

(1935) 08 AHC CK 0023
In the Allahabad High Court
Case No : Civil Misc. Case No. 147 of 1933
In Re: Mr. Bhagwant Prasad, Advocate

Date of Decision : 20-08-1935

Acts Referred:

Citation : (1935) 08 AHC CK 0023

Final Decision : Disposed Of

Judgement

Bennet and Ganga Nath, JJ.—This case against Mr. Bhagwant Prasad, Advocate of Ghazipur, was sent to the Bar Council for an enquiry and the Bar Council framed the following two charges:

(1) That you Mr. Bhagwant Prasad carried on a business in a partnership with others but took steps not to disclose your connection as a partner and thereby committed professional misconduct.

(2) That in the suit, out of which F A. 481 of 1929 arose, you denied that you were a partner, which denial was held not to be true both by the Subordinate Judge and the Hon"ble High Court, and your conduct in the said suit disclosed that you took steps to make out that you were a creditor, which was also found to be untrue, and by such action you were guilty of professional misconduct.

2. The Bar Council conducted an enquiry and heard evidence on both sides and have come to a conclusion as follows:

Our conclusions therefore are, that Mr. Bhagwant Prasad was never a partner but had advanced Rs. 2,000 as a loan to Harnandan Prasad, that his defence in suit No. 85 of 1928 was true, that the charges against him are not proved and that ho is not guilty of any professional misconduct" Against this conclusion the learned Government Advocate has filed two objections as follows:

(1) That the finding of the Tribunal is against the weight of evidence on the record.

(2) That the Tribunal has erred in going behind the finding of the High Court in First Appeal No. 481 of 1928.

3. This finding of the High Court was to the effect that Mr. Bhagwant Prasad was a partner in the business in question. We will first dispose of this point of law. The learned Government Advocate relied on two rulings for his proposition. One of these is reported in *In the matter of Rajendro Nath Mukerji* (1899) 22 All. 49 (P.C.) In that it was held by their Lordships that the High Court was correct in deciding that the propriety in law or in fact of the conviction maintained by the Court of appeal could not be brought into question and that it was final and that the Appellant could not argue that he did not fraudulently or dishonestly use a copy of the decree as he had been convicted of doing. The learned Government Advocate also referred to *In the matter of an Advocate* (1933) 12 Rang. 110. In that case an advocate had been convicted under Section 177, I.P.C, of furnishing an income tax return which he knew to be incorrect. On the other hand in *Muni Reddi v. K. Venkata Row* (1912) 37 Mad. 238 (F.B.), a Full Bench laid down that the judgment and evidence given in the civil suit filed by a party against the pleader was admissible as evidence in an enquiry against the pleader under the Legal Practitioners Act but the judgment and evidence was not conclusive proof in the enquiry. It appears to us that a distinction is to be drawn between the judgment in a criminal case and the judgment in a civil case where these judgments are produced in an enquiry against a legal practitioner. In the case of a criminal conviction the Court is making an enquiry as to whether the character of the legal practitioner is such, that he should be allowed to remain on the rolls. In this enquiry the proceedings are of a criminal or quasi-criminal nature. The Evidence Act S. 54 provides as follows:

In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation:-This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2:-A previous conviction is relevant as evidence of bad character.

4. In our opinion the case we are supposing would be one in which the bad character of the legal practitioner was itself a fact in issue and therefore a previous conviction would be relevant as evidence of bad character under Explanation 1 and 2. The fact that a man had been convicted therefore would be relevant evidence and the grounds on which he had been convicted could not be called into question. But when we come to a civil decree as in the present case, Section 54 of the Evidence Act cannot be applied. The learned Government Advocate was not able to refer to any section of the Evidence Act which he could apply to show that the findings of the Civil Court were conclusive proof. Accordingly we agree with the view expressed by the Full Bench of the Madras High Court that the judgment and evidence in the civil suit are admissible as evidence in this enquiry but the judgment and decree are not conclusive proof.

5. We now come to examine the admitted facts in this case.* ***** [Their

Lordships after discussing the facts proceed:-]

In view of the considerations we have set forth we have come to the conclusion that the two charges against Mr. Bhagwant Prasad have been established by the evidence which has been produced. The question now remains as to what should be the order of this Court in regard to this finding. Mr. Bhagwant Prasad as a Vakil of the High Court was not permitted by the rules to take part in business or enter into a partnership. The rules on this point are very strict and have been strictly administered by this Court, and it is the custom of this Court to refuse permission for any member of the Bar to enter into such a partnership. It is an aggravation of the offence that Mr. Bhagwant Prasad did not inform this Court of the matter. Further Mr. Bhagwant Prasad has put forward statements in evidence that he was not a partner and therefore has made statements which are untrue. Under these circumstances we cannot take a very lenient view of the conduct of Mr. Bhagwant Prasad. However we do not desire to take an extreme view of the matter and the order which we pass is that Mr. Bhagwant Prasad Will be suspended from practice for a period of six months from the date of this order

Iqbal Ahmad, J.

6. I respectfully dissent as, after giving due weight to all that could be and has been urged... against the finding of the Bar Council, I remain unconvinced.. I can discover no justification for not accepting the finding of the Bar Tribunal that Mr. Bhagwant Prasad, Advocate was never a partner in Sri Lakshmi Flour Mills, and that the sum of Rs. 2,000 advanced by him to Harnandan Singh was by way of loan and not as a contribution to the capital of the partnership and that his defence in suit No. 85 of 1928 was true. The finding of the Bar Council being in favour of the advocate, the burden to displace that finding lies on the Government Advocate and that burden, in my judgment, has not been discharged. It is to be remembered that the question for consideration by the Bar Tribunal was a pure question of fact and its findings on the question are entitled to great weight. It is further to be remembered that the charges of professional misconduct against an advocate must be, proved by clear and convincing evidence and should not be inferred from mere grounds for suspicion, however reasonable those grounds may appear to be- vide A, a pleader v. the Judges of the High Court of AIR 1930 144 (Privy Council) It may be that in the present case there were certain grounds for suspicion against the advocate but clear and cogent evidence to bring the charges home to the advocate was wholly wanting, and I, therefore, have no hesitation in accepting the finding of the Bar Council.

7. The charges framed by the Tribunal against the advocate were as follows:-

(1) That you Mr. Bhagwant Prasad carried on a business in partnership with others but took steps not to disclose your connection as a partner and thereby committed professional misconduct.

(2) That in the suit out of which F.A. 481 of 1929 arose, you denied that you were¹ a partner, which denial was held not to be true both ;by the Subordinate

Judge and the Hon'ble High Court, and your conduct in the said suit disclosed that you took steps to make out that you were a creditor, which was also found to be untrue, and by such action you were guilty of professional misconduct.

8. Mr. Bhagwant Prasad started practice as a Vakil in Etah and practised there till the year 1920. He left Etah and commenced practice in Ghazipur - from August or September 1920. His first cousin Trijugi Narain was then employed as an assistant master in the D.A.V. School of Ghazipur. It is in evidence in the case that they are joint but their "incomes are separate." One Harnandan Singh was also a teacher in the D.A.V. School. Trijugi and Harnandan were known to each other from the year 1909. Both were together in College in Allahabad and resided in Oxford and Cambridge Hostel and both were teachers in the D.A.V. School, Ghazipur. Harnandan along with his brother Harcharan owned a Flour Mill at Ghazipur. The Mill existed from the time of his father. Harnandan had, therefore, some experience about the business of Flour Mills. Harnandan was keeping bad health and, it appears from the evidence of Dr. Preo Nath Chaudhari which evidence I accept that he was suffering from slow fever and cough and on the advice of the doctor went to the sanatorium at Bhowali. On his return from Bhowali the D.A.V. School authorities refused to keep him in service presumably because of the infectious disease from which he was supposed to be suffering. Harnandan then conceived the idea of starting a flour mill at Ballia and in November 1920 an order for the engine of the mill was placed. The engine arrived in January 1921 and a sum of about Rs. 3,000 was required for payment of the price of the engine with a view to take its delivery. It is alleged -that Harnandan received a sum of Rs. 2,000 in October 1920 from his brother-in-law (wife's brother) Ananda Prasad. A further sum of Rs. 2,000 was paid by the advocate in February 1921. Harnandan passed a receipt on the 24th of February 1921, for the sum of Rs. 2,000 and this receipt constitutes the sheet anchor of the case against the advocate. The receipt is in the following words:-

Received from B. Trijugi Narain and B. Bhagwant Prasad the sum of rupees two thousand only on account of making up for the payment of an oil engine, worth Rs. 3,046-15-0 (as per draft, National Bank, Calcutta) Rs. 2,000.

9. The delivery of the engine was then taken.

10. It is alleged that there were four partners in Lakshmi Flour Mills, viz., Harnandan Singh, Ananda Prasad, Trijugi Narain and Bhagwant Prasad, and that each partner contributed Rs. 1,000 to the capital of the partnership. It is said that out of the sum of Rs. 2,000 advanced by Ananda Prasad in October 1920 a sum of Rs. 1,000 represented his share of the partnership capital and the balance of Rs. 1,000 was advanced by him as a loan to his brother-in-law Harnandan Singh. It is also asserted that the sum of Rs. 2,000 paid by the advocate in February 1921 was on account of the share of the advocate and his cousin Trijugi Narain in the capital of the partnership. In short the case against the advocate is that he was a partner in the Mill and that the advance made by him was on account of his share in the capital of the partnership.

11. The case put forward by the advocate, on the other hand, was that sum of Rs. 2,000 was advanced by him as a loan and that he never was a partner in the Mills.

12. The cardinal question that arises for consideration in the case, therefore, is whether Mr. Bhagwant Prasad was a partner in the Mill and advance made by him was by way of loan. The answer to the question, whether a person is a creditor of a partnership concern or the money advanced by him was in the capacity of a partner, is always beset with difficulties of varying intensity and, as observed by Under bill, in "Principles of the Law of Partnership" 1931 Edition page 23, "A person whose intention was to be a bona-fide lender finds himself in the very mortifying position of an apparently mala fide partner, with all its consequent litigation, worry and not impossible ruin".

13. The Flour Mill began to work in Ballia from May, 1921, and Trijugi Narain resigned his post as a teacher in the school on the 14th May, 1921, when the sessions closed. It is common ground that Trijugi Narain took an active part in the working of the Mill at Ballia and remained there till April, 1922. By this time it became apparent that the Mill was working at a loss and the Mill was then shifted from Ballia to village Reotipur (vide the evidence of Dasrath, a witness examined by the Counsel who was appointed to prosecute the case against the advocate). From Reotipur the Mill was taken to Ghazipur and located in close proximity to the ancestral Flour Mill of Harnandan Singh.

14. On the 7th June, 1922, Harnandan Singh executed a hypothecation bond for a sum of Rs. 1,600 in favour of the advocate. Half of the Lakshmi Flour Mills was hypothecated to secure the sum of Rs. 1,600 but, as the document was not registered, it did not operate as a mortgage. The bond was in respect of the amount taken under the receipt dated the 24th February, 1921, referred to above. It is a matter of admission that some amount was paid in cash and a sum of about Rs. 45 was set off against a debt due from Trijugi Narain and the bond was for the balance of the amount paid by the advocate in February, 1921. The sum of Rs. 1,600 with interest at 1 per cent per mensem was stipulated to be paid by Harnandan by instalments extending over about 2 1/2 years.

15. It was recited in the bond that the Flour Mill at Ballia was purchased by Harnandan out of his "own expenses" and that as he had not sufficient amount of money he borrowed Rs. 2,000 from the advocate.

16. Some of the instalments were paid by Harnandan Singh and endorsements about those payments were made on the back of the bond, but most of the instalments remained unpaid and then the advocate filed a suit (suit No. 301 of 1928) in the Court of the Munsif of Ghazipur for recovery of Rs. 1,990 against Harnandan Singh. Harnandan pleaded that the advocate, he himself and Ananda and Trijugi were partners in the Flour Mill and that the sum of Rs. 2,000 advanced by the advocate was by way of investment and not as a loan, and that the bond in suit was obtained from him (Harnandan) by way of security. He

contended that as the partnership still subsisted, the advocate was only entitled to profits and his claim was not maintainable. The Munsif held that the advocate was not a partner and the amount was advanced by him as a loan and, accordingly, decreed the suit on the 2nd August, 1928.

17. In execution of the decree the advocate attached the Flour Mill on the 15th September, 1928, and then on the 30th October, 1928, Ananda Prasad filed a suit (suit No. 85 of 1928) in the Court of the Subordinate Judge of Ghazipur impleading Bhagwant Prasad, Trijugi Narain and Harnandan Singh as Defendants. Ananda prayed for a declaration that the parties to the suit were the four partners of the Lakshmi Flour Mills each having an equal share in the assets thereof and that Bhagwant Prasad, the advocate, was not entitled to have the Mill attached and sold in execution of the decree obtained by him against Harnandan Singh. In the plaint he alleged that "When a loss was caused to the business, Defendant No. 1 (advocate), cunningly and dishonestly, with a view to his future gain and the loss of this Plaintiff, and also for the purpose of safeguarding his profit and the principal amount, brought Defendant No. 3 (Harnandan Singh) in his collusion and got a bond, dated 7th June, 1922, of which the Plaintiff as got the information now, executed without Plaintiff's knowledge and obtained a fictitious and collusive decree against Defendant No. 3, and by means of the same he has got the whole machine attached " Bhagwant Prasad contested the Suit mainly on (he allegation that he was never a partner in the Mill, nor did he pay the sum of Rs. 2,000 as his share in the firm. He maintained that the sum of Rs. 2,000 was taken by Harnandan Singh as a loan from him through Trijugi Narain. He also alleged in the written statement that Ananda had full knowledge of the suit filed by him on (he basis of the bond and, that Ananda had filed the suit for declaration at the instance and for the benefit of Harnandan and, that the suit was really prosecuted by Harnandan himself. In short he alleged that the suit was a collusive suit filed for the benefit of Harnandan.

18. Harnandan also Tiled an appeal against the decree in suit No. 301 of 1928 which was numbered as appeal No. 414 of 1928. This appeal was transferred for disposal to the same Subordinate Judge who tried suit No. 85 of 1928.

19. Suit No. 85 of 1928 was decided by the Subordinate Judge on the 10th May, 1929. He held that (1) Laksbmi Flour Mills was a partnership concern in which the four parties were partners, and that Rs. 2,000 paid on the 20th October, 1920, represented the share of the advocate and Trijugi Narain in the capital of the partnership:

2. the partnership was dissolved in June 1922; and

3. the claim on the basis of the partnership was time barred ; and on these findings dismissed the suit.

20. The Subordinate Judge also dismissed the appeal filed against the decree passed by the Munsif holding that the bond dated the 7th June, 1922, was

executed by Harnandan as a debtor and that the relationship of creditor and debtor existed between the advocate and Harnandan.

21. Ananda Prasad preferred an appeal (F.A. 481 of 1929) to this Court against the decree of the Subordinate Judge in suit No. 85 of 1928. The appeal was allowed by a Bench of this Court (which held) that Harnandan, Ananda Prasad, Bhagwant Prasad and Trijugi Narain were partners in the Flour Mill and continued as such up to the date of attachment. Ananda's claim for declaration mentioned above was, therefore, decreed.

22. The case was then referred to the Bar Council for enquiry and Mr. Prem Mohan Lal was appointed to prosecute the case against the advocate. Mr. Prem Mohan Lal contended before the Tribunal that the finding of the High Court on the question of fact was final. This argument has also been advanced by the learned Government Advocate before us. On the other hand it was contended on behalf of the advocate that, as the case was sent to the Bar Tribunal for enquiry, the Tribunal was bound to record the evidence produced by the parties, and then to record a finding on consideration of that evidence, irrespective of the fact that this Court has arrived at a decision adverse to the advocate.

23. In support of his contention the learned Government Advocate relied on the decisions of their Lordships of the Privy Council in the matter of Rajendro Nath Mukerji (1), and in the matter of an advocate (2). In Rajendro Nath's case (1), a Vakil was convicted u/s 471 of the Indian Penal Code of fraudulently using as genuine a document which he knew to be forged. His conviction was affirmed on appeal. The High Court then ordered notice to be given to the Vakil to show cause why he should not be removed from the roll of Vakils and his certificate be cancelled in consequence of the offence of which he had been convicted. This Court held that the propriety in law or in fact of the conviction could not be questioned by the advocate, and the decision of this Court was affirmed on appeal by their Lordships of the Privy Council. The Privy Council observed that:

the conviction of forgery followed by a sentence of 2 years' rigorous imprisonment is sufficient without further enquiry to justify the Court in removing the Vakil from the roll of Vakils.

24. In the case of in the matter of an Advocate (2), also the propriety of the conviction of the advocate was not allowed to be questioned in the proceedings taken against him for the removal of his name from the roll of advocates. These two cases are distinguishable on the broad ground that in those cases the conviction itself was the basis of the charge against the advocate, and are no authority for the proposition that the finding recorded against an advocate by a Civil Court is final and conclusive in proceedings taken against the advocate under the Bar Councils Act. When a case is referred to the Bar Council u/s 10 of the Bar Councils Act for enquiry into the conduct of an advocate it is the duty of the Council to enquire into the matter and to record a finding on the materials produced before it, irrespective of any finding on the point recorded by a Civil

Court. The enquiry by the Council is with a view to ascertain whether or not the advocate concerned has been guilty of misconduct. The enquiry is of a quasi-criminal nature and a finding has to be arrived at on a consideration of the materials before the Council. I am not aware of any provision of law that supports the contention that the finding of the Civil Court is either relevant or conclusive in the enquiry before the Bar Council. I, therefore, hold that the Bar Tribunal in the present case was right in recording its own finding on the question before it untrammelled by the finding recorded by the Subordinate Judge or by the Civil Court.

25. In the enquiry before the Tribunal both sides agreed that the documentary evidence already on the record of suit No. 85 of 1928 (F.A. 481 of 1929) be treated as evidence. The parties further agreed that the evidence of Ananda Prasad as recorded in suit No. 85 of, 1928 be read as evidence as Ananda Prasad did not appear before the Tribunal. Neither side produced further documentary evidence. But Mr. Prem Mohan.-Lai examined four witnesses named Dasrath, Harcharan, Badal Khan and Raja Ram and the Advocate examined-himself, his cousin Trijugi Narain, Tribeni Sahai, Abdul Aziz Khan and Preo Nath Chaudhri. Some of these witnesses were examined before the Subordinate Judge in suit No. 85 of 1928, but their evidence as recorded by the Subordinate Judge is not Megal evidence in the present proceedings.

26. In support of the contention that Bhagwant Prasad, Advocate was a partner in the Mill and that the sum of Rs. 2,000 was not advanced by him as a loan reliance is placed on the receipt dated the 24th February, 1921, (Ex. 1, paper book H.C. page 34), a Sarkhat (Ex. 10 paper book H.C. page. 47), a draft of partnership agreement (Ex. 15, paper book H.C. page 45), and an account book for the year 1921 (Ex 6), and also on the evidence of the witnesses examined before the Tribunal against the Advocate. * * * * * [His Lordship after discussing the evidence proceeds:-]

For the reasons given above I hold that the charges against the advocate were not "made out and that he was not guilty of any misconduct.

27. By the Court-The order of the Court is that Mr. Bhagwant Prasad be suspended for a period of six months from the date of this order.