

## APPELLATE CIVIL.

*Before Subramanyam and Jack JJ.*

HARENDRA NARAYAN CHAKI

v.

1928  
Nov. 27.SECRETARY, BAR ASSOCIATION, JAMALPUR  
(MYMENSINGH).\**Legal Practitioner—Tout—Evidence of general repute—Resolution of Bar Association, when sufficient—Direct evidence of receipt of remuneration, if necessary—Inference from circumstances and conduct—Legal Practitioners Act, (XVIII of 1879) as amended by Act XV of 1926, ss. 3, 36 (1).*

A resolution passed by a majority of members of a Bar Association present at a meeting of the Association convened for the purpose of considering whether a person is a tout is sufficient evidence of the general repute of such person within the meaning of section 36 (1) of the Legal Practitioners Act (XVIII of 1879).

*Ugam Prasad Pandey v. King Emperor (1)* distinguished.

Direct evidence of receipt of remuneration by a person for procuring legal work is not necessary under section 3 of the Legal Practitioners Act; the court can infer this from circumstances and the conduct of such person to proclaim him as a tout.

*In the Matter of the Petitions of Kalka Prasad (2)* referred to.

CIVIL RULE obtained by Harendra Narayan Chaki, the petitioner.

The petitioner was for a number of years a clerk in the service of a pleader who practised at Jamalpur in the district of Mymensingh. After the death of his master several years ago he joined the office of a junior pleader who left him after a short time. The petitioner then opened an office of his own within the court compound with an assistant under him and attended the courts regularly from 11 A.M to 6 P.M. during which he used to look after cases of clients, paid pleaders, realised costs, engaged pleaders, realised fees for them and did other works for clients in connection with the management of their cases. On

\*Civil Rule, No. 959 of 1928, against the order of the District Judge of Mymensingh, dated May 26, 1928.

(1) (1927) I. L. R. 6 Pat. 567. (2) (1917) I. L. R. 40 All. 153.

the 17th December, 1927, 7 members of the Jamalpur Bar Association sent in a requisition to the president to convene a meeting of the Association to institute an enquiry and declare the petitioner and some others as touts and report them to the authorities. On the 19th December following, a meeting of the Association was held accordingly, which was attended by 29 out of 43 members, in which the petitioner and another were declared to be touts and the secretary of the Association reported them to the Munsif. The Munsif then held an enquiry and examined a number of witnesses both for and against the petitioner, in which nothing transpired as to the passing of any remuneration for legal work procured by the petitioner to any legal practitioner. The Munsif, however, reported the petitioner to the District Judge, who, acting on the report, proclaimed the petitioner as a tout under section 36 of the Legal Practitioners Act. The petitioner, thereupon, moved the High Court and obtained this Rule.

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*Mr. Sureshchandra Talukdar*, for the petitioner.

*The Senior Government Pleader, Mr. Surendranath Guha*, and *the Assistant Government Pleader, Mr. Nasim Ali*, for the opposite party.

SUHRAWARDY J. This Rule is directed against an order of the District Judge of Mymensingh declaring the petitioner Harendra Narayan Chaki a tout under section 3 of the Legal Practitioners Act. The point taken on his behalf and seriously pressed by Mr. Talukdar is that there is no evidence bringing him under the definition of "tout" as given in section 3. According to that definition, a "tout" is one who procures, in consideration of any remuneration, moving from any legal practitioner, the employment of the legal practitioner in any legal business: or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business.

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The matter has come before us in revision and we have to see if the order of the court below is unsupported, there being such absence of evidence as to induce us to hold that the order was passed without jurisdiction or with material irregularity.

We have in this case a resolution of the Jamalpur Bar Association declaring the petitioner a tout. Such resolution has now been made evidence of general repute by the amendment in 1926 of section 36 of the Legal Practitioners Act. If this resolution is good and in conformity with the requirements of the law, there is evidence in support of the Judge's order that the petitioner is a tout; but it is argued by Mr. Talukdar that the resolution passed was not duly passed and cannot be validly treated as evidence in the case. The findings of the Munsif, who originally dealt with the matter, and of the learned District Judge are that a special meeting was convened for the purpose of considering the matter of the petitioner and, out of 43 members of the Association, 29 members were present and they passed a resolution declaring the petitioner a tout. There does not seem to be any irregularity in the proceeding by the Bar Association; but Mr. Talukdar says, that the meeting at which such a resolution was passed was not one of the entire body of the members of the Association inasmuch as only 29 out of 43 members were present at the meeting. The law does not require that all the members should be present at the meeting but requires that a meeting of the Association should be convened for the purpose of considering whether a certain person is a tout: and if by a majority of the members present at such a meeting a resolution is passed it is to be considered as a resolution of an Association of persons entitled to practice as legal practitioners in court. The courts below have also proceeded upon certain facts in order to hold that the petitioner is a tout within the meaning of the law. Undoubtedly there is no direct evidence to show that the petitioner received remuneration from any legal

practitioner. But certain facts were placed before the learned District Judge from which the learned District Judge has observed that the irresistible inference to be drawn from his admitted conduct is that he is a tout and received remuneration from legal practitioners. In this connection the learned advocate for the petitioner has drawn our attention to the case of *Ugam Prasad Pandey v. King Emperor* (1). In that case the resolution of the Bar Committee was held not to have been legally passed. In that case, the Bar Association appointed a small committee of 7 persons to enquire into the matter of the petitioner in that case and this small sub-committee held that the petitioner was a tout. The learned Judges remarked that such a resolution was not a resolution within the meaning of the law. I am not called upon to consider whether in that case the view expressed there is correct, but I am not prepared to say in this case that the view taken by the Judge is wrong. The next point upon which the judgment in that case proceeded was that there was no direct evidence that the petitioner received any remuneration from a legal practitioner. The learned Judge who delivered the judgment had accepted the arguments of the counsel for the petitioner in that case that the mere fact that a person makes it his business to act as general agent and to find legal practitioners for those who want legal aid without being bound as clerk or otherwise to any one legal practitioner does not constitute such person a tout. As a bare proposition of law the argument looks unassailable. But there may be circumstances from which the court is entitled to draw a legal inference. The Legal Practitioners Act, as it originally stood before its amendment in 1926, made it obligatory upon the prosecution to prove that the person accused receives remuneration from legal practitioners. Even at that time it was held in some cases that this proof may be supported by circumstances leading to the inference that the person accused was in the habit of receiving remuneration from legal practitioners. It was held by Walsh J. in the case of

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*In the matter of the Petitions of Kalka Prasad* (1) that it is a reasonable and legitimate inference of fact that if a man is shown to spend the greater portion of his working hours in canvassing and introducing clients to members of the profession, he is not rendering gratuitous service such as a casual friend or acquaintance may do. The learned Judges in *Ugam Prasad Pandey v. King-Emperor* (2) also did not lose sight of this principle and observed, while remanding the case to the court below, that there might "be evidence on the record showing that remuneration moved from legal practitioners, or giving rise to a reasonable inference that it so moved." It is ordinarily difficult for the prosecution by evidence of the legal practitioners to prove moving of remuneration from them and in order to facilitate the proof of such conduct on the part of the person accused the legislature thought it fit to amend section 36 by making evidence of a general repute admissible against the person accused. There can be no doubt that the courts below were within their rights to draw legitimate inference from the facts before them as to the probability of the petitioner receiving remuneration from legal practitioners and this is in accordance with the definition of "proved" in the Evidence Act.

In the present case, the facts, as succinctly stated by the Munsif in his judgment, are that it has been admitted and proved by the evidence on both sides that Harendra Narayan Chaki attends courts regularly every day from 11 A.M. to 6 P.M., looks after cases of clients, even pays to pleaders and realises costs and engages pleaders and realises also fees for pleaders. From these facts we cannot say that the inference drawn by the courts below was unjustifiable.

The result is that this Rule fails and must be discharged.

JACK J. I agree.

*Rule discharged.*

A. A.

(1) (1917) I. L. R. 40 All. 153.

(2) (1927) I. L. R. 6 Pat. 567.