

CRIMINAL REVISION.

Before Mr. Justice Dunkley.

1938

Aug. 2.

MOHAMED GHAZI

v.

U TUN KYWE AND OTHERS.*

Pleaders—Discipline and control vested in Courts—Restraint of pleader from appearing in a case—Strong case to be made out—Prosecution pleader a likely witness for the defence—Magistrate's opinion—Sufficient grounds of restraint—Prosecution pleader, a competent witness—Appearance for the prosecution not desirable.

The discipline and control of pleaders is vested in the Courts by the Legal Practitioners Act, and a Judge or Magistrate has authority to restrain a pleader from appearing for either party in a case, when it would be manifestly improper for the pleader to do so.

A very strong case must be made out before an order restraining a pleader from acting in a particular case can be passed. The mere fact that the defence asserts that the pleader for the prosecution will be required as a witness for the defence, and that the Magistrate himself thinks that he will be a material witness for the defence, are not sufficient grounds for restraining the pleader from appearing in the case for the prosecution.

A pleader who is conducting a case is nevertheless a competent witness therein. But it is desirable that a pleader who knows he will be an important witness should not appear in the case, and if he accepts a brief without knowing that he will be such a witness, he should retire from the case when he discovers the fact.

Chandreshwar Prasad v. Bisheshwar Prataf, I.L.R. 5 Pat. 777 ; *D. Weston v. Dass*, I.L.R. 40 Cal. 898 ; *Srimati Sabitra v. Savi*, I.L.R. 12 Pat. 359, referred to.

DUNKLEY, J.—The learned Magistrate has passed an order, dated 21st June, 1938, restraining a pleader, named U Ba Maung, from conducting the prosecution in a criminal trial instituted on complaint which is pending before him. The grounds on which the order is based are that the defence advocate states that, if the accused are called upon to enter on their defence, he will desire to call U Ba Maung as a defence witness,

* Criminal Revision No. 343B of 1938 from the order of the 3rd Additional Special Power Magistrate, Yamethin, in Criminal Trial No. 15 of 1938.

and the learned Magistrate himself thinks that U Ba Maung will be a material witness for the defence. That a Judge or Magistrate has authority to restrain a pleader from appearing for either party in a case, when it would be manifestly improper for the pleader to do so, cannot be gainsaid. In Burma the discipline and control of pleaders is vested in the Courts by the Legal Practitioners Act, and for the proper control of the profession it is essential that the Courts should have authority to refuse to permit a particular pleader to appear on behalf of a particular person in a particular case when it would be gross misconduct on the part of the pleader so to appear. This power has always been recognized and acted on. But the Courts are always slow to interfere with the general right which a party has to be represented by the pleader of his choice, and a very strong case must be made out before an order restraining a pleader from acting in a particular case will be passed. For instance, if a pleader has accepted a retainer from one party, or has at an early stage been engaged by one party and has received confidential information from that party, he will not be permitted to appear for the other party. But the mere facts that the defence asserts that the pleader for the prosecution will be required as a witness for the defence, and that the Magistrate himself thinks that he will be a material witness for the defence, are not sufficient grounds for restraining the pleader from appearing in the case for the prosecution. A pleader who is conducting a case is nevertheless a competent witness therein, and there is no harm in his giving evidence in a case in which he is appearing [*D. Weston v. Peary Mohan Dass* (1), *Chandreshwar Prasad Narain Singh v. Bisheshwar Pratap Narain Singh* (2), *Srimati Sabitra Thakurain v.*

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(1) (1912) I.L.R. 40 Cal. 898.

(2) (1926) I.L.R. 5 Pat. 777.

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Mrs. F. A. Savi (1)]. But it is desirable that a pleader should not appear in a case if he knows or has reason to believe that he will be an important witness in the case, and no self-respecting pleader should conduct a case under such circumstances; if he accepts the brief not knowing or having reason to believe that he will be such a witness, but discovers subsequently that he is a witness on a material question of fact, he should retire from the case [*Chandreshwar Prasad Narain Singh v. Bisheshwar Pratap Narain Singh* (2)].

Viewed as an order restraining U Ba Maung from appearing in the case for the prosecution, the order of the learned Magistrate, dated the 21st June, 1938, was wrong and must be set aside. But if it was merely intended to be advice given by the Magistrate to U Ba Maung and his client, it was very proper advice to give. U Ba Maung cannot be restrained from continuing to appear for the prosecution, but if he does so after this advice has been given to him, he does so at his own risk, and he may find at the end of the trial that he has laid himself open to a charge of misconduct.

(1) (1932) I.L.R. 12 Pat. 359.

(2) (1926) I.L.R. 5 Pat. 777.