SPECIAL BENCH.

Before Jai Lal, Dalip Singh and Monroe JJ.

1933

April 19.

THE CROWN—Petitioner

versus

FARID-UL-HAQ ANSARI AND ANOTHER, Respondents.

Civil Miscellaneous No 32 of 1933.

Legal Practitioner—Petition under Clause 8 of the Letters Patent (on conviction under Section 17 (1), Criminal Law Amendment Act, XIV of 1908) for suspension or removal from practice—Legality of the original conviction—whether can be questioned—Necessity of ascertaining facts of the criminal case—to decide whether respondents are improper persons to remain legal practitioners.

The respondents *A* and *B* were convicted by a Magistrate under Section 17 (1) of the Criminal Law Amendment Act, and after having served their respective terms of imprisonment applications were made under Clause 8 of the Letters Patent and Section 41 of the Legal Practitioners' Act for removal of their names from the rolls of Advocates of this Court. Before the Magistrate, *A* was charged with having committed the offence of taking part in a celebration of Independence Day under orders of the Delhi District Congress Committee, which had been declared an unlawful association, and had thereby assisted an unlawful association, to which he pleaded guilty. While *B* was found to have made a speech at a meeting which was convened by the Congress Committee condemning the action of Government in arresting Mr. Sen Gupta.

Held, that the respondent cannot as a matter of right raise the plea that the High Court should consider the merits of the original convictions in these proceedings.

Held, however, that it is necessary for the High Court to know about the nature of the act complained of, in order to decide whether the person in question is an improper person to remain a legal practitioner. Being a member of an association which interferes with the administration of the law or with the maintenance of law and order or constitutes a

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danger to the public peace may well be considered to render a man an improper person to be a practitioner in a Court of Justice, but it does not follow that a man who has committed an isolated act which assists the operation of an unlawful association is necessarily such an improper person. Everything depends on the nature of the act and the particular operation assisted.

And, as in the case of *A*, neither the record, nor the Government Advocate could give the Court any information as to the facts on which he was convicted no action could be taken against him under the present petition.

In re Abdul Rashid (1), and *In re Hill*, per Lord Blackburn (2), referred to.

Shankar Ganesh Dabir v. *Secretary of State for India* (3), *In re Jivanlal Varajray Desai* (4), and *In the matter of Babu Madahra Singh, Vakil* (5), distinguished.

Held further, as to *B*, that all that appeared from the judgment of the Magistrate was that he made a speech at a meeting convened by the Congress Committee, of which he was found not to be a convener, and that the speech was not of such an objectionable character as to bring the case within the ambit of clause 8 of the Letters Patent.

Petition under Clause 8 of the Letters Patent and Section 41 of the Legal Practitioners Act, praying that a rule nisi *be granted against the respondents to show cause why they should not be removed or suspended from practice.*

C. H. CARDEN-NOAD, Government Advocate, for Petitioner.

J. H. AGGARWAL, B. R. PURI, J. L. KAPUR and ASA RAM, for Respondents.

DALIP SINGH J.—These two cases under para. 8 of the Letters Patent raise somewhat similar points and may conveniently be disposed of in one judgment. DALIP SINGH J.

(1) (1923) I. L. R. 4 Lah. 271.
(2) (1868) 3 Q. B. 543.
(3) (1922) I. L. R. 49 Cal. 845.
(4) (1920) I. L. R. 44 Bom. 418.
(5) (1923) 72 I. C. 875.

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The facts of the first case, namely, that of Mr. Farid-ul-Haq Ansari, Advocate of Delhi, are as follows :—

The respondent was charged under section 17 (1) of the Criminal Law Amendment Act. The record of the proceedings shows that he was asked whether he had taken part in a celebration of Independence Day under the orders of the Delhi District Congress Committee, which had been declared an unlawful association by the Chief Commissioner in his Notification No. 40, dated the 4th January, 1932, and had thereby assisted the operations of an unlawful association. The respondent pleaded guilty to the charge and the Court, on his plea of guilty, convicted him under section 17 (1) of the Criminal Law Amendment Act and sentenced him to six months' simple imprisonment and a fine of Rs. 200 or in default one and-a-half months' further simple imprisonment. There is nothing on the record to show us what was Independence Day or how it was ordered to be celebrated by the unlawful association known as the Delhi District Congress Committee nor what part the respondent took in the celebration. The learned Government Advocate, who appeared on behalf of the Crown in the case, stated that he did not wish and did not consider it proper to lead any evidence to elucidate the above matters.

The facts of the second case, namely, that of *Lala* Jugal Kishore Khanna, Pleader of Delhi, are that on the 21st January, 1932, he addressed a meeting held by the Delhi Congress Committee, in which he told the people assembled that the purpose of the meeting was to congratulate Mr. Sen Gupta, a member of the All-India Congress Working Committee, which had also been declared an unlawful association by the

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Governor-General in Council, on his arrest. He further stated that, in arresting Mr. Sen Gupta, the Government had given proof of their embarrassment and nervousness and that, since the Government had declared the Congress unlawful, he would like to know under what law the Government itself existed. When questioned by the Court the said respondent stated that he did not mean any disrespect to the Court but he did not wish to take part in the proceedings. In other words, he refused to plead to the charge. He was convicted of an offence under section 17 (1) of the Criminal Law Amendment Act, either for taking part in a meeting of an unlawful association or for assisting the operations of any such association. The judgment does not make it clear which of these two clauses was applied. He was sentenced to six months' simple imprisonment and to Rs. 200 fine or, in default, to $1\frac{1}{2}$ months' further simple imprisonment.

Before dealing with the arguments advanced by the learned Government Advocate, I think it is convenient here to dispose of an argument raised by Mr. Bhagat Ram Puri, who appeared for Mr. Farid-ul-Haq Ansari. The learned counsel endeavoured to argue, relying on *High Court Bar Association, Lahore* v. *Emperor* (1), that it was open to the High Court in such a case to consider the merits of the original conviction. I do not think it is open to the respondent to raise such a plea at all when called upon under para. 8 of the Letters Patent to show cause why his name should not be removed from the list of practitioners or attorneys of the Court. No doubt the High Court, as held in that ruling, has wide powers to intervene in any case brought to its notice in the interests of

(1) (1932) 33 Cr. L. J. 339.

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justice, apart from the fact whether the accused himself has moved the High Court or has appealed from the conviction against him or not; such a power, however, would only be exercised in very special cases and, as pointed out in that ruling, it is not a right of the accused or any one else, but a power inherent in the High Court itself. I would, therefore, repel this argument of the learned counsel.

I now proceed to deal with the arguments advanced by the learned Government Advocate. He relied on *In re Abdul Rashid* (1). This was a decision by three Judges of this Court in a case where certain persons had been held guilty under section 17 (1) of the Criminal Law Amendment Act for being members of an unlawful association. The ruling refers to the judgment of Lord Blackburn in the case of *In re Hill* (2) with approval. That ruling says: "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. * * * * * the principle on which the Court acts being to see that the suitors are not exposed to improper officers of the Court." With the test laid down, with all deference, I humbly agree. Whether this test does or does not imply any moral baseness or depravity of character is not a question which to my mind arises in this case and I, therefore, do not feel called upon to decide that point. It is clear, however, that it is necessary for the Court to know what the nature of the act complained of was in

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order to decide whether that act shows that the person in question is an improper person to remain a practitioner, or, to put it in the words of the ruling, to whom suitors in the Court should not be exposed. In the first case before us we do not know the nature of the act complained of. There seems to me to be a great distinction between being a member of an unlawful association and in assisting the operations of an unlawful association. An unlawful association is defined as one (*a*) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts or (*b*) which has been declared to be unlawful by the Governor-General in Council under the powers conferred by the Act. In section 16 the Governor-General is given power to declare an association unlawful, if, in his opinion, it interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or constitutes a danger to the public peace. Now, being a member of an association which interferes with the maintenance of law and order or is a danger to the public peace may well be considered to render a man an improper person to be a practitioner in a Court of justice but, in my opinion, it by no means follows that a man, who has committed an isolated act which assists the operations of an unlawful association, is necessarily such an improper person. Much would depend upon the nature of the act done and the particular operation assisted. I do not say, and I clearly must not be taken to say, that there may not be acts assisting a particular operation of an unlawful association which might be as bad or even worse than being a member of that unlawful association, but I repeat that all depends on the nature of the act and the particular operation assisted. In this case we only have it

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that celebration of a day was ordered and the practitioner assisted in that celebration. A very wide range of acts might be covered by the facts disclosed. It might range from the most venial or trivial acts to an act involving grave danger to the public peace and the maintenance of law and order. In the absence of anything to show what particular act was done, I do not think that this Court is called upon to take any action in the matter at all.

The learned Government Advocate relied upon *Shankar Ganesh Dabir* v. *Secretary of State* (1), but the facts of that case are quite different. There it was proved that the practitioner had organized resistance to a tax of which he disapproved and it was held as a fact that the procedure adopted was reasonably calculated to lead to a breach of public tranquillity, or as held by the Privy Council, that the practitioner had attempted to establish a system of resistance to payment which might have defeated the recovery of the tax with grave danger to the public peace.

Similarly, in *In re Jivanlal Varajray Desai* (2), the practitioner in question had taken a pledge to break particular laws known as the Rowlatt Acts and had further undertaken to break any laws which a committee to be appointed hereafter might think fit to declare liable to be broken. Such a case might well be held to make the practitioner an improper person to act as a practitioner in a Court of justice, since obviously there was no limit to the laws which the committee might consider fit to be broken.

In *In the matter of Babu Madahva Singh Vakil* (3) the conviction was under section 17 (2) of the

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Criminal Law Amendment Act. That is a much more serious offence, the punishment of which may extend to three years' imprisonment or with fine or with both and a conviction under that section might similarly well be held to show unfitness to be a legal practitioner.

DALIP SINGH J.

The facts, therefore, of the cases relied upon by the learned Government Advocate are clearly distinguishable from the facts of this case, and I would therefore, hold that this Court should not take any action in the case of Mr. Farid-ul-Haq Ansari, especially as he has served his punishment imposed under the section itself.

The above arguments also apply, though in a modified form, to the case of Mr. Jugal Kishore Khanna. There is no doubt in this case as to what the respondent did. He made a speech in which he condemned the action of the Government in arresting Mr. Sen Gupta. This fact by itself would not have been a criminal offence but for the manner in which it was performed, namely, a speech at a meeting organized by an unlawful association. I do not think, in the circumstances, that this fact would by itself show that Mr. Jugal Kishore Khanna was an improper person to remain a legal practitioner of this Court and I would, therefore, hold that this Court need take no further action against Mr. Jugal Kishore Khanna either.

JAI LAL J.

JAI LAL J.—I have read the judgment of Dalip Singh J. and agree with his conclusion that no reasonable cause, within the meaning of para. 8 of the Letters Patent of this Court, has been shown to exist to justify the removal or suspension from practice of Mr. Farid-ul-Haq Ansari and Mr. Jugal Kishore Khanna, Advocates of this Court. The respondents were convicted by a Magistrate of Delhi under section 17 (1), Criminal

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Law Amendment Act, and after they had served out their respective terms of imprisonment applications were made by the learned Government Advocate, praying that the names of the respondents be removed from the rolls of the Advocates of this Court. The cases cited by the Government Advocate, *i.e. In re Abdul Rashid* (1), *Shankar Ganesh Dabir* v. *Secretary of State* (2), *In re Jivanlal Varajray Desai* (3) and *In the matter of Babu Madahva Singh Vakil* (4) (a Patna case) are all distinguishable from the present case.

Every conviction of a legal practitioner under section 17 (1) of the Criminal Law Amendment Act does not necessarily attract the disciplinary jurisdiction of this Court. This must depend on the nature of the acts for which the practitioner was convicted.

It is true that in such proceedings it is not open to the Court to go behind the conviction, *i.e.* to examine the legality of the conviction, but it is open to the Court, and indeed the Court is bound to do so, to ascertain from the criminal proceedings the facts on which the conviction is based in order to decide whether by virtue of his conduct complained against the legal practitioner concerned is or is not a proper person to be retained as a member of the legal profession.

Now, in the case of Mr. Farid-ul-Haq Ansari, neither the record nor the learned Government Advocate can give us any information as to the facts on which he was convicted. In the case of Mr. Jugal Kishore Khanna all that appears from the judgment of the Magistrate is that he made a speech at a meeting which was convened by the Congress Committee. It has, however, been found that he was not one of the

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conveners of the meeting and the speech made by him is not of such an objectionable character as to bring his case within the ambit of para. 8 of the Letters Patent.

I, therefore, concur in dismissing the petitions.

MONROE J.—I have read the judgments of Jai Lal and Dalip Singh JJ. I fully agree with the views expressed by my learned brethren, but, nevertheless, I think it proper that I should actually state my view also. MONROE J.

The respondents, having committed criminal offences, the commission of which, they, the one expressly, and the other by implication, admit have been convicted and sentenced by a Court of competent jurisdiction. We have to decide in each case whether the conviction and the information which we have obtained from a perusal of the record show that the respondent has proved himself to be unfit to act as a legal practitioner in the Courts of this Province. It cannot be contended that conviction for any criminal offence is a sufficient ground for our taking action; nor do I think that from the nature of the offences for which the respondents have been sentenced their want of fitness is apparent. We cannot proceed to condemn either of them without considering his conduct. The acts of Mr. Farid-ul-Haq Ansari do not appear from the record of his case and have not been shown to us, and we are asked to pronounce on his conduct without having before us any material from which we may form an opinion. We are, therefore, in my opinion, constrained to hold that it has not been shown that Mr. Farid-ul-Haq is unfit to carry on his profession.

In Mr. Jugal Kishore Khanna's case we know what he did. At a meeting organized by an unlawful

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association he made a speech protesting against the arrest of Mr. Sen Gupta. Who Mr. Sen Gupta is or for what he was arrested does not appear? As a legal practitioner Mr. Jugal Kishore Khanna would have acted more in accordance with the etiquette of his profession if he had refrained from interfering in Mr. Sen Gupta's case until he had been retained to defend him, but the complaint against him is not that he has committed a professional impropriety; and in any event I do not think that there is anything to show that Mr. Jugal Kishore Khanna's speech was prompted by a desire to get himself employed in Mr. Sen Gupta's case. So far as a conclusion on the nature of the speech can be found, it seems to me that Mr. Jugal Kishore Khanna was expressing the view that the policy of the Government in having Mr. Sen Gupta arrested was wrong. It has not been suggested by the Government Advocate that Mr. Jugal Kishore Khanna was not entitled to hold and give expression to such a view—the offence arises from the circumstances in which the view was expressed. It does not appear that Mr. Jugal Kishore Khanna expressed his views in a provocative manner, nor that, though he broke the law, he said anything to indicate his own determination or to encourage others to break the law.

The fact, too, that he disclaimed any disrespect to the Court in refusing to plead indicates an absence of an intention to defy lawfully constituted authority.

I am unable, therefore, to infer from Mr. Jugal Kishore Khanna's single act of disobedience to the law that he ought to be debarred from practising his profession.

A. N. C.

Petitions dismissed.