

FULL BENCH.

1919
August, 12.

*Before Justice Sir Pramada Charan Banerji, Mr. Justice Muhammad Rastgi
and Mr. Justice Figgott.*

IN THE MATTER OF TIKA RAM, VAKIL,*

Rules of Court of the 10th August, 1904, rule 26—Legal practitioner—Professional misconduct—Entering into trade or business.

Held, on a construction of rule 26 of the Rules of Court of the 10th August, 1904, that the carrying on by a vakil of occasional speculations in grain, salt and other commodities whilst he was practising as a vakil did not amount to entering into a trade or business within the meaning of the rule so as to render him amenable to the disciplinary jurisdiction of the High Court.

The facts of this case were as follows :—

One Ram Sarup presented a petition against a vakil of the High Court, practising at Agra, the allegation being that he was guilty of professional misconduct in having violated rule 26 of Part II of the High Court Rules (1), by having, since his enrolment, been carrying on business in grain and other articles without giving notice to the High Court of his having entered into such business. A rule was issued to the vakil to show cause why he should not be dealt with under the disciplinary powers of the Court. In his explanation the vakil stated that there was a joint family business which used to be carried on from the time of his grandfather, that he and his father and his uncle were members of the joint family, that he as a member of that family had an interest in that business, and that the business had long been closed. There were also about eight instances, spread over the course of three years, of his having entered into transactions for the sale of grain, salt, cotton seeds, *etc.*, by way of speculation, but it did not appear that he had done so habitually or systematically.

Mr. *Nihal Chand*, appeared on behalf of the vakil to show cause :—

* Civil Miscellaneous no. 325 of 1919.

(1) Paragraph second of Rule 26 :—“Any person who, having been admitted as a legal practitioner shall accept any appointment or shall enter into any trade or other business, shall give notice thereof to the High Court, which may thereupon suspend such legal practitioner from practice, or pass such orders as the said Court may think fit.”

1919

IN THE
MATTER OF
TIKA RAM,
VAKIL.

If a person is a member of a joint Hindu family which, from before his enrolment as a legal practitioner, has been carrying on an ancestral business, he cannot be said to have entered into a business since his enrolment, and the second paragraph of rule 26 of Part II of the High Court Rules does not apply at all. That matter might have been raised at the time of the vakil's enrolment in 1894, and the High Court might or might not have refused to enrol him. Apart from this, the mere fact that the joint Hindu family, of which the vakil was a member, had a family business the benefit of which went to all the members, but which was not actively carried on, conducted or managed by him, would not make him a person who had entered into a trade or business within the meaning of the rule. I am supported by the ruling in *Munireddi v. K. Venkata Rao* (1). Further, merely occasional and isolated instances of speculation in grain, *etc.*, not undertaken as a continuous and systematic course of business, would not amount to entering into a trade or business. There were not more than eight such instances during the course of three years. I rely on the interpretation of the expression "to exercise a trade or business" contained in *Halsbury: Laws of England: Vol. 27, p. 512*. The present case is quite distinguishable from the facts of the case of *Kunmetta Chinnarappa v. Kona Timma Reddi* (2).

The petitioner, Ram Sarup, appeared in person in support of his petition.

BANERJI, MUHAMMAD RAFIQ and PIGGOTT, JJ.:—This is an application by one Ram Sarup praying that notice be taken of the conduct of Babu Tika Ram, a vakil of this Court, now practising at Agra, it being alleged that he is guilty of professional misconduct. The misconduct imputed to the vakil is a violation of rule 26, Part II, of the High Court Rules. The first paragraph of that rule provides that "if an applicant for admission as a legal practitioner hold any appointment or carry on any trade or other business, the High Court may refuse to admit him, or pass such orders on his application as it thinks proper." That paragraph has no bearing on the present case, inasmuch as in the petition before us it is not asserted that at the time when the vakil

(1) (1912) 17 Indian Cases, 544 (553).

(2) (1910) 8 Indian Cases, 677.

1919

IN THE
MATTER OF
TIRA RAM,
VAKIL.

applied in 1894 for admission he was carrying on any trade or business. It is the provisions of the second paragraph of the rule which the vakil is alleged to have contravened. That paragraph requires that "any person who, having been admitted as a legal practitioner, shall accept any appointment or shall enter into any trade or other business, shall give notice thereof to the High Court." It is said that this vakil has, since his enrolment, been carrying on business in grain and other articles and has not given notice of his having entered into such business to this Court. The vakil has filed an explanation and in this explanation he states that there was a joint family business which used to be carried on from the time of his grandfather, that he and his father and uncle were members of the joint family and that he as a member of that family had an interest in that business. That business, according to his allegation, has long been closed and this is not denied by the applicant. We do not think that the carrying on of a family business which has been in existence for a long time may be regarded as entering into any trade or business within the meaning of the rule. The vakil has admitted that from time to time he entered into transactions for the sale of grain, salt, cotton seeds, *et cetera*, by way of speculation, but he has not done so habitually. He has mentioned eight instances, seven of which were instances of business carried on in the years 1915, 1916 and 1917. It does not appear that he has habitually or systematically exercised the profession of a trader in addition to his work as a vakil. We do not think, therefore, that he can be held to have violated the provisions of the rule to which we have referred. We think, however, that it was not proper for him to have entered into the alleged transactions while he was carrying on the business of a vakil, although those transactions were only isolated ones. We do not think that the fact that he helped his son in borrowing money for the business which his son is alleged to have carried on on his own account would amount to a violation of rule 26. Under these circumstances we are of opinion that further action is not called for in this case. At the same time we think that the vakil should give an undertaking to the Court that he will not enter into any business or trade without giving notice to the

1919

IN THE
MATTER OF
TIKA RAM,
VAKIL.

Court and obtaining its permission. Such undertaking has been given to us by Mr. Nihal Chand who appears on behalf of the vakil and by the vakil, who is himself present in Court. The rule issued to the vakil is accordingly discharged.

Rule discharged.

REVISIONAL CRIMINAL.

Before Mr. Justice Ryves.

SHEO NARAIN SINGH AND ANOTHER v. RADHA MOHAN.*

1919
September, 15.

Criminal Procedure Code, section 437—"Discharge"—Subordinate Magistrate omitting to frame a charge.

Two persons were placed on trial before a Magistrate of the second class for offences under sections 307 and 323 of the Indian Penal Code. One of these persons was discharged; but, as regards, the other, the Magistrate, whilst framing a charge against him under section 323, omitted to say anything about the other section.

Held, that the effect of this was equivalent to a discharge so far as the offence under section 307 was concerned and it was open to the District Magistrate to direct a further inquiry under section 437 of the Code of Criminal Procedure. *Krishna Reddi v. Subbanma* (1) referred to.

This was an application in revision against an order passed by the District Magistrate of Jaunpur, purporting to be made under section 437 of the Code of Criminal Procedure, and directing further inquiry into charges under sections 323 and 307 of the Indian Penal Code, against the applicant. The facts of the case are set forth in the judgment of the court.

Dr. J. N. Misra, for the applicants.

Dr. S. M. Sulaiman, for the opposite-party.

RYVES, J.—This application arises under the following circumstances:—Two persons, Sheo Narain and Arjun Singh, were placed before a Magistrate of the second class for trial on charges under sections 307 and 323 of the Indian Penal Code. The learned Magistrate passed an order formally discharging Arjun Singh but he went on to frame a charge under section 323 only against Sheo Narain Singh who was directed to enter on his defence at the next hearing. In the course of his order the

* Criminal Revision no. 491 of 1919, from an order of C. Moore, District Magistrate of Jaunpur, dated the 23rd of July, 1919.

(1) (1900) L.L.R., 24 Mad., 136.