

CIVIL REFERENCE.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Chitty and Mr. Justice Vincent.

ABINASH CHANDRA MOITRA, *In re.**

1909
Aug. 17.

Practice—Jurisdiction—Legal Practitioners' Act (XVIII of 1879) ss. 13, 14—Division Bench, jurisdiction of, to hear reference under the Act from subordinate Courts.

According to a long and undeviating course of practice, which may be regarded as the law of the Court, a Division Bench appointed to dispose of the civil business arising out of a particular Group, has power to hear and dispose of a reference, under section 14 of the Legal Practitioners' Act, by the presiding officer of a Court within that Group.

REFERENCE in the matter of Abinash Chandra Moitra, a pleader, under the Legal Practitioners' Act, 1879.

Abinash Chandra Moitra was enrolled as a pleader in the District Court of Faridpur in 1893. The District Judge of Faridpur having held that a charge of grossly improper conduct in the discharge of his professional duties was proved against him, made a reference to the High Court under section 14 of the Legal Practitioners' Act, recommending that he be either dismissed or subjected to such other punishment as may be deemed proper by the High Court.

The matter came on for disposal before Chitty and Vincent JJ., the Judges presiding over the Presidency Group to which the district of Faridpur belonged. Their Lordships having agreed with the learned District Judge ordered that the said pleader be dismissed.

Thereupon, Abinash Chandra Moitra applied to the Chief Justice to form a Bench for hearing the application, on the ground of an illegal exercise of jurisdiction under the Legal Practitioners' Act, and then, after hearing it, to appoint a Bench to dispose of the case. The application was made with a request that it might be dealt with administratively.

* Civil Reference No. 1 of 1909, by the District Judge of Faridpur.

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The following order was passed by the Chief Justice dismissing the application :—

JENKINS C.J. This is an application by way of petition, whereby it is prayed that I will “ form a Bench for hearing the application, and then, after hearing it, appoint a Bench to dispose of the case,” to which the petition relates, “ legally as a matter which has not been legally disposed of, and to pass any other order as may be deemed fit and proper.”

The application has been brought before me as Chief Justice, with a request that I will deal with it administratively.

In July 1893 the applicant was enrolled as a pleader in the District Court of Faridpur, where he practised by virtue of a certificate granted under the Legal Practitioners’ Act. The District Judge finding that a charge of professional misconduct was established against the applicant, reported the same to the High Court.

The case came before Mr. Justice Chitty and Mr. Justice Vincent, who at that time constituted the Divisional Court appointed to deal with the business of the Presidency Group to which the District of Faridpur belongs. The order passed by the Division Court was that the application be dismissed. The applicant now contends that the case did not fall within the jurisdiction of the Division Court so constituted, and submits that “ it had been empowered by the Rules of the High Court only to exercise Appellate Civil Jurisdiction and to hear references from the subordinate Courts of the Presidency Group, and not to exercise the Court’s disciplinary jurisdiction given by the Legal Practitioners’ Act.” Though the applicant was represented by counsel before the Division Court, no exception was taken to its jurisdiction, and it is conceded that had this particular Division Court been specially nominated by the Chief Justice to deal with this case, no objection could now be raised. I have consulted the officers of the Court and find that, in accordance with a practice that has obtained ever since the passing of the Act, 1879, each Division Court has dealt with all cases of this kind coming from districts of the

group in its charge ; and this has been done by virtue of the determination of the Chief Justice for the time being expressed in terms identical with those in obedience to which this case was placed before the Division Court whose jurisdiction is now questioned. Seeing that I am only invited to deal with this matter administratively, it is not open to me to hold that what has been done by the Division Court is a mere nullity which can be regarded by me as though it had no existence.

The Division Court has acted under a direction which has always been treated as a sufficient allocation of cases arising under the Legal Practitioners' Act.

The intention to allocate is beyond doubt ; the question is whether the language is apt to carry out this intention. The long and undeviating course of the Court must, for the purpose of this application, be regarded as a sufficient answer ; and in the circumstances the practice of the Court may justly be regarded as the law of the Court. Moreover, if the proceeding before the Division Court be the nullity for which the applicant before me contends, and is forced to contend, then the order made is followed by no legal consequences against him, and in any case he has his remedy by way of appeal to His Majesty in Council. In the circumstances, I must reject the present application.

The application having thus been disposed of by his Lordship the Chief Justice, the petitioner made another application for review of judgment to Chitty and Vincent JJ., the learned Judges who presided over the Presidency Group and formerly disposed of the matter.

Mr. A. Chaudhuri, Mr. K. N. Chaudhuri, Babu Kishori Lal Sarkar and Babu Debendra Nath Bagchi, for the petitioner.

CHITTY AND VINCENT JJ. This is an application to us to review our judgment of the 28th May 1909, by which we ordered the dismissal of the pleader, Abinash Chandra Moitra, who was charged with professional misconduct. The petition for review contains eight grounds, but none of these have been

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seriously pressed by the learned counsel for the applicant. The first ground that the District Judge had no jurisdiction to hold the enquiry and report was given up. The learned counsel did suggest that we had taken an erroneous view of the facts in one or two unimportant respects, principally with regard to the withdrawal of the suit against Bahadur Mollah by Abinash Chandra Moitra; but after hearing his arguments with regard to those points, we do not see any reason to go back upon the conclusions at which we arrived.

The main ground which was urged before us was that this Division Bench was not properly constituted and authorised to deal with this reference. It was suggested that this might be covered by the concluding words of the first ground, but it is evident that that ground refers solely to the jurisdiction of the District Judge to make the reference. We permitted the learned counsel, however, to say what he had to say on the point, and will now deal with it. It is argued that the Charter gives the High Court jurisdiction over only the vakils of the High Court and not over pleaders in the mofussil. That jurisdiction, it is said, is conferred only by the Legal Practitioners' Act, 1879, and can only be exercised in conformity with the provisions of that Act. Under section 14 a report may be made by certain officers therein named to the High Court, and it is for the High Court to say whether the pleader shall be acquitted, suspended, or dismissed. It is argued that the High Court means the whole body of the Chief Justice and Judges, or such of them as have been authorised by rule or special order to deal with the matter. It was contended before us that the arrangement could be made only by the Full Court and not by the Chief Justice. But we find from the judgment of the learned Chief Justice, delivered when the matter was brought before him in his administrative capacity, that it was conceded before him that had this particular Division Court been specially nominated by the Chief Justice to deal with this case, no objection could have been raised. It thus appears that the same counsel for the same client adopted on the two occasions opposite lines of argument.

Before us it is conceded that for the past 30 years such references have been invariably dealt with by the Bench disposing of the civil business arising out of the group from a district of which the reference comes. It is argued that this assumption of jurisdiction cannot confer jurisdiction, and that, unless authorised by the Full Court, a Division Bench has no Jurisdiction to deal with such a reference. It is to be noted that although this reference was argued before us on two occasions (the 30th and 31st of March and the 17th of May last) by two different counsel for the applicant, no suggestion was made that we had no power to deal with the matter; nor, indeed, was any such suggestion made in the application for review. It is true that up till now there has been no framed rule of this Court expressly allotting such matters to any particular Bench; but the practice of the past 30 years has been uniform, and has been well-known to the profession. It is not precisely a question of jurisdiction, for undoubtedly the High Court has jurisdiction in the matter, but rather a question whether this particular Division Bench represented the High Court for the purpose. We do not feel disposed to entertain the suggestion, made at this late stage, that this Bench was altogether without jurisdiction, and that the proceedings before us are null and void. There is nothing, so far as we are aware, which requires these matters to be allocated to a Bench or Benches by a written rule or order, and we think that the established practice of 30 years, which is unquestioned, gave a sufficient authority, whether it be considered to emanate from the Full Court or from the Chief Justice.

The learned counsel concluded with an appeal *ad misericordiam*. The sentence, he said, was too severe, and he pleaded for its reduction to a period of suspension. It was said that the pleader had in fact paid up the money which he was charged with having misappropriated. We allowed time for evidence of such payment to be produced, and required that it should be verified by the affidavit of the pleader of Monorama, to whom the payment was alleged to have been made. Two receipts purporting to be given by that pleader have been produced,

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but the affidavit in support is not sworn by the pleader to whom payment was made, not even by Abinash Chandra Moitra himself, but by his younger brother. The payments are said to have been made, Rs. 75 on the 9th December 1908, and the balance, Rs. 87-15-8, on 10th August 1909, that is *after* we heard counsel on the petition for review. This is most unsatisfactory. It is incredible that if the Rs. 75 had been paid, as alleged, last December, it should not have been stated at one or other of the hearings before us, especially as we laid stress on the fact that up to now nothing had been paid. The payment said to have been made last week after we were told that it had been paid does not improve matters.

At the same time we have no wish to press too hardly on the applicant. His offence is a very serious one and cannot be lightly regarded, and we adhere to the conclusions which we stated in our judgment; but after giving the appeal of his counsel our best consideration, we think the justice of the case will perhaps be met by an order of suspension. We accordingly revoke the order of dismissal and order that Abinash Chandra Moitra be suspended for four years, to commence from the date when he was first suspended by the District Judge.

S. C. G.