PETITIONER:
LALIT MOHAN DAS

Vs.

RESPONDENT:
ADVOCATE-GENERAL, ORISSA

DATE OF JUDGMENT:
29/11/1956

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
DAS, SUDHI RANJAN (CJ)
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.

CITATION:
1957 AIR 250 1957 SCR 167

ACT:
Legal Practitioner-Report--Procedure-Not open to District judge to send back report to the Subordinate civil judge-Report once made Proceedings can terminate by- Final Order of the High Court only--Member of the Bar-Officer of the Court-Duty to client and Court-Dignity and decorum of the Court must be upheld-Conduct-Not a matter between individual member of Bar and a member of Judicial Service-Disciplinary action-Punishment-Mitigating circumstances-Interference by Supreme Court-Legal Practitioners Act (XVIII of 1879), s. 14.

HEADNOTE:
The appellant pleader who already had strained relation with the Munsif made certain objectionable remarks in open Court, suggesting partiality and unfairness on the part of the Munsif.
The Munsif drew up a proceeding under ss. 13, 14 Of the Legal Practitioners Act, 1879, against the pleader and submitted a report to the High Court through the District judge.
An application to the Additional District judge was filed by the pleader, for time to move the High Court to get an order to have the matter heard by some judicial Officer other than the
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Munsif who had made the report. One month's time was accordingly granted, and for some reason which is not very apparent, the Additional District judge sent the record back to the Munsif. The Additional District judge made an effort to settle the trouble. It was arranged that the pleader should apologise and a resolution should be passed by the members of the local Bar Association. Accordingly, the pleader appeared in the Court of the Munsif and filed a written apology and expressed his regret, and the Munsif dropped the proceeding. It was later found that the resolution was not passed in the terms suggested by the Additional District judge, and the terms of settlement suggested by the latter were not fully carried out.

Accordingly, the proceeding was re-opened and the report was re-submitted to the District judge who with his opinion forwarded the same to the High Court. The High Court suspended the pleader for 5 years.

It was contended on behalf of the appellant that there was no valid reason for reviving the proceeding, after it had once been dropped on the submission of an apology and expression of regret.

Held, that the report under s. 14 of the Legal Practitioners Act is a report which is submitted to the High Court. When a report is made to the High Court by any Civil judge subordinate to the District judge, the report shall be made through the District judge and the report must be accompanied by the opinion of such judge. Once the report has been made, it is not open to the District judge to send back the record to the Subordinate Civil judge, and no order passed by the Subordinate Civil judge can have the effect of terminating or bringing to an end the proceeding. The High Court alone is competent to pass final orders on the report.

A member of the Bar is an officer of the Court, and though he owes a duty to his client and must place before the Court all that can fairly and reasonably be submitted on behalf of his client, he also owes a duty to the Court and must uphold the dignity and decorum of the Court in which he is appearing. Making amputations of partiality and unfairness against the subordinate Civil judge in open Court is scandalizing the Court in such a way as to pollute the very fount of justice ; such conduct is not a matter between an individual member of the Bar and a member of the judicial Service.

With regard to disciplinary action against a member of the Bar, the Supreme Court would be reluctant to interfere with the order of the High Court unless there are clear mitigating circumstances.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 176 of 1956 and Petition No. 165 of 1955.

Appeal by special leave from the judgment and order dated March 15/23,1955 of the Orissa High Court, in Civil Reference No, 4 of 1954,

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N. C. Chatterji, D. -N. Mukherjee and R. Patinaik, for the appellant.

Porus A. Mehta and R. H. Dhebar, for respondent No. 1.

1956. November 29. The Judgment of the Court was delivered by

S.K. DAS J.-The appellant is Shri Lalit Mohan Das, a pleader of about 25 years' standing. who ordinarily practiced in the Courts at Anandapur in the district of Mayur bhanj in Orissa. The Munsif of Anandapur, one Shri L. B. N. S. Deo' drew up a proceeding under ss. 13 and 14 of the Legal Practitioners Act, 1879, against the pleader for grossly improper conduct in the discharge of his professional duty and submitted a report to the High Court through the District Judge of Mayurbhanj on December 12, 1953. The District Judge forwarded the report, accompanied by his opinion, to the High Court of Orissa on March 9, 1954. The recommendation of the Munsif was that the pleader should be suspended from practice for one year. The reference was heard by the High Court of Orissa' and by its order dated March 15, 1955, the High Court came to the conclusion that the pleader was guilty of grave professional misconduct and

suspended him from practice for a period of five years with. effect from March 15,1955,

Shri Lalit Mohan Das then obtained special leave from this Court to appeal against the judgment and order of the Orissa High Court dated March 15 /23, 1955. He also filed a petition under Art. 32 of the Constitution. Learned counsel for the petitioner has not pressed the petition under Art. 32 and nothing more need be said about it. We proceed now to deal with the appeal which has been brought to this Court on special leave.

The charges against the appellant were the following On July 15, 1953, the appellant was appearing on behalf of the defendant in Suit No. 81 of 1952 pending before the Munsif of Anandapur. On that date, there were two other suits pending before the same Munsif. There were petitions for time in all the three suits.

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The Munsif wanted to take up the oldest suit for hearing, and the oldest suit being Suit No. 54 of 1952, it was taken up first and five witnesses for the plaintiff were examined. Suit No. 81 of 1952 was postponed to August 18, 1953. The appellant, who appeared for the defendant in that suit, was informed of the postponement. When so informed, the appellant made a-remark in open Court and within the hearing of the Munsif to this effect: " If the Peshkar is gained over, he can do everything." He then left the Court. The Munsif was surprised at the remark made and asked the appellant to explain his conduct, by means of a letter sent the same day. As the appellant sent no reply, the Munsif wrote again to the appellant on July 18, 1953. To this letter the appellant sent the following reply:

"Dear Sir,

I am painfully constrained to receive memo after memo for some imaginary act of mine not in any way connected with my affairs for which if any explanation is at all warranted officiallv.

For your second memo I felt it desirable as a gentleman to reply.

Further I may request you to be more polite while addressing letters to lawyers.

Yours faithfully,
Sd. L. M. Das. Pleader."

It is obvious that the letter of the appellant was couched in very improper terms and considerably strained the relation between the Munsif and the appellant. The appellant, it may be stated here, was at that time the President of the Anandapur Sub Divisional Bar Association which consisted of about 14 legal practitioners. On July 21, 1953, Shri B. Raghava Rao, who was the predecessor in office of Shri Deo, came to Anandapur. He was the guest of Shri A. V. Ranga Rao, the Sub- Divisional Officer. One Shri N. C. Mohanty, a pleader of. Anandapur and who was related to the appellant, -came -to invite the two Munsifs to a luncheon on the occasion of a housewarming ceremony. On hearing about the trouble between Shri Deo

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and the appellant, Shri B. Raghava Rao interceded and it appears that the appellant was persuaded to come to the house of the Sub-Divisional officer and to ,say that he was sorry for what had happened in court on July 15, 1953, and that- he did not happean to insult Shri Deo; Shri Deo, it appears, accepted the apology and for the time being. the trouble between the two was smoothed over.

A second incident, however, took place on September 25,

1953. The appellant was appearing for a defendant in another suit before the Munsif It was Suit No. 101 of 1952. This suit was fixed for hearing on September 21, 1953. As that date was a holiday, the suit was taken up 'on September 22, 1953. Another suit, Suit No. 86 of 1952, was also fixed for hearing on that date but Shri N. C. Mohanty, pleader for the defendants in that suit, took time on the ground of the illness of one -of the defendants, which ground was supported by a medical certificate. In Suit No. 101 of 1952 also, the defendants applied for time. on the ground of illness of their witnesses; but there being no medical certificate in support of the allegation of illness and no witnesses having been summoned in that suit, the learned Munsif refused to grant time, and one Shri P. N. Patnaik who also represented the defendants agreed to go on with the suit. The suit was then heard for two days, i. e., on September 22 and 23, 1953, and at the request of the defendants' lawyers the hearing of arguments was postponed to September 25, 1953. On that date the appellant came to Court accompanied by his junior Shri P. N. Patnaik, for the purpose of arguing the case on behalf of the defendants. At the very outset of his arguments the appellant made the follwing remarks:The Court is unfair to me, while the Court was fair to Mr. Misra (meaning Shri Bhagabat Prasad Misra who was appearing for the plaintiffs in that suit). The Court is accommodating and granting adjournments to Mr. Misra while it was not accommodating me.". The Munsif took objection to these remarks but nothing untoward happened. The appellant concluded his arguments.

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A third incident brought matters to a climax, and this incident took place on September 29, 1953. The appellant was appearing for the defendants in Suit No. 6 of 1951. In that suit a preliminary point of jurisdiction and sufficiency of court fees was raised and Shri B. Raghava Rao, the predecessor in office of Shri Deo, had dealt with the point and decided it against the appellant's client. A Civil Revision taken to the High Court was also rejected. 'The appellant, however, again pressed the same preliminary point and on September. 29, 1953, Shri Deo passed an order dismissing the preliminary objection. When this order was shown to the appellant, he stood up and shouted at the top of his voice-I'I on behalf of the Bar Association, Anandapur, challenge the order of the Court,. The Court has no principle as it is passing one kind of order in one suit and another kind of order in another suit." The Munsif, it appears, was disgusted at the conduct of the appellant and he stood up and, left the Court room, directing the bench clerk to send a telegram to the District Judge., A telegram was accordingly sent to the District Judge asking him to come to Anandapur. The District Judge asked for a detailed report which was sent on October 1, 1953. On October 5, 1953, the Munsif drew up a proceeding against the appellant on a charge under s. 13 of the Legal Practitioners Act referring therein to the three incidents mentioned above. The appellant was asked to show cause by October 26, 1953. On November 3, 1953, the appellant denied the allegations made and took up the attitude that the Munsif was not competent to hold the enquiry on the ground that the Munsif was in the position of a complainant. The appellant gave a different version of what happened on the three dates in question. With regard to the incident of July 15, 1953, the appellant's plea was that some other client had come to him. in connection with a criminal case pending in another Court and to that client the appellant had said that an enquiry

should be made from the Peshkar as to the date fixed. With regard to the incident, on September 25, 1953, the plea of the appellant was^ total denial, and with regard to the last incident, the appellant said

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that the Munsif behaved rudely- and wanted to' assault the appellant, for which the appellant appears, to have filed a petition to the Governor of Orissa on September 30, 1953, for according sanction for the prosecution of the Munsif.

It may be stated here that on October 8, 1953, a resolution was passed, numbered Resolution 6, which purported to be a resolution on behalf of the Bar Association, Anandapur. The resolution was in these termis:

"Resolved that on September 29, 1953, the Court's (Munsif) action on the. dais in rising from the chair, thumping on the table, shouting at the top of his voice, and using the words 'shut up' against one honourable member (President) of this Bar Association is quite unprecedented., undesirable and affecting the prestige of the Bar and may cause apprehension in the mind of the litigant public to get fair justice."

It may be stated that some other members of the Bar dissociated themselves from the a id resolution at a later date. The proceeding against the appellant under the Legal Practitioners Act stated, as we have said earlier, on October 5, 1953, and the appellant filed his written statement on November 3, 1953. On November 5, 1953, the Munsif sent the record to the District Judge in connection with the plea of the appellant that the enquiry should be made by some other judicial officer. The District Judge, however, took the view that under the provisions of ss. 13 and 14 of the Legal Practitioners Act the enquiry should be made by the Munsif himself and the records were accordingly sent back to the Munsif. Thereafter, the appellant non-co-operated and did not appear at the enquiry though more than one communication was sent to ham The enquiry was concluded on December 11, 1953, and the Munsif submitted his report. to,. the High Court through the District Judge on December 12, 1953. On December 22, 1953, the appellant filed an application to the Additional District Judge for time to move the High Court to get an order to have the matter heard by some other judicial officer. One month's time was

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accordingly granted and the Additional District Judge, for some reason which is not very apparent, sent the record back to the learned Munsif In the meantime, the Additional District Judge, it appears, made an effort to settle the trouble. On December 23, 1953, he met the members of the Bar Association and the Munsif at the inspection bungalow at Anandapur on his way to Mayurbhanj. At a -meeting held there, a copy of a draft resolution to be passed by the members of the Bar Association, Anandapur, was made over. This draft resolution was in these terms:

"This Association re rets very much that an incident relating to the bench clerk of the Civil Court. should have led to the subsequent unhappy differences between the Bench and the members of the Bar. As in the interest of the litigant public it is felt not desirable to allow these strained feelings to continue further, this Association unanimously resolves to withdraw Resolution No. 6 dated October 8, 1953, passed against the Court and communicate copies of the same to the addressees previously communicated. It is further resolved to request the Court to see to the desirability of withdrawing the proceedings that had been started against the various members of the Bar

and their registered clerks on their expressing regret to the Court individually in connection with those proceedings. It is further resolved that the members of the Bar involved in the proceedings be requested to take immediate steps in this direction. The Association hopes that the bench clerk who has -to some extent been the cause for this friction between the Bench and the Bar would be replaced by a person from a different place at an earlier date."

On January 8, 1954, the appellant appeared in the Court of the Munsif and filed a written apology and expressed his regret. His signature wag taken on the order-sheet and the order of that date reads:

"Sri L. M. Das, pleader, appears and expresses his regret. So the proceeding No. 2 of 1952 is dropped. Intimate Additional District Judge."

No resolution, however, was passed in the terms

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suggested by the Additional District Judge. On January 19, 1954, two resolution,% were passed in the following terms:

"No. 1. In - view of the fact that past misunderstandings between the Munsif and members of the Bar caused by an incident relating to the bench clerk of the Civil Court, have been removed by amicable settlement of differences existing between both parties, it is unanimously resolved that resolution No. 6 dated October 8, 1953, stands withdrawn.

No. 2. It is further resolved that the copies of the above resolution be sent to the addressees previously communicated of resolution No. 6 of October 8, 1953."

The learned Munsif, it appears, wanted to see the minute book of the Bar Association, presumably to find out in what terms the proposed resolution was passed. There was again trouble between the Munsif and the appellant over the production. of the -minute book. Ultimately, the minute book was produced, and on February 2,1954, the Munsif expressed the view that the resolution passed did not fully carry out the terms of settlement suggested by the Additional District Judge. Accordingly, the proceeding was re-opened and the record was re-submitted to the District fudge. The District Judge thereupon sent the report of the Munsif to the High Court accompanied by his opinion. The High Court dealt with the report with the result which we have already indicated.

The main contention of Mr. N. C. Chatterji, who has appeared on behalf of the appellant is this. He has submitted that there was no valid reason for reviving the proceeding against the appellant, after the proceeding had been dropped on January 8, 1954, on the submission of an apology and expression of regret by his client; because, in substance and effect, the terms of the settlement suggested by the Additional District Judge had been complied with. According to Mr. Chatterji an expression of regret having been made earlier than the passing of the resolutions on January 19, 1954, by the Anandapur Bar Association and the bench clerk having already been transferred from

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Anandapur, the resolutions could not be in the same terms as were suggested by the Additional District Judge; but the two resolutions passed on January 19, 1954 coupled with the expression of individual regret made on January 8, 1954, complied in substance with the essential terms of the draft resolution which the Additional District Judge had made over on December 23, 1953. Mr. Chatterji has contended that this view of the matter has not been properly considered by the High Court. He has submitted that in view of the order

passed by the learned Munsif himself on January 8, 1954, the proceeding against the appellant should be treated as having been dropped and concluded on that date.

Mr. Chatterji has also drawn our attention to ground No. VI in the petition for special leave dated May 9, 1955, in which the appellant said that he was " willing and prepared to submit before this Court expressions of unreserved regret and apology for his error of judament and indiscretion, if any, in the discharge of his professional duties."

We cannot accept the contention of Mr. Chatterji that the order passed by the learned Munsif on January 8, 1954, had the effect of terminating and bringing to an end the proceeding against - the appellant. The learned Judges of the High Court rightly pointed out that the report of the Munsif dated December 12, 1953, was a report which was submitted to the High Court. Under the provisions of s. 14 of the Legal Practitioners Act, such a report had to be forwarded to the High Court by the District Judge accompanied by his opinion. It was not open to. the Additional District Judge to send back the record to the Munsif The efforts of the Additional District Judge were, indeed, well-intentioned; but at that stage, after the Munsif had made his report to the High Court, the High Court alone Was competent to pass final orders in the matter.

Apart, however, from that difficulty, we are not satisfied that the terms of settlement suggested by the Additional District Judge were fully complied with in this case. It is true, that the appellant did express his

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regret and to that extent the settlement suggested by the Additional District Judge was carried out. It is also true that by the resolutions passed on January 19, 1954, the earlier resolution of October 8, 1953, was cancelled, but one essential and important part of the terms of settlement suggested by the Additional District Judge was that the Association should express regret at what had happened. Resolution No. I dated January 19, 1954, was so worded as to give the impression that the misunderstanding between the Munsif and the appellant was all due to the bench clerk and that misunderstanding having been removed Resolution No. 6 dated October,$, 1953, should be withdrawn. There is nothing in the resolution to show that the appellant was in any way at fault, a fault which he had expiated I by an expression of regret. It may be pointed out that the earlier ,resolution, Resolution No. 6 dated October 8, 1953, had been communicated to a large number of persons and authorities and the later resolution dated January 19, 1,954, passed in the diluted form in which it was passed, could hardly undo the damage which had been made by the earlier resolution.

On merits we agree with the High Court that the appellant was undoubtedly guilty of grave professional, misconduct. A member of the Bar undoubtedly owes a duty, to his client and must place before the Court all that can fairly and reasonably be submitted on behalf of his client. He may -even submit that a particular order is not correct land may ask for a review of that order. At the same time, a member of the 'Bar is an officer of the Court and owes a duty to the Court in which- he is appearing. He -must phold the dignity and decorum of the Court and must not do any thing to. bring the Court itself into disrepute. The appellant before us grossly' overstepped the limits of proprieety when he made imputation$; of partiality and unfairiness against the Munsif in open Court. In suggesting that the Munsif followed no principle -in his orders the appellant was

adding insult to- injury, because the 'Munsif -had merely up held an order of his predecessor on the preliminary point of jurisdiction and Court fees,

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which order had been upheld by the High Court in s revision. Scandalising the Court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice. From -that point of view, the conduct-of the appellant was highly reprehensible. The appellant gave no evidence in support of his version of the incidents, though he had an opportunity of doingso, if he so desired.

The only point left for consideration, is the question of punishment. On a matter of this nature, this Court would be reluctant to interfere with the order of the High Court as respects the disciplinary action to be taken against a member of the Bar who has been guilty of professional misconduct. There are, however, two mitigating circumstances. One is that the learned Munsif himself recommended suspension of practice for one year only. The appellant was suspended from practice with affect, from March 15,1955. The order of suspension has now lasted for a little more than a year and eight months. The second mitigating circumstance is that the appellant did file la written apology and expressed regret to the learned Munsif onJanuary 8, 1954. It is unfortunate that the appellantdid not take up a more contrite attitude in the High Court. In this Court, the appellant tried to make out that the proceeding against him should not have been revived; he however showed his willingness to offer an apology and ex pression of regret Having regard to all the circumstances, we think that the punishment imposed errs -on the side of excess. We -would accordingly reduece the period of susppusion to, two years only.

In the result, the petition, under Art. 32 is dismissed and the appeal is,also dismissed subject to the reduction of the period of suspension as indicated above. In the circumstances of this case, there will be, no 'order for costs.

Appeal dismissed

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