

SPECIAL BENCH.

*Before Sir Shadi Lal, Chief Justice, Mr. Justice Scott-Smith and
Mr. Justice Abdul Raof.*

In re ABDUL RASHID AND ANOTHER.

Civil Miscellaneous Nos. 729 and 730 of 1922.

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March 29.

Letters Patent, clause 8—Legal Practitioners— convicted of a criminal offence—Disciplinary jurisdiction of the High Court— Procedure applicable—Is a legal practitioner entitled to present a written statement?—Criminal Procedure Code, Act V of 1898, section 256 (2)—Joining an Association declared to be unlawful— Reasonable cause—Legal Practitioners Act, XVIII of 1879, section 12.

An Association called "The National Volunteers Association" was declared to be an unlawful Association on the 12th December 1921, under section 15, sub-section (2), clause (b), of the Criminal Law Amendment Act, XIV of 1908, and on the 23rd January 1922 the respondents (legal practitioners) were convicted of being members of that Association and sentenced to imprisonment under section 17, sub-section (1), of the aforesaid Act. The respondents were then called upon by the High Court to show cause why they should not be removed or suspended from practice under the provisions of clause 8 of the Letters Patent. One of the respondents proposed to file a written statement.

Held, that the proceedings under clause 8 are not of a criminal nature in the sense that the rules of procedure applicable to a criminal trial such as the filing of a written statement by the accused are applicable to them, and respondent's written statement could not, therefore, be received. The High Court exercises a special jurisdiction over legal practitioners under clause 8 of the Letters Patent and has inherent power to apply such rules of procedure as may ensure a fair trial of the matter requiring adjudication. What is essential is that the parties concerned should have a proper notice and reasonable opportunity to be heard.

Held also, that the proceedings are not in the nature of a second trial or new punishment, but the question is whether the respondents after their conviction should continue members of the profession which should stand free from all suspicion.

Ex parte Brounsall (1), per Lord Mansfield, followed.

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Held further, that the propriety in law or in fact of the conviction cannot be questioned in these proceedings notwithstanding that the accused offered no defence in the criminal cases in which they were convicted.

In the matter of Rajendro Nath Mukerji (1), and *In the matter of Tasadduq Ahmad Khan* (2), followed.

In the matter of Durga Charan (3), not followed.

Held however, that while it is not permissible to go behind the conviction there can be no doubt that the Court is not only entitled but bound to enquire into the nature of the crime in order to decide whether the offence was of such a character as to render the person guilty of it unfit to remain a member of the profession.

An Advocate or a Vakil may be struck off the rolls for an offence which has no relation whatever to his character as a legal practitioner, but the mere circumstance that he has been convicted of an offence does not make it imperative on the Court to remove or suspend him from practice. The intention of the Crown was to give a wide discretion to the High Court in regard to the exercise of its disciplinary authority under clause 8 of the Letters Patent.

In the matter of Sashi Bhushan Sarbadhicary (4), referred to.

Held also, that legal practitioners, just as they enjoy special privileges, are subject to peculiar obligations not shared by ordinary citizens. They are officers of the Court and it is for the Court to see that the suitors are not exposed to improper officers of the Court.

In re Hill (5), per Lord Blackburn, followed.

And if an Advocate or a Vakil deliberately joins or continues to be a member of an Association which has been declared to be unlawful under the provisions of a statute, he renders himself liable to disciplinary action by the High Court. He may not like a particular measure, and he is entitled to protest against it and agitate for its repeal by all lawful means. But so long as it is the law of the land, it is his duty to obey it and not to act in defiance of its provisions.

In re Jivanlal Varajray (6), *Emperor v. Rajani Kanta Bose* (7), and *Shanker Ganesh Dabir v. Secretary of State* (8), referred to.

(1) (1899) I. L. R. 22 All. 49 (P. C.).

(2) (1922) I. L. R. 44 All. 362 (F. B.).

(3) 1885 I. L. R. 7 All. 290 (F. B.)

(4) (1906) I. L. R. 29 All. 95 (P. C.).

(5) (1868) 3. Q. B. 543.

(6) (1919) I. L. R. 44 Bom. 418 (F. B.).

(7) (1922) I. L. R. 49 Cal. 732.

(8) (1922) I. L. R. 49 Cal. 845 (P. C.).

The Government Advocate for the Crown—Messrs. Abdul Rashid and Duni Chand of Ambala have been convicted under the provisions of the Criminal Law Amendment Act (XIV of 1908) and Mr. Bishen Nath of Lahore has been convicted under the provisions of the Prevention of Seditious Meetings Act (X of 1911).

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[C. J.—The facts in the case of Mr. Bishen Nath and the Ambala lawyers are different, but the principle of law applicable is the same.]

Yes, my Lord. I do not propose to go behind the judgments, but in order to understand the significance of these convictions it would be necessary to state the circumstances under which the Volunteer Corps came to be declared unlawful. These are matters of common knowledge and historical importance.

[C. J.—Do you want us to take judicial notice of these facts? We cannot be influenced by what is not on the record.]

Then I will not refer to them. There is no definition given of "reasonable cause" in the Letters Patent. Section 12 of the Legal Practitioners Act gives a good illustration of what is meant by a reasonable cause. The point before your Lordships is whether these convictions imply a defect of character which may unfit the respondents to continue on the roll of the Legal Practitioners of this Court.

[C. J.—Do you concede that it is not every conviction which shows defect of character?]

Yes, my Lord, I concede that. The definition of an "unlawful Association" is given in section 15 (2), clause (b) of the Criminal Amendment Act.

[C. J.—It says that any Association which has been declared to be unlawful by the Governor-General in Council is an unlawful Association.]

The Volunteer Corps was declared to be an unlawful Association by notification and the respondents were convicted in pursuance of that. Your Lordships cannot go behind the conviction.

[C. J.—I am aware of the Privy Council ruling reported as *In the matter of Rajendro Nath Mukerji* (1),

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which says that a High Court taking disciplinary action cannot go into the merits of the conviction. But does that ruling apply to the case of a conviction of this nature ?]

Yes, my Lord, there is no difference between this and any other conviction.

The law on the subject of "reasonable cause" is illustrated by a number of rulings of the various High Courts. The first is *In re Jivanlal Varajray* (1). I would specially draw attention to the observation of Heaton J., on pages 440-442: Lawyers belong to a privileged class and just as they enjoy special privileges so they are under peculiar obligations. The Court has to see that they do not abuse their privileges. The respondents here interfered with the maintenance of law and order. Their conduct was calculated to openly defy the Government and hence they have rendered themselves liable to be dealt with under the disciplinary powers vested in your Lordships under the Letters Patent. See also *Emperor v. Rajani Kanta Bose* (2), and *Shanker Ganesb Dabir v. Secretary of State* (3).

Duni Chand (arguing his own case)—I propose reading out a written statement which will be filed.

[C. J.—That is not the practice of this Court. You may address us, but we cannot allow you to file a written statement.]

I have got a right to file a written statement under section 256, sub-section (2), of the Code of Criminal Procedure.

[C. J.—This is not a criminal case of the kind contemplated by that section.]

Then what is the procedure in such cases, my Lord ?

[C. J.—Such rules as the Court may lay down. Do you know of any case where a written statement has been filed in a High Court ?]

I cannot quote any such case but the lower Courts have been flooded with written statements.

[C. J.—We must decline to receive any written statement.]

(1) (1919) I. L. R. 44 Bom. 418 (F. B.).

(2) (1922) I. L. R. 49 Cal. 732.

(3) (1922) I. L. R. 49 Cal. 845 (P. C.).

The learned Government Advocate has conceded that it is only a conviction for offences which involve "moral turpitude" that renders a man liable to be dealt with under the disciplinary jurisdiction of your Lordships. A member of a Volunteer Association cannot be accused of moral turpitude. These Associations were rendered unlawful by a fiction of law; which lacks the ingredients that should be present in a law.

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[C.J.—The Courts are not concerned to see whether a law is morally good or bad. Their only concern is whether it was passed by a lawful authority.]

My submission is that the breach of a law, which is immoral, does not render me liable under the disciplinary action of the High Court. The Criminal Law Amendment was not intended to be applied to Volunteer Associations. It was meant for anarchical movements which were then so rife. When I broke the law nothing was further from my thoughts than to interfere with the maintenance of law and order.

Mr. *Abdul Rashid* adopted the arguments of Mr. Duni Chand.

The Government Advocate replied.

[*Proceedings under clause 8 of the Letters Patent concerning the conduct of certain Legal Practitioners.*]

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—Mr. Abdul Rashid, an Advocate, and Mr. Duni Chand, a *Vakil* of this Court, have been called upon to show cause why they should not be removed or suspended from practice under the powers conferred upon the Court by clause 8 of the Letters Patent. It appears that on the 12th December 1921, an Association called National Volunteers Association was declared to be an unlawful Association under section 15, sub-section (2), clause (b), of the Criminal Law Amendment Act, XIV of 1908, and that on the 23rd January 1922 both the respondents were convicted of being members of that Association and sentenced under section 17, sub-section (1), of the aforesaid Act, to rigorous imprisonment for six months each.

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The judgment of the Magistrate shows that the members of the Association had devoted their attention chiefly to picketting liquor shops at Ambala, and that on the morning of the 23rd January a party of the national volunteers carrying some flags and headed by the respondents went to the District Courts at Ambala where an auction of the liquor licenses was to be held. The respondents were invited by the Deputy Commissioner to sit on the platform where the bidding was to take place, and they accepted this invitation and asked their followers to withdraw to a place at a short distance. The liquor licenses were then offered for sale, but no person came forward to make a bid. After this infructuous proceeding the Deputy Commissioner suggested to the respondents that the volunteers should surrender their flags, but he was told that they were not prepared to do so. Thereupon the District Magistrate arrested the respondents, and, after recording the evidence for the prosecution, pronounced judgment that very day convicting them of an offence under section 17 (1) of the Act.

Now, clause 8 of the Letters Patent empowers this Court "to remove or to suspend from practice on reasonable cause" an Advocate or a *Vakil*, whose name is borne on the rolls of the Court; and the question arises whether a conviction under section 17, sub-section (1) of the Criminal Law Amendment Act constitutes a reasonable cause within the meaning of the above clause. Before adjudicating upon this matter it is necessary to notice a contention which has been pressed by Mr. Duni Chand. He challenges the propriety of the conviction and urges that neither he nor his colleague was afforded by the Magistrate an opportunity to submit a written statement in answer to the case set up by the prosecution. The record of the Magistrate, however, shows that Mr. Duni Chand as well as his friend admitted his membership of the National Volunteers' Association, and it is beyond dispute that that Association had been declared to be an unlawful Association. The Magistrate no doubt acted hastily, but his action cannot in the circumstances be said to have caused any prejudice to the accused.

There appears to be some misapprehension as to the nature and the scope of the present proceedings.

and it is necessary to point out that these proceedings cannot be regarded as criminal in their character. It is true that they are sometimes described as *quasi*-criminal, but only for the reason that they may result in penalties. They are not of a criminal nature in the sense that the rules of procedure applicable to a criminal trial, such as the filing of a written statement by the accused, are applicable to them. Strictly speaking, these proceedings are neither civil suits nor criminal prosecutions. The High Court exercises a special jurisdiction over legal practitioners in pursuance of the authority conferred upon it by the Letters Patent or an Act of the Legislature, and has inherent power to apply such rules of procedure as may ensure a fair trial of the matter requiring adjudication. What is essential is that the parties concerned should have a proper notice and a reasonable opportunity to be heard. These requirements have undoubtedly been fulfilled in the present case.

Coming now to the question whether the propriety of the conviction can be impugned in these proceedings, I find that the position of a legal practitioner convicted of a criminal offence was clearly and tersely described in an English case decided as far back as 1778. In the case of *ex parte Brounsall* (1), Lord Mansfield says:—

“ This application is not in the nature of a second trial or new punishment. But the question is whether after the conduct of this man (i.e., in stealing the guinea) it is proper that he should continue a member of the profession which should stand free from all suspicion * * * * and it is on this principle that he is an unfit person to practice as an Attorney. It is not by way of punishment, but the Courts in such cases exercise their discretion whether a man, whom they have formerly admitted, is a proper person to be continued on the roll or not. Having been convicted of felony we think the defendant is not a fit person to be an Attorney. ”

I am aware of the judgment of the Allahabad High Court in the case of *Durga Charan* (2) in which the pleader convicted of an offence was allowed to go behind the conviction in order to show that he had committed no offence at law. But this view has now been expressly overruled by the Privy Council in *Rajendro Nath's* case (3).

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(1) (1778) 2 Cowper 829.

(2) (1885) I. L. 7 All 290 (F.B.)

(3) (1899) I. L. R. 22 All. 49 (P. C.)

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In their judgment their Lordships of the Privy Council state in distinct terms that the propriety in law or in fact of the conviction cannot be questioned in the proceedings taken by the Court in the exercise of its disciplinary jurisdiction.

It is true that the respondents did not offer any defence to the charge brought against them, nor did they cross-examine the witnesses for the prosecution; and it may be urged that the rule in *Rajendro Nath's* case (1) was not intended to apply to a conviction of this character which proceeds upon what is practically an *ex-parte* version. There can, however, be no doubt that the prosecution cannot be held responsible for this result.

It appears that this contention was raised but not accepted by the Allahabad High Court, in the case of a legal practitioner who had been convicted without making any defence to a charge under section 153-A of the Indian Penal Code, *vide. In the matter of Tassaduq Ahmad Khan* (2).

While it is not permissible to go behind the conviction there can be no doubt that the Court is not only entitled but bound to inquire into the nature of the crime, in order to decide whether the offence was of such a character as to render a person guilty of it unfit to remain a member of the profession. The decided cases have placed it beyond doubt that an Advocate or a *Vakil* may be struck off the rolls for an offence which has no relation whatsoever to his character as a legal practitioner, but the mere circumstance that he has been convicted of an offence does not make it imperative on the Court to remove or suspend him from practice. There are criminal offences and criminal offences. As I pointed out to the learned Government Advocate at the hearing, suppose a legal practitioner is convicted of driving a motor car at an excessive speed or of some other offence of a trifling character, no Court would ever think of taking any disciplinary action against him. On the other hand, there may be an offence which implies a defect of character unfitting the person guilty of it to be a member of the legal profession.

(1) (1899) (I. L. R. 22 All. 49 (P. C.). (2) (1922) I. L. R. All. 352 (F. B.).

I will not attempt to suggest any precise rule which would distinguish cases of venial offences from those belonging to the other category; nor is it desirable to crystallize the Court's discretion into a rigid rule. As observed by their Lordships of the Privy Council in *Sarbadhiary's* case (1).—

“The intention of the Crown was to give a wide discretion to the High Court in regard to the exercise of his disciplinary authority.”

It is true that the offence committed by the respondents does not imply any moral baseness or depravity of character; but the decided cases, to which I shall refer presently do not show that it is necessary that the act of a legal practitioner, which is relied upon for striking his name off the roll, should have subjected him to anything like a general infamy or imputation of bad character. It must be remembered that we are dealing here, not with an ordinary citizen, but with a legal practitioner, who, just as he enjoys special privileges, is subject to peculiar obligations not shared by ordinary citizens. It has repeatedly been laid down that he is an officer of the Court, and his position as such has been clearly defined by Lord Blackburn in the case of *In re Hill* (2).

“I think when we are called upon in exercise of an equitable jurisdiction to order an attorney to perform a contract, to pay money, or to fulfil an undertaking, there we have jurisdiction only if the undertaking or the contract is made in his character of attorney, or so connected with his character of attorney as to bring it within the power of the Courts to require that their officer should behave well as an officer. But where there is a matter which would subject the person in question to a criminal proceeding, in my opinion a different principle must be applied. We are to see that the officers of the Court are proper persons to be trusted by the Court with regard to the interests of suitors, and we are to look to the character and position of the persons, and judge of the acts committed by them upon the same principle as if we were considering whether or not a person is fit to become an attorney. If he has previously misconducted himself we should consider whether the circumstances were such as to prevent his being admitted, or whether he had condoned his offence by his subsequent good conduct, the principle on which the Court being to see that the suitors are not exposed to improper officers of the Court.”

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(1) (1906) I. L. R. 29 All. 95 (P. C.)

(2) (1868) 3 Q. B. 543.

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Now, if an Advocate or a *Vakil* deliberately joins, or continues to be a member of, an Association which has been declared to be unlawful under the provisions of a Statute, his conduct attracts the operation of the rule enunciated by Lord Blackburn. He may not like a particular measure, and he is entitled to protest against it even vehemently and agitate for its repeal by all lawful means. But so long as it is the law of the land, it is his duty to obey it and not to act in defiance of its provisions. It is unnecessary to pursue this discussion any further, because I find that the cases decided by the High Courts in India leave no doubt on the subject. Taking them in the chronological order, we have, first, the case of what is called the "*Satyagraha* pledge" reported as *In re Jivanlal Varajray* (1). A Full Bench of the Bombay High Court held in that case that the act of certain legal practitioners in signing a pledge "to refuse civilly to obey the Anarchical and Revolutionary Crimes Act and such other laws as a Committee to be hereafter appointed may think fit" brought them within the disciplinary jurisdiction of the High Court. Then there is the judgment of the Calcutta High Court in *Emperor v. Rajani Kanta Bose and others* (2), where three Judges of that Court dealt with the case of certain pleaders who had joined a *hartal* and in furtherance of that movement absented themselves from the Courts and consequently neglected to discharge their duties towards their clients. The judges unanimously came to the conclusion that the conduct of the pleaders rendered them liable to disciplinary action by the High Court. Lastly, the Patna High Court has recently decided a case very similar to that before us. It appears that a *Vakil* Babu *Madhava Singh* was convicted of an offence under section 17 (2) of the Criminal Law Amendment Act, and that when his conduct came up for consideration under clause 8 of the Letters Patent, the Judges had no hesitation in holding that the conviction constituted a reasonable cause for suspending the *Vakil* from practice. We have also the case of a pleader in the Central Provinces who had organised an agitation against the payment of a tax and was bound over by a Magistrate to keep the peace for one year. The Court of the Judicial Commissioner dismissed the pleader, holding that his conduct brought him

(1) (1919) I. L. R. 44 Bom. 418 (F.B.). (2) (1922) I. L. R. 49 Cal. 732.

within the purview of section 13 (f) of the Legal Practitioners Act, and their Lordships of the Privy Council declined to grant leave to appeal against that judgment, —*vide Shankar Ganesh Dabir v. Secretary of State for India* (1).

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These authorities, which in principle are indistinguishable from the present case, show that the question which we are called upon to determine is by no means *res integra*; and I, accordingly, hold that the conviction of the respondents has rendered them liable to be dealt with under clause 8 of the Letters Patent.

Considering, however, that these are the first cases of the kind that have come before this Court; and that Mr. Duni Chand has assured us that neither he nor his comrade had the slightest intention to cause a breach of the peace, and that the object aimed at by them was to promote the cause of total abstinence or temperance, an object which pursued in a lawful manner is not only a perfectly legitimate but a laudable one, I would take no action against them other than giving them a warning.

SCOTT-SMITH J.—I concur on all points.

ABDUL RAOOF J.—I also agree.

A. N. C.

(1) (1922) I. L. R. 49 Cal. 845 (P.C.)