

1955

November 23.

IN THE MATTER OF
D AN ADVOCATE OF THE SUPREME COURT. .

[B. K. MUKHERJEA, C. J., S. R. DAS and
VENKATARAMA AYYAR JJ.]

Bar Councils Act—Misconduct in capacity other than professional—Jurisdiction of Court—Bar Councils Act (XXXVIII of 1926), s. 10—Supreme Court Rules, Order IV, Rule 30.

Section 10 of the Bar Councils Act confers on the Court jurisdiction to take disciplinary action against an Advocate not merely for professional misconduct but any other misconduct committed in any other capacity as well and leaves it to the Court's discretion to take such action as it thinks fit in any suitable case.

The Advocate-General of Bombay v. Three Advocates ([1934] I.L.R. 59 Bom. 57), *In the matter of an Advocate* ([1936] I.L.R. 63 Cal. 867) and *In re a Pleader* (I.L.R. [1943] Mad. 595), referred to.

In re Thomas James Wallace ([1866] L.R. 1 P.C. 283), and *In re an Advocate of Benares* (A.I.R. [1932] All. 492), held inapplicable.

Consequently, in a case where an Advocate figuring as an accused in a case under the Bombay Prohibition Act was persistently rude to and contemptuous of the trial Magistrate and did all in his power to hold up the trial and bring the administration of justice into contempt, he was guilty of misconduct and as such was liable to be suspended from practice.

D in person

M. C. Setalvad, Attorney-General for India, as
amicus curiae.

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DAS J.—This Rule was issued by this Court under Order IV, rule 30 of the Rules of this Court after receipt of a report from the Bombay High Court that that High Court had, by its order made on the 13th October 1955 in Civil Application No. 1506 of 1955, suspended the respondent from practice as an Advocate of that High Court for a period of one year from the date of the said order. By the rule the respondent has been required to show cause why, in view of the matter specified in the judgment and order of the Bombay High Court referred to above, appropriate action, disciplinary or otherwise, should not be taken against him by this Court.

The respondent is an Advocate of some standing in the Bombay High Court and as such was also enrolled as an Advocate of this Court. It appears that in the earlier part of the year 1953 the Advocate was prosecuted before Mr. Sonavane, one of the Presidency Magistrates at Bombay, on a charge of having committed an offence under the Bombay Prohibition Act. The trial lasted from July 1953 to November 1953. On the 18th November 1953 the Magistrate convicted the Advocate of the offence with which he was charged and sentenced him to rigorous imprisonment for one month and to a fine of Rs. 201 and to rigorous imprisonment of four weeks in default of payment of the fine. The Advocate went up on appeal to the High Court. The High Court on the 24th February 1954 upheld the conviction but altered the sentence to one of fine of Rs. 1,000 only.

In the meantime, on the 25th November 1953, the trial Magistrate, Mr. Sonavane, made a report to the Registrar (Appellate Side) of the Bombay High Court as to the conduct of the Advocate who appeared in person as the accused before him. On a perusal of that report the Hon'ble the Chief Justice of the Bombay High Court constituted a Tribunal consisting of three members of the Bar Council to enquire into the conduct of the Advocate. The Tribunal issued a summons

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against the Advocate intimating that it would enquire into his conduct as disclosed in :—

(a) the report dated the 25th November 1953 of Shri T. A. Sonavane, B.A., LL.B., Presidency Magistrate, 18th Court, Girgaum, Bombay, to the Registrar, High Court, Appellate Side, Bombay, regarding Case No. 593/P of 1953 tried by him, and

(b) the judgment recorded by the High Court of Judicature at Bombay in Criminal Appeal No. 1532 of 1953 (with Criminal Appeal No. 1564 of 1953) upholding the judgment and order of conviction passed against him by the aforesaid learned Magistrate in the aforesaid case.

The proceedings appear to have been somewhat protracted by reason of frequent objections made and petitions filed by the respondent but eventually on or about the 16th March 1955 the respondent forwarded to the Secretary to the Bar Council Tribunal a copy of a letter addressed by him to the Registrar, High Court, Bombay, and requested the Tribunal to send a report to the High Court in terms of his pleading guilty to the charges levelled against him. He concluded the letter by expressing regret for having wasted the time of the Tribunal. In his letter to the Registrar, the respondent enclosed a separate written apology unconditionally withdrawing his contention that the proceedings before the Tribunal were misconceived in law and admitting that the High Court had full authority in law to refer the matter to the Bar Council Tribunal and further that the statements made by Mr. Sonavane in his report were true except in two respects therein specified. On the 28th March 1955 the respondent submitted an additional statement clarifying and supplementing his previous apology. Thereupon the Tribunal made a report to the High Court. By this report the Tribunal held, on the respondent's own admission, the allegations in the report of Mr. Sonavane to be proved and recommended that a very serious notice should be taken of the respondent's conduct. As regards the second item in the summons the Tribunal held that the mere conviction of the respondent under the Prohibition Act did not amount

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to professional or other misconduct under section 10 of the Indian Bar Councils Act and, therefore, found him not guilty of that charge.

On a perusal of that report the High Court issued notice to the respondent for final hearing of the matter. The matter came up for final disposal before a Bench consisting of the Chief Justice and Tendolkar, J. on the 13th October 1955. Learned counsel appearing for the respondent offered an unconditional and unqualified apology on behalf of the respondent and pleaded that the ends of justice would be met if the Court only administered a warning to the respondent. After considering the report of the Tribunal the High Court took the view that the misconduct of the respondent was so serious and so grave that a deterrent punishment must be imposed on him. Accordingly, taking everything into consideration, the High Court suspended the respondent from practice for a period of one year from the date of that order. The respondent's application for a certificate of fitness for appeal to this Court having been refused, the respondent filed a petition for special leave to appeal before us. That petition has, however, been dismissed by us. The rule for disciplinary action now remains to be dealt with.

In answer to the rule the respondent has filed a petition by way of showing cause. Paragraph 7 of that petition runs as follows :—

“7. That the report of the learned Presidency Magistrate, 18th Court, is a highly exaggerated, garbled and manifestly incorrect version of the incidents that occurred during the trial of the case. And looking to the circumstances under which the petitioner was more or less compelled to tender a humiliating apology, this Hon'ble Court be pleased to direct that a proper inquiry be held in the matter by or under the directions of this Hon'ble Court”.

Appearing in person before us the respondent has contended with a certain amount of vehemence that he had not had any fair deal before the Tribunal, that the Tribunal had no jurisdiction to enter upon the enquiry inasmuch as the misconduct complained of

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was not committed by him in his capacity as an Advocate, for he appeared in person as the accused in the Prohibition case, that the Tribunal had at one stage held that it had no jurisdiction but had without giving him a hearing gone back on that decision and declined to decide that question in his presence, that the Tribunal failed to formulate any formal charge, that he made an application to the High Court under article 227 for quashing the proceedings for want of jurisdiction but the High Court had rejected that application and declined to give him a certificate of fitness for appeal to this Court and pointed out various other matters which he characterised as showing prejudice and bias on the part of the Tribunal.

It was pointed out to the respondent that his application for special leave to appeal from the judgment and order of the High Court having been dismissed we were not, in this Rule, concerned with the proceedings in the Bombay High Court or before the Tribunal of the Bar Council as observed by this Court in *In the matter of Mr. G, a Senior Advocate of the Supreme Court*⁽¹⁾. The respondent then fell back upon paragraph 7 of his petition quoted above and asked this Court to hold a fresh enquiry into the matter. From the judgment of the Bombay High Court which is referred to in the Rule issued herein it appears that the respondent had admitted the truth of everything contained in Mr. Sonavane's report except two matters only. In his present petition showing cause he does not, apart from a vague allegation that the report is an exaggerated, garbled and manifestly incorrect version of the incidents that occurred during the trial of the case, refer to any particular statement therein which is exaggerated, garbled or incorrect. In view of his unconditional admission of the truth of the statements in the report of Mr. Sonavane we are not prepared to permit him to go back on the same on such vague allegations as are to be found in paragraph 7 of his petition. It is needless for us to emphasise that a person holding the responsible position of an Advocate of a High Court

(1) [1955] 1 S.C.R. 490, 495.

and of this Court cannot be permitted to play with the Court in the way this Advocate has done. He admitted the correctness of the report, confessed his guilt and tendered an unconditional apology evidently in the hope that he would get away with it by merely tendering an apology. Finding that the tactics did not work with the High Court as he expected the same to do, he now wants to change his tactics by asking for an enquiry which he had himself avoided by means of his admission and apology. This we are not prepared to permit him to do. We have carefully gone through the report of Mr. Sonavane and we find ourselves in entire agreement with the High Court when it says that that report makes an extremely sad reading. The conduct of the respondent in the criminal trial was, as pointed out by the High Court, entirely indefensible by any standard. It discloses a continuous and persistent attempt on the part of the respondent to be rude to and contemptuous of the Magistrate, to hold up the trial and to do everything in his power to bring the administration of justice into contempt. Such a conduct, in our opinion, merits severe condemnation.

The respondent has drawn our attention to the case of *In re Thomas James Wallace*⁽¹⁾ which was followed in *In re An Advocate of Benares*⁽²⁾. We do not conceive that the Privy Council intended to lay down any fixed and rigid rule of law or did anything more than indicate the course which, in the circumstances of that case, it considered to be reasonable, satisfactory and convenient and the Allahabad case simply followed the same. As has been held by a Full Bench of the Bombay High Court in *The Advocate-General of Bombay v. Three Advocates*⁽³⁾, the Indian Legislature by using the words "professional or other misconduct" in section 10 of the Indian Bar Councils Act intended to confer on the Court disciplinary jurisdiction to take action in all cases of misconduct whether in a professional or other capacity leaving it to the discretion of Court to take action only in suitable

(1) [1866] L.R. 1 P.C. 283.

(2) A.I.R. 1932 All. 492.

(3) [1934] I.L.R. 59 Bom. 57.

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cases. To the like effect is the decision of a Special Bench of the Calcutta High Court in *In the matter of an Advocate*⁽¹⁾. The pleader concerned in the case of *In re a Pleader*⁽²⁾ was certainly not, by shouting slogans in Court, functioning as an Advocate, nevertheless he was dealt with under section 13(f) of the Legal Practitioners Act. *Wallace's case* (supra) was not a decision on any statutory provision such as we have in the Legal Practitioners Act or the Bar Councils Act.

For the reasons stated above and in view of the conduct of the Advocate seen in the light of the surrounding circumstances we are clearly of opinion that the Advocate should, by reason of his having indulged in conduct unworthy of a member of the honourable profession to which he belongs, be suspended from practice for some time. He is an Advocate of this Court and according to a majority decision of this Court he is entitled, under the Supreme Court Advocates (Practice in High Courts) Act, to exercise his profession in all Courts throughout the Union of India. Any suspension for a period less than the period fixed by the Bombay High Court will obviously lead to serious anomaly and inconvenience. We accordingly direct that the Advocate concerned be suspended from practice for a period co-terminous with the period of suspension fixed by the Bombay High Court, namely, up to the 13th October, 1956.

(1) [1936] I.L.R. 63 Cal. 867.

(2) I.L.R. [1943] Mad. 459.