SPECIAL BENCH.

1939.

April, 13, 14, 28.

Before Harries, C.J., Wort and Khaja Mohamad Noor, JJ.

U. C. PATNAIK, IN THE MATTER OF.*

Legal Practitioners Act, 1879 (*Act XVIII of* 1879), *sections* 13 *and* 14—*inquiry against legal practitioner—standard of proof required—failure to formulate charges, whether vitiates the proceeding—lawyer, whether should accept loan from client.*

Lawyers should not, except in very special circumstances, accept loans from their clients.

Where a lawyer has withdrawn money for a client and has been permitted to retain it, a document evidencing that transaction should in every case be drawn up. It is essential, in cases where the relationship of lawyer and client has been changed into one of debtor and creditor, that the clearest evidence of such a change should be obtainable.

No lawyer should ever borrow money from a client unless he is sure that he can repay it when the client demands repayment.

Charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion.

An inquiry in a serious case, such as professional misconduct on the part of a legal practitioner, should proceed on formulated charges, but failure to formulate precise charges, where it has led to no injustice, does not vitiate a proceeding under section 14 of the Legal Practitioners Act, 1879.

A, a pleader v. *The Judges of the High Court of Madras*(1), followed.

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*Civil Reference no. 2 of 1939, made by Rai Sahib R. C. Mitra, District Judge, Ganjam-Puri, in his letter no. 1, dated the 8th February, 1939, forwarding a report of Rai Sahib Charu Chandra Coari, District Munsif, Berhampur.

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

The facts of the case material to this report are set out in the judgment of Harries, C.J.

Sir Sultan Ahmed (with him *G. C. Das* and *P. Misra*), for the legal practitioner.

G. P. Das, Public Prosecutor for Orissa, for the Crown.

HARRIES, C.J.—This is a reference by the learned Munsif of Berhampur made through the District Judge of Ganjam-Puri under section 14 of the Legal Practitioners Act.

On the 25th of April, 1938, one Kashi Nath Ratho filed a petition in the Court of the District Judge of Ganjam-Puri complaining against the conduct of the opposite party U. C. Patnaik, a pleader practising in the Courts at Berhampur. As the misconduct was alleged to have taken place in the Court of the learned Munsif, the learned District Judge sent the application to that Court. The petitioner Kashi Nath Ratho did not himself file the petition in the Court of the learned Munsif, but on receipt of the petition from the Court of the learned District Judge the learned Munsif took cognizance of it and examined Kashi Nath Ratho on oath. Notice was sent to the opposite party, U. C. Patnaik, who duly appeared and filed a written statement. The learned Munsif heard evidence on behalf of the petitioner, and the opposite party and eventually came to the conclusion that the pleader was guilty of fraudulent or grossly improper conduct in the discharge of his professional duty. The report was forwarded to the learned District Judge, who heard Counsel on behalf of the parties. He came to a different conclusion and held that the pleader was not guilty of any misconduct. The learned District Judge has forwarded the two reports to this Court, and we have heard Counsel on behalf of the pleader. The Advocate-General of Orissa,

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appeared through the Public Prosecutor for Orissa, Mr. G. P. Das. The latter informed the Court that he had been instructed to support the view taken by the learned District Judge. Consequently no argument has been addressed to us on behalf of the view held by the learned Munsif. Sir Sultan Ahmed, who appeared for Mr. U. C. Patnaik, has dealt with the case very fully and has placed quite fairly before the Court all the materials which were before the lower Courts.

The petitioner, Kashi Nath Ratho, is a professional money-lender, and in the year 1935 he had instructed the opposite party to appear for him in certain execution cases. On the 8th of May, 1935, Mr. Patnaik withdrew from Court a sum of Rs. 1,065-1-0 which has been deposited to the credit of the petitioner. On the 8th of October, 1935, Mr. Patnaik withdrew another sum of Rs. 460-15-0 which had been likewise deposited to the credit of the petitioner. These two sums had been deposited in Court by a judgment-debtor in execution case no. 76 of 1935. On the 14th of August, 1937, Mr. Patnaik withdrew from Court a sum of Rs. 30 which had been deposited to the credit of the petitioner by a judgment-debtor in execution case no. 149 of 1937. It is common ground that Mr. Patnaik did not pay these sums ever to the petitioner for some considerable time. On the 4th of November, 1935, he paid to the petitioner a sum of Rs. 400 out of the sum of Rs. 460-15-0 which he had withdrawn on the 8th of October, 1935. The next two payments were of Rs. 20 and Rs. 5 which were made on the 12th of June, 1936, and the 14th of January, 1937, respectively. It is admitted that these two payments were made to cover the travelling and other expenses of the petitioner. On the 5th of September, 1937, a payment of Rs. 100 was made by the pleader to the petitioner out of which the petitioner had appropriated Rs. 10 towards his travelling and other

expenses. According to the pleader, this was a payment towards interest; but, according to the petitioner, the whole sum was paid towards travelling expenses, though in his books Rs. 10 only are appropriated towards such expenses. On or about the 30th of October, 1937, a further sum of Rs. 20 was paid to the petitioner to cover expenses. On the 23rd of November, 1937, the pleader paid to the petitioner a sum of Rs. 400 and on the 13th of January, 1936, a further sum of Rs. 100. On the 1st of April, 1938, Mr. Patnaik paid the petitioner a sum of Rs. 614 which represented the balance due in respect of the amounts withdrawn by the pleader and a further sum of Rs. 210 which the pleader alleges was paid as interest. On this date also the petitioner acknowledged that a sum of Rs. 42 had been spent by the pleader in expenses in connection with the petitioner's litigation.

According to the petitioner, Mr. Patnaik concealed from him the fact that he had withdrawn these various sums and the petitioner only became aware of the fact as a result of the inquiries made in Court. He alleges that Mr. Patnaik wrongfully retained these sums and only made payments from time to time as a result of pressure. According to him, these monies should have been handed over immediately they were withdrawn, and consequently it was urged that the pleader had been guilty of misappropriation of the monies and wrongful detention of them for a considerable time.

The pleader's defence was twofold. With regard to the sum of Rs. 1,065-1-0 withdrawn on the 8th of May, 1935, he alleged that an agreement was entered into between the parties, whereby he was allowed to retain this sum by way of loan. On the 5th of September, 1937, he alleges that he paid a sum of Rs. 100 by way of interest on this loan; but, as I have stated, the petitioner alleges that this sum of Rs. 100 was paid to cover expenses. Admittedly a sum of Rs. 210 was paid on the 1st April, 1938, and

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this, according to the pleader, was the balance of interest due upon the loan. The petitioner admits that this sum was paid as interest; but he alleges that he was forced to accept it and to give a receipt.

The learned Munsif held that the petitioner had not established that the pleader had concealed these withdrawals from him, and this finding is upheld by the learned District Judge. In my view there is no evidence upon which a finding of concealment could be based, and in fact the evidence points to the fact that the petitioner well knew that these sums had been withdrawn. The learned Munsif, however, rejected the pleader's defence that he had been permitted to retain the sum of Rs. 1,065-1-0 as a loan. He further rejected the opposite party's plea that the balance of the monies withdrawn by him had been retained by him to meet costs to be incurred in the litigation which was proceeding. The learned District Judge, however, held that there had been no misappropriation of the monies withdrawn and that the evidence established that Kashi Nath Ratho had permitted the pleader to retain the sum of Rs. 1,065-1-0 withdrawn by him as a loan. He further held with regard to the other sum alleged to be misappropriated, namely, Rs. 90-15-0, that the pleader was allowed to retain the sum to meet current expenses.

In the first place, it was argued in this Court that the enquiry by the learned Munsif was not a proceeding under section 14 of the Legal Practitioners Act. The form of the learned Munsif's report is somewhat unfortunate. He appears to have thought that he had to make this report to the learned District Judge, whereas the report is really made for the High Court. The report is to be forwarded through the learned District Judge; but it is not in fact a report made on his behalf. The same point was taken before the learned District Judge, and in my view the latter rightly held that the proceeding before the learned Munsif was a proceeding under section 14 of the

Legal Practitioners Act. The learned Munsif found the pleader guilty of an offence under section 13(*b*) of the Legal Practitioners Act and sent his report to the learned District Judge. It would have been better, however, if the learned Munsif had not framed his report in the way he did. However, on reading the whole report, it is clear that the learned Munsif was conducting an inquiry under section 14 of the Legal Practitioners Act and as required by that Act he forwarded his report to this Court through the learned District Judge.

It was also argued that the finding of the learned Munsif cannot be sustained by reason of the fact that no precise charges were framed. It might have been better if the learned Munsif had framed charges; but in my view the failure to formulate precise charges has led to no injustice in this case. The opposite party was given full particulars of the complaint made against him and was given every opportunity to meet that complaint. At no stage in the proceedings did the opposite party complain that he had been taken by surprise, and in my view these proceedings were not illegal by reason of the failure to formulate charges.

It is to be observed that in the case of *A, a pleader* v. *The Judges of the High Court of Madras*(1), their Lordships of the Privy Council laid down that "an inquiry in a serious case (such as professional misconduct on the part of a pleader) should proceed on formulated charges, not only in fairness to the person charged with professional misconduct, but in order that evidence may relevantly bear on the particular issues, and, further, that the evidence should be carefully taken and judged according to the ordinary standards of proof". As I have stated, it would have been better in this case if precise charges had been formulated; but as the failure to formulate such charges has not prejudiced the pleader, I hold

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that such failure to formulate charges is not fatal to these proceedings.

Before dealing with merits, it will be convenient at this stage to consider what standard of proof is required in cases of this kind. In the Madras case, to which I have already referred, Lord Thankerton at page 145 stated :—

"Before dealing with the charges it is right to state that, in their Lordships' opinion, charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion. An appropriate guide may be found in section 13, Legal Practitioners Act, no. XVIII of 1879, under which a pleader or mukhtar may be suspended or dismissed, who is guilty 'of fraudulent or grossly improper conduct in the discharge of his professional duty'."

The petitioner in this case has charged the pleader with fraudulent or grossly improper conduct in the discharge of his professional duty and in order to succeed he must clearly prove those charges. Proving facts and circumstances giving rise to grave suspicion is not sufficient to establish such a charge.

The petitioner's allegations were two-fold, namely, that the pleader had wilfully concealed from the petitioner the withdrawal of these various sums of money and had wrongfully and fraudulently retained the money in spite of repeated demands. According to the pleader, the petitioner well knew that these sums had been withdrawn and that he had been permitted to withhold Rs. 1,065-1-0 as a loan and to retain the balance, namely, Rs. 90-15-0 to meet current expenses. * * * * *

[His Lordship then discussed the evidence, and examining the merits of the case proceeded as follows :]

In my judgment the petitioner has failed to prove that the pleader misappropriated this sum of

Rs. 1,065-1-0. In my view, the circumstances suggest that there was some arrangement between the parties whereby Mr. Patnaik was allowed to retain this sum by way of loan. In all probability what happened was that Mr. Patnaik was allowed to retain the sum as a temporary accommodation and having spent it, he was unable to repay the whole for a period of nearly three years. If the relationship of pleader and client was changed into one of debtor and creditor, then no question of misconduct can arise. Had there been no arrangement entitling the pleader to use the money, then this would be a clear case of temporary misappropriation. However, there was, in my view, some arrangement which entitled Mr. Patnaik to keep and use this money, and that being so, the relationship existing between the parties was changed to that of debtor and creditor. Failure by the debtor to pay the money on demand does not, in my view, amount to professional misconduct.

A letter dated the 17th of January, 1938, from Mr. Patnaik's clerk to Kashi Nath (Ex. Q) was put in evidence. In that letter reference is made to an auction sale and Kashi Nath is told to bring money for poundage and not to depend on the vakil to provide that sum. In my view, such a letter would never have been written if the vakil had been guilty of misappropriation. When that letter was written, it was known to both the parties that a large sum was still owing from Mr. Patnaik to Kashi Nath. Even so, the pleader's clerk wrote to Kashi Nath telling him to bring money and not to rely on the pleader. Such a letter might be written if the pleader was in the position of a debtor unable to pay his debts; but I cannot imagine the letter being written if the pleader was in the position of a person who had wrongly misappropriated monies.

As to the sum of Rs. 90-15-0 alleged to have been misappropriated, the defence was that the pleader was allowed to retain this sum to meet expenses. Mr. Patnaik withdrew a sum of Rs. 460-15-0 on the

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9th of October, 1935, and on the 4th of November, 1935, he paid Kashi Nath Rs. 400 out of this sum leaving a balance in his hands of Rs. 60-15-0. Kashi Nath signed a receipt for this sum in which he states that he is in need of money now and that he has taken a sum of Rs. 400. He says:

"Afterwards I shall take the balance and sign the chittah and auraja. This is with my consent."

It is clear that when Kashi Nath took Rs. 400 he knew that there was a balance due to him, but he was quite prepared to take that when an account had been settled. On the 14th of August, 1937, the pleader withdrew another Rs. 30 for Kashi Nath and, according to him, he also retained this money to meet expenses. The difference between Rs. 460-15-0 and Rs. 400 which was paid and this sum of Rs. 30 makes up the sum of Rs. 90-15-0 alleged to have been misappropriated. When the final settlement was made on the 1st of April, 1938, Kashi Nath acknowledged that a sum of Rs. 42 had been spent by the pleader on his behalf. Litigation was going on during this time in which Mr. Patnaik was acting for Mr. Kashi Nath and it may well be that the pleader was allowed to retain this small amount to meet current expenses.

If Kashi Nath was prepared to accommodate the pleader to the extent of Rs. 1,065-1-0, there is nothing strange in the fact that he permitted the pleader to retain a sum of Rs. 90-15-0 to meet current expenses.

Having given the matter the fullest consideration I can, I am not satisfied that the petitioner has proved that Mr. Patnaik has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, and I would, therefore, reject the reference and find U. C. Patnaik not guilty of the charges made against him.

Though I find Mr. Patnaik not guilty of these charges, it must not be thought that I approve of his conduct in this case. In my view lawyers should not, except in very special circumstances, accept loans

from their clients. Where a lawyer has withdrawn money for a client and has been permitted to retain it a document evidencing that transaction should in every case be drawn up. It is essential, in cases where the relationship of lawyer and client has been changed to one of debtor and creditor, that the clearest evidence of such a change should be obtainable. In the present case Mr. Patnaik should have drafted a document setting out in precise terms the transaction and, further, should have shown in his books that the sum of Rs. 1,065-1-0 was no longer money which he held on behalf of his client but was money which he had obtained from Kashi Nath as a loan. The sum always appeared in Mr. Patnaik's books as money due to Kashi Nath from Mr. Patnaik as his lawyer and Mr. Patnaik has no one but himself to thank for these proceedings. Where a lawyer conducts himself in the manner in which he (Mr. Patnaik) conducted himself in this case, suspicion is bound to arise, and a lawyer by so acting places himself entirely in the hands of an unscrupulous client. Further, Mr. Patnaik should not have accepted temporary accommodation from Kashi Nath when he must have realised that it would be extremely difficult for him to repay the money on demand. At this time Mr. Patnaik was in serious financial difficulties and he must have been aware that repayment of this money would be extremely difficult. In such circumstances, he should never have accepted a loan from a person who placed confidence in him. It is true that the failure of Mr. Patnaik to repay this money does not amount to professional misconduct, but borrowing money in such circumstances is, in my view, most reprehensible. No lawyer should ever borrow money from a client unless he is sure that he can repay it when the client demands repayment.

WORT, J.—I agree.

KHAJA MOHAMAD NOOR, J.—I agree.

Reference discharged.

S. A. K.