

SUPREME COURT OF INDIA

Shiv Narain Jafa

Vs.

Hon'ble Judges of the High Court of Judicature at Allahabad

C.A.No.25 of 1951

(Mehr Chand Mahajan, B. K. Mukherjea, Ghulam Hasan, N. H. Bhagwati and B. Jagannadhadas,
JJ.)

15.05.1953

JUDGEMENT

GHULAM HASAN, J. :-

1. Mr. Shiva Narain Jafa, an Advocate practising at Budaun, has appealed against the decision of a Full Bench of the Allahabad High Court suspending him from practice as an Advocate for a period of six months under the provisions of the Indian Bar Councils Act.

2. It appears that in 1942 one Ganesh was prosecuted before Mr. N P. Sanyal, Assistant Sessions Judge. Budaun, under S. 376, Penal Code, read with S.511. Penal Code, for an attempt to commit rape upon a Chamar woman called Himman. His defence was a denial of the offence and the improbability of his attempting such an offence owing to his physical defect. He attributed his implication in the offence to his enemies. Ganesh was convicted and sentenced to 5 years' rigorous imprisonment, but his sentence was reduced on appeal by the High Court to one year's rigorous imprisonment. Mr. Jafa represented Ganesh at the trial. It was in connection with his conduct as an Advocate in the trial that Mr. Sanyal complained to the High Court for taking disciplinary action against Mr. Jafa for professional misconduct. The High Court directed the District Judge. Pudaun under S. 10(2). Bar Councils Act to hold an inquiry into the conduct of Mr. Jafa with reference to the allegations made in Mr. Sanyal's complaint. The District Judge framed several charges and reported as a result of his findings that Mr. Jafa should not be allowed to continue as a member of the Bar.

3. The main charges are stated to be three. Under the first charge there are eleven subsidiary charges indicated by letters A to K of which seven refer to the Advocate's conduct in connection with the trial of Ganesh in the Court of Mr. Sanyal. The second charge is to the effect that the Advocate was in the habit of putting scandalous and obscene questions to women witnesses and is based partly upon questions put to Himman in the witness box and to a witness in another case in which action proposed to be taken against the Advocate was subsequently dropped. The third charge is that he deliberately raised groundless personal issues between himself and his clients on the one side and the presiding officers of courts on the other so as to pick up quarrels with them with the object of bullying and brow-beating them. The High Court acquitted the, Advocate of all the charges, save two, described as I-A and I-F.

4. The subsidiary charge I-A is that the Advocate made an application before the Assistant Sessions

Judge asking for copies of the statements of certain witnesses examined by the Police under S. 162, Criminal P. C. Six of these had been produced before the Committing Magistrate and they were cited as witnesses to be produced by the prosecution at the Sessions trial. The seventh was Hulasi, the husband of Himman Hulasi had been produced before the Committing Magistrate but the prosecution did not propose to examine him in the Court of Session; In the application at No. 6 Himman was mentioned and Hulasi was also added as a witness, but was not separately numbered. The application in the opening paragraph stated that the statements of the 'undermentioned witnesses' were required. The copies were supplied under the order of the Court. The charge against the Advocate was that Hulasi was not a witness who was called for the prosecution at the Sessions trial and therefore a copy of his statement could not under S. 162, Criminal P. C. be asked for or supplied but by misleading the Court into thinking that Hulasi was such a witness, the Advocate succeeded in getting a copy of his statement, This action of the Advocate is characterised by the High Court as a piece of sharp practice which was entirely unworthy of a member of the Bar and amounted to professional misconduct. The second subsidiary charge (I-F) which was held established by the High Court is that the Advocate had put a question to Babu Shiv Pershad, the Investigating Inspector in cross-examination in that case, whether he had been alone with Himman in her field till mid-night or till a late hour in the night, The Advocate denied having put the question but the Court held that he did put it and it was a most improper question. They held that the question was irrelevant as the charge had already been made before the sub-Inspector began investigation and the suggestion that the Sub-Inspector was guilty of misbehavior with the woman was a scandalous allegation put forward in the form of a question without any real justification. They took the view that the Advocate's conduct was reprehensible and that it amounted to professional misconduct which would justify disciplinary action against him. The other subsidiary charges were held not proved. One of the subsidiary charges (I-C) referred to certain questions which the Advocate attempted to put to Himman in the course of cross-examination which were disallowed by the Court as being indecent and unnecessary. These questions related 'inter alia' to the physical condition and physical characteristics at the accused Ganesh. The learned Judges held that the attempt to put such questions reflected in some measure upon the Advocate's capacity as a lawyer but there was no sufficient reason for holding that he deliberately intended to put indecent questions to the witness merely to embarrass and annoy her.

5. As regards the first charge, it is true that under S. 162, Criminal P. C. the Advocate could not apply for and obtain a copy at the statement of Hulasi recorded by the Police as he was not called for the prosecution to give evidence in the Court of Sessions. His action was either due to his ignorance of the provisions of S. 162, a fact which is scarcely credible in view of his standing at the Bar for over 30 years, or it was a deliberate act on his part to obtain the copy with a view to using it, as he thought, for contradicting Hulasi in the witness box with reference to his previous statement and to make it conflict with the other prosecution evidence, should he be called at any stage of the trial. In the latter case he may well have acted in good faith believing, however erroneously, that he was serving the best interests of his client.

6. Regardless of the motive of the Advocate, it is clear that the Court failed to exercise its jurisdiction in non refusing the application in view of the express provisions of S. 162, which permits the furnishing at a copy to the accused only of a witness who is called for the prosecution at the trial. On the other hand, Mr. Sanyal ordered on the application 'Comply' whereupon the Court Moharrir issued the copy. Mr. Sanyal subsequently held the Court Moharrir guilty of gross negligence in issuing the copy but failed to realise that it was he who was to blame for neglecting to do his obvious duty. We do not think that the Advocate's conduct in obtaining the copy can be called a piece of sharp practice justifying suspension from practice.

7. The second charge does not in our opinion merit any serious notice. The question no doubt carried a veiled insinuation about the Sub-Inspector's misbehaviour but the Sub-Inspector did not object to the question being asked and the Court did not disallow it as it had ample jurisdiction to do if it regarded the question as being in decent or scandalous. The question was intended as pointed out by the Advocate, to impeach the credit of the Sub-Inspector in the conduct of the investigation. The question was not intended to show that the Sub-Inspector was responsible for instituting a false charge against the accused but it could well be taken to impeach the credit of the Investigating Inspector in other respects such as employing questionable methods to obtain the conviction of the accused on the ground of his partiality towards the woman. The First Information Report was made on 29-1-1942, soon after the occurrence which took place at 11 a.m. The Sub-Inspector went to the village for investigation on February 1. The Sub-Inspector while denying that he remained with the woman for a long time in the night in the field, made conflicting statements about the time of his return. He said he did not remember that he had noted the time of his return in the diary at 11 p.m. but it was possible that the time may be correct. This lends some colour to the insinuation made in the question. At another place he stated that he returned at 7 p.m. In this state of the evidence. It is not possible to say that the question which was intended to shake his credit was improper.

8. Having regard to all the circumstances of the case, we are not satisfied on the materials before us that the case is one which deserves severe disciplinary action such as suspension of practice for six months as has been imposed by the High Court. We think the ends of justice will be served by letting off the Advocate with a warning. We cannot, however, part with the case without expressing our disapprobation of the conduct of the Advocate in not exercising proper discretion in putting certain questions to Himman. The subject-matter of the questions and the manner in which they were put do suggest that the Advocate exceeded the legitimate bounds of his privilege to some extent. We hope that the warning we have issued to him will serve to make him more careful in future.

9. Accordingly we set aside the order of the High Court suspending the appellant from practice and content ourselves with issuing a warning to him. We make no order as to costs.

Appeal allowed.

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