
(1922) 09 MAD CK 0014
In the Madras High Court

R. Varadachariar	Vs	APPELLANT
C.R. Kalyanasundaram Aiyar		RESPONDENT

Date of Decision : 08-09-1922

Acts Referred:

Legal Practitioners Act, 1879 — Section 36

Citation : AIR 1923 Mad 188 : (1922) 16 LW 795 : (1923) 44 MLJ 437

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—I have heard very full arguments and I proceed to deliver judgment at once.

2. This revision Petition arises out of and is connected with an application made to the District Court of Coimbatore by the respondent, a High

Court Vakil, to take action u/s 36 of the Legal Practitioners" Act, XVIII of 1879, against the petitioner who was alleged to be a tout.

3. The petitioner complained that the petition filed by the respondent was defective, that it did not contain necessary particulars and that, even if all

the allegations made in it against him were true, he would not be a "tout" as the word is defined in the Act, and he applied to the District Court that

the petition might be rejected on the ground that the allegations in the petition could not constitute the basis of an enquiry. The District Munsif

dismissed the application and it has been argued before me that the District Judge had no jurisdiction to proceed with the enquiry and that he at any

rate acted with material irregularity in refusing to order particulars. I have been asked to quash the proceedings.

4. The learned Advocate-General on behalf of the petitioner argued very forcibly that it was apparent from the petition filed by the respondent that

the latter had very indefinite conceptions regarding a tout, that, while making irrelevant imputations, he did not even suggest that the petitioner was

guilty of any acts which would be improper under the Act, that the respondent's object appeared to be to make allegations with a view to create

prejudice and that he carefully avoided giving any particulars or making any definite and clear charges. With this criticism of the petition, I entirely

agree. It was argued on the analogy of Order VII, Rule 11, Code of Civil Procedure, that the petition should have been rejected. This argument

would no doubt be sound if the proceedings were between two parties as in the case of a civil suit. u/s 36 of the Legal Practitioners' Act, 1879 it

is not necessary that there should be petition at all. It does not contemplate the case of a private party making definite allegations against an alleged

tout. I must therefore regard the petition filed in this case as a superfluity. The District Judge is authorised to frame and publish lists of persons

proved to his satisfaction habitually to act as touts. No procedure is laid down and the section merely provides that no person shall be included in

any such list until he has had an opportunity of showing cause against such inclusion. It is important to bear in mind that evidence on which the

District Judge may act under the section, may be "evidence of general repute. "It seems to me that the Court acting u/s 36 would sufficiently

comply with its provisions if it called upon the alleged tout to show cause why his name should not be included in the list provided an opportunity

was given to him to rebut the evidence tendered and otherwise to place his case before the Court. Although the petition filed by the respondent

was defective, it referred to Section 36 of the Act and contained a prayer that the petitioner should be declared a tout. The petitioner had notice of

the nature of the proceedings instituted against him and he clearly knew that he was asked to defend himself in respect of action taken u/s 36.

Moreover the words "Evidence of general repute" in the section indicate that it is not necessary to prove specific acts on the part of an alleged tout.

I am therefore unable to accept the argument that Order 7, Rule 11, CPC is applicable.

5. The next argument of the Advocate-General was that the procedure laid down in Sections 107 to 112 of the Code of Criminal Procedure,

1898, should be followed in an enquiry of this kind. I cannot accept this contention. In Sections 107, 108, 109 and 110 occur the words, "the

Magistrate may, in the manner hereinafter provided, require such person to show cause. ""Section 112 provides the manner; it enacts ""When a

Magistrate acting under Sections 107, 108 and 109 or Section 110 deems it necessary to require any person to show cause under such section,

he shall make an order in writing setting forth the substance of the information received..."and Section 115 requires that every summons or warrant

shall be accompanied by a copy of the order made u/s 112.

6. It will thus be seen that in respect of the proceedings under these sections of the Code of Criminal Procedure, the law has made the observance

of certain rules imperative and it seems unreasonable to hold in the absence of similar provisions in the Legal Practitioners" Act, that an enquiry u/s

36 of that Act should be conducted in the manner prescribed in the Code of Criminal Procedure regarding enquiries altogether of a different

nature.

7. It was next argued that the District Judge should have followed the procedure laid down in regard to charges of unprofessional conduct against

legal practitioners. This argument again seems to be untenable. Section 14 of the Legal Practitioners" Act, 1879, deals with such charges. It

prescribes a very definite procedure. It says "" if any such pleader is charged, the presiding officer shall send him a copy of the charge. "" It further

provides that such copy shall be served upon the pleader at least 15 days before the date of hearing. The contrast between Section 14 and Section

36 is very marked and I cannot import into the latter words which find a place only in the former.

8. What then is the duty of the Courts in regard to an enquiry u/s 36? I think the answer is contained in the following passage in the judgment of

Mukerjee and Carnduff, JJ., in Hari Charan Sircar v. District Judge of Dacca (1910) 11 C.L.J. 513 :

The position, therefore, reduces itself to this: Section 36 of the Legal Practitioners" Act creates a special jurisdiction, but does not define the details

of the mode in which that jurisdiction is to be exercised. What course is the Court to pursue? The obvious answer is that the course to be adopted

should be such as would do substantial justice to the parties brought before the Court.

9. I accept with great respect the principle enunciated in this passage.

10. I shall examine with reference to the facts of this case, in the words quoted above, whether the course adopted is such as will do substantial justice to the petitioner. It is no doubt true, that several applications made by the petitioner were rejected by the District Judge. His application, that the cross-examination of the respondent's witnesses might be reserved, was refused. Further it was represented to the District Judge that, if the respondent was examined first, the petitioner would be able to know what the definite charges against him were and therefore the Court should take the evidence of the respondent before other witnesses were examined in the case. Even this application was dismissed. In the circumstances it would have been more satisfactory if the District Judge had complied with at least one of the requests of the petitioner. 11. This was not done. The opposition of the respondent was clearly not bona fide. This is proved by the sequel. The respondent examined several practitioners in support of his case that the petitioner was a tout. Those witnesses spoke generally to the fact that the petitioner was interesting himself in litigation which was not his own, that he was generally seen in Court helping parties, giving instructions to Vakils and so forth. These facts if true, were as much within the respondent's knowledge as within the knowledge of any pleader examined. Still he closed his case without himself giving evidence although it was at his instance that the proceedings were initiated. But these are not matters which must weigh with me in dealing with this application.

11. The question is: "" Has any case been made out for my interference? "" On the 4th of March, the District Judge made the order to which reference has been made stating that the details given in the petition were sufficient and that the enquiry should proceed. On the same date two witnesses for the respondent were examined. On the 7th three more; on the 9th and 16th five further witnesses were examined. The petitioner cross-examined the witnesses at considerable length. He had ample opportunity to ascertain what the charges against him were. The witnesses were not examined at a stretch from day to day and after the respondent closed his case on the 16th of March, the petitioner commenced to examine his own witnesses from the 27th of March and the Civil Revision Petition was filed in this Court on the 28th of March. From these facts, it is clear that the petitioner could have no legitimate complaint in regard to the course adopted.

12. I have closely examined the evidence and I shall say nothing about it which is likely to prejudice either party; but I cannot accept the argument

of the learned Advocate-General that there is no evidence to sustain a charge. It will be for the District Judge to act or refuse to act upon the

evidence but I cannot say that there is no material on which he can proceed.

13. On behalf of the petitioner several cases were referred to as authorities for the proposition that the High Court can interfere in revision with

orders made u/s 36 of the Legal Practitioners" Act. I agree that the High Court has undoubted power to interfere. When the lower Courts acting

on no legal evidence whatsoever declared a person to be a tout the High Court in the exercise of its revisional powers set aside the orders. See

Sundara Upadya v. The President of the Mukthears" Association, Chapra (1911) 15 C.W.N. 100, In re Siddeshwar Boral (1901) 19 M.L.J.

504, In Re Somayajulu Ramamurthi (1912) M.W.N. 959, In Re Jonnalagedda Sambayya (1915) 28 I.C. 918 and Keramat Ali v. Emperor

(1921) 62 I.C. 829 . But these cases have no bearing upon the question under consideration.

14. Several other cases were cited by the learned Adovate General. Of these In re A.G. Ganapathi Sastry and Anr. 6 M.L.T. 253 In the matter of

John Thompson of Moulmien (14) W.R. 257 , Suryanarayana Iyer v. Sitharama Sastri (1895) 6 M.L.J. 142 , deal with charges made against legal

practitioners and Ranga Reddi v. King Emperor 38 M.L.J. 97 and Konda Reddi v. King Emperor ILR (1917) Mad. 246 relate to proceedings

under Sections 107 to 112 of the Code of Criminal Procedure. For reasons already given by me these authorities are of little assistance.

15. I am therefore not prepared to hold that the District judge either usurped jurisdiction which he did not possess or acted with material

irregularity. I would therefore refuse to quash the proceedings, but I would observe that, if the petitioner should desire to cross-examine further any

of the witnesses that have already been cross examined, the District Judge should give him the necessary facility. I may add that Mr. T. R.

Ramachandra Aiyar has, on behalf of the respondent, expressed his willingness to produce any witnesses required for further cross-examination.

16. I dismiss this Civil Revision Petition and I do not propose in the circumstances to make any order as to costs.