

## SPECIAL BENCH.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice,  
Mr. Justice Mya Bu, and Mr. Justice Mosely.

## IN THE MATTER OF AN ADVOCATE.\*

1938

Dec. 16.

*Advocate—Bribing a judicial officer—Gross professional misconduct—Dishonouring justice—Reinstatement after disbarring—Period of time—Long period of strenuous effort at good conduct—Reinstatement not a matter of course or within short period.*

An advocate who stoops to the nefarious tactics of bribing or attempting to bribe a judicial officer is guilty of the grossest professional misconduct; for by such means, if successful, justice is both dishonoured and betrayed. An advocate disbarred for such an offence cannot hope to be reinstated within such a short period as four years even though his conduct may be satisfactory during such interval. The offence can only be purged after strenuous efforts and after a long period during which he has tried his best to reinstate himself in society by uniformly satisfactory conduct. A person who is disbarred is not necessarily shut out permanently, but reinstatement is not a matter of course and it is not something which can be hoped for within a brief period of time.

*Clark* for the applicant. Where an advocate has been disbarred, he may apply for reinstatement after a lapse of time if he can show that during the interval he has conducted himself honourably, and that no objection remains as to his character and capacity. *In re Abiruddin Ahmed* (1), and see the American, English, Australian and Indian authorities cited. The test is whether the sentence of exclusion, however, right, has had the salutary effect of awakening in the delinquent a higher sense of honour and duty. *In re Pyke* (2). If the advocate produces, as in this case, a large body of respectable opinion, especially of his own professional class, he need not be debarred for ever. See also *In the matter of Mathrua Prasad* (3): *In re an Advocate* (4).

\* Civil Misc. Application No. 75 of 1938.

(1) I.L.R. 38 Cal. 309, 315.

(3) I.L.R. 1 Pat. 684.

(2) (1865) 6 B. & S. 707.

(4) I.L.R. [1937] Bom. 99.

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An advocate or a solicitor who has purged his wrong and is of a reformed character may be readmitted.

[ROBERTS, C.J. The Court must have regard to the nature of the offence committed and the standard of the profession must also be assured. Some people who have given their certificates seem to think that this is a venial matter, and the applicant can easily redeem himself.]

There is an overwhelming expression of complete satisfaction as to the present character of the applicant in the locality he is living by respectable people. The applicant is engaged in public and charitable work. He has shown great promise and has been sufficiently punished. Is he to be branded and debarred for ever?

*Tun Byu* (Government Advocate). Some of the testimonials have been given very shortly after the applicant was disbarred. Something more solid is wanted than bare testimonials. The time is not yet come for his reádmision to the honourable profession. *In re Poole* (1)

*N. M. Cowasjee*. The Bar Council is unanimously of opinion that the application for reinstatement is premature and cannot be supported.

ROBERTS, C.J.—This is an application for the reinstatement of an advocate of Maubin, one U Ba Htin, who was disbarred in March 1935. The charge which was proved against him was that having been engaged by a gentleman to defend him in a civil suit he wrote to his client and said that the Myoók had demanded a sum of Rs. 300 and that he was “still bargaining with him trying to beat him down”; and he was called upon

to show cause why he should not be struck off. There were also charges that he received from his client's wife the sum to be given as a bribe and misappropriated that sum. Those charges were not proved and they did not form part of the matter in respect of which action was taken, which was limited to his guilt upon the first charge. The defence was that the document was forged by some one else, and that defence was not believed. In giving the judgment of the Court Page C.J. said :

“ An Advocate who stoops to such nefarious tactics is guilty of the grossest professional misconduct ; for by such means, if successful, justice is both dishonoured and betrayed.”

We regard as of the highest importance that the sentiments which are expressed in that phrase should be widely disseminated throughout Burma, and we should be wanting in the discharge of our duty if we were to convey the impression that an advocate found guilty of an offence like bribery or attempted bribery could in any circumstances suffer so slight a penalty as suspension for four years. That is in effect what would happen if we were to accede to the appeal which has been made by Mr. Clark, who has said everything that could be said on behalf of the applicant. In the particular case the applicant was not proceeded against under section 162 of the Penal Code : the reason may have been that the matter was discovered too late for proceedings to be satisfactorily taken. In that respect at least he was not unfortunate ; and far from this having been a venial matter, as some of the writers of testimonials in his favour seem to think, it is an offence which can necessarily only be purged after strenuous efforts and after a long period during which he has tried his best to reinstate himself in society. It is clear from the testimonials that the applicant has been

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making an effort to regain the confidence of the Bar, the Bench and the profession, and we are far from saying in any case that the door is inevitably and permanently shut to persons who are disbarred: they may after the lapse of a suitable period of time, provided their conduct has been uniformly satisfactory, ultimately reach reinstatement. But reinstatement is not a matter of course and it is not something which can be hoped for within a brief period of time.

We are of opinion that the Advocate-General's view and that of the Bar Council is the proper one: whereas people who have written these testimonials have, we think, been actuated more by pity than a real regard for the realities of the situation. In particular we notice that the Bar Association of his own town passed a resolution that he was fit to be reinstated after the lapse of two years and three months from the time he was disbarred. That shows that the offence of which he has been found guilty was not regarded with that seriousness with which it should be. We have considered this matter with great care and, as I say, desire to point out that our judgment does not mean that the door is for ever shut upon applicants who have been disbarred: they may in course of time in circumstances which I have indicated be reinstated. But this case is not one in which, we are of opinion, we should interfere at the present juncture, and, accordingly, we reject the application.

MYA BU, J.—I agree.

MOSELY, J.—I was a member of the Bench which ordered the present applicant to be struck off the rolls. I agree with the judgment of my Lord the Chief Justice.