
(1919) 10 MAD CK 0013
In the Madras High Court

K.V. Subrahmania Aiyar

APPELLANT

Vs

The District Magistrate of Salem

RESPONDENT

Date of Decision : 14-10-1919

Acts Referred:

Legal Practitioners Act, 1879 — Section 14

Citation : (1920) 11 LW 122 : (1920) 38 MLJ 230

Hon'ble Judges : Abdur Rahim, C.J.; Spencer, J.; Krishnan, J

Bench : Full Bench

Judgement

Abdur Rahim, C.J.—Mr. K.V. Subrahmania Aiyar, a First Grade Pleader practising in the Salem District has been called upon by the

District Magistrate of Salem to show cause why he should not be proceeded against u/s 14 of the Legal Practitioners Act with reference to certain

statements which occurred in an article contributed by the pleader to the newspaper ""New India"" on the 15th August 1919. The gist of the article is

to show that the present administration of criminal justice by the Subordinate Magistracy in the Salem District was not satisfactory. The general

complaint was that the present District Magistrate had issued a number of circulars to the Subordinate Magistrates with reference to the granting of

adjournments, which fettered the discretion of the Subordinate Magistrates in dealing with the cases before them properly. The statements subject

matter of the charge are: (a) ""The magistrates were allowed great latitude to exercise their discretion and judgment unfettered by Police Orders or

quick despatch circulars. The cases were allowed to take their own course in appeal or revision (that was before the time of the present District

Magistrate). The present holder of the office (i.e., the District Magistrate) has issued various mandates for the guidance of the magistracy in the

matter of adjournments, grants of copies and disposals.

2. Then statement (b) is, ""The Police ask for transfers from the files of the Magistrates who grant bails to the accused and the letter of the District

Superintendent carried great weight."" Then the next extract is to this effect, (c) ""where the question for adjournment comes, the Court solemnly

consults the circulars and ukases issued from the District Magistrate's office fixing the number of days and hours for summons, warrant and

Sessions cases and the convenience of the prosecuting staff.

3. It is charged that these statements are false and scandalous, made with the intention of bringing the office of District Magistrate and the

Subordinate magistracy into contempt.

4. It is argued by Mr. Rangachariar who appeared for Mr. Subrahmania Aiyar that the statements charged against his client are nothing but fair

comment on the administration of criminal justice in the District of Salem and that they do not come within the purview of Section 13 of the Legal

Practitioners Act. It is conceded by the learned Advocate-General who appeared for the District Magistrate that the statements in question do not

fall within Clauses (a) to (e) of the section. But he urges that they come within the purview of the residuary Clause (f) i. e., ""any other reasonable

cause."" It has been ruled that the phrase ""any other reasonable cause"" is not to be understood in an ejusdem generis sense, but that it covers cases

other than those of professional misconduct in the ordinary sense but which unfit a pleader or the practice of his profession; for instance, conviction

for a crime involving dishonesty or moral turpitude or gross and habitual contempt of court would be covered by the general clause. The learned

Advocate-General has especially relied on the case In the matter of a pleader ILR (1902) Mad 448. There the pleader had written a letter to an

officer who was conducting an inquiry into a charge of bribery against a Revenue Inspector, the letter containing allegations which were intended to

prejudice the mind of the officer in connection with the matter which he was investigating. That was held to come within the words ""any other

reasonable cause."" That seems to me was a fairly clear case; for a lawyer to attempt to cause miscarriage of justice by a letter of that character

would, if not strictly professional misconduct, undoubtedly be such as to make him unfit to continue to practise the profession. The next case relied

on is In the matter of Rasik Lal Nag ILR (1916) Cal. 639. There a pleader had a quarrel with an officer of the Court in the Court premises and seriously threatened and abused him. That was held to be contempt of Court although the act was not committed in the actual presence of the Judge, and that it came within Clause (f) of Section 13. What the learned Judges held was that the conduct of the pleader amounted to obstructing the course of administration of justice in the particular case in connection with which he threatened the officer of the Court. In the matter of Sashi Bhushan Sarbadhicary (1906) ILR 29 All. 95. (P.C.) another on case which the learned Advocate-General emphasises, an Advocate of the Court quarrelled with a learned Judge of the Allahabad High Court before whom he was conducting a case and then published an article in a newspaper which amounted to a serious contempt of Court. That was not the first time, as pointed in the Privy Council, when the matter went on appeal, that the Advocate had behaved in such an unseemly manner. Their Lordships held that the High Court was justified in taking a disciplinary action against the advocate and say "" on the other hand, it is essential to the proper administration of justice that unwarrantable attacks should not be made with impunity upon Judges in their public capacity; and having regard to the fact that in this case a contempt of Court was undoubtedly committed (and as the evidence shows not for the first time) by an advocate in the matter concerning himself personally in his professional character. Their Lordships agree with the conclusion at which the Judges of the High Court arrived, and there was ""reasonable cause"" for the order which they made."" Then they cite with approval the following dictum of Lord Westbury in In re Wallace (1866) L.R. 1 P.C. 283. It was an offence...committed by an individual in his capacity of a suitor in respect of his supported rights as a suitor, and of an imaginary injury done to him as a suitor; and it had no connection whatever with his professional character or anything done by him professionally either as an advocate or as an attorney,

5. In the case of The District Judge of Kistna v. Hanumanulu ILR (1915) Mad. 1045 the conduct of the Pleader which was held to bring him within Section 14 of the Legal Practitioners Act was with reference to statements contained in an affidavit filed in a particular case. The learned

Advocate-General has not been able to cite before us any case in which comments made on the administration of justice generally in a particular district or in a particular court has been held to amount to misconduct within the meaning of Section 13. On the other hand, there are authorities to the effect that where a Pleader makes imputations against a particular Judge in the capacity of a suitor, that would not bring him within the disciplinary action of the Court. That was the case in *In re Wallace* (1866) L.R. 1 P.C. 283 to which reference has already been made and I might here refer to another passage in the judgment of Lord Westbury where he says: "When an offence was committed which might have been adequately corrected by that punishment, and the offence was not one which subjected the individual committing it to anything like general infamy, or an imputation of bad character, so as to render his remaining in the Court as a practitioner improper, we think it was not competent to the Court to inflict upon him a professional punishment for an act which was not done professionally, and which act per se, did not render him improper to remain as a practitioner of the Court." That seems to me to be the proper principle to be applied in cases of this character.

6. The question then is whether these statements are such as to render it improper that Mr. Subrahmanya Aiyar should remain in the profession. We have read the entire article from which these passages have been extracted. There are certain statements in that article which contain specific charges against the subordinate magistracy in the District of Salem so far as their methods and conduct in trying criminal cases are concerned. But those statements are not included in the charges framed by the District Magistrate. In writing that article the Pleader cannot be said to have acted professionally. He acted as a member of the public and he thought that he was bringing to the notice of the public an important matter concerning the administration of justice in that district. It is quite possible that some of the statements contained in that article exceeded the limits of fair comment and that the statement cited in the charge contain reflections on the way in which cases are tried in the District of Salem by the subordinate magistrates suggesting that certain circulars issued by the District Magistrate have the effect of influencing the subordinate magistrates and that miscarriages of justice sometimes occur in consequence. It is possible that the pleader has drawn inferences which are not accurate from

the fact that those circulars were issued; but we cannot reasonably hold that the statements which form the subject-matter of the charge or the repudiations contained therein are of such a nature that they would render the pleader unfit to continue in the profession and bring him within the disciplinary jurisdiction of the Court.

7. The remedy provided by Section 14 of the Legal Practitioners Act is not intended to apply to cases in which a Pleader as an ordinary member of the public criticises the administration of justice generally in a particular district even though such criticisms may on enquiry be found not to be wholly justified without attempting to define the classes of cases covered by the phrase ""any other reasonable cause"" I think that that clause of Section 13 of the Legal Practitioners Act cannot be properly utilised in punishing a pleader for making comments on matters of public interest in the newspapers merely because such comments exceed the limits of fairness or accuracy. The proceedings therefore u/s 14 the Legal practitioners Act against Mr. K.V. Subrahmania Aiyar must be quashed.

8. It thus becomes unnecessary to deal with the other prayer of the petition that the enquiry should be transferred to another Judicial Officer.

Spencer, J.

9. I agree with the learned Chief Justice for the reasons given by him that the pleader was not acting in a professional capacity or in connection with any particular case, when he wrote the letter which is the subject of the present charge.

10. Assuming for the purpose of argument that some of the statements in the letter were defamatory of the District Magistrate and the subordinate magistrates of Salem District, that fact will not in itself necessarily imply such moral turpitude in the character of the pleader as to make him unfitted to carry on his profession of pleader. Reluctant as we must ordinarily be to stifle an enquiry at a stage before it is known what the evidence that remains to be taken will establish, I can conceive no purpose to be gained by allowing the proceedings to be continued on the charges now framed, and it will not be proper that the enquiry should travel beyond those charges. I therefore agree that the proceedings should be annulled.

Krishnan, J.

11. I agree with the judgment just delivered by the learned Chief Justice. The

case is one that arose u/s 14 of the Legal Practitioners Act. That section deals first of all with "" taking instructions except as aforesaid"" that is as stated in Section 13(a) and then it speaks of ""such misconduct as aforesaid."" That has been held to mean any misconduct that would fall under any of the Clauses (b), (c), (d), (e) and (f) of Section 13 in the Full Bench ruling in *The District Judge of Kistna v. Hanumanulu* ILR (1915) Mad. 1045 which I respectfully follow.

12. In the present case the Advocate-General who appears for the District Magistrate has, conceded that he could not bring this case under any of the clauses of Section 13 except the last Clause (f) which speaks of "" any other reasonable cause."" These words are very general; and as pointed

out by their Lordships of the Privy Council in the matter of *Sashi Bhushan Sarabadhicary* (1906) ILR 29 All. 95. (P.C.) with reference to similar

words in the Letters Patent, it is not desirable to try and define what would be reasonable cause. I do not propose to attempt to do. It has been

held by the Full Bench in *The District Judge of Kistna v. Hanumanulu* ILR (1915) Mad. 1045 that the Clause (f) should not be read in an ejusdem

generis sense with the other clauses following certain rulings of the Allahabad and the Calcutta High Courts which are cited there. I do not consider

that the case. In the matter of *Sashi Bhushan Sarabadhicary* (1906) ILR 29 All. 95. (P.C.) has thrown any real doubt upon the view expressed in

the Full Bench case that Clause (f) includes misconduct other than professional and I am prepared to follow that view, But I think in considering

whether any particular charge against a pleader falls within the terms ""any other reasonable cause"" in Clause (f), we should bear in mind the scope

of the Act which is one dealing with the Legal Practitioners as such and the object of the inquiry that is to be held u/s 13 or Section 14 which is to

see whether the pleader should be suspended or dismissed from practice for misconduct. I think it is necessary to bear this in mind when deciding

whether any particular case falls within Section 13 or Section 14 of the Act. The misconduct should therefore be in my opinion such as would

render the continuance of the pleader in practice an undesirable thing to be allowed or is so dishonourable or so dishonest as to unfit him from

being a member of the profession permanently or temporarily, before it should be held to fall within Clause (f). Though misconduct other than

professional, may fall under Clause (f) its impropriety has to be considered with reference to the pleader's professional capacity and it is only if the misconduct can reasonably be held to affect it that it would fall within Clause (f) as the Act deals with a pleader only in his professional capacity and not in his private capacity as already pointed out above.

13. As regards the particular case before us, the learned Chief Justice has already set out in his judgment the three passages which form the subject-matter of the charge against the pleader. They appeared in a letter written by the pleader to the "" New India "" and published under his own name. I am in agreement with the learned Chief Justice that the publication of those statements made by the pleader which have been referred to is not such an act as would fall under Clause (f) as it is not in my opinion a misconduct when considered with reference to his position as a pleader.

He cannot properly be suspended or dismissed for unfitness or otherwise punished professionally for it.

14. The case cited by the learned Advocate-General on the one side and by Mr. Rangachariar on the other side have been considered by the

Chief Justice in his judgment and I do not propose to deal with them at length. Each case, it seems to me, has to be decided on its own facts. No

case similar to the present one where a pleader has been dealt with under the Legal Practitioners Act because he wrote in a paper commenting

upon the supposed undesirable state of criminal administration in any particular district or Presidency has been brought to our notice. In all the

cases cited by the Advocate-General it would be noticed, as pointed by the learned Chief Justice, that the case arose with reference to some

particular suit or proceeding before the Court in which a pleader appeared in his professional capacity except in the case in the matter of a Pleader

ILR (1902) Mad. 448. That, however, was a case in which the pleader attempted by sending an anonymous petition to the Sub-Collector making

certain allegations to interfere with the course of justice in the case before him. Although the pleader there apparently had no professional

relationship with the case before the Sub-Collector, his conduct was certainly so grossly improper when considered with reference to his position

as a pleader as to necessitate his being suspended from practices to bring home to him the impropriety of what he did. That case really has no

bearing on the present case because the facts to be considered in this case are very different. The Full Bench case in *The District Judge of Kistna*

v. *Hanumanulu* ILR (1915) Mad. 1045. was a case in which the learned Chief Justice who delivered the judgment thought that it would probably

fall under Clause (b) of Section 13 and though the actual charge was under Clause (f) the misconduct there was something closely connected with

the discharge of the pleader's professional duty in the case that was before the Court. The cases relied on by the Advocate-General are thus all

distinguishable from the present case; and on the merits of this case I have come to the conclusion as I have said already that the charges are not

such as would properly fall u/s 14 as the pleader's statements were made in a letter to the public press as a correspondent and are really only

comments on the general administration of the District. I agree that comments made in the press even though they may overstep the bounds of

fairness and may not be strictly in accordance with facts, are not matters necessarily to be dealt with under the disciplinary jurisdiction given by the

Legal Practitioners Act. I therefore agree in the order proposed by the learned Chief Justice that the proceedings before the District Magistrate

should be annulled.

15. As regards the second point taken as to whether the High Court has got the right of transferring proceedings u/s 14 from the Presiding Officer

to any other officer, there is a ruling of this Court in *In re, a Pleader* (1907) 18 M.L.J. 184 against it, and also a ruling in *In the matter of Janak*

Kishore and Ors. (1916) 1 Pat L.J. 576 to the same effect. It is however a question of some difficulty to decide whether the High Court has the

power of transfer under the Letters Patent or the Government of India Act (*Lolit Mohan v. Surja Kanta Acharjee* ILR (1903) CAL 709.with

reference to cases u/s 145 of the Criminal Procedure Code and whether if it has such power it has been taken away by implication by the language

of Section 14 of the Legal Practitioners Act with reference to the proceeding under it. But as u/s 13 the High Court is entitled to order an enquiry

itself, the question of transfer is not of importance as it would be open to us if we thought that the District Magistrate was not the right person to

conduct the present enquiry to stay proceedings before him and to order an enquiry u/s 13 to be held by an officer chosen by us. But on the view

we have taken on the merits this question does not require a decision and I do not express a definite opinion on it. I agree to the order proposed by the learned Chief Justice.