

[On the merits his Lordship held that the learned Additional Sessions Judge had not committed any error of law whatever and so dismissed the application in revision.]

1937

MA THAUNG

v.
NANDIYA.

MOSELY, J.

SPECIAL BENCH.

*Before Sir Ernest H. Goodson Roberts, Kt., Chief Justice, and
Mr. Justice Dunkley.*

IN THE MATTER OF AN ADVOCATE.*

1937

Nov. 10.

Advocates and pleaders—Conviction for offence—Subsequent enquiry for disciplinary action—Conviction to be deemed right—Facts and circumstances of case—Defect of character involving moral turpitude—Conviction for defamation—Function of Bar Council Tribunal—Justification of advocate's action—Dissemination of defamatory matter—Advocate's duty.

Where criminal proceedings are taken against a pleader or an advocate and finally concluded they must be taken to have been rightly decided, and the question to be determined in a subsequent enquiry as to whether the advocate or pleader ought to have disciplinary action taken against him is whether upon a perusal of the facts and circumstances disclosed in the evidence in the criminal proceedings his offence has been one implying a defect of character which unfits him to be a pleader or advocate. Such a defect of character normally involves moral turpitude.

Where an advocate has been convicted of the offence of defamation, it is not open to the tribunal of the Bar Council to justify his action. A responsible citizen when making a charge against a person of which he has not ascertained the truth should be careful not to aggravate the defamatory nature of the matter by lending his support to an implied acceptance of it without careful investigation into its nature.

Campagnac for the advocate: The mere circumstance that an advocate has been found guilty of a criminal offence does not make it imperative for the Court to take disciplinary action against him. The Court will look at all the surrounding circumstances and if it finds that the advocate has been guilty of an offence involving moral turpitude then only will it take disciplinary action against him. *In the matter of an Advocate* (1).

* Civil Misc. Application No. 60 of 1937.

(1) I.L.R. 12 Ran. 110.

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In a subsequent case a Bench of this Court presided over by Sir Arthur Page, the former Chief Justice refrained from taking disciplinary action against a pleader who had been convicted of the offence of cheating under section 420 of the Indian Penal Code. The pleader's appeal from the conviction had been dismissed and so had an application in revision to the High Court been dismissed. Nevertheless in that case, without any other materials before it, except the records of the criminal Courts, the Bench reviewed all the facts and circumstances and held that it was not a case in which disciplinary action should be taken against the pleader.

Tun Byu (Government Advocate). Members of the legal profession are under no legal duty to their clients to make grave and scandalous charges against either Judges or the opposite parties on the mere wish of their clients. The more serious the allegations of a defamatory character are, the greater must be the caution on the part of the advocate concerned. He cannot shield himself behind others. *In the matter of Dwarka Prasad Mithal* (1).

The evidence shows that there was a personal motive on the part of the advocate. He ought to have had more corroborative affidavits. To put it at the lowest, the advocate's action was careless and showed lack of responsibility.

ROBERTS, C.J.—This case comes before us for such action as it may appear ought to be taken under the Bar Council Act, one U Kun, an advocate of this High Court, having been convicted of the offence of defamation, contrary to section 499 of the Penal Code, and having been required by the Magistrate to

enter into a bond and to come up for judgment when called upon within a period of two years, under the provisions of section 562 of the Code of Criminal Procedure. The advocate thus convicted did not appeal against his conviction, and we must take it for all purposes, therefore, that that conviction was right. An enquiry has been held by a Tribunal of the Bar Council into his conduct with a view to seeing whether he has done anything which seems to indicate the necessity of taking disciplinary action against him, and the Tribunal, we think, should have merely recorded the fact that he had been convicted of an offence and have asked him to show cause why no disciplinary action should be taken against him. But the Tribunal framed charges which involved a consideration of the law of conspiracy and which also included an allegation that he had published the defamatory matter knowing it to be false ; and they exonerated him of guilt on the charges thus framed. They have even gone further and said that he was justified in the action which he took.

The charge brought against him in the Magistrate's Court and the incidents connected therewith arose from the writing of a letter by the advocate to the Registrar of the High Court inviting him to call for papers and institute enquiries upon certain allegations made in affidavits of which the advocate enclosed copies. The affidavits contained charges which were clearly defamatory and, if untrue, of a scurrilous nature ; and by writing in the way he did we are clearly of opinion that as a responsible citizen he was disseminating defamatory matter and making himself responsible for its republication. We think that if he had desired to take any action, and had been taking action in good faith, he would have adopted a course different from that which he did, and the Magistrate

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who tried the case—and beyond whose judgment we cannot go—took the same view and arrived at a finding of fact which we cannot disturb that U Kun had not, in all the circumstances of the case, acted in good faith in forwarding the affidavits in the way he did. It is therefore necessary to say that the Committee of the Bar Council must be held wrong in declaring that he was justified in the action which he took. No man can ever be justified in disseminating defamatory matter unless he can bring himself within one of the exceptions to section 499 of the Penal Code, or unless his action is privileged in other respects. It having been held that he did not act in good faith it must be wrong to say that he was justified in acting as he did.

When we come, however, to consider the measure of guilt which we ought to impute to him, the matter is rather different. It has been held, following a number of decided cases in this High Court and elsewhere, that when criminal proceedings are taken against a pleader or an advocate and finally concluded, they must be taken to have been rightly decided, and the question to be determined in a subsequent enquiry as to whether the advocate or pleader ought to have disciplinary action taken against him is whether upon a perusal of the facts and circumstances disclosed in the evidence in the criminal proceedings his offence has been one implying a defect of character which unfits him to be a pleader or advocate. Such a defect of character normally involves moral turpitude.

We are of opinion that in this case the action of U Kun was exceedingly ill-advised. He took some part in the preparation of some of the affidavits, and the nature of the allegations made in them made it desirable for him to have corroborative material if any action were to be taken by him, and also to have pointed out that he was merely passing on information

in good faith for what it was worth with the object of an enquiry being held and with *bona fide* intentions. But we do not think, while it is not open to us to question the propriety of the criminal conviction, that what he has done is of such a nature as to render him to be unfit to be an advocate, or even to call for any disciplinary action on our part, beyond saying that we trust that responsible citizens, when afforded the opportunity of making charges against persons (whether known to them or not) of which they have not ascertained the truth, should be careful not to aggravate the defamatory nature of the matter by lending their support to an implied acceptance of it without careful investigation into its nature.

As I say, we have come to the conclusion that in all the circumstances no further action need be taken in this matter, but U Kun will have to pay the costs of the Bar Council enquiry and the hearing before this Court : ten gold mohurs before the Bar Council and ten gold mohurs here.

DUNKLEY, J.—I agree.

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