

SPECIAL BENCH.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Rampini, Mr. Justice Harrington, Mr. Justice Mitra and Mr. Justice Chitty.

In re S. K. H., AN ADVOCATE.

1907

May 25.

Advocate—Unprofessional Conduct—Arrangement with client without intervention of Solicitor—Threat—Compensation.

An advocate of the High Court made an arrangement to do professional work for his client, without the intervention of a solicitor, at a fee of half the usual charge; and, on another occasion, he wrote to the same client to the effect that he had an offer to work professionally against her (the client) in a case the plaintiff of which was settled by him for her, and unless she paid him ten gold mohurs (five times the usual fee) for refusing the brief offered, he would take up the case against her:—

Held, that the advocate was guilty of highly unprofessional conduct.

RULE calling upon S. K. H., an advocate of the High Court, Calcutta, (practising at Bhagalpore), to shew cause why his name should not be removed from the Roll of Advocates of this Court, or why he should not be suspended from practising as such advocate, for an alleged unprofessional conduct.

The following letter, dated the 18th February 1907, was sent by the Registrar of the High Court, Appellate Side, to Mr. H. :—

“I am directed to inform you that the attention of the Chief Justice and Judges has been drawn to your professional conduct in your relations with a Mrs. Maloney, who was apparently at one time a client of yours, and to request that you will be so good as to offer any explanation you may wish to do for the consideration of the Court in relation to the following matters:—

“In a letter dated 22nd June, 1904, which you addressed to Mrs. Maloney the following passages occur: ‘I only charged you Rs. 8 for settling each of the complaints, namely, against Barber and Nesbit. This was in accordance with my promise and Rs. 8 is less than half a mohur, which is the lowest charge of any attorney or a very junior counsel for that kind of work.

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Now the arrangement that I made for you with Shircore is for you to pay him less than what you used to pay your other pleader, Surita. I think this is very satisfactory and [I want to know if he made you understand this in my absence. If he has not, please let me know what you used to pay Surita and pay Shircore less through me.] The Chief Justice and Judges will be glad to consider any explanation you desire to offer of your conduct to this matter.

“I am further to draw your attention to your letter dated 6th September, 1904, to the same lady, in which you say: ‘In this case I have the offer to work professionally against you and as the plaint of your case was settled by me, I do not like to accept the brief without giving you notice that unless you pay me my fee, 10 gold mohurs, for refusing the brief, I will take up the case against you as you have practically given me up.’ In this connection I am to invite your attention to your cross-examination in regard to this matter in the case of *S. K. H. v. J. P. Maloney and Others* before Mr. Justice Harington in which you stated that 10 gold mohurs was five times your fee. The Chief Justice and Judges desire that you will offer any explanation you wish regarding your attempt to obtain five times your fee by a threat to work professionally against a client in a case in which the plaint had been settled by you.”

Mr. H. wrote in reply two letters, dated respectively the 22nd March and the 25th March, 1907, offering the following explanation:—

“With reference to paragraph 2 of your letter I beg to state that at the time when I wrote the letter, dated the 22nd June 1904, I and my family were and had been living in Mrs. Maloney’s house as her tenant, but our relations were not merely that of a landlord and tenant but were cordial and friendly. Mrs. Maloney, who was my wife’s intimate friend, represented to us that she was in great distress and an injured person and was at the time prosecuting and defending several cases in the Small Cause Court and wanted my help. I knew that she was not in affluent circumstances and I at her request, and upon the recommendation of my wife, helped her and generally assisted her in her suits. After some time but before the letter dated 22nd June 1904 was written, Mrs. Maloney told me to debit her with Rs. 8 for each of the two plaints I had settled for her saying that I should charge something for the work so that she might not feel she was taking advantage of her friendship. I therefore promised to do so. I, however, never in fact demanded or deducted

the aforesaid sums, nor have I in fact ever asked for or received any fee whatever. I have also never received any money from Mrs. Maloney on account of my fees. These facts were admitted or not disputed in the case mentioned in the letter under reply. I helped her as a friend, and I respectfully submit, I believe, I was not doing anything wrong.

“That as to the latter part of paragraph 2 of your letter I desire to state that in order to save Mrs. Maloney as much expense as I could, I, as a friend of Mrs. Maloney’s, used my personal influence [with Mr. Shiroore, a pleader of the Small Cause Court, and requested him to help Mrs. Maloney and accept from Mrs. Maloney fees lower than she had previously had to pay to Mr. Surita, another pleader of that Court, for works done on her behalf in that Court. The last sentence quoted from my letter was not intended to convey anything more than a request to Mrs. Maloney to let me have such lesser fee (if she so chose) as Mr. Shiroore had agreed to accept, in order that I might pass them on to him on her behalf.

“With reference to the third paragraph of your letter, I desire to state that at the time when my letter, dated the 6th September 1904, was written, friction which ultimately culminated in my suit against Dr. and Mrs. Maloney had already arisen, Mrs. Maloney at that time was still engaged in the litigation in the Small Cause Court and I had in fact just before writing my letter in question been approached by a gentleman, who, though not a legal practitioner, was to the best of my recollection and belief either one of the other parties or a friend of the other party (but at this distance of time cannot say which) in a suit in which Mrs. Maloney was plaintiff with a view to appearing against her in such suit. This offer to retain and engage me against Mrs. Maloney was made at about 8 P.M. of the 6th September 1904, and the case was to come on for hearing on the 7th September 1904. Mrs. Maloney at this time doubtless owing to the existing friction, had, as conveyed at the end of my letter in question “as practically you have given me up,” given up consulting me in connection with her litigation. At the time I wrote the letter, dated 6th September 1904, I believed that the rules of profession which obtain in Calcutta were in effect the same as are the rules in England. I believe, therefore, that when a counsel had drawn pleadings in a suit he is entitled as of right to a brief at hearing, and I further conceived that when I was entitled in the event of my not being briefed in her suit to go over to the other side after giving Mrs. Maloney an opportunity to brief me, I was entitled to ask her whether she chose to prevent me from taking the brief of the other side: and I believed that on her electing so to prevent me I would be entitled to a sum which would compensate me fully for such fees as I might have become entitled to or earned, if so briefed, by appearing either on one side or the other and from the beginning to the end of the case, and under such conceptions I wrote my letter in question proposing as I submit it does all necessary terms and giving all necessary opportunities, as I thought was due from me to Mrs. Maloney. The provision of the rule of the Calcutta Bar, dated 25th July 1874, at page 16 of the Rules, had further affected my humble judgment and had hastened me to write my letter in question as soon as I was approached by the other side. In the hurry of the moment the letter was couched as best as I could, which no doubt is too concise. There was

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however, no complaint, objection or reply to that letter until it was put to me during my cross-examination at my suit against Mrs. Maloney. In my evidence by five times my fee, I meant five times my fee for an appearance which was two gold mohurs. That when I proposed ten gold mohurs for refusing the brief as aforesaid, I estimated my loss for refusing the brief at five times my fee for appearance in the case right through which I estimated would mean five such appearances. I further desire to add, I never intended to convey any threat to Mrs. Maloney of any sort and as I was free to go over to the other side after notice I meant to inform her about it giving her all such opportunities as I could think of.

"I respectfully submit that my letter in question, namely, dated 6th September 1904, I meant by implication to point out and ask the addressee Mrs. Maloney that please either engage me at 2 gold mohurs per appearance if 'you have' not really 'given me up' or if you do not do so and at the same time choose to prevent me from going to the other side, pay me 10 gold mohurs for refusing the brief which would mean refusing a work of five appearances to me or else I will go to the other side as I am entitled to go.

"In conclusion, I leave myself and these matters in the hands of their Lordships without any attempt or pretence to justify or defend my conduct. Before this I had left the matter arising from my letter, dated 6th September 1904, by not electing to appear to defend myself at the Bar meeting. If by anything I have done in the instances cited in your letter, I have, in their Lordships' view, in any portion contravened the rules or tradition of my profession, I would beg respectfully to submit I erred not intentionally, but through inadvertence and would express to their Lordships my deep regret for having so erred, and sincere and unqualified apologies for any such trespass. I have merely stated the facts in this letter in obedience to their Lordships' direction and I trust that in any decision at which they arrive they would be gracious enough to take into consideration that I have never been actuated by any dishonourable motive, and had since already been subjected to pain and humiliation of a unanimous resolution of censure by the members of the Calcutta Bar. I hope, further, that their Lordships would be kind enough to take the aforesaid facts into account and also the public exposure that I underwent at the trial of the said suit, in dealing with this matter."

Mr. Norton (Mr. A. Chaudhuri and Mr. Euckland with him), for Mr. H. Mr. H. has erred not intentionally but through inadvertence. He expresses his deep regret and tenders an unqualified apology for having transgressed any rules of his profession. He has been practising for fourteen years in Bhagalpore where, probably, the professional ties are more relaxed than in Calcutta. He has no wish whatever to defend in any measure what he has done, or to justify his conduct. It should, however, be taken into account that Mr. H. had to appear before the Bar and to subject himself to the humiliation of having his conduct as

a Barrister questioned by his colleagues. And it is quite possible that Mr. H.'s contrition is sincere, and, if that be so, the Court would take it into consideration in awarding punishment.

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[MACLEAN C.J. But the Bar has no punitive powers over its members.]

When a Barrister is charged with unprofessional conduct, he should be reported to his Inn to hold an investigation. [*The Advocate-General*. This course, though recommended by some, the Bar did not think fit to adopt in this case.]

The Advocate-General (The Hon'ble Mr. O'Kinealy) and *The Officiating Standing Counsel* (Mr. Gregory), for the Crown, left the matter in their Lordships' hands.

MACLEAN C.J. (addressing Mr. H. who was present in Court). There can be no question upon the materials before the Court that you have been guilty of highly unprofessional conduct. It appears from your own letter of the 22nd of June 1904, that you made an arrangement with your client, Mrs. Moloney, without the intervention of any solicitor, to do work for her, at a fee of half of that which is the usual charge. I need hardly say, for it must be clear to every one, that that is quite unprofessional conduct, but the second charge against you, is of a much more serious nature—the charge which springs from your letter of the 6th of September, 1904. In that letter you say: "In this case I have the offer to work professionally against you, and as the plaint of your case was settled by me, I do not like to accept the brief without giving you notice that unless you pay me my fee, 10 gold mohurs, for refusing the brief, I will take up the case against you as you have practically given me up." It is conceded by yourself that ten gold mohurs was five times the fee to which you are entitled. The language of that letter, to my mind, conveys something very like a threat, though I am not unmindful of the suggestion of Mr. Norton that what it really means is not a threat but that, as you had been thrown over, you ought to be given some compensation for refusing the brief on the other side. But whichever view one may take of the

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letter, I do not hesitate to say that it was a letter, that no member of the bar ought to have written to his client. It is suggested that as your practice has been mainly in the *mofussil*, you are not so acquainted with the strict etiquette of the Bar as you would have been, if practising here in Calcutta. That may afford some slight mitigation of your conduct, but it is no excuse. I should have thought that every member of the Bar, even the youngest, would have known that such a letter as this was of the most improper character, and, I am confident speaking as a member of the Bar of close upon forty years' standing, that I echo the sentiment of every member of the Calcutta Bar, when I say that such conduct as yours will certainly be condemned by every member of that Bar.

The only question is what punishment we ought to pass on this your undoubted offence. I think we must mark our condemnation of your conduct by suspending you for a period: I do not know that the period of suspension is so important, for, be it short or long, the stigma attaching to any suspension is equally severe. I think we are taking a lenient, a very lenient, view of the case when we suspend you from practice for three calendar months.

RAMPINI J. I agree.

HARRINGTON J. I agree.

MITRA J. I agree.

CHITTY J. I agree.

S. C. B.