young, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Young, J.—Complaint having been made by one Suraj Prasad Dube on 26th November 1929 against Mr. B., an advocate enrolled in this Court, this Court under the Bar Council Act, Section 10, referred the matter to the Bar Council for inquiry and report. In due course the Bar Council nominated a tribunal for the above purpose. Several charges had been formulated against the advocate. Three charges were withdrawn by per. mission of the tribunal and they also found as regards those charges that they were not proved. The charges which were pressed against the advocate were : (1) that he deliberately made false allegations involving imputations upon the fairness and impartiality of two judicial officers in proceedings connected with an execution case to which he was himself a party; (2) that he made contradictory statements in two proceedings arising out of Suit No. 23d of 1921 in the Court of the Subordinate Judge of Benares, with the object of supporting the claim of his brother, Jawahir Lal in Suit No. 60 of 1928; and (3) that he filed an objection in Execution Case No. 61 of 1928 in the Court of the Additional Subordinate Judge of Benares, in which he set up a false settlement.

2. With regard to the first charge the tribunal found that the judicial officers themselves accepted an apology from the advocate, that that amounted to a composition of the offence, that the composition amounted to an acquittal and that "therefore the advocate must be deemed to have been acquitted of this charge. The tribunal submitted on this that if they were right as to the effect of the apology, their finding would be that the charge was not proved, but that if their view was erroneous then their finding would be that the charge was proved.

With regard to the second charge, the tribunal found the charge proved, and with regard to the third charge, they found it also proved. Notices have been served upon the advocate and the Government Advocate. The advocate is represented by Mr. Hasan Imam of the Patna Bar, and the Government Advocate represents the Crown. With regard to the first charge, it is unnecessary for us to come to a conclusion as to whether the view of the tribunal is correct in law or not. There is no doubt that the advocate committed a gross contempt of Court in his allegations in the applications filed by him against the judicial officers. He has admitted that the allegations were unfounded and it is obvious to us that there was no foundation whatever for the gross attacks made upon the judicial officers. The question which we have to decide is whether it is possible for this Court to punish the advocate on the disciplinary side under the Indian Bar Councils Act and to suspend or remove him from practice. We have been referred to a decision of their Lordships of the Privy Council in the matter of T.J. Wallace [1867] 1 P.C. 283 In that case a barrister of the Supreme Court of Nova Scotia committed a gross contempt of Court in his capacity as a private suitor and not in his capacity as an officer of the Court, The Court suspended the barrister from practising, and he appealed to the Privy Council. The Privy Council held that it was not competent for the Court to punish him by suspension for the contempt. All that the Court could do was to punish him for contempt of Court. Their Lordships of the Privy Council said that it was an offence

committed by an individual in his capacity of a suitor in respect of his supposed rights as a suitor and of an imaginary injury done to him as a suitor, and it had no connexion whatever with his professional character or anything done by him professionally, either as an advocate or an attorney. It was a contempt of Court committed by an individual in his personal capacity only.

3. Their Lordships further found that there was no element of moral delinquency in the charge against the barrister, and that the offence might adequately be punished in the ordinary way as contempt of Court. It would appear from this decision that this Court cannot deal with the advocate in this case for professional misconduct. The learned Government Advocate relied upon the case of Shashi Bhushan Sarbadhicari [1907] 29 All. 95 In our view, that case is clearly distinguishable. The advocate concerned had been engaged as counsel in a case before the High Court. He was reprimanded by the Court, and he thereafter in his capacity of editor of a newspaper published an article which amounted to a contempt of Court. In that case the High Court suspended the advocate for four years, and he appealed to the Privy Council. Their Lordships of the Privy Council in their judgment distinguished this case from the case In re Wallace [1867] 1 P.C. 283 on the ground that the matter arose through the conduct of the advocate in conducting a case in his professional capacity before the Court, and the contempt which he committed was in order to vindicate his professional conduct as an advocate. We consider that in the case I before us we are bound by the decision In re Wallace (I), and therefore cannot pass an order against him under the Bar Councils Act on this charge. (His Lordship then considered the

second charge and concluded). It is clear to us on the merits therefore that this charge cannot be held to be proved against the advocate. (His Lordship then considered the third charge and concluded). We therefore agree with the finding of the Bar Tribunal that this charge has been clearly proved against the advocate.

4. There only now remains the question of what sentence the Court should pass. It is clear that the advocate has been guilty of misconduct involving moral turpitude. He has falsely verified an application and he has endeavoured to advocate the Court and to deprive the decree-holder of money due to him. While we must look upon the misconduct of the advocate as serious, we have been impressed by the appeal of his counsel Mr. Hasan Imam in mitigation of sentence. We agree with the finding of the Bar Tribunal that the complainant did not file his complaint out of any high sense of public duty, and that Raja Sir Motichand, who has been engaged in litigation with the advocate in his personal capacity, is behind the application and has paid the expenses, of the applicant. The application has been made out of a desire to further harass the advocate. The advocate himself has been engaged for some years in private litigation of an onerous nature. As regards the particular charge of which he has been guilty, it must have been extremely irritating to him to find the assignee of the debt purchasing it for such a small sum. There must have been great temptation, after having paid the sum of Rs. 1,100 to the decree-holder, who had only paid Rs. 125 for the debt to endeavour to avoid payment of the balance. Further the whole amount of the balance has since been made good to the decree-holder. We take also into consideration that the advocate was not acting for a client in this matter, but was engaged in his own litigation, and that in the end no one has suffered by his action. He has further been subjected to heavy expenses in defending himself upon all these charges, some of them at any rate, being without any substance. On the whole we think that justice will be satisfied in this case by an order suspending the advocate from practice for the term of three calendar months, and we order accordingly.