Thakur Har Prasad Singh, Vakil - - - - - *Petitioner*

v.

The Judges of the High Court of Judicature at Allahabad - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON PETITION FOR SPECIAL LEAVE TO APPEAL, DELIVERED THE 24TH FEBRUARY, 1931.

Present at the Hearing:

LORD MACMILLAN.
SIR LANCELOT SANDERSON.
SIR GEORGE LOWNDES.
SIR DINSHAH MULLA.

[*Delivered by* LORD MACMILLAN.]

The High Court of Judicature at Allahabad on 25th June, 1930, found the petitioner guilty of certain charges made against him under Article 8 of the Letters Patent of the Court, and ordered his name to be struck off the roll of vakils practising before them. He now craves special leave to appeal against this order. At the conclusion of the hearing their Lordships intimated that they were unable to advise His Majesty that a case for special leave had been made out, and stated that they would embody their reasons in a written judgment. This they have now done.

It appears that in 1929 a suit founded on two bonds was instituted in the Court of the Munsif of Banda at the instance of Samarjit Singh, a brother-in-law of the petitioner, against Dinkar Singh and another. While this suit was pending before the Munsif, Dinkar Singh presented an application to the High Court complaining of the conduct of the petitioner who, he alleged, had acted improperly in procuring the execution of the bonds on which the suit was based, and had failed to disclose

to the Court the circumstances in which the bonds had come into existence. The Chief Justice referred the application to three Judges of the High Court for investigation, but the inquiry was postponed to await the disposal of the civil suit.

On the 6th August, 1929, the Munsif gave judgment in the civil suit in favour of the plaintiff. Against this judgment Dinkar Singh lodged an appeal which by order was transferred to the High Court, and was there heard by the three Judges before whom the application against the petitioner was then pending. On the 6th May, 1930, the High Court allowed the appeal in the civil suit, reversed the judgment of the Munsif, and pronounced decree in favour of the defendant Dinkar Singh. On the same day the Judges, who had thus disposed of the appeal in the civil suit, issued a notice to the petitioner calling upon him to show cause why he sould not be dealt with under Article 8 of the Letters Patent.

The charges formulated against the petitioner were as follows :—

> " 1. In giving evidence in Original Suit No. 324 of 1929 in the Court of the Munsif of Banda he committed perjury in respect of the following statements [here follow three statements quoted from the evidence of the petitioner].
>
> " 2. He filed a false fee certificate in the said case.
>
> " 3. He abetted Samarjit in the filing of false suit No. 324 of 1929 in the Court of the Munsif of Banda.
>
> " 4. He entered into a champertous agreement with Dinkar Singh to aid Meda Singh in filing and prosecuting a suit for the recovery of village Chaitara on terms that he should receive no fees in connection with the said suit, but should supply the necessary money for the expenses of the said suit and on condition that, if the village was recovered, half of it should be given to him by Dinkar Singh and Meda Singh."

The petitioner lodged a written statement in which he objected to the charges against him being investigated by the same Judges as had dealt with the appeal in the civil suit, inasmuch as the charges related to matters on which they had already decided adversely to him in their judgment in that suit ; he also submitted that as he was charged with offences which were criminal under the Penal Code he should not be dealt with under the Letters Patent unless and until he was convicted of these offences after a trial in the criminal courts. The Chief Justice addressed a letter to the petitioner stating that it was for the Judges before whom the matter was set down for hearing to dispose of his objection to their adjudicating upon it, and that if they asked him to appoint another Bench he would immediately do so.

At the hearing counsel for the petitioner formally objected to the composition of the tribunal, but his objection was overruled and the inquiry proceeded.

Objection was taken on behalf of the petitioner to the method in which the Government Advocate adduced the evidence of certain witnesses who had testified in the civil suit, and his

counsel declined to cross-examine them. He, however, cross-examined another witness called by the Government Advocate, and also Dinkar Singh, who was recalled for the purpose. No evidence was led on behalf of the petitioner, but he was directed by the Court to take his stand in the witness box, and was afforded, and fully availed himself of, the opportunity of commenting upon the judgment in the civil suit appeal which was read over to him.

In the present petition it is stated that towards the conclusion of the proceedings the Court thus addressed the petitioner's counsel :—

> " We have been all through moved by the desire to give Har Prasad every facility for clearing himself, and cannot fail to be impressed by his failure to produce Samarjit and by the way he has refrained from coming to close quarters with the real points in the case."

The petitioner's counsel replied :—

> " We do not suggest that your Lordships have not given us every possible opportunity and are grateful for the care with which the record has been kept."

After sundry further procedure the petitioner's counsel and the Government Advocate addressed the Court, which reserved judgment, and thereafter found the four above charges fully established, and ordered the petitioner to be struck off the roll of vakils of the Court.

Before their Lordships the main ground on which it was submitted that special leave to appeal should be granted was that the constitution of the Court by which the charges against the petitioner were investigated prevented him from having a fair and independent inquiry into the grave allegations against him, as the Court had already prejudged the issues in the civil suit out of which they arose.

Their Lordships are not to be taken as commending the course which was adopted in the High Court. It is true that Article 8 of the Letters Patent prescribes no special procedure for dealing with complaints against the conduct of vakils practising before the Court, and merely empowers the Court " to remove or suspend from practice on reasonable cause " advocates, vakils or attorneys-at-law of the Court. The procedure to be followed in such cases is thus left to the discretion of the Court, but it is manifest that where such grave charges are involved as were made in the present case, scrupulous care should be taken to see, not only that justice is done, but also that justice should seem to be done. An appropriate guide in dealing with such cases is to be found in the disciplinary provisions of the Legal Practitioners Act, No. XVIII of 1879, as was pointed out by their Lordships in the recent case of *T. C. A. Anandalwan* v. *The Judges of the High Court of Judicature at Madras* (10th February, 1930, P.C.A.).

Presumably it was thought that the Judges who had heard the appeal in the civil suit and were conversant with all the facts of the case were best qualified to pass judgment on the conduct

of the petitioner in relation to it ; but while the Judges who dealt with the petitioner's case no doubt acted within their jurisdiction and showed every desire to give him a full and fair hearing, their Lordships are clearly of opinion that it is undesirable that such an investigation should proceed before the same Judges as have heard the case out of which the charges arise. Where the accused's defence involves a challenge of the previous decision of the Judges before whom he is arraigned it is obvious that this must occasion embarrassment on his part. Accordingly, while their Lordships do not find in the circumstances of this case anything which would lead them to believe that there has been such a miscarriage of justice as would justify them in advising His Majesty that special leave to appeal should be granted, they desire to emphasize the propriety of such charges being investigated by a tribunal which has had no previous association with the matters in issue.

Their Lordships think it right to add that while they do not take the view that it is incompetent for the High Court to deal under Article 8 of the Letters Patent with charges of a criminal nature against a practitioner unless and until these have been investigated by a criminal court, they regard it as eminently fitting that in such cases the criminal prosecution should precede any disciplinary decision.

With these observations and for the reasons stated their Lordships have humbly advised His Majesty that the petition should be refused.

In the Privy Council.

THAKUR HAR PRASAD SINGH, VAKIL

v.

THE JUDGES OF THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

DELIVERED BY LORD MACMILLAN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1931.