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any such question for further consideration after the disposal of the suit. If there were no other reason for this course, and there are several in my judgement, it is in any case not a matter which concerns the parties, or one in respect of which they ought to be penalized either by prolonging the suit or increasing the costs. This case seems to have occupied the time of the court on six days, including the framing of the issues and the delivery of judgement, and lasted for more than six months. I direct the order of the Munsif, so far as it affects the applicant, to be cancelled.

Order set aside.

Before Mr. Justice Walsh.

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December, 22.

IN THE MATTER OF THE PETITIONS OF KALKA PRASAD AND OTHERS.*

Act No. XVIII of 1879 (Legal Practitioners' Act), section 36—Touts—Procedure to be followed by a court taking action under section 36—Revision—Statute 5 and 6 Geo. V, Ch. 61, section 107—Evidence—Criminal Procedure Code, section 117 (3).

It is competent to the High Court to entertain an application in revision against an order passed by a District and Sessions Judge under section 36 of the Legal Practitioners' Act, 1879, and this without invoking the aid of the Government of India Act, 1915, section 107. *In the matter of the petition of Madho Ram* (1), *In the matter of the petition of Kedar Nath* (2), *Babu Sahib* v. *the District Judge of Madura* (3) and *Hari Charan Sircar* v. *the District Judge of Dacca* (4) referred to.

In a proceeding under section 36 of the Legal Practitioners' Act, 1879, the court may properly apply, as regards the nature of the evidence adducible, the provisions of section 117 (3) of the Code of Criminal Procedure.

Where a person's name has once been included in a list framed under section 36 the mere fact that the exhibition of such list in any particular court room is discontinued has no effect on the validity of the original order.

AT the instance of the Bar Association of Meerut the District Judge instituted proceedings under section 36 of the Legal Practitioners' Act, 1879, against several persons alleged to be touts, and on the 4th of May, 1917, he passed an order directing that the names of six persons, Abdur Rahim, Iftikhar Husain, Nisar Ahmad, Rup Chand, Abdul Karim and Kalka Prasad, along with certain others, should be posted and put on a list of touts according to the provisions of the section. The persons

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*Civil Revision No. 170 of 1917.

(1) (1899) I. L. R., 21 All., 181. (2) (1903) I. L. R., 31 All., 59.
(3) (1903) I. L. R., 26 Mad., 593. (4) (1910) 11 C. L. J., 513.

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whose names are mentioned above applied in revision to the High Court against this order.

Mr. *A. P. Dube*, and Babu *Satya Chandra Mukerji*, for the applicants.

Mr. *A. E. Ryves*, for the Crown.

WALSH, J.:—These are four applications in revision made by six persons, Abdur Rahim, Iftikhar Husain, Nisar Ahmad, Rup Chand, Abdul Karim and Kalka Prasad against an order made by the District and Sessions Judge of Meerut on the 4th of May, 1911, ordering the names of these persons with others to be posted and put on a list of touts under section 36 of the Legal Practitioners' Act. Although the cases of the various applicants are not precisely similar, I propose to deal with all of them in one judgement.

The proceedings were undertaken by the District Judge at the instance of the Bar Association of Meerut, which had sat and considered the matter with great thoroughness and which supported the complaint which they made against the system of touting by a large number of persons with a considerable body of evidence.

The hearing of the case was spread over a considerable period, and the learned Judge devoted great pains to the performance of this difficult but important task. I have to consider in the case of each applicant to this Court how far he is entitled to complain of the order made against him. Before doing so, however, it is necessary to make one or two general observations. While exercising due care to see that each case is fairly made out by the evidence called, and is established in a hearing according to law, it is desirable to emphasize the great importance of this legislation both to the general public and to the legal profession. The Judge has used language none too strong, about the pests who perennially infest the courts. It is common knowledge that systematic touting is inseparable from a great deal of deception and imposition practised upon poor and ignorant litigants, whose interests are subordinated to those of the needy persons who prey upon their credulity. It is also inseparable from unprofessional conduct on the part of those who employ touts. It is only by the vigilant efforts of bodies like the Meerut Bar

Association, and by strict enforcement of statutory safeguards, that the poorer members of the public and the respectable members of the profession can obtain protection.

The nature of the evidence which may legitimately be tendered in such a case does not really admit of much controversy. The learned Judge has held that the recognized principles applicable in cases under section 110 of the Code of Criminal Procedure or the "evil livelihood" section, are applicable here. This is clearly right. Indeed it was admitted at the Bar by both sides in this case, which was well and temperately presented. The Statute says "by general reputation or otherwise." The former of those provisions clearly includes hearsay evidence which may be tested, when admissible, by cross-examination just as other evidence may be tested and challenged. The latter provision "or otherwise" is clearly intended to include all the ordinary modes of proof known to the law which might otherwise be said to have been impliedly excluded, such as personal observation, evidence of conduct, admissions in conversation and the like, proved by first hand testimony. In this case almost every possible kind of evidence was given. I note that none of the alleged touts themselves gave evidence on oath, though I can find nothing in the Statute or in the general law to prevent their doing so if they chose. The Code of Criminal Procedure is not applicable, and there seems no reason in good sense or in the general law to disentitle them to be heard on oath. It is not to be expected that direct evidence of a specific case of consideration passing between tout and employer can be forthcoming, except in the rarest cases. The case quoted to me from the Punjab Record is not in point. The only evidence in that case was a letter of introduction which did not suggest remuneration, and might have been perfectly harmless. But 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.

In my opinion revision may be entertained in such a case as this. It is "a case in which no appeal lies." I am aware that

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the contrary view has been expressed by some Judges of this Court. *In the matter of the petition of Madho Ram* (1) the point taken was that the finding was against the weight of evidence. That is not a ground for revision, and therefore it was not necessary for the Court to decide more. I do not think that it is necessary to invoke the aid of the superintendence section in the Government of India Act, 1915, though it seems to have been held in *In the matter of the petition of Kedar Nath* (2) that this was one way of questioning orders in this Court. There is no decision binding upon me, and I prefer the view taken in *Bavu Sahib* v. *The District Judge of Madura* (3), where the High Court interfered in revision in a similar case. The matter has been very fully discussed in *Hari Charan Sircar* v. *The District Judge of Dacca* (4) where it was held that the revisional jurisdiction could only be entertained in the furtherance of justice.

These being the general considerations applicable I now come to the particular case of each applicant before me. In the cases of Rup Chand, Iftikhar Husain, and Abdul Karim there was ample evidence to justify the order. They were constantly seen to be taking clients about, one of them had taken away one case from one of the witnesses; they had been seen to stop clients, hold them in conversation and apparently take charge of them. The evidence as to their general reputation was very strong. It was urged on behalf of Rup Chand, and I think one of the others, that the Judge had erred in refusing to send for files of cases which would have shown that they were legitimately engaged in litigation in which they or members of their family were interested. This might be so, but it would not negative or prove anything inconsistent with the other evidence called against them. The learned Judge was no doubt pressed for time to conclude inquiry before going on leave. He took the right view in assuming that these files would prove what they were alleged to show and that it was superfluous to prove them strictly because they would not alter his view. I see no reason to interfere with the decision in the case of these three applicants and I therefore dismiss their applications.

(1) (1899) I. L. R., 21 All., 181. (2) (1908) I. L. R., 31 All., 59.

(3) (1903) I. L. R., 26 Mad., 596. (4) (1910) 11 C. L. J., 513.

The cases of Nisar Ahmad and Abdur Rahim stand upon a somewhat different footing. I have felt some doubt as to whether I ought to interfere even in their cases. I am not prepared to overrule the findings of the learned Judge on a question of fact of this kind, even if I had the power to do so, and it may be that I am stretching the revisional power of this Court in these cases by interfering at all. I only do so because the evidence as recorded in the Judge's note in these two cases is not very strong, and the Judge being admittedly pressed for time and having given reasons in their cases which are not entirely satisfactory, it is just possible that they may have suffered injustice by being, so to speak, swept away in the general current against their co-defendants. Abdur Rahim had been in the employment for one year of Mr. Abdul Bari, a Barrister, against whom the complainants made no suggestion, but who had been temporarily absent from Meerut. Those who mentioned Abdur Rahim said very little about him. Muhammad Husain in cross-examination really spoke in his favour and mentioned that he had returned to Mr. Abul Bari's employment. Gauri Prasad said little or nothing about him. Ghasi Ram mistook him altogether for another.

As to Nisar Ahmad two pleaders were called for the defence. One, with over three years' experience, spoke of him as being regularly in the employment, and constantly seen in the company of Mr. Zamir-ul-Islam, his employer. Mr. Abdullah Shah had nothing to suggest against the latter. Bahal Singh and Ghasi Ram certainly gave positive evidence about his holding clients. Ramji Lal on the whole spoke in his favour. In these two cases the learned Judge's reason, namely, that the evidence did not warrant him in rejecting the considered complaint of the Bar Association is not quite satisfactory. He must form an independent view of his own, though, no doubt, the opinion of the Bar-Association on a matter of general reputation is entitled to very great weight. I am not deciding that his conclusion was wrong. It is a question of fact of which he is a better judge than I. I merely hold that these two applicants have made out a case for further consideration and I remit their cases

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to the learned Judge for consideration and for such final order thereon as he, on hearing any further evidence on either side or of the men themselves, sees fit to make. He can of course take into account the evidence already given. And in the exercise of my discretion I leave it to the learned Judge to decide whether in the cases of these men he will suspend the operation of the list until he is able to take up the further inquiry. Further than this I decline to interfere.

The last case is the case of Kalka Prasad. This case has caused me some difficulty. The applicant was put upon a list in 1908 by the then District Judge of Meerut, the list which gave rise to the decision in I. L. R., 31 All., 59. The District Judge reports that he has repeatedly applied to have his name removed as it was impeding his chances of obtaining work in Delhi, but the District Judge of course had no material on which to act. The applicant undoubtedly wrote to the court on the 9th of February of this year and received what I may accept as an official reply that no list of touts was then affixed. According to the learned Judge it was also not affixed from the long vacation of 1916 and afterwards. It is clear that the list ought to be exhibited. I think sub-section (3) means that the exhibition of the copy list, there referred to, is necessary to constitute a man a proclaimed tout, though it is not necessary for me to decide that point in this case. But upon further consideration I have come to the conclusion that the mere removal or failure to keep the list exhibited in the court of the District Judge of Meerut had not the effect of cancelling the list altogether, inasmuch as it was by the order to be exhibited in all courts subordinate to the District Court, and its mere removal in one court out of many would not *per se* cancel the original order of 1908. The form, however, adopted by the learned Judge in this particular case has caused some embarrassment. He might have made a further list supplementary to the existing list of 1908 and merely ordered his official to restore the list of 1908 to the place from which it should not have been removed. In that event the applicant would have had no grievance. As it is he has the grievance, technical though it may be, that his name has been included in a new list consisting of the old list and the

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new names added together by the order of the 4th of May, and before that was done he was given no opportunity of showing cause. In this case again I decline in my discretion to interfere. Though the applicant's name would not be properly upon the new list and ought to be removed, it is not improperly upon the old list. The section gives the Judge the power, from time to time, to alter and amend the list, and under the circumstances, inasmuch as the present applicant is desirous of being heard and may be able to satisfy the learned Judge that if he had been given an opportunity of showing cause, his name would not have been included in the list of the 4th of May, I think the learned Judge might well allow an application by Kalka Prasad, if he sees fit to make it, to have the list altered or amended by the removal of his name on the ground that whatever may have been the case in 1908 he is no longer a tout. The result is that, though feeling some doubt in the matter, I dismiss the application of Kalka Prasad.

Order modified.

PRIVY COUNCIL.

SURAJ NARAIN *v.* RATAN LAL AND TWO OTHER APPEALS CONSOLIDATED.

[On appeal from the Court of the Judicial Commissioner of Oudh at Lucknow.]

P. C.* 1916 *November*, 16, 17, 20.

1917 *January*, 30.

Hindu Law—Joint family—Mitakshara law—Managing member keeping accounts of joint funds and of his own self-acquired property in same account book—Entries in such book evidence of intention to make self-acquired property joint—Purchases made in name of son-in-law out of funds so blended to provide for son-in-law—Statement to that effect made by manager admissible as being against his own interest—Benami deeds—Civil Procedure Code, 1882, *section* 317.

With respect to a Hindu joint family the law is that while it is possible that a member of the joint family can make separate acquisitions, and keep moneys and property so acquired as his separate property, yet the question whether he has done so is to be judged by all the circumstances of the case.

Where a member of a joint Hindu family at Lucknow, who had made considerable savings from his earnings as a pleader at Hardoi where he was entrusted with the management of the joint family property at that place, eventually became managing member of the joint family at Lucknow, kept the

* *Present*:—The Lord CHANCELLOR [Lord BUCKMASTER], Lord WRENBURY, and Mr. AMEER ALI.