

PRIVY COUNCIL.

ADVOCATE GENERAL OF BOMBAY, PETITIONER *v.* PHIROZ RUSTOMJI
BHARUCHA AND ANOTHER, RESPONDENTS.

ADVOCATE GENERAL OF BOMBAY, PETITIONER *v.* MINOCHER RUSTOMJI
MASANI, RESPONDENT.

DISTRICT GOVERNMENT PLEADER AND PUBLIC PROSECUTOR,
KOLABA, PETITIONER *v.* PITAMBERDAS GOKULDAS MEHTA, RESPONDENT.

DISTRICT GOVERNMENT PLEADER, BROACH, PETITIONER *v.*
MOTILAL HARGOVANDAS VIN, RESPONDENT.

[On Appeal from the High Court at Bombay]

*Advocates and Pleaders—Misconduct—Bar Councils Act (XXXVIII of 1926),
section 10—Bombay Pleaders Act (Bom. Act XVII of 1920), section 25—
Misconduct not connected with profession—Disciplinary jurisdiction—Evidence of
misconduct—Onus.*

The conviction of an advocate or pleader of a criminal offence is evidence of misconduct within the meaning of section 10 of the Bar Councils Act (XXXVIII of 1926) and also section 25 of the Bombay Pleaders Act (Bom. Act XVII of 1920) though the misconduct was not committed in his professional capacity and entitles the Court to take disciplinary action against him.

It is not necessary to adduce evidence of the grounds on which the conviction is based. It is for the Court to decide whether conviction of the particular offence is evidence of such misconduct on the part of an advocate or pleader as to render him unfit for the exercise of his profession, or to call for the Court's censure. It is for the impugned advocate or pleader to adduce any considerations which might induce the Court to refrain from taking disciplinary action.

PETITIONS for Special Leave to appeal from a judgment of the High Court (September 17, 1934).

The respondents in the first two petitions were advocates of the High Court at Bombay. They were convicted of offences under section 17 (1) and (2) of the Criminal Law Amendment Act (XIV of 1908) as amended by the Criminal Law Amendment Act (XXXIII of 1932) on charges of being members of and assisting in the operations of the Bombay

*Present : Lord Blanesburgh, Lord Macmillan and Sir Lancelot Sanderson.

Provincial Congress Committee, an association declared unlawful under section 16 of the Criminal Law Amendment Act of 1908. The respondent, Mehta, in the third petition was a pleader practising in the Thana District. He was detained in jail in January 1932 under the provisions of section 3 of the Emergency Powers Ordinance No. II of 1932. On his release, he was directed under section 4 of the Ordinance to abstain from any act in furtherance of the Civil Disobedience Movement. For disobedience of this order, he was tried and convicted under section 21 of the Ordinance. The respondent, in the fourth Petition, M. H. Vin, was a pleader practising in the Broach District. He was convicted of an offence under section 17 (I) of the Criminal Law Amendment Act of 1908 as amended by the Criminal Law Amendment Act of 1932 on a charge of assisting the Broach Zilla Samiti and the Congress Working Committee, associations declared unlawful under section 16 of the Criminal Law Amendment Act of 1908.

The High Court at Bombay was moved with a view to disciplinary action being taken against the advocates under section 10 of the Bar Councils Act by the Advocate-General of Bombay and against the pleaders under section 25 of the Bombay Pleaders Act on Reports by the District Judges of their respective Districts. The High Court held that it had jurisdiction to take disciplinary action against the respondents, but that no action was called for.

The judgment of the High Court is reported in *The Advocate-General of Bombay v. Three Advocates (O. S.)* ⁽¹⁾

Dunne, K. C. and *Sir Thomas Strangman* for the petitioners: The High Court acted on the principle that the misconduct must go to the root of fitness to act professionally. That is a wrong test. It is not necessary,

⁽¹⁾ (1934) 59 Bom. 57.

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in order to bring the case under section 10 of the Bar Councils Act, to show that the advocate's conduct is incompatible with a capacity to act professionally. If the principle laid down by the High Court were acted on, the status of the Bar would be lowered.

[LORD BLANESBURGH. Every offence against the law is not a ground for disbarring an advocate.]

Dunne. No. The matter must rest on the specific facts of each case. Where an advocate has been convicted of being a member of an unlawful association which has for one of its objects interference with the administration of the law and the maintenance of order, the case falls within section 10 of the Bar Councils Act. Some High Courts have treated conduct of the kind in question as being of the character which invokes the disciplinary jurisdiction of the Courts, but there is divergence in the views of the High Courts. The case against the pleaders under section 25 of the Bombay Pleaders Act stands on the same footing as that of the advocates.

Pritt, *K. C.* and *Wallach* for the respondents in the first two petitions: It is doubtful if the petitions are competent. The Advocate-General in presenting the petitions to the High Court acts as an informant, as he does here. An informant has no right to be heard. It was said that Congress was a revolutionary body, but there was no evidence of that.

[LORD BLANESBURGH. The only evidence we have to consider is the conviction].

Pritt: Practically nothing was proved as to the activities of the advocates beyond membership of the associations. The principles laid down by the High Court are correct. There was no moral turpitude and nothing to render the

advocates unfit to associate with their fellow advocates or to appear before the Court or to advise their fellow citizens in litigation. The High Court, applying these principles, in its discretion, found there was no reason to suspend the advocates or impose any penalty. He was stopped.

Dunn, K. C. in reply referred to the aims of Congress.

Pritt, K. C. : Congress was never declared an unlawful association. It was only some of its Committees that were so declared. The petition should be dismissed as was done in *Shankar Ganesh Dabir v. Secretary of State for India*.⁽¹⁾

The reasons for the reports of their Lordships were delivered by

LORD BLANESBURGH. Their Lordships after hearing these petitions came to the conclusion that in none of them were the circumstances such as to justify them in advising His Majesty to grant special leave to appeal, and they gave expression to that conclusion.

Their Lordship now propose to state in a few words certain considerations which were present to their minds in reaching their decision.

It is plain that the learned judges of the High Court held that the fact that the advocate concerned had been convicted of a criminal offence was evidence of their misconduct within the meaning of section 10 (1) of the Bar Councils Act and that this misconduct, though not committed in their professional capacity, entitled the Court to take disciplinary action against them. With this view their Lordships agree. The learned judges, in the exercise of their statutory discretion, then proceeded to consider whether in the circumstances the misconduct so proved called for any disciplinary action whether in the nature of reprimand, suspension, or removal from practice. The learned judges

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⁽¹⁾ (1922) L.R. 49 I.A. 319; 49 Cal. 845.

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Lord
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decided that it did not. So interpreted, the action of the High Court in thus exercising their discretion is not such as His Majesty can be advised further to consider.

But to avoid all misapprehension their Lordships think it right to add that in so advising His Majesty they must not be taken to endorse all the views which are expressed in the judgment of the learned Chief Justice and his colleagues. In particular, their Lordships do not think that it was incumbent on the Advocate-General to adduce evidence of the grounds on which the convictions were based. It was for the Court to decide whether conviction of having been a member and having assisted and managed the operations of an unlawful association having for its object interference with the administration of the law or with the maintenance of law and order and constituting a danger to the public peace was evidence of such misconduct on the part of an advocate as to render him unfit for the exercise of his profession, or to call for the Court's censure. It was for the impugned advocate to adduce any considerations which might induce the Court to refrain from taking disciplinary action.

Their Lordships do not however find that the learned judges misdirected themselves in law as to their powers in the exercise of their discretion and, that being so, it would not be fitting to express any opinion by way of agreement or otherwise on the considerations upon which they proceeded in deciding to refrain from any disciplinary action.

These observations apply equally to the case of the pleaders.

Solicitors for Petitioners : *Solicitor, India Office.*

Solicitors for Respondents in the first two petitions :
Messrs. Hy. S. L. Polak & Co.