In Re: Matter of N, an Advocate

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Court : Kolkata

Decided On : Jan-10-1936

Reported in : AIR1936Cal158

Appellant : In Re: Matter of N, an Advocate

Judgement :

1. Mr. Niharendra Dutt Mazumdar, a Barrister of the Middle Temple, was enrolled under the Bar Councils Act, on 11th January 1933 and was admitted as an advocate of this Court, his name being entered in the roll of advocates entitled to appear and plead on the original side of the Court on 17th January 1933. It is his case that soon after his enrolment as aforesaid he began to take a prominent part in Labour and Trade Union movements and became, as he says, an 'Honorary Trustee,' some sort of a principal officer of a Trade Union of the labourers of the Port and Docks of Calcutta registered under the Indian Trade Unions Act of 1926. In 1934, between 3rd March and 2nd December, he delivered a number of speeches at certain meetings of the Union held at public places. For three of the speeches, said to have been made on 3rd, 4th and 18th March respectively, proceedings under Section 107, Criminal P. C., were taken against him and the Magistrate ordered him to be bound over to keep the peace for one year, and this order was affirmed by this Court on appeal. For three other speeches, made respectively on 29th April, 11th November and 2nd December, the Magistrate convicted him in three separate cases under Section 124, Penal Code, and sentenced him to undergo rigorous imprisonment for nine months, one year and one year respectively. He preferred appeals to this Court in the first and the third of these cases, but not in the second case, and this Court being of opinion that the sentence which he was undergoing in the second case would be sufficient for all the cases, reduced the sentence in the first case to the period already undergone and ordered the sentence in the third case to run concurrently with that in the second case.

2. In the meantime, upon a petition presented by the Registrar on the original side of this Court on 22nd July 1935, in which all the aforesaid cases were set out the Court referred the matter to the Bar Council for inquiry. The tribunal constituted for the purpose held the inquiry, its findings having been received, the case has come up before us for passing final orders.

3. A considerable part of the arguments addressed to us on behalf of the advocate was directed to establish that the misconduct referred to in Sub-section (1) of Section 10, Indian Bar Councils Act, means such misconduct as would make a lawyer unfit for the exercise of his profession. This contention apparently is based upon a comparison of the language of the said subsection with the wording of Clause 10 of the Letters Patent, under which the Court can take action on reasonable cause; it being suggested that the legislature by using the word 'misconduct' in the Indian Bar

Councils Act in the place of the more indefinite phrase 'reasonable cause' in the Letters Patent has restricted the powers of the High Court in this respect. On this supposition it has been argued that the words 'professional or other misconduct' can mean misconduct in a professional capacity and also only such misconduct in a private capacity as would denote unfitness for the duties of an advocate. The argument is sought to be supported by reference to these decisions of English Courts in which arose the question of taking disciplinary action against Solicitors and in which, while formulating the principles on which such action should be taken, the question of their unfitness to practice as Solicitors was stressed upon. One such case is In Re: Weare (1893) 11 Q B 439 in which Lopes L. J., observed:

The jurisdiction of the Court extends not only to the case where the misconduct has been connected with the profession of the Solicitors, but also to cases where the conduct, though not so connected, has been such as to make it clear to the Court that that person is no longer fit to be held out as a fit and proper person to exercise the important functions with which the Court entrusts him. * * * *

4. If he has previously misconducted himself we should consider whether the circumstances were such as to prevent his being admitted or whether he had condoned his offence by subsequent good conduct, the principle on which, the Court acts being to see that suitors are not, exposed to improper officers of the Court.

5. But in the same case Lord Esher, M, R., expressed himself in words which may perhaps be read as taking a much wider view of the Court's jurisdiction in this respect. He observed:

The Court is not bound to strike him off the rolls unless it considers that the criminal offence of which he has been convicted is of such a personally disgraceful character that he ought not to remain a member of that strictly honourable profession.

6. There is, however, no authority in which it has been said that in the case of misconduct in a private capacity, unless it denotes unfitness in professional capacity, action should not be taken. And I do not see why the words 'professional or other misconduct' should not be read in their plain and natural meaning. I therefore respectfully agree with Beaumont, C. J., in holding that by the words aforesaid the legislature intended to confer on the Court jurisdiction to take action in all cases of misconduct, misconduct in a professional or other capacity: 59 Bom 57 Advocate-General of Bombay v. Three Advocates 1935 Bom 1, affirmed on appeal by the Judicial Committee in Advocate-General of Bombay v. Pharoj Rustomji Bharucha 1935 P C 168. The word 'may' in Sub-section (1) of Section 10 of the Act makes it plain, that while the jurisdiction of the Court is not restricted but extends to all cases of misconduct, a discretion is left to Court to take action in suitable cases only. With regard to the exercise of the Court's discretion in a case of this nature, or for the matter of that in any other case, it is not possible to lay down any hard and fast rule, and the exercise of the discretion will often have to be varied with changing conditions. No general priniciples can or ought to be laid down fettering the Court's discretion, except that it must be exercised judicially. But if reported decisions afford us a guide, I would adopt, with respect, the test which Page, C. J., on a consideration of some of the authorities, laid down in In the matter of an Advocate 1934 Rang 33. He said:

The test that the Court has to apply in considering whether an advocate should be

struck off the roll of advocates is whether the proved misconduct of the advocate is such that he must be regarded as unworthy to remain a member of the honourable profession to which she has been admitted, and unfit to be entrusted with the responsible duties that an advocate is called upon to perform.

7. With all respect I would prefer to take the two conditions laid down as aforesaid disjunctively, and apply the test in that way so that on the fulfilment of any one of the conditions the test would be regarded as satisfied. This test would prove a sound working rule in the majority of cases and would be applicable to all branches of the profession; the first condition being a standard applicable to all and as regards the second condition the circumstances to be taken into consideration differing according to the duties attaching to the particular profession. The test speaks of 'striking off the roll' which is equivalent to removal. But as regards suspension or reprimand the test would apply equally well, the form of the action taken being dependent on the nature and gravity of the misconduct found and also on other circumstances. Amongst the principles that are well settled in this connexion one is contained in the following words of Lord Mansfield in Ex parte Brounsall, 2 Cowd Rep 829:

This application is not in the nature of a second trial or a new punishment. But the question is whether after the conduct of this man, it is proper that he should continue a member of the profession which should stand free of all suspicion. It is not by way of punishment, but the Courts in such cases, exercise their discretion, whether a man whom they have formerly admitted is a proper person to be continued on the roll or not.

8. If the above principle be correct, then another principle follows immediately from it and it is this: that the disciplinary jurisdiction vested in Courts should not be employed merely in aid of the Criminal law of the land and merely to supplement, as it were, by way of a further punishment, a punishment which the advocate has received under that law for the misconduct of which he is guilty.

9. The present case is not one in which the advocate concerned had engaged himself in revolutionary activities designed to destroy the Government or the system of which the Courts of justice form part or to boycott the Courts or to break any particular law which it is the duty of the Courts to administer. Nor is there any indication of his having made an organised or persistent attempt to create a breach of the peace or to incite acts tending to subvert law and order. In the speeches that he made on a subject in which he was interested, he advocated certain reforms and supported a policy which suited his ideals, and in the course of those speeches he made utterances which were open to objection. For some of these speeches it was considered necessary to bind him over for a year to keep the peace, and in others, passages were found in which he had transgressed the limits of fair criticism and which appeared to bring him within the clutches of the law as to sedition. For the offences of sedition he was punished in the three cases in which he was tried. It is really the convictions in these last mentioned cases which have to be regarded for the present purpose.

10. That to be convicted of sedition is to be found guilty of a misconduct cannot be denied. Indeed it is beyond question now that conviction of a criminal offence is per se evidence of misconduct: 59 Bom 57 Advocate-General of Bombay v. Three Advocates 1935 Bom 1, affirmed on appeal by the Judicial Committee in Advocate-General of Bombay v. Pharoj Rustomji Bharucha 1935 P C 168. But while conviction

for a criminal offence is prima facie evidence of misconduct, all criminal convictions are not grounds for the exercise of the Court's disciplinary jurisdiction e.g., motoring offences. And here the first question is whether a conviction for the offence of sedition is such misconduct as would, in all circumstances, require action to be taken under the Court's disciplinary jurisdiction. A consideration of some of the authorities relevant upon the point will be useful. A case to which very great importance must attach is that of Shankar Ganesh v. Secy. of State 1922 P C 351, in which a pleader made speeches at various places against a particular land revenue system in vogue in the Province, in the course of which he characterized the system as unjust and illegal, and advised his audience to stop payment under that system and leave it to Government to recover the dues by attachment. His sanad was cancelled upon grounds one of which was that his conduct appeared to be incompatible with his obvious duties and responsibilities as an official of the Court. The case went up to the Judicial Committee and their Lordships in refusing leave laid stress on the point that the pleader had not confined himself to protests, however vehement, against the tax or against its injustice, but that he had urged an organised resistance of payment and attempted to establish a system which would have impeded and might have defeated its recovery with grave danger to public peace. The case was one under Section 13 (f), Legal Practitioners Act.

11. The above mentioned cases, as well as a large number of other cases where legal practitioners convicted under Section 17, Criminal Law Amendment Act, 1908, or under Section 3, Police Incitement Disaffection Act, 1922, or for similar other offences, or found guilty of Civil Disobedience, or of participating in hartals or revolutionary campaigns for breaking or disobeying the laws of the land have been referred to and discussed in an elaborate judgment by Jai Lal, J., in In the matter of Mohammad Alam 1934 Lah 251. Of these cases special reference must be made to three. One of these is Emperor v. Kolhatkar (1910) 6 Nag L R 129, in which a legal practitioner of the Central Provinces was convicted under Section 124-A, I. P. C. and the question of his dismissal arose under Section 12, Legal Practitioners Act. The Court held that

Prima facie, such a conviction implied a defect of character and that loyalty to the Crown is a fundamental part of the structure of the legal profession throughout the British Empire.

12. It was found that the sedition of the pleader took the form of an implacable hatred of the British rule and everything connected with it, indicating a desire and intention not to correct but to root out the Government of India. And it was found that, even after the punishment was served out, he stubbornly adhered to his criminal tendencies and that there was an entire absence of any change of character or disposition in the direction of loyalty to the Crown. On these findings the pleader was dismissed.

13. Another case is 44 Bom 418 In Re: Jivanlal Varajraj 1920 Bom 168, in which the Advocates involved had signed a pledge whereby they bound themselves to refuse civilly to obey certain laws and such other laws as a committee to be appointed thereafter might think fit. Mcleod, C. J., held that it was the duty of the legal practitioners to advise their clients to the best of their abilities as to what the law is, and not as to what the law should be in their opinion, and that this conflict should be more pronounced if any of the legal practitioners had occasion to advise his clients regarding one of the laws denounced by the league, and added:

A very sound principle to remember is that those who live by the law should keep the law.

14. Beaumont, C. J., Bom 57 Advocate-General of Bombay v. Three Advocates 1935 Bom 1, dissented from the aforesaid view and observed that no such embarrassment was likely to ensue and also observed:

In our opinion, the obligation of obedience to the law is neither greater nor less in the case of lawyers than that of other citizens. If the so-called principle means that those who earn their living by the practice of the law must cease to do so if they break the law, the condition is one which should be imposed under legislative authority when the advocate is admitted and not invented afterwards by the Court.

15. The third case is 75 I C 977 In the matter of Ramachandra Rao 1924 Mad 129. In this case the legal practitioner had instigated to forsake the English Courts and resort to the Courts to be set up by the Congress and to cease paying taxes to Government. For this conduct the renewal of his sanad was refused, Coutts-Trotter, J. remarking as follows:

The last thing that I think we should consider ourselves concerned with in the ordinary way is what the political opinions of anybody are, whether they are members of the legal or any other profession. But while the Courts will always uphold the liberty of the subject in thought or speech, an applicant who comes to ask for the issue or renewal of a sanad is applying to be treated as a part of the machinery for the maintenance of law and order in the body politic and to take an active part in administering for the other subjects of the Crown the benefit that may be supposed to result from the upkeep of law and order. It is intolerable and illogical that a man should seek to be put in that position while at the same time he is saying that law and order should be disobeyed, that taxes are not to be paid, and that public offices are to be abandoned in order to paralyse the very life of the body politic.

16. It is apparent that the pleader in the case last mentioned was persisting in his tenets when the order aforesaid was made. On a consideration of the cases referred to in his judgment, Jailal, J., in the case aforementioned deduced certain tests and came to the following conclusion:

Applying the above tests to the present case, it seems to me that a mere conviction under Section 124-A does not necessarily involve the removal or suspension of a legal practitioner, but the Court must ascertain and take into consideration the facts on which the conviction is based.

17. The case before the learned Judge was one in which the advocate concerned had been convicted of sedition, and the question that was being considered was whether he should not be removed or suspended from practice under Clause 8, Letters Patent of the Lahore High Court and Section 41, Legal Practitioners Act. I have carefully considered all the decisions referred to by the learned Judge and with the conclusion quoted above, I entirely agree. I have read the speeches which the advocate delivered on the several occasions. They certainly bring the advocate within the clutches of the law as to sedition, inasmuch as in some of the passages therein base motives were attributed to Government and remarks were made which were likely to lead to disaffection and hold the Government up to contempt in the eyes of the public. At the same time, however, I am clearly of opinion that the general tenor of the speeches

was inoffensive and was such as one would expect to find in speeches made in connexion with questions affecting a labour union. I would say of all the speeches what was said in respect of one of them by my learned brother Lort-Williams, J., namely:

Unfortunately in his enthusiasm, this accused, as so often happens, went over any line which could be held to be legitimate.

18. Regarding the speeches together, I find that except on some particular questions his views are not in any way hostile to the Government; and indeed there are several passages in them in which he may be taken to have advocated obedience to law and order. The tribunal of the Bar Council has pointed out:

Apart from his activities in connexion with the labour movement the respondent (meaning the advocate) seems to be a young man of good character, inexperienced in his profession, honest and straight in his dealings. No question of professional misconduct arises here. .... After a very careful and anxious consideration of the speeches, and all the surrounding circumstances, we have come to the conclusion, not without some hesitation, that the respondent is guilty of 'other misconduct' under Section 10, Bar Councils Act; though in view of the fact that his speeches and conduct were in connexion with the then existing industrial movements and disputes, the case seemed to us to be very near the border line.

19. In my opinion no further action is called for in the case and I would order accordingly.