

CIVIL REFERENCE.

1938

Jan. 11.

Before Jack and Patterson JJ.

EMPEROR

v.

SACHINDRA NATH MOULIK.*

Legal Practitioner—Unprofessional conduct—Allegations amounting to a criminal charge—Proper procedure—Legal Practitioners Act (XVIII of 1879), ss. 13(b), 14.

When an allegation is made against a legal practitioner of an act of professional misconduct, *e.g.*, dissuading a client by means of threats from making a voluntary confession, the proper procedure is to prosecute him criminally in the first instance before bringing proceedings under the Legal Practitioners Act, which being summary proceedings in the nature of a summons trial, are otherwise likely to prejudice him.

REFERENCE made by the District Magistrate through the Sessions Judge against a *mukhteâr* under s. 14 of the Legal Practitioners Act.

The *mukhteâr* was charged with improper conduct in the discharge of his professional duty by making gestures to his client, who was an accused in a case of dacoity, and thereby putting him to fright and dissuading him from making a voluntary confession, which he had expressed a desire to do and for which he was produced before a Deputy Magistrate. The District Magistrate, thereupon, took cognisance of the matter, held an enquiry and reported his findings to the High Court through the Sessions Judge under s. 14 of the Legal Practitioners Act. There were other two charges besides intimidation but the Sessions Judge in his letter of reference expressed the opinion that the evidence with regard to them was not satisfactory.

*Civil Reference No. 8 of 1937, made by Mahammad Mahmud, District Magistrate of Pabna, dated Sep. 16, 1937, under s. 14 of the Legal Practitioners Act.

Assistant Government Pleader, Ramaprasud Mukhopadhyaya, for the Crown. Of the three counts on which the *mukhteâr* was charged two have not been believed by the Sessions Judge and I do not press them. But the third charge, *viz.*, intimidating an accused person by gestures and thereby deterring him from making a voluntary confession has not been disbelieved by the Sessions Judge. There is sufficient evidence to show that the *mukhteâr* drew his hand across his own throat thereby conveying the impression to the accused that in case he confessed his throat would be cut. The Sessions Judge, however, has expressed some doubt as to whether the District Magistrate had jurisdiction to take cognisance of the matter, seeing that the occurrence took place before another Magistrate. Although there is some divergence of judicial opinion amongst different High Courts as to the question of jurisdiction in such cases, so far as the Calcutta High Court is concerned the matter is concluded against the *mukhteâr* by the decision in *In re Rabindrachandra Chatterjee* (1). On the merits of the case the law is quite clear. It has been held that intimidating a witness with a view to prevent him from giving evidence is professional misconduct. *In re Har Prasad Singh* (2).

Surajit Chandra Lahiri for the *mukhteâr*. I give up my objection to jurisdiction of the District Magistrate and confine my submission to the merits of the case. The facts alleged by the Crown constitute the offence of criminal intimidation punishable under s. 506 I.P.C. The Crown did not think it proper to prosecute the *mukhteâr* criminally and the omission to prosecute constitutes a bar to the proceedings under s. 14 of the Legal Practitioners Act. *In the matter of Rajendra Kumar Datta* (3); *Emperor v. Satish Chandra Singha* (4) and *King-Emperor v. Prasanna Kumar Das* (5). A criminal prosecution may not be a pre-requisite to the initiation of disciplinary

1938
—
Emperor
v.
Sachindra
Nath
Moulik.

(1) (1922) I. L. R. 49 Cal. 850.

(3) (1925) 30 C. W. N. 186.

(2) [1918] A. I. R. (All.) 136.

(4) (1927) I. L. R. 54 Cal. 721.

(5) (1933) 38 C. W. N. 87.

1938
 —
 Emperor
 v.
 Sachindra
 Nath
 Moulik.

action, but as a matter of appropriate procedure such action must be preceded by a criminal prosecution. *In re Chandī Charan Mitter* (1). Otherwise, the legal practitioner may be prejudiced in his defence in a summary investigation. Here the evidence shows that the *mukhteâr* was simply pointing out that by making a confession the accused was putting a noose round his neck and this does not amount to unprofessional conduct.

Mukhopadhyaya, in reply. It is true that there are cases which show that the appropriate procedure is to have a conviction in a criminal Court before taking disciplinary action in such cases, but no case has gone the length of saying that a criminal prosecution should be a condition precedent. In this case there has been no prejudice to the *mukhteâr*, as all the defences which might have been available to him in a criminal Court were open to him here.

JACK J. This is a Reference under s. 14 of the Legal Practitioners Act made by the District Judge of Pabna and Bogra in connection with a proceeding against a *mukhteâr*, Babu Sachindra Nath Moulik, under ss. 13(b) and 14 of the Legal Practitioners Act. The charge was that the *mukhteâr*, practising in the criminal Courts, Pabna, having been engaged by the accused in the case of *Emperor v. Hurmaj Sander and Afaz Taluqdar and others* under s. 395 of the Indian Penal Code has been guilty of fraudulent and grossly improper conduct in the discharge of his professional duty. The charge was worded as follows:—

(1) That on or about December 3, 1935, when the accused Hurmaj was produced before the Deputy Magistrate of the Sadar Sub-Division for record of his confession he made gestures to him for inducing him not to make confession as the result of which Hurmaj declined to make any voluntary statement on that date;

(2) That in his attempt to prevent the aforesaid accused from making a voluntary statement he frequently interviewed the accused in jail between December 3, 1935, and January 23, 1936, for the purpose of tampering with the evidence and got the said accused to sign a petition for bail before

the Sessions Judge without informing him of its contents and himself swore a false affidavit which was filed with the aforesaid petition in the Court of the Sessions Judge on January 7, 1936; and

(3) That he sent a telegram on January 20, 1936, showing that he was persisting in his attempt to tamper with evidence by deterring the accused from making his confession.

In the opinion of the learned Judge, the evidence as regards the last two counts is not convincing and, therefore, he does not make a Reference on those charges. But as regards the first count he says that if the District Magistrate before whom the misconduct was alleged was the proper authority to initiate the enquiry, then in his opinion the *mukhteâr* was guilty of professional misconduct. It is not disputed that the proceedings of the District Magistrate were in order, and, therefore we have to consider the first charge under which the learned Judge is of opinion that he was guilty of professional misconduct. The other charges, we think on the recommendation of the learned Judge and also on a consideration of the proceedings, have not been clearly made out. As regards the first charge also, we are of this opinion.

The finding of the Magistrate is that the *mukhteâr* made on the 3rd December threatening and intimidating gestures towards Hurmaj Sander for the purpose of dissuading him from making a confession. He finds that the statement of Hurmaj as to the gestures is corroborated by the evidence of the witnesses. The statement is that—

While deposing in the Court the *mukhteâr* looked daggers at him in the Deputy Magistrate's Court room and when he came to the *verandâh* the *mukhteâr* came and shook his head towards him and by running his hands across his throat made a gesture about cutting Hurmaj's throat. This frightened him and he did not confess on that date.

In support of this statement we have the evidence of the Magistrate's orderly, the evidence of Sudheer Kumar Bhattacharjya, a constable and watcher of the Criminal Investigation Department, who was at the Court at the time, the evidence of the Inspector of Police and also the evidence of the Assistant Sub-Inspector as well as the statement of the accused

1938
—
Emperor
v.
Sachindra
Nath
Mouluk.
—
Jack J.

1938
 —
 Emperor
 v.
 Sachindra
 Nath
 Moulik.
 —
 Jack J.

Hurmaj himself. With reference to this evidence, it must be remembered that this occurrence took place on December 3, 1935, and these proceedings were not drawn up until March 13, 1937. The report of the Inspector who made an enquiry into the matter was forwarded to the Magistrate on July 31, 1936. Consequently, these witnesses are giving evidence about fifteen months after the occurrence. Further, all the witnesses are police witnesses, with the exception of the orderly of the Magistrate. We find that this occurrence was not brought to the notice of the Magistrate at the time, and apparently it was not brought to his notice before Hurmaj made the confession on January 23, 1936, although Hurmaj must have been produced before him several times. It is not also mentioned in the petition which Hurmaj made to the Magistrate on the 20th January. There are also discrepancies in the evidence. Sudheer, the orderly, says that these gestures were made when he was bringing Hurmaj back to the Court. [He had been taken out to the *verandâh* during the period which was given to the accused by the Magistrate for consideration before recording his confession.] He was taken out to the *verandâh* by the orderly who says that when he was bringing back the accused into the Court room these gestures were made. Hurmaj himself says on the other hand that the gestures were made as he came out into the *verandâh*. Sudheer Bhattacharjya says that he informed the Assistant Sub-Inspector at the time and the Assistant Sub-Inspector says that he was so informed but that he did not then inform the Court Sub-Inspector or the Court-Inspector although they were sitting with him in the same room.

Then, in his statement, Hurmaj says that he was threatened by no less than six men at the same time in the *verandâh*, but the orderly refers to threatening only by the *mukhteâr*. In the circumstances, we think that this evidence is not sufficient to sustain the charge against the *mukhteâr*. Moreover, it has been

laid down that in such cases, where the allegations amount to a criminal charge, the proper procedure is to prosecute the accused criminally in the first instance before bringing proceedings under the Legal Practitioners Act. Otherwise, the accused is likely to be prejudiced in as much as these are summary proceedings in the nature of a summons trial. In this case, the proper procedure would have been to prosecute the *mukhteâr* criminally under s. 506 of the Indian Penal Code.

The long delay in bringing these proceedings is a serious objection to the proceedings. The charge was not brought to the notice of the accused until a very long time after the occurrence and the witnesses must have forgotten what took place. Moreover, the delay throws suspicion on the whole proceedings, in as much as this charge was not brought at once and the witnesses examined immediately after the occurrence. It is possible that if the proceedings had been initiated immediately after the occurrence a charge might have been established that the accused acted unprofessionally in communicating with his client without the permission of the Magistrate, but that charge has not been included in the present proceedings and the evidence at this stage is not at all sufficient to warrant a finding that the accused made the gestures alleged or that in doing so he acted unprofessionally.

We think accordingly that this Reference cannot be accepted and that the *mukhteâr* cannot be found guilty of professional misconduct. We are told that he has been under suspension since September last and this suspension should be withdrawn immediately.

PATTERSON J. I agree.

Reference rejected.

A. A.

1938
 —
Emperor
 v.
Sachindra
Nath
Moulík.
 —
Jack J.