Calcutta High Court
In Re: The Matter Of An Attorney vs Unknown on 12 June, 1913
Equivalent citations: (1914) ILR 41 Cal 113
Author: Jenkins
Bench: Jenkins, Stephen, Chaudhuri
JUDGMENT Jenkins, C.J.

1. On the 13th of May 191.3 a Rule was issued by Chaudhuri J. at the instance of Srimatee Kusum Kumari Dasee, the plaintiff in suit No. 405 of 1909, calling on an attorney of this Court to show cause why ho should not be struck off the Roll of Attorneys. The Rule was returnable on the 23rd May and on that day came before this Bench. A number of objections were taken as to the procedure that had been adopted, and special stress was laid on the fact that the service of the Rule on the attorney had not been personal, that none of the materials on which the Rule was based and no grounds had been served, and that the length of the service was insufficient. It was proposed to support these objections by reference to the English rules, but we had to be guided by the rules of this Court.

2. These rules make no special provision for the disciplinary procedure of this Court, and the course adopted in this case, except as to the mode of service, was according to the Court's ordinary procedure as expressed in the rules. In appeared to us, however, that in a proceeding such as the present, the individual involved should be under no disadvantage; and so we directed a further personal service of the Rule together with the materials on which it was based, and enlarged the time for the hearing. On the matter being mentioned to us on a later date we directed that the grounds on which misconduct was charged should be distinctly formulated. This was done, the attorney put in his affidavits in answer and the case has been heard.

3. At the outset an objection was taken by Mr. Jackson on behalf of the attorney that Mr. James, counsel for the applicant, could not be heard. This objection proceeded on a curious misconception of the nature of these proceedings. More than a century ago it was determined by Lord. Mansfield, after consulting all the Judges, that disciplinary action against an attorney rests on the principle that the Court deems him an unfit person to act as an attorney and not by way of punishment. The purpose then of an application is to firing to the notice of the Court the misconduct of one of its officers, and it would indeed be a fantastic rule that would debar an aggrieved person or his representative in interest from the right of application.

4. But authority as well as good sense affords a complete answer to this argument, for in the case of In re A Solicitor (1890) L.R. 25 Q.B.D. 17 it was decided by the Court of Appeal, affirming the judgment of a Division. Bench, that anybody was entitled, to inform the Court of the misconduct of one of its officers.

5. Therefore we considered, that Mr. James, as counsel for the person who brought the matter before the Court, was certainly entitled to be heard. He accordingly placed before the Court the materials, on which he relied.

6. Though many objections of a somewhat technical character have been placed in the forefront of the attorney's answer, it would be neither safe nor just to make against the attorney himself any adverse presumption, on this account, or to treat the conduct of the case as indicating a lack of confidence in his own defence on the merits, for he has put in an affidavit by way of answer in which he has set forth the merits from his point of view. This aspect of the case has been placed before us with clearness by Mr. Norton, and his argument lost no force from its candour and conciseness. It is with this that I now propose to deal. The case made against the attorney is substantially this.

7. In 1906, while still an articled clerk, he wrote out a promissory note for Rs. 9,000 purporting to be made by Srimatee Noyan Manjuri Dasee in favour of the late Nilmoney Pal, the present applicant's husband. On or about the 21st of April 1909, having then become an attorney of this Court, he as such attorney drew a plaint in suit No. 405 of 1909 in which Nilmoney Pal was plaintiff and Srimatee Noyan Manjuri Dasee one of the defendants. In that plaint so drawn by him it is alleged:

8. [His Lordship then proceeded to quote the portions of this plaint and the verification as set out above and continued:]

9. On the 23rd July 1910 a suit No. 723 of 1910 was instituted by Kuchil Lal Sen against the attorney, who put in his written statement on the 20th November following.

10. In that written statement it was alleged as follows:

11. [His Lordship proceeded to quote the portions of this written statement and the verification as sot out above, and continued:]

12. Here then, it is said, we have two conflicting verified statements for which the attorney is responsible, and one of them must have been false to his knowledge. This, it is urged amounts to professional misconduct demonstrating his unfitness to continue on the rolls of this Court. Several grounds have accordingly been formulated, and the gist of them is that the attorney knowingly made or procured a false verification.

13. Mr. Norton did not seek to minimize the gravity of the misconduct ascribed to the attorney, and rightly so.

14. A verification is a matter of great importance Girdhari v. Kanhaiya Lal (1892) I.L.R. 15 All. 59 and has been described by a Full Bench of this Court as possessing the security of being made under the sanction of a solemn declaration for which the person making it would be liable to the penalties attaching to the crime of giving false evidence if the declaration were false to his knowledge: Rammohun Mookerjee v. Rajah Narsing Deb (1862) W.R.F.B. 54. Bat while Mr. Norton conceded the seriousness of the charge, he maintained that there was no foundation for it; that the statements made by the attorney were not false, and that in any case no knowledge of the falsehood could be ascribed to him.

15. To appreciate the force of this argument it will be convenient to start with the written statement in suit No. 723 of 1910, and in order to grasp the real meaning of what is' there alleged it is necessary to go back to the plaint in that suit. Kuchil Lal Sen, the plaintiff, prayed that the defendant attorney might be ordered and decreed to render him an account of the moneys deposited with him. In the plaint it was alleged that on the 11th May 1907 Kuchil paid to the attorney a sum of Rs. 3,000 as deposit to meet sundry expenses in connection with the estate of Noyan Manjuri Dasee, and this was one of the items in the account according to the plaintiffs case.

16. The attorney's defence was that he was under no obligation to Kuchil, but that his indebtedness was to Noyan Manjuri Dasee.

17. The whole drift therefore of his written, statement is to show that what he received was part of the Rs. 9,000. For this purpose it is alleged that of this sum only Rs. 3,000 was actually paid on the 22nd. April 1906, that Rs. 4,000 was paid on the 11th May 1907, and that out of this Rs. 3,125 was deposited with the attorney on the same day.

18. Further, it is alleged that on the 28th of May 1907 the attorney received. Rs. 1,000 on account of Noyan Manjuri Dasee from Nilmoney Pal.

19. From the attorney's affidavit we learn that it is his case that this sum of Rs. 1,000 was a part of the Rs. 9,000, and that he learnt that the balance of Rs. 1,000 was in fact paid by Nilmoney Pal to Noyan Manjuri. Dasee. It is true that this sum is not mentioned in the written statement, but there was no occasion for it. In this way, it is said, the whole of the Rs. 9,000 was paid.

20. The payment of this sum is a fact of no small importance in this case, and the evidence on this point is that it has all been paid. There is nothing on the record that controverts this, and so for the purpose of this proceeding, and for that purpose only, we must act on the basis that it has not been shown that the whole amount has not been paid.

21. I now turn to the plaint in suit No. 405 of 1909 to which the written statement in suit No. 723 of 1910 is said to be contradictory.

22. It is there said that on the 22nd of April 1906 Nilmoney Pal lent and advanced to Noyan Manjuri Dasee the sum of Rs. 9,000 with interest thereon at the rate of 12 per cent. per annum, and that the promissory note was executed as security for the same. It is further alleged that there is due under the promissory note Rs. 9,000 for principal and Rs. 3,240 for interest. This sum of Rs. 3,240 represents interest on Rs. 9,000 from the 22nd April 1906.

23. Mr. Norton has urged on us that we should not construe the words of the pleadings too strictly against his client: that we should keep in view the substance of the pleadings, not the mere literal wording.

24. To begin with he points out that actual and unqualified payment of the Rs. 9,000 is not alleged in the plaint drawn by the attorney, and that the words used are at least susceptible of a meaning

consistent with the case as made in the written statement in suit No. 723 of 1910 read in the light of the explanation contained in the attorney's affidavit. This affidavit, it is further argued, affords a possible explanation as to how interest came to be chargeable on the whole of Rs. 9,000 from the 22nd April 1900.

25. The attorney declares that he was not present at the time the promissory note was executed and the money paid and that his information as to what happened is derived from Nilmoney Pal, Manick Lall Seal and Kuchil Lal Sen. Of these the first two are dead and we have no statement from Kuchil Lal Sen. Noyan Manjuri, the person most interested does not seem to have mentioned the matter.

26. Mr. James has urged that as the attorney has in his verification declared that the statements contained in paragraph 2 are true to his knowledge, it must mean that he was present.

27. But we think not; the attorney has given an explanation which, if true, would show that Mr. James' argument ascribes too narrow a meaning to the words. In this connection too he relies on the word "declined" as inconsistent with the attorney's present version.

28. It is a strange story that the attorney tells; still even a strong case of suspicion is not enough to justify disciplinary action on a summary proceeding, especially when there is a positive sworn denial and repudiation of the misconduct imputed. Moreover, there is more than a bare denial, there is an explanation of the transaction by the attorney, and it is an old rule that where this is so, an adverse order should not be made on a summary proceeding, unless the attorney's story is highly incredible. If his affidavit in answer and explanation be false, he can be prosecuted for a criminal offence.

29. We cannot on the materials before us hold that the attorney's explanation is demonstrably false; more than that we are not prepared to say. On this ground therefore we discharge the Rule, but as, in our opinion, the matter has been properly brought to our notice, there will be no order as to costs, except that each party do bear his or her own costs.

30. We would wish to add one word as to the procedure in cases of this class. We have had an opportunity of examining a note of all proceedings against attorneys in the exercise of the Court's disciplinary jurisdiction, of which there is a record. The procedure has not been uniform, but except as to service the proceedings in this case have been in substantial conformity with the more recent cases that have come before the Court.

31. There is an insuperable obstacle in the way of our adopting the English procedure in its entirety, but we think we should do well to approximate it as far as can be. Here a preliminary enquiry before a professional body is impossible, but the English procedure suggests the expediency of initiating proceedings by a Rule, or a motion on notice, calling on the attorney to answer the matter in the affidavit or affidavits of the applicant. Service should be personal, a copy of the affidavits should be served with the Rule or notice of motion, and the returnable date should allow sufficient time for an answer to be put in. Ordinarily, we think, ten days should suffice.

32. After the explanation has been considered, it will then be for the Court to determine whether further proceedings should be taken, and if this be determined in the affirmative, then it would be right to request the Advocate-General or some other person or body, as the case may be, to take the necessary steps for that purpose.

33. In case these further proceedings are taken, the same rules as to service should be observed, and there should be as a part of the Rule or notice of motion a general statement of the grounds on which the proceedings are based.

Stephen, J.

34. I agree.

Chaudhuri, J.

35. I agree.