

Before Mr. Justice Kemp and Mr. Justice Glover.

*In re KALI CHARAN CHUND (PETITIONER).**

1872
July 5.

Act XX of 1865, ss. 11 and 13—Meaning of the word “Practise”—Mooktar.

The writing a petition for a party who presents it in Court is not acting as a Mookhtar within the meaning of s. 11, Act XX of 1865; and the writer is not liable to punishment under s. 13 for practising as a Mookhtar without a certificate.

ONE Kali Charan Chund drew and wrote out a petition of complaint for one Kumaraddin, which the complainant, Kumaraddin, personally presented in the Joint Magistrate's Court. The Joint Magistrate construed this act of Kali Charan Chund's to be “practising” as a mookhtar within the meaning of the word as used in s. 13 of Act XX of 1865, and finding that Kali Charan had not a properly stamped certificate authorizing him to practise as mookhtar, convicted him of having committed an offence punishable under s. 13 of the Act. The Sessions Judge, being of opinion that the conviction was illegal, referred the proceedings of the Joint Magistrate to the High Court under s. 434, Code of Criminal Procedure (Act XXV of 1861), for the purpose of having the conviction quashed. The Sessions Judge in making the reference observed:—“By s. 11 of Act XX of 1865, mookhtars duly admitted and enrolled may appear, plead, and act in any Criminal Court subject to certain conditions of their certificate, and these words embrace the whole of what constitutes the more general term ‘practise.’ In the present instance Kali Charan neither appeared nor pleaded. Did he then act? It seems to me that he can only be said to have acted in a private capacity, not in the sense contemplated by the Act (XX of 1865) in a public capacity, as a medium between the complainant and the Court. The law does not forbid one person from giving advice to another, or from drawing up a petition for another on any matter out of Court, and so long as the adviser or writer abstains from dealing with the Court itself in any way in connexion with the matter, he must be considered to be absolved from all consequences under Act XX of 1865.”

The judgment of the High Court was delivered by

GLOVER, J.—There can be no doubt, we think, that the Judge is right, and that the mere writing of a petition for a party who afterwards presents that petition himself is not “acting” in the sense of s. 11, Act XX of 1865.

We therefor set aside the order of the Joint Magistrate, and remit the fine imposed upon Kali Charan Chund.

* Reference to the High Court, under s. 434 of the Code of Criminal Procedure, by the Sessions Judge of Backergunge, dated the 17th June 1872.