
(1940) 01 AHC CK 0011
In the Allahabad High Court

Saharanpur Grain Chamber Ltd.

APPELLANT

Vs

Maharaj Singh

RESPONDENT

Date of Decision : 02-01-1940

Acts Referred:

Citation : AIR 1940 All 233 : (1940) 10 AWR 165

Hon'ble Judges : Thom, C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Thom, C.J.—This is an application purporting to be under Sections 115 and 151, Civil P.C., and Section 10, Bar Councils Act. The applicants are the Saharanpur Grain Chamber, Ltd. and they pray that for the reasons given in their affidavit

the Court be pleased to set aside the order of the learned Civil Judge, Saharanpur, dated 16th September 1939, and direct the opposite party not to appear for the defendant in Suit No. 16 of 1938 of the Court of the Civil Judge, Saharanpur, and pass such other and further order as the Hon"ble Court may deem fit and proper.

2. One Jagdish Prasad, who was the cashier of the Saharanpur Grain Chamber, Ltd., was charged u/s 408, I.P.C., with embezzling Rs. 7418. The accused was eventually acquitted, and in his judgment the learned Magistrate who tried the case observed that the remedy of the Saharanpur Grain Chamber, Ltd., lay more appropriately in the Civil Court and it was for them to institute proceedings by way of a suit for accounting against Jagdish Prasad and the manager of the Chamber. The Saharanpur Grain Chamber thereupon decided to consult the opposite party, Mr. Maharaj Singh, an advocate of Saharanpur. He was consulted in April 1937. His opinion was taken upon the advisability of instituting a suit against Jagdish Prasad and the manager of the Chamber, and he was paid a sum of Rs. 10 for his opinion. In May 1938 the applicants filed a suit against Jagdish Prasad only through another counsel. The 17th July 1939 was fixed for the

hearing of the case and upon that date the applicants made an application praying the Court to restrain Mr. Maharaj Singh from appearing for Jagdish Prasad, who had instructed him. The learned Civil Judge of Saharanpur, in whose Court the suit was pending, refused the application of the plaintiffs. He held, upon a consideration of the evidence, that during the consultation of Maharaj Singh by the plaintiffs nothing of a confidential nature was imparted to Mr. Maharaj Singh and that therefore the plaintiffs could not suffer any prejudice by Mr. Maharaj Singh appearing for the defendant.

3. The applicants have presented this application in which they pray that the order refusing their application in the Court below be set aside, or that this Court should, in virtue of its powers u/s 151, Civil P.C., pass such order as it thinks proper. So far as the application is one u/s 115, it must fail. The learned Civil Judge has not been guilty in disposing of the application of the plaintiffs in the suit of any material irregularity, nor has he refused to exercise his proper jurisdiction, nor has he exercised any jurisdiction with which he is not vested. I do not consider it necessary to decide the question as to whether this Court has jurisdiction to grant an order, in the circumstances, restraining Mr. Maharaj Singh from appearing for the defendant in the suit instituted by the plaintiffs against him, in view of the conclusion at which I have arrived upon a consideration of the merits of the application. An advocate who has been consulted by one party to a litigation may not appear on behalf of the other party, if the first party has conveyed to him any information of a confidential nature regarding the dispute between the parties. In this connexion reference may be made in the first place to Rule 3 of the Bar Council Rules framed by the Bar Council of this Court under the Bar Councils Act of 1926. Rule 3 is in the following terms:

No advocate can be required to accept a retainer or brief or to advise or draw pleadings in any case where he has previously advised another party on or in connexion with the case, and he ought not to do so in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by the other party or his action would be inconsistent with the obligation of any retainer held by him, and in any such case it is his duty to refuse to accept such retainer or brief or advise or to draw pleadings, and in case such retainer or brief has been inadvertently accepted, to return the same.

4. Now, in the present case, there is no question of a retainer having been paid to Mr. Maharaj Singh by the applicants. In their affidavit the applicants aver that they paid Mr. Maharaj Singh the sum of Rs. 10 for his opinion on the question as to whether a suit against Jagdish Prasad should be instituted. As already observed, the learned Civil Judge has held that no information of a confidential nature was conveyed by the applicants' representatives to Mr. Maharaj Singh during the course of their consultation with him. It was contended, however, for the applicants that during the course of the consultation confidential information must have been conveyed to Mr. Maharaj Singh. In his evidence in the Court below, Mr. Maharaj Singh swore that he merely read the judgment in the criminal

proceedings against Jagdish Prasad and that no confidential information was imparted to him by the plaintiffs" representatives. The duty of an advocate who has been consulted by a party to a litigation who subsequently retains another counsel to conduct the litigation was considered in *U Ko Ko Gyi v. U San Mya* (1930) AIR Rang 365. In that case a Bench of the Rangoon High Court upheld the order of the District Judge restraining a counsel from appearing for the defendants in a case in which he had been previously consulted by the plaintiffs. Upon a consideration of the evidence the learned Judges were satisfied that during the course of the consultation with counsel the plaintiffs had given him certain information which would be of use to him as counsel for the defendants. This, as already observed, was the decision by the learned District Judge. In the course of the judgment of the High Court, reference is made to the law upon the point in England as it has been expounded in Halsbury's passage quoted as follows:

Counsel ought not to accept a brief against a party, even though the party refuse to retain him, in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by that party.

5. The clear implication of this exposition of the law is that if no confidential information were conveyed to him, counsel would be free to accept a brief against a party who consulted him. In this connection reference may be made to the case in *Cholmondeley v. Clinton* (1815) 19 Ves 261. In the course of his judgment in that case Lord Chancellor Eldon observed:

The practice of the Bar in my time was this: If a retainer was sent by a party against whom the counsel had been employed, the retainer being in a cause between the same parties, the counsel, before accepting it, sent to his former client, stating the circumstances, and giving him the option. That has, I believe, been relaxed; and the course now is as it has been represented at the Bar. I do not admit that he is bound to accept the new brief. My opinion is that he ought not, if he knows anything that may be prejudicial to the former client, to accept the new brief, though that client refused to retain him.

6. The question as to whether counsel was free to accept a brief against a party who had consulted him was considered in *Pallonji Merwanji v. Kallabhai Lallubhai* (1888) 12 Bom 85. In the course of his judgment in that case West J. deduced a number of principles from the English cases to which he referred. These principles are as follows:

1. A party to a judicial proceeding is entitled to such professional assistance as he thinks will best suit him.
2. A pleader is free to place his services at the disposal of any such party upon such terms as he may think most advantageous to himself consistently with the honour of his profession and the due administration of justice.
3. A pleader who receives any confidential information from his client in the

course of his professional employment is not at liberty to carry that information into the service of his antagonist, or anyone who in that very litigation or in any subsequent litigation may be opposed to the client furnishing the information.

7. Upon a consideration of the evidence in that case the Court held that the lawyer whom it was sought to have restrained from appearing against the party who had consulted him had not, in fact, received in the course of consultation any information of such a nature that it would have prejudiced the party who had consulted him. In other words, the lawyer had not received any information of a confidential nature which would have been carried into the service of the antagonist of the party who had consulted him. It appears to me from a consideration of the authorities which have been cited that the law is not in doubt. An advocate who has been consulted by one party is perfectly free to accept a brief against him, if he has not received from him any information of a confidential nature which would be of use against that party in the litigation. This appears to me to be only common sense. The law is not, as was contended by learned Counsel for the applicants that once an advocate has been consulted by one party, he may not accept a brief against that party, no matter what may have been the nature of the information conveyed to him during the course of the consultation. No doubt litigants are entitled to protection against unscrupulous members of the legal profession; but the members of the legal profession are equally entitled to protection against unscrupulous litigations and if the law were that once a counsel was consulted by one party, he could not under any circumstances accept a brief against him, the position of the legal profession would be parlous indeed.

8. The whole matter therefore turns upon the answer to the question, did the applicants' representatives convey any confidential information to Mr. Maharaj Singh when they consulted him. The onus of proving that confidential information was conveyed lay, and lay heavily, upon the applicants, and in this connexion reference may again be made to the observations of West J. in *Pallonji Merwanji v. Kallabhai Lallubhai* (1888) 12 Bom 85. Now the averments of the applicants in their affidavit are vague and, in my judgment lacking in specification. The learned Civil Judge, after hearing the witnesses, reached the conclusion that no confidential information had been imparted to Mr. Maharaj Singh. Indeed, the learned Judge observes towards the close of his judgment:

I am positively of the opinion that the applicant has presented this application maliciously with some ulterior motive. I find absolutely nothing unprofessional in the conduct of Maharaj Singh Vakil, nor do I feel at all satisfied that any confidential information was given by Sri Ram to B. Maharaj Singh during the consultation which he had with him, or that the plaintiff in any way suffers any loss by B. Maharaj Singh conducting the defence in the suit.

9. It is a point not without significance that the application to have Mr. Maharaj Singh restrained from appearing for the defence was not presented until long after he had been instructed by the defendant. The applicant's suit was filed in

May 1938. The defendant's written statement was filed on 27th July 1938. This written statement was signed by Mr. Maharaj Singh. On 1st September 1938 issues were framed when counsel for both sides including Mr. Maharaj Singh for the defendant were present. It was not until July 1939 however that an application was made to restrain him from appearing for the defendant. I find it difficult to believe that the plaintiffs were unaware that Mr. Maharaj Singh had been engaged for the defendant in their suit. I find it equally difficult to believe that the plaintiffs' counsel were unaware that Maharaj Singh had been consulted by the applicants. The natural inference in the circumstances is that neither the applicants nor their counsel entertained any idea that Mr. Maharaj Singh was in possession of any confidential information which would have been of use to him in the conduct of the defence. Upon the whole matter I am satisfied that there is no reason whatever for interfering with the order of the learned Civil Judge of Saharanpur. Further I am of opinion that the applicants have failed to show sufficient ground to justify this Court u/s 151, Civil P.C., in granting an injunction restraining Mr. Maharaj Singh from appearing for Jagdish Prasad, the defendant, in Suit No. 16 of 1938. In the result the application is dismissed with costs.