

there was any chance of recovering such costs from him. The infant should not be ordinarily burdened with such costs if they can be avoided. This case has not taken beyond a day's hearing and was necessary to institute to have the charge declared, and it does not seem to me unjust to make the order for costs as above made.

W. M. C.

1915
 KUMAR
 KRISHNA
 DUTT
 v.
 HARI
 NARAIN
 GANGULY.

CIVIL REFERENCE.

Before D. Chatterjee and Beachcroft JJ

*In re POORNA CHANDRA ADDY.**

Unprofessional Conduct—Pleader as litigant—Letter to Munsif threatening legal proceedings to recover costs, in execution proceedings, incurred owing to the negligence of the Court Officer—Legal Practitioners Act (XVIII of 1879) ss. 13(b) and 14—Anonymous communication—Contempt of Court.

1915
 Dec. 22.

Where a pleader who was a decree-holder in a certain suit associated himself with his co-decree-holder in a notice to the Munsif threatening legal proceedings to recover costs in an execution proceeding incurred owing to the negligence of the Court Officers though the pleader did not sign the notice :—

Held, that what was done by the pleader was done by an individual in the 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 connection whatever with his professional character or anything done by him professionally, and that this case was not one within s. 13(b) of the Legal Practitioners Act.

In re Wallace (1), *In the matter of Jogendra Narayan Bose* (2), *In re a Pleader* (3), *In the matter of a first grade Pleader* (4), and *In the matter of Sarat Chandra Guha* (5) referred to.

* Civil Reference No. 6 of 1915, under s. 14 of the Legal Practitioners Act, by H. Allanson, District Judge of Cuttack, dated May 1, 1915.

(1) (1866) L. R. 1 P. C. 283.

(3) (1907) 18 Mad. L. J. 184.

(2) (1900) 5 C. W. N. 48.

(4) (1900) I. L. R. 24 Mad. 17.

(5) (1900) 4 C. W. N. 663.

1915

— —
 POORNA
 CHANDRA
 ADDY,
In re.

REFERENCE under s. 14 of the Legal Practitioners Act.

One Poorna Chandra Addy, a pleader practising in the courts at Puri, and his cousin, Mahesh, obtained a joint decree in a suit before the second Munsif of Puri. On the date fixed for sale in execution of the decree the decree-holders discovered that the sale-proclamation had not been duly published owing to the negligence of the Court Officers. They, thereupon, applied for a fresh sale-proclamation. This application was dismissed by the Munsif and the case was struck off with the result that the whole cost of the execution proceeding was lost for no default of the decree-holders. The decree-holders having obtained legal advice as to whether they could recover damages from the Munsif, wrote to him to the following effect: "We have by your illegal and unwarrantable conduct as aforesaid suffered a loss of Rs. 7-7-3, being the amount of costs incurred as specified below. I hereby give you notice that both the aforesaid Babu Poorna Chandra Addy and myself shall adopt legal proceedings against you for the said sum." This letter was actually written by Poorna Chandra Addy and signed only by Mahesh. The Munsif made a report in this matter to the District Judge, who instituted proceedings against Poorna Chandra Addy under s. 14 of the Legal Practitioners Act, calling on him to show cause why he should not be reported to the High Court as guilty of grossly improper conduct in the discharge of his professional duty. After hearing pleader on behalf of Poorna Chandra Addy, the District Judge made the following reference to the High Court:—

1. "The above-named pleader and Babu Mahesh Chandra Addy are joint decree-holders. They took out execution of their decree in execution case No. 995 of 1914 in the Court of the 2nd Munsif of Puri. A copy of the order sheet of this case (marked B) is on the record. The Munsif dismissed the case as infructuous for the reasons given in his order of

15th February 1915. On the 26th February he received the letter marked A, dated 25th February. It is in the handwriting (admittedly) of Babu P. C. Addy, pleader, one of the joint decree-holders. It is in the name of both decree-holders, but is signed only by Babu M. C. Addy. It is a notice to the Munsif that the two decree-holders are going to take legal proceedings against him for Rs. 7-7-3 the costs incurred in the execution proceedings. The letter was sent to me by the Munsif.

2. The notice marked C, dated 15th March 1915, is a notice from me on the pleader under section 14 of the Legal Practitioners Act, calling on him to show cause why he should not be reported to the High Court as guilty of grossly improper conduct in the discharge of his professional duty (section 13(b)).

To the notice is attached the charge.

The pleader has not appeared in person before me, but appeared through another pleader of this Court. A suggestion made by me that an apology should be offered was not accepted.

3. Briefly the charge against the pleader is that knowing full well that no suit could lie against the Munsif in respect of his dismissal of the execution case, he was guilty of grossly improper conduct in the discharge of his professional duty by writing this letter in his own name and in that of the other decree-holder, and that his action was not *bonâ fide* and was dictated by a desire to harass the Munsif.

4. There can be no question that in view of the provisions of Act XVIII of 1850 no suit could lie against the Munsif in respect of the order passed by him dismissing the execution case. It was argued before me that this Act only protects the Munsif if he acted in good faith, and the suggestion was made that the Munsif's action was *malâ fide*. Not the slightest attempt was made to show how his action was *malâ fide*, and this suggestion in my opinion only aggravates the original offence. It is not my duty in this proceeding to discuss whether or not the Munsif's order was legal. If it was illegal, the decree-holders had a means of redress by moving the higher judicial authorities. Any Court may err in law.

5. It was also argued that if the notice was mere waste paper, it should be treated as such. Of course if the notice had not been written by a pleader, the present proceedings could not be taken, and the suit might be awaited. But if the notice is a mere empty threat, the Pleader's conduct is in my opinion indefensible.

6. It was of course argued that the pleader wrote the letter as a private party, *i.e.*, as a litigant, and therefore he could not be guilty of professional misconduct.

It is noteworthy that despite the fact that the pleader wrote the letter in his own name and in that of his co-decree-holder, he did not himself sign

1915
 POORNA
 CHANDRA
 ADDY,
In re.

1915

POORNA
CHANDRA
ADDY,
In re.

it. That very fact would show that his action was not *bond fide*. He does not of course plead that he wrote as a legal practitioner at the dictation of his client.

7. The real question for decision in this matter appears to me to be, whether a pleader, who is a party in a suit, is at liberty to write to the Munsif who has passed an order of which he disapproves, threatening him with a suit for recovery of the costs incurred in the suit when as a pleader he must know perfectly well that no such suit can lie.

It does seem to me that a pleader who acts like this is guilty of grossly improper conduct in the discharge of his professional duty. A litigant who is not a legal practitioner, may write such a letter, if he likes. He may even think that such a suit would lie and may in that case bring it, But a pleader knows that no such suit would lie, and of course he would not waste his money by bringing it. How then can his action be *bond fide*? The object of the letter is obvious. The intention of the pleader who wrote it in his own name—though he shrunk from signing it—could only be dictated by *mala fides* and by a desire to harass, annoy and browbeat the Munsif.

8. If such conduct on the part of a pleader who is himself a litigant is not improper professional conduct, then every Judge who passes an order that does not commend itself to the pleader litigant, may be exposed to receiving a letter of this kind threatening him with legal proceedings for "illegal and unwarrantable conduct." The gravamen of the charge is that he knew no such suit would lie, and that his threat was an empty one.

9. It was argued that in any case his conduct could not come within sub-sections (a) and (b) of section 13, and that therefore this Court had no right to take action under section 14. I am of opinion that what he has done does come within section 13 (b), at any rate for this reason that he does not sign the letter as a litigant. It is in his handwriting and is signed by the other party to the suit. If he wrote it as a litigant he should have signed it. It appears to me that it may be held he wrote the letter as a legal adviser. He has been very clever in the matter. For as it is in their joint names he may argue that he wrote as a litigant, yet if he wrote as a litigant why did he not sign it himself?

10. I consider it my duty to report the whole matter under section 14 to the High Court for such orders as the Hon'ble Judges may think fit. I come to a finding that he is guilty of grossly improper conduct in the discharge of his professional duty by writing this letter, and I consider that he should be suspended for a period as a warning.

Babu Sarat Chandra Ray Chowdhury, Babu Satya

Charan Sinha and *Babu Dharendra Krishna Roy*, for the petitioner.

The Senior Government Pleader (Babu Ram Charan Mitra), for the opposite party.

Cur. adv. vult.

D. CHATTERJEE J. Babu Poorna Chandra Addy is a pleader practising in the Courts at Puri. He and his cousin Mahesh had an execution case before the second Munsif of Puri. On the date fixed for sale, the decree-holders found out that the sale-proclamation had not been duly published. They applied for the issue of a fresh sale-proclamation on the ground that the non-publication was due to the negligence of the Court officers. If the facts were, as stated above, the most proper and just course for the learned Munsif would have been to grant the application. He rejected it, however, and struck off the case and the whole cost of the execution was lost for no default of the decree-holders. They were naturally annoyed and took legal advice as to whether they could recover damages from the Munsif. It is said that they were advised that such a case would lie, their advisers relying on the case of *Tarucknath Mookerjee v. The Collector of Hooghly* (1). Mahesh insisted upon fighting out this case and a notice was given to the Munsif signed by Mohesh but written out by Babu Poorna Chandra to the following effect—"We have by your illegal and unwarrantable conduct as aforesaid suffered a loss of Rs. 7-7-3 being the amount of costs incurred as specified below. I hereby give you notice that both the aforesaid Babu Poorna Chandra Addy and myself shall adopt legal proceedings against you for the said sum." The learned Munsif made a report to the District Judge of Cuttack and the said officer instituted

1915

POORNA
CHANDRA
ADDY,
In re.

(1) (1870) 13 W. R. 13.

1915
 POORNA
 CHANDRA
 ADDY,
In re.
 CHATTERJEE
 J.

proceedings under section 14 of the Legal Practitioners Act against Babu Poorna Chandra for grossly improper conduct in the discharge of his professional duty, inasmuch as the letter of notice was in his handwriting and must have been written with his knowledge and by his advice and inasmuch as he knew that no such suit would lie, his action in writing it and allowing it to be signed by Mahesh was not *bonâ fide* and was dictated by a desire to harass the Munsif. Babu Poorna Chandra in showing cause said that the notice was given under legal advice without any intention of harassing the learned Munsif and even if the advice was wrong he had acted *bonâ fide* as a litigant in the exercise of his legal rights and not as a pleader acting for a client, and no charge of professional misconduct would lie.

The learned Judge asked him to apologise, but he chose to stand upon his legal rights and did not. The learned Judge has, therefore, made this reference under section 14 of the Legal Practitioners Act holding that the pleader was guilty of grossly improper conduct in the discharge of his professional duty.

It is contended before us that the reference is incompetent and should be discharged.

I think that this contention is right. What was done in this case was done "by an individual in the 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 connection whatever with his professional character or anything done by him professionally:" see *In re Wallace* (1), *In the matter of Jogendra Narayan Bose* (2), *In re a pleader* (3), *In the matter of a first grade pleader* (4). The learned senior Government pleader, who appeared in this case

(1) (1866) L. R. 1 P. C. 283.

(3) (1907) 18 Mad. L. J. 184.

(2) (1900) 5 C. W. N. 48.

(4) (1900) I. L. R. 24 Mad. 17.

on notice from the Court, did not support the reference as one warranted by clause (b) of section 13, but he said that the language used was intemperate and as the pleader did not accept the invitation of the Judge to make an apology, he deserved some censure by this Court. The language was perhaps a little harsh, but it was the language of a litigant smarting from what he considered a wilful disregard of his just rights merely for the sake of administrative despatch when the greater part of the fault was not with him but with the office of the Court. Then again the part that he took in helping his co-litigant to give the notice was an insignificant one: he merely copied the letter and refrained from joining openly in the assertion of what he was advised was his legal right. It is admitted by his learned vakil that the advice was wrong, and in the absence of malice his client had no right to maintain a suit for damages for a judicial act, but that does not take the case further than *this that he and his advisers committed an error of law*. No doubt the error was rather serious in this case as it led to a breach of that amity and mutual understanding which should always exist between the Bench and the Bar. Justice to the litigant is the end for which the Bench and Bar are the means and the powers of the one and the privileges of the other are ordained for the attainment of that end by their harmonious co-operation. It is to be regretted, therefore, that there was a discord in this case. The error however, was nevertheless an error of law which cannot be treated as professional misconduct: see *In the matter of Sarat Chandra Guha* (1). He has, however, in this Court through his vakil expressed his regret for what has happened and there is an end of the matter.

1915
 POORNA
 CHANDRA
 ADDY,
In re.
 CHATTERJEE
 J.

1915

POORNA
CHANDRA
ADDY,
In re.
CHATTERJEE
J.

I may, in this connection, mention that while the case was awaiting judgment, I received a type-written envelope posted at Puri and enclosing some newspaper cuttings containing aspersions against the Munsif concerned in this case. Babu Poorna Chandra, through his vakil, disowns all knowledge of this and expresses his regret that any body should have done it. I accept his statement and hold him blameless in the matter. I think it my duty, however, to say that whoever may be responsible for the sending of these cuttings in an anonymous cover with a type-written superscription which cannot be identified, is guilty of a gross contempt of Court. It is an attempt to interfere with the due administration of justice; it is unfair to the party for whose benefit it is done; it is unfair to the party slandered who has no means of meeting it, and it is unfair to the Court which might, humanly speaking, be unconsciously influenced without being able to deal with the perpetrator in due course of law. Conduct like this is cowardly ungentlemanly, and in the highest degree reprehensible, and I hope no one connected with the Puri Bar had any hand in it.

In this view of the case, I discharge the Rule.

BEACHCROFT J. I agree that the Reference ought to be discharged on the ground that the case is not one within section 13 (b) of the Legal Practitioners Act. I am, however, sceptical of the truth of the pleader's allegations that he took and acted on other legal advice in sending the objectionable letter to the Munsif. But even if it be assumed that it was sent with the intention of annoying the Munsif, I do not think it necessary to take any further notice of the matter.

We have no explanation from the Munsif as to why he rejected the prayer for issuing a fresh sale-proclam-

ation in the execution proceedings, but on the facts stated his order dismissing the execution case appears to be wholly indefensible. The Munsif ought to have been thankful to the decree-holders for bringing to his notice the defect in the execution proceedings, and incidentally in the working of his office, instead of penalizing them for it. Human nature being what it is, one must not view the action of the pleader too seriously. Having had time for reflection, he would have been well advised to accept the suggestion of the learned District Judge and offer an apology to the Munsif. I am not impressed by the offer of an apology in this Court at the eleventh hour when the pleader felt that he might get into trouble. But in the circumstances the matter may now be allowed to rest.

I associate myself with the strictures of my learned brother on the sending of anonymous communications.

O M.

1915

POORNA
CHANDRA
ADDY,
In re.

BEACHCROFT
J.