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as it is found that they have the right of catching small fish by hand at harvest time. This is a matter of such trifling importance that it does not in my opinion alter the nature of the right acquired by the plaintiffs. I would admit the appeal, set aside the decree of the trial court and the lower appellate courts and decree the plaintiffs' suit granting them a declaration of their rights in accordance with the findings of the learned District Judge on remand and issue an injunction upon the defendants restraining them from interfering with the plaintiffs in the exercise of these rights. The appellants are entitled to their costs here and in each of the lower courts.

MULLICK, J.—I agree.

## REFERENCE UNDER THE LEGAL PRACTITIONERS ACT.

*Before Dawson Miller, C. J. and Mullick, J.*

MATHURA PRASAD,

1922.

May, 31.

*In the matter of.*

*Legal Practitioner—application for re-instatement after dismissal from profession—Court's inherent power to grant—Procedure.*

The High Court has inherent power to re-instate a legal practitioner who has been dismissed from his profession.

Before exercising such power the court must be convinced not by mere protestations of repentance or regret, but by actual facts, that the delinquent has reformed his character and has for a sufficiently long period acted in such a way that he can be trusted to act in future as a worthy member of his profession.

*Abir-ud-din Ahmed, In re*(1) and *Hara Kumar Chatterji, In re*(2), referred to.

The proper procedure for the applicant to adopt is to apply to the Bench presided over by the Chief Justice for a rule.

(1) (1910) 12 Cal. L. J. 625. (2) (1911) 14 Cal. L. J. 113.

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If a *prima facie* case is made out the Bench may direct that a rule be issued and call upon the Government Advocate to shew cause why the petitioner should not be re-instated, and the rule will then come up before, and be determined by a specially constituted Bench.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

*Manohar Lal*, for the petitioner.

DAWSON MILLER, C. J.—The petitioner, Mathura Prosad Sinha, formerly practised as a mukhtar in the criminal courts of this province, but was debarred from further practice by an order of the court, dated the 12th March, 1917. He now presents a petition asking that he may be reinstated and allowed to resume his practice as a mukhtar. The first question which arises is whether the court which debarred him from further practice has any jurisdiction to rescind the order made under the provisions of the Legal Practitioners Act and reinstate him. No provision is made either in the Legal Practitioners Act or in the rules of the court giving the court power to exercise such jurisdiction, and, if it can be done at all, it must be either under the inherent powers of the court or under the powers given by the Legal Practitioners Act to enrol mukhtars. Two cases have been referred to in support of the contention that the court has jurisdiction in such cases. The first is *In re Abiruddin Ahmed* (1), in which the High Court at Calcutta, on the petition of a mukhtar who had been dismissed from practice for an offence under section 363 of the Indian Penal Code, reviewed at length the English authorities on the subject and held that the court had power to reinstate a legal practitioner who had been dismissed for misconduct of any description. The test applied in that case was whether by his conduct in the interval between his dismissal and his application for reinstatement the petitioner had satisfied the court that he had conducted himself honourably and that no objection remained as

(1) (1910) 12 Cal. L. J. 625.

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to his character and capacity. In the particular case the court was not satisfied that the case came within the requirements laid down and dismissed the petition. The other case was that of a pleader, *Hara Kumar Chatterji* (1). There the offence for which the petitioner was dismissed was that of misstating his age in an application for enrolment as a candidate for the Provincial Judicial Service. The offence was less serious than in the previous case cited and the petitioner appears to have satisfied the court that since his dismissal he had been employed in positions of responsibility and had conducted himself honourably. His good character was vouched by *zamindars* and others of respectability and position, and the court, following the principle laid down in the previous case, restored the petitioner to the rolls taking the view that his punishment had awakened in him a higher sense of honour and duty and that his subsequent conduct had been so irreproachable that notwithstanding his delinquency in early life, he might safely be admitted to an honourable profession without degradation to that profession. In so far as those cases recognized the court's jurisdiction to reinstate legal practitioners who have been dismissed from their profession, I have no doubt that they were right and that in proper cases the court should exercise that power. I agree also that before any court should exercise such powers it should be clearly convinced not by mere protestations of repentance or regret, but by actual facts, that the delinquent has reformed his character and has for a sufficiently long period acted in such a way that he can be trusted to act in future as a worthy member of an honourable profession.

The next question which arises is as to the procedure which should be adopted in cases of this nature. No procedure has been laid down in this court for dealing with such cases, but, as it is within the power of the Chief Justice to direct which Judges shall deal with particular cases and the constitution

(1) (1911) 14 Cal. L. J. 113.

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of the Bench which should deal with such cases, I think the proper course is for the petitioner to apply to a Bench presided over by the Chief Justice and ask for a rule in the matter. The Bench over which he presides, can then, if a *primâ facie* case is made out, direct that a rule be issued and call upon the Government Advocate to show cause why the petitioner should not be reinstated. The matter would then come up before a Bench specially constituted and the case would be determined by that Bench.

The petitioner in the present case was dismissed from practice five years ago by a bench of three Judges for an offence of so grave a character in one of his profession that no less a punishment than that of dismissal would have been adequate. It consisted in tempering with a petition of complaint filed in the Magistrate's Court and conspiring with the peshkar of the court and another mukhtar, to the detriment of his own client, to substitute a spurious document in its place after transferring the stamp thereto from the original. Anyone who could take part in such a fraud, when acting in a position of trust and responsibility towards his client and the court, is manifestly unfitted to be entrusted with the duties of a mukhtar.

The petitioner now produces a number of certificates which, with two exceptions, are from pleaders or mukhtars practising at Muzaffarpur and Motihari where he formerly practised. They are all to the effect that they have known him for the last few years or the last three or four years and that his conduct and behaviour have been in every way satisfactory. They are all couched in more or less the same terms. Some are rather more positive and say they have known him as a man of exemplary character. Others are less positive and are to the effect that they have heard no complaints against him. But in none of them are any particulars given as to the opportunities they have had of associating with him or the capacity in which they have had any dealings with him. Nor

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does it appear whether the petitioner was residing either in Motihari or Muzaffarpur during the last few years. It appears, however, by a certificate given by the proprietors of the Dulichand Prabhndayal Coal Company carrying on business at Jharia in Manbhum that he has been in their employment for two years before January, 1922 and his petition states that he is still engaged there. This certificate does not say in what capacity he is engaged but states he has all the responsibility of their business, including cash and contract transactions, and they have a very good opinion of his morality, truthfulness and loyalty and that they find him trustworthy and straightforward.

It would appear therefore that for two years at least he has given satisfaction to his employers in some capacity or other and that they consider him honest and straightforward.

The only other certificate is that of Mr. Ambica Prosad Upadhyay, a vakil of this court, who states that the petitioner worked in his *zamindari* for about a year—but which year is not stated—and during that time he proved very diligent, honest and trustworthy in the discharge of his duties. I have no doubt that this conveys Mr. Upadhyay's honest opinion but it does not give the court much information as to the nature of the petitioner's duties or whether he was employed in a position of trust or what opportunities the petitioner had for acting otherwise than honestly.

I am willing to believe that the petitioner is endeavouring to rehabilitate his character but I cannot ignore the fact that the offence for which he was dismissed was one which it is the duty of the court jealously to guard against by every means in its power. I think we should be failing in our duty if upon the material before us we were to accede to this petition merely because the petitioner can produce satisfactory reports of his conduct from his employers for the last 2½ or possibly 3½ years. A mukhtar exercises an office of trust towards his clients and towards the court. He has many opportunities of betraying that trust and he

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may frequently abuse his trust without being discovered. It is therefore essential that flagrant abuses such as the petitioner was guilty of should not be lightly passed over or regarded as capable of expiation by a short probationary period during which they have not been repeated. If we considered that the case was at all doubtful or that a larger tribunal might properly take a more lenient view we might issue a rule and call upon the Government Advocate to appear and show cause against the application before a special bench, but I am satisfied that no *primâ facie* case has been established and I have no doubt that the course we should adopt is to reject the application.

MULLICK, J.—I agree.

## REFERENCE UNDER THE LEGAL PRACTITIONERS ACT, 1879.

*Before Dawson Miller, C. J. and Mullick and Jwala Prasad, J.J.*

BANAMALI DAS,

*In the matter of.**

1922.

*June, 7.*

*Legal Practitioners' Act,* 1879 (*Act XVIII of* 1879), *sections* 13 *and* 14—*filing a written statement on behalf of defendant who has not given instructions to do so—no action taken by trial court—reference to High Court by appellate court, validity of—High Court's powers in case of invalid reference*—Vakalatnama, *practice as to acceptance of.*

Where a reference is made to the High Court under section 14 of the Legal Practitioners Act, 1879, by a court which has no power to make such reference under section 14, the High Court has power under section 13, after such inquiry as it thinks fit, to suspend or dismiss the practitioner whose conduct is complained of.

The nature of the inquiry to be held by the High Court in such a case is a matter for the discretion of the court. In

* Civil Reference No. 1 of 1922.