

SPECIAL BENCH.

1937.

Before Courtney Terrell, C.J., James and Manohar Lall, JJ. November,
11, 12.
December, 2.

KARUNA KANT PRASAD, PLEADER, *In re*.*

Legal Practitioners Act, 1879 (Act XVIII of 1879), sections 13 and 14—proceedings drawn up and evidence recorded by Judge-in-charge record room—pleader found not guilty of misconduct—District Judge's disagreement with finding—proceedings forwarded to High Court for action—proceedings, whether ultra vires—pleader entering record-room without permission of Judge-in-charge—conduct improper—Judge-in-charge, duties of.

The Judge-in-charge of a record room drew up proceedings against a pleader, for entering the record room and making his signature on a vakalatnama without the permission of the Judge-in-charge, and called upon him to show cause why his conduct should not be reported to the High Court. The pleader showed cause and the Judge having recorded the evidence came to the conclusion that there was no ground for any action. The District Judge, however, disagreed with his finding and submitted the record to the High Court for appropriate action.

Held, (i) that the proceedings were *ultra vires* as the District Judge had no jurisdiction either to forward the proceedings which were never initiated by him, or to act on the evidence which was never recorded by him.

(ii) that the District Judge could have drawn up fresh proceedings against the pleader and then after giving notice to the pleader he should have recorded himself all evidence and after adjudicating thereon he could report the matter to the High Court.

(iii) that likewise it was open to the High Court on reference to draw up fresh proceedings against the pleader and then after giving notice to him and hearing his defence, if any, to dispose of the matter.

*Civil Reference no. 3 of 1937, made by B. P. Jamuar, Esq., District Judge of Saran, in his letter no. 2272, dated the 25th May, 1937.

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It is highly improper for any pleader to force his way into the record room without the permission of the Judge-in-charge.

Observations on the duty of the Judge-in-charge to see that the orders of the District Judge forbidding any member of the public or pleader to enter into the record room are strictly obeyed.

Reference under section 14 of the Legal Practitioners' Act, 1879.

The facts of the case material to this report are stated in the judgment of the Court.

Dr. D. N. Mitter, for the pleader.

The Advocate-General, for the Crown.

COURTNEY TERRELL, C.J., JAMES AND MANOHAR LALL, JJ.—This is a reference by the learned District Judge of Saran forwarding the record of proceedings drawn up under section 13, clauses (b) and (f) of the Legal Practitioners Act against Babu Karuna Kant Prasad, a pleader, (who will be referred to as "the pleader" hereafter) recommending that the pleader should be held guilty of professional misconduct and that proper orders may consequently be passed by this Court. The facts which led to the drawing up of these proceedings must be briefly stated.

Money suit no. 416/238 of 1935-36 (Ramlal Singh and another *versus* Guptar Prasad and others) was disposed of in the court of the first Munsif of Chapra in or about December, 1936 leaving a small sum of Rs. 4 on account of guardian's fee still unexpended. After the disposal of that suit the record of the case had been sent in the normal course to the record room. The pleader filed on the 25th of February, 1937, a petition signed by him for the withdrawal of this sum of Rs. 4. The petition was sent to the record-keeper for report. On the 26th of February, 1937, the pleader entered into the record room in order, it is

alleged, to put his signature on the back of the vakalatnama which was filed in the original suit in 1935 by the plaintiffs in that suit. It is further alleged that the record keeper happened to be absent from his seat on the table where the record of this suit was lying at that time and the pleader was observed by the other clerks in that room engaged in making his signature on the vakalatnama secretly and without the permission of the Judge-in-charge of the record room. Ram Chandra Sahai, the clerk of the record room, brought the matter immediately to the notice of Mr. B. K. Sarkar, the Judge-in-charge, who took down his statement in writing. The statement is printed at page 10. The Judge-in-charge forwarded the statement which, he had recorded, to Mr. S. K. Das, the then District Judge of Saran, asking for instructions if any action should be taken in the matter against the pleader in the way of drawing up a proceeding against him. The learned District Judge passed the following order upon that report :

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" Certainly. Please draw up a proceeding against the pleader under the Legal Practitioners Act [section 13, clauses (b) and (f)]. Put up the proceeding to me for approval.

Please also enquire how the pleader was allowed access into the record room. No payment should be made to the pleader without my authority."

Upon that the Judge-in-charge of the record room drew up proceedings on the 27th of February, 1937, under clauses (b) and (f) of the Legal Practitioners' Act and called upon the pleader to show cause in writing on or before the 18th March, 1937, why his conduct should not be reported to the Hon'ble High Court of Judicature at Patna for necessary orders. These proceedings were approved by the District Judge, Mr. S. K. Das, on the 1st of March, 1937. On the 18th of March the pleader filed his explanation before the Judge-in-charge who recorded the evidence of the pleader and his witnesses on the 17th of April, 1937, and the evidence on behalf

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of the opposite party on the 23rd of April, 1937. On the 24th of April, 1937, the Judge-in-charge submitted the report to the District Judge with his conclusion :

"After due consideration of all the facts and circumstances connected with this enquiry I am of opinion that the pleader is entitled to a benefit of doubt and the proceeding against him should be dropped.

Let the record be submitted to the District Judge for favour of disposal."

By that time Mr. S. K. Das had been transferred from Saran and was succeeded by Mr. Januar who disagreed with the findings and report of the Judge-in-charge and without himself drawing any fresh proceedings against the pleader has submitted the record to this Court with his report in which he has given reasons for his disagreement with the report of the learned Subordinate Judge who has made the enquiry.

The above narrative of facts makes it clear that the proceedings are irregular and no action can be taken by us on these proceedings. Section 14 of the Legal Practitioners Act empowers the Presiding Officer of a court subordinate to the High Court to draw up a charge of the alleged misconduct against a pleader and if he does so he is required to send to the pleader a copy of the charge and also a notice that on a day to be therein appointed such charge shall be taken into consideration. The Presiding Officer on any day to which the enquiry is adjourned shall receive and record all evidence properly produced in support of the charge or by the pleader and shall proceed to adjudicate on the charge. It will be noticed that the enquiry is to be conducted by the Presiding Officer who has drawn up the charge. Section 14 then goes on to provide that if the Presiding Officer finds the charge established and considers that the pleader should be suspended or dismissed he shall record his finding and the reasons therefor and shall report the same to the High Court. In the present case the Judge-in-charge, who drew up the proceedings, was not satisfied (as pointed out already)

that there was any ground for suspension or dismissal of the pleader. He, therefore, did not report the matter to the High Court. The learned District Judge, Mr. Januar, on the other hand, disagreed with that finding and considered that the matter should be reported to the High Court for the suspension or the dismissal of the pleader. The learned District Judge was at liberty to draw up fresh proceedings against the pleader and then after giving notice to the pleader he should have recorded himself all evidence in support of the charge or to refute the charge and then after adjudicating thereon he could report to the High Court if in his view the conduct of the pleader deserved a punishment to be meted out by this Court. But the learned Judge had no jurisdiction to forward the proceedings which were never initiated by him nor could he act on the evidence which was never recorded by him. The result of these irregularities is that the reference must be discharged as being *ultra vires*. But it is open to this Court to draw up fresh proceedings here and then after giving notice to the pleader and hearing his defence, if any, to dispose of the matter. At one time we thought it desirable that this step should be taken but on further consideration we do not think it is expedient in the interest of justice that this enquiry should be prolonged as any further investigation will necessarily lead to much false evidence on one side or the other. We desire, however, to make a few observations for the guidance of the pleaders and of the subordinate courts and the clerks who are in charge of the record rooms.

The facts narrated above which were sought to be established before the Judge-in-charge were refuted by the pleader who gave evidence to the effect that his name was already in the vakalatnama on the plaint which was filed in May, 1935, and that he went to the record room in order to find out what report was being made upon the petition which he had filed for withdrawal of the unexpended guardian cost. His

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case further was that there was an altercation between the clerks in charge of the record room and himself because the clerks wanted the pleader to send for or bring his client; and that owing to this altercation a false charge was trumped up against him by all the clerks who were present in the record room in collusion with each other. *Prima facie* it would be difficult to believe that the clerks deliberately concocted a false case against the pleader in the very short time that elapsed between the alleged altercation and the report to the Judge-in-charge; but it is unnecessary to come to a conclusion on this point. The admitted facts of this case are that the pleader was found inside the record room in front of a table on which this particular record was lying at that time. Let it be assumed that the pleader had already signed the vakalatnama which bears his signature; still we do not see any justification for the pleader to have entered the record room without the permission of the Judge-in-charge. The pleaders should realise that this Court is making its best attempt to wipe out bribery and corruption from the offices of the subordinate courts and unless the Bar comes to the help of the Court it is impossible for the Court to succeed in doing so. We know that a good deal of temptation is put in the way of the clerks who are kept in charge of the record from day to day and the only effective way in which this can be checked is to see that the clerks are not brought into contact with the litigants or their agents. The pleaders should see that their conduct is entirely above suspicion and they should behave as officers of the court as they are considered to be. It is admitted that there is a standing order of the District Judge forbidding the public or the pleaders from entering into the record room and that a Judge is placed in special charge of the record room. It was the obvious duty of this pleader as well as of other pleaders to refrain from entering into the record room and to obey the standing order of the District Judge. If it was necessary for this

pleader to enter into the record room he should have done so with the permission of the Judge-in-charge and if this had been done there would have been no occasion for the initiation of these proceedings.

The Judge-in-charge of the record room should see that the orders of the learned District Judge forbidding any member of the public or pleader to enter into the record room are strictly obeyed and that any infringement of this order is seriously brought home to the Sharistadar or the officer in charge of the record room. The Judge-in-charge can, by paying surprise visits from time to time at unexpected hours during the court time and after, easily find out for himself if there is any laxity in the particular record room. The Judge-in-charge will, by show of severity, be helping the public in rooting out the scandal that prevails on these matters in the mufasil courts.

The learned Advocate-General, in the course of hearing in this case, pointed out that some method should be found by which the pleaders should be allowed access to the records in order to find out reports which are made from time to time by the clerks in charge of the record room on the petitions of the litigants in matters which are more or less of an administrative character like the one under consideration in these proceedings. He pointed out that in such matters it is impossible for the pleaders to move the Judge in open court on account of the expenses involved which will be disproportionate to the amount of the relief claimed. Now, in our opinion, the proper procedure is for the pleaders to go to the Judge-in-charge who will send for the record and acquaint the pleader with the report made by the clerk in charge of the record. But until such time as the rules are not made it is highly improper for any pleader to force his way into the record room without the permission of the Judge-in-charge. With these remarks the reference is discharged.

Order accordingly.

S.A.K.

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