

FULL BENCH.

Before Terrell, C.J., Ross and Kulwant Sahay, JJ.

1929.

SHIVA KUMAR JHA, MUKHTAR, IN THE MATTER
OF.*

Feb., 12.

Legal Practitioners' Act, 1879 (Act XVIII of 1879), section 13—legal profession, duty of, with regard to applications for transfer and pleadings—Statements imputing prejudice or unfairness or corruption to Magistrate, when should be made.

The duty of the legal profession is a very serious one both with regard to applications for transfer and also in respect of pleadings.

Statements imputing prejudice or unfairness or corruption to Magistrates should not be made unless the statements of the client as tested by the legal adviser are found sustainable, unless they are found to be corroborated and unless the adviser has taken some steps, not necessarily to pledge himself for the client's veracity, but such as to give him as a reasonable man ground for belief that the statements at any rate are such as should be properly investigated.

The facts of the case material to this report are stated in the order of the Chief Justice.

Sir Sultan Ahmed, Government Advocate, for the Crown.

N. N. Sinha, *D. N. Das* and *P. Jha*, for the Mukhtar.

COURTNEY TERRELL, C. J.—This is a reference by the District Magistrate of Bhagalpur forwarded through the District Judge relating to the conduct of a Mukhtar, Babu Shiva Kumar Jha, and recommending his punishment. The circumstances out of which the accusation arises are as follows:—A case was being heard before the Sub-Deputy Magistrate of

*Civil Reference no. 6 of 1928. In the matter of Babu Shiva Kumar Jha, Mukhtar, Madhipura.

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Madhipura in Bhagalpur in which a person had been charged under section 408 of the Indian Penal Code with the offence of criminal breach of trust and the Mukhtar was defending the accused. When the prosecution evidence had been heard and the prosecution case closed the Mukhtar on behalf of his client applied for an adjournment and for the recalling of the complainant in the case for further cross-examination. This application was refused and the Mukhtar and his client appear to have had certain grievances, whether well founded or not I do not care to say, as to the Sub-Deputy Magistrate's conduct of the case and therefore notice was given to him that an application would be made to the District Magistrate for the transfer of the case to another Magistrate. The client went away with the Mukhtar and a draft application to the District Magistrate was made out. The draft application in addition to alleging other grievances contains this statement :—

"That the petitioner came to know that Babu Narnath Jha, the Manager of the Srinagar Estate, at whose instance Mahadeb Lai complained against this petitioner, visited the Sub-Deputy Magistrate at his house, supplied him with eatables like ghee and fish and provided him with a servant and maid-servant and has promised to supply all his requirements from the estate."

The Mukhtar recommended the client to go to Bhagalpur and there to engage another Mukhtar to whom he was about to write a letter and to obtain the services of this Bhagalpur Mukhtar to file the application for transfer, and he wrote this letter :—

"My dear' (then he mentions the name of the Mukhtar addressed) "I send to you this case for a transfer petition before the District Magistrate. I have advised him not to engage a pleader so you will attend a bit closely. He is being unjustly dealt with by the Sub-Deputy Magistrate as the draft will shew,"

and to that he signs his name.

The client then set out for Bhagalpur but instead of going to the Mukhtar who had been recommended he went to a pleader and the pleader filed the application for transfer. The draft which the Mukhtar

wrote was, however, recast and in the form in which the petition was filed the paragraph which I have quoted from the Madhipura Mukhtar's draft was recast as follows:—

" That the petitioner has recently come to know that Babu Narnath Jha has paid several visits to the trying Magistrate during the pendency of this case and has supplied a maid-servant aged about 22 years from his zemindari and she is still working at his place and has also given a servant to him who is still there."

It will be noted that there are two important alterations. In the first and most important place the age of the maid-servant is stated and in the second place the statement about the alleged receipt by the Sub-Deputy Magistrate of ghee and fish and eatables is deleted. But in its form as filed the petition most distinctly imputes the gravest moral turpitude to the Sub-Deputy Magistrate and the mention of the age of the maid-servant said to have been supplied can have no other significance.

The Magistrate before whom this petition was filed called the attention of the pleader and of the client to the fact that the allegation was of great gravity. The client, however, said that he could substantiate it. The Magistrate then communicated with the Subdivisional Officer and asked him to make a report and in the report the Subdivisional Officer states that he called upon the Mukhtar who originally made the draft for an explanation and the Mukhtar wrote to him that in the draft he made no such allegation. The District Magistrate also asked the Sub-Deputy Magistrate for an explanation and when the report and the explanation from the Sub-Deputy Magistrate came before him he sent for the applicant and told him that the application ought not to proceed. The applicant, however, insisted and the Magistrate required him then to swear an affidavit that the allegations were true and within his personal knowledge and this the applicant did. Later on in August the District Magistrate made personal enquiries and as a result he rejected the application

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for transfer and he issued notice to the Mukhtar who is the respondent in this matter of charges that would be made against him, and then reported to the District Judge, and through him to this Court.

The most serious of the charges and the only one with which we need seriously trouble ourselves is the accusation that the Mukhtar had acted unprofessionally in taking part in filing or having anything to do with the application for transfer containing the allegation I have quoted. It is perfectly clear that the Mukhtar cannot be responsible for anything more than the draft which he himself prepared although the gravity of the allegations due possibly to the negligence or malevolence of other people may later have been grossly increased. Comparing the draft which the Mukhtar prepared with the actual petition as filed there are certainly the differences to which I have drawn attention and it is the opinion of my learned brothers, with which I am not prepared to differ because they have had vastly more experience than I in considering matters of this kind, that if they had been sitting as District Magistrate and had received a petition of the character and having the wording set forth in the draft undoubtedly prepared by the Mukhtar, they would have come to the conclusion that what was intended was not an accusation of moral turpitude against the Sub-Deputy Magistrate such as is undoubtedly contained in the petition actually presented before the District Magistrate. They would have considered it as a statement that there was such a relationship between the Magistrate and the person who is mentioned as having visited him, as to make it undesirable that the Magistrate should sit and try a case in which the interests of that person were adversely affected. Needless to say if a Magistrate is in close business or friendly relationship with a party it is on the whole undesirable that he should take part in hearing a case in which the interests of such a person are gravely affected. I am

not prepared to differ from that construction of the draft as prepared by the Mukhtar but taking it on that basis and assuming, as I have no doubt, that it is the proper construction to put upon it, the allegations contained in it, and with that significance, are unfounded and untrue. It appears to be the fact that on one occasion the person named did actually visit the Sub-Deputy Magistrate but the visit was of a wholly innocent nature and to receive such a visit would have been in the regular course of the Sub-Deputy Magistrate's social duties and no sinister significance can be attached to it at all. It is absolutely clear that the Sub-Deputy Magistrate was not supplied with any vegetables, fish or other eatables; it is absolutely clear he was not supplied with any servants and the accusations against the Magistrate in this respect and even removing from the words any significance of gross moral turpitude have no basis whatever.

It is said on behalf of the Mukhtar that he took the instructions of his client and was bound to act upon those instructions. It is perfectly true in one sense that a legal adviser must accept statements of fact from his client. But that privilege of the legal adviser has a tendency and a very grave tendency to be very much abused and nowhere is the abuse so manifest as in applications for transfer. It has become notorious that applications for transfer based upon the alleged prejudice and unfairness of the Magistrate have developed to an extent which is a scandal and it would be well that professional advisers and more particularly young professional advisers should bear in mind that there are certain kinds of duties which they have to perform in setting forth the case of their clients in relation to which they cannot take shelter, as they are in the habit of doing, behind the instructions of the client. One sees this plea of legal professional privilege taken up not only in applications of this sort but also in pleadings.

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Nothing is more conspicuous in pleadings than allegations of fraud, forgery and so on made against the other side which when the case comes up for hearing are never substantiated in the slightest degree. It is well, therefore, that members of the profession, and particularly those practising before Magistrates and liable to have the duty cast upon them of making an application for transfer, should feel the weight of their responsibility. Statements imputing prejudice or unfairness or corruption to Magistrates should not be made unless the statements of the client as tested by the adviser are found sustainable, unless they are found to be corroborated and unless the adviser has taken some steps not necessarily to pledge himself for his client's veracity but such as to give him as a reasonable man ground for belief that the statements at any rate are such as should be properly investigated. The duty of the legal profession is a very serious one both with regard to applications of the kind I have mentioned and also in respect of pleadings.

The Mukhtar in this case is a young man. He has been hampered as regards matters of this kind by a very bad tradition and it is possible that it might have required a person of stronger moral character than perhaps his age and experience would indicate to resist the tendency produced by the tradition and, therefore, we do not propose to punish him. He is under the necessity of incurring such expenses as have been necessary for presenting his case and I need say no more than that we accept the reference but we do not see fit to exact any specific penalty.

ROSS, J.—I agree.

KULWANT SAHAY, J.—I agree.

Reference accepted.

S. A. K.