

## SPECIAL BENCH.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Ba U.

U THEIN NYUN

v.

DISTRICT SUPERINTENDENT OF POLICE,  
MAUBIN.\*

1935

July 2.

*Pleaders—Admission, suspension, dismissal—High Court's powers—Enquiry by a subordinate Court—Misconduct must arise in proceedings before the subordinate Court—Pleader entitled to practise before District Magistrate—Misconduct in a case before another Court—Enquiry by District Magistrate—Legal Practitioners' Act (XVIII of 1879), ss. 12, 13, 14.*

According to the scheme of the Legal Practitioners' Act the duty of admitting and suspending or dismissing pleaders is entrusted to the High Court. S. 12 of the Act empowers the High Court to suspend or dismiss a pleader who is convicted of a criminal offence implying a defect of character which unfits him to be a pleader. In cases of misconduct under s. 13 the High Court, after making such inquiry as it thinks fit, is entitled to suspend or dismiss a pleader guilty of such misconduct.

In a case where in the course of a proceeding before it a subordinate Court has reason to think that a pleader has committed misconduct in the course of his professional duty the presiding officer of such Court, under s. 14 of the Act, can institute proceedings against the pleader and inquire into his misconduct. If such officer finds the charge established he reports the case to the High Court. But a Court in which the proceedings are not pending in the course of which a pleader is alleged to have been guilty of misconduct is not entitled to take action under s. 14 merely because the pleader is entitled to practise before it.

*In the matter of Ganga Dayal, I.L.R. 4 All. 375; In the matter of Janak Kishore, 1 Pat. L.J. 576; In the matter of Manazirul Haq, (1923) Pat. H.C. Cases 45; Nallasivan v. Ramalingam Pillay, 32 M.L. J. 402; In the matter of Purna Chunder Pal, I.L.R. 27 Cal. 1023; Radha Churn Chuckerbutty and others, 10 C.W.N. 1059; In the matter of S. K. Rao, I.L.R. 15 Cal. 152—referred to.*

*In the matter of Maung Tun Aung Gyaw, 11 L.B.R. 111—overruled.*

*Rabindrachandra Chatterjee, In re, I.L.R. 49 Cal. 850—dissented from.*

The District Magistrate of Maubin received information that a Lower Grade Pleader of Maubin who was engaged for the defence in a sessions trial in the Court of the Additional Sessions Judge, Maubin, had been

\* Civil Misc. Application No. 17 of 1935.

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guilty of professional misconduct in attempting by means of a bribe to induce two witnesses for the prosecution to resile from the statements that they had made. The District Magistrate, purporting to act under s. 14 of the Legal Practitioners' Act, sent a copy of two charges of professional misconduct to the pleader, and gave him notice to appear before him for an inquiry.

*Held*, that as the professional misconduct alleged did not take place in the course of any proceeding before the District Magistrate of Maubin, the proceedings were invalid, and must be quashed.

*K. C. Sanyal* for the applicant. This is an application for the transfer of certain proceedings under the Legal Practitioners' Act now pending before the District Magistrate, Maubin, to some other Court.

[PAGE, C.J. How can these proceedings be regarded as criminal proceedings?]

Proceedings under the Legal Practitioners' Act are of a quasi-criminal nature. *In the matter of Maung Po Tok* (1). Even if they are not criminal proceedings the High Court has full power to direct the transfer of any proceedings under s. 107 of the Government of India Act.

[PAGE, C.J. Is not s. 107 merely an administrative section?]

Many of the decided cases take the contrary view. But in any case the present proceedings are invalid on another ground. Under s. 14 of the Legal Practitioners' Act it is only the presiding judge before whom the alleged offence on the part of the pleader is alleged to have been committed who can take action under that section. In the present case the alleged offence was not committed before the

District Magistrate, Maubin, but during a criminal trial pending before the Additional Sessions Judge, Maubin. *Nallasivan v. Ramalingam* (1); *In the matter of Janak Kishore* (2). A contrary view is taken in *In the matter of Maung Tun Aung Gyaw* (3).

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No appearance for the respondent.

PAGE, C.J.—This is an application for the transfer of Criminal Miscellaneous No. 126 of 1934 from the District Magistrate, Maubin, to some other judicial officer for determination.

The respondent is the District Superintendent of Police, Maubin, and the Court is informed that he has withdrawn his objection to the transfer being made. It is unnecessary, however, to consider whether the alleged facts upon which the application is based would justify a transfer of the proceedings from the District Magistrate of Maubin, because in our opinion the proceedings in Criminal Miscellaneous No. 126 of 1934 as a whole are *ultra vires* and must be quashed.

It appears that information was received by the District Magistrate of Maubin to the effect that Maung Thein Nyun, a Lower Grade Pleader of Maubin who was engaged for the defence in Sessions Trial No. 16 of 1934 of the Additional Sessions Judge, Maubin, had been guilty of professional misconduct in attempting by means of a bribe to induce two witnesses for the prosecution to resile from the statements that they had made.

On the 18th of December 1934 the District Magistrate, purporting to act under section 14 of the Legal Practitioners' Act (XVIII of 1879), sent a copy of two

(1) 32 M.L.J. 402.

(2) 1 Pat. L.J. 576.

(3) 11 L.B.R. 111.

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charges of professional misconduct to the applicant, Maung Thein Nyun, and at the same time gave him notice to appear before the District Magistrate on the 4th of January 1935 "when an enquiry will be held to show cause why you should not be reported to the High Court of Judicature at Rangoon."

It is to be observed that the professional misconduct alleged did not take place in the course of any proceeding before the District Magistrate of Maubin, but during a criminal trial pending before the Additional Sessions Judge, Maubin.

Now, the scheme of the Legal Practitioners' Act is plain. The duty of admitting and suspending or dismissing pleaders is entrusted to the High Court. If a pleader is convicted of a criminal offence "implying a defect of character which unfits him to be a pleader," the High Court is given power under section 12 to suspend or dismiss him. In cases where the misconduct referred to in section 13 is alleged, or where a pleader is otherwise alleged to be guilty of professional misconduct, the High Court, after making such enquiry as it thinks fit, is entitled under section 13 to suspend or dismiss the pleader. But in a case where in the course of a proceeding before it a subordinate Court has reason to think that a pleader has committed misconduct in the course of his professional duty it is expedient and reasonable that the presiding officer of the Court should have power to institute proceedings against the pleader, and for that reason section 14 was enacted which, so far as is material, provides that

"if any such pleader or Mukhtar practising in any subordinate Court or in any Revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration . . . On

such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtar, and shall proceed to adjudicate on the charge. If such officer finds the charge established and considers that the Pleader or Mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the Pleader or Mukhtar

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The section further provides *inter alia* that in each case the report of the presiding officer of the Court shall be forwarded to the High Court through the proper authorities.

Now, the District Magistrate of Maubin was not the presiding officer of the Court in which the misconduct of the respondent was alleged to have been committed, and, that being so, in my opinion the District Magistrate had no jurisdiction to institute proceedings against the applicant under section 14 of the Act. For the reasons that I have stated I am of opinion that upon a true construction of section 14 the only person who is entitled to take proceedings against a pleader under that section is the presiding officer of the Court or Office in which proceedings are pending in the course of which the pleader is alleged to have been guilty of misconduct. In *In the matter of Maung Tun Aung Gyaw, 3rd Grade Pleader of Ngathaingyaung, Bassein District* (1) and *Rabindrachandra Chatterjee, In re* (2), however, it has been held that any Court in which a pleader practises his profession is a Court the presiding officer of which is entitled to take proceedings for misconduct against the pleader under section 14. In *Rabindrachandra Chatterjee, In re* (2) in which the misconduct alleged did not take place in the course of

(1) 11 L.B.R. 111.

(2) (1922) I.L.R. 49 Cal. 850 at p. 858.

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 U THEIN Sanderson C.J. observed  
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 DISTRICT \* "in my judgment, the learned District Judge had jurisdiction to  
 SUPERIN- deal with all the matters which were alleged in the notice, inasmuch  
 TENDENT as the petitioner (the learned pleader) was practising in the Court  
 OF POLICE. of the learned District Judge and it was within his jurisdiction,  
 MAUBIN. upon proper materials being laid before him, to institute the  
 PAGE, C.J. proceedings in the manner in which he did."

But in that case the judgment of a Bench of the Calcutta High Court in *Radha Churn Chuckerbutty and others* (1) was not referred to, in which the learned Judges took the same view of the meaning and effect of section 14 which finds favour with us. With all due respect I am of opinion that the view expressed by the Calcutta High Court in *Rabindrachandra Chatterjee, In re* (2) was not in accordance with law. Indeed, as I apprehend the matter, if section 14 was construed as the Calcutta High Court construed it the section would be inherently inconsistent and much trouble might follow. If the Calcutta view were to prevail it would mean that section 14 should read not "if any such pleader *practising* in any subordinate Court or in any Revenue office is charged in such Court or office", but "if any such pleader *is entitled to practise* in any subordinate Court or in any Revenue Office", and much confusion would result. If the presiding officer of any subordinate Court or Revenue office in which a pleader is entitled to practise can take proceedings in connection with alleged misconduct on the part of the pleader otherwise than in relation to a case pending before such Court there would be nothing in section 14, for example, to prevent the presiding officer of a Revenue Office who thought that the pleader had been guilty of misconduct in the course of a sessions trial from

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(1) 10 C.W.N. 1059. (2) (1922) I.L.R. 49 Cal. 850 at p. 858.

charging the pleader with such misconduct, or a Subdivisional Judge might take upon himself to charge a pleader with alleged misconduct not in connection with any proceeding in his Court but in a proceeding before the District Magistrate. Such an anomalous state of affairs could never have been intended. In my opinion it is manifest from the language used in the section that it is only where in the course of proceedings before it a subordinate Court has reason to suppose that a pleader has been guilty of misconduct that the subordinate Court is at liberty, without reference to the High Court, to enquire whether the pleader had been guilty of misconduct or not. The view which I take of the construction of section 14 is in consonance with that held in *In the matter of Janak Kishore, Abinash Ch. Nandi and Girwardhar* (1); *In the matter of Manazirul Huq* (2); *In the matter of the petition of Ganga Dayal and others* (3); *Radha Churn Chuckerbutty and others* (4) and *In the matter of Purna Chunder Pal* (5); see also *In the matter of Southekal Krishna Rao* (6) and *Nallasivan Pillai v. N. Ramalingam Pillay* (7).

In my opinion the case of *Maung Tun Aung Gyaw* (8) was wrongly decided, and must be treated as overruled.

For these reasons, in my opinion, the proceedings in Criminal Miscellaneous No. 126 of 1934 of the Court of the District Magistrate of Maubin are invalid in law, and must be quashed.

BA U, J.—I agree.

(1) 1 Pat. L.J. 576.

(2) (1923) Pat. H.C. Ca. 45.

(3) (1882) I.L.R. 4 All. 375.

(4) 10 C.W.N. 1059.

(5) (1899) I.L.R. 27 Cal. 1023 at p. 1040.

(6) (1887) I.L.R. 15 Cal. 152.

(7) 32 Mad. L.J. 402.

(8) 11 L.B.R. 111.

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