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February 6.

MANAK LAL

v.

DR. PREM CHAND

(VENKATARAMA AYYAR, S. K. DAS and GAJENDRAGADKAR JJ.)

Tribunal—Member having bias against party—Whether tribunal improperly constituted—Waiver—What amounts to—Effect of waiver—Failure to examine a witness—Witness no better than accomplice—Effect—Professional misconduct by advocate—Measure of punishment.

P filed a complaint of professional misconduct against M, an advocate of the High Court of Rajasthan. The Chief Justice appointed a tribunal under the Bar Councils Act for enquiry into the complaint. C, a senior advocate, was appointed chairman of the tribunal. C had appeared once for P before the trial Court in the case out of which the complaint arose. No objection was raised as to its constitution before the tribunal. The tribunal found M guilty of having got a false stay order in favour of his clients written by the clerk of the Court by improper means. The High Court concurred in this finding and directed the removal of M's name from the rolls. It was contended on behalf of M that the tribunal was not properly constituted.

Held, that the constitution of the tribunal suffered from a serious infirmity in that C was appointed its member and acted as its chairman. It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

Frome United Breweries Co. v. *Bath Justices* [1926] A. C. 586, *Rex* v. *Sussex Justices, Ex parte Mc Carthy* [1924] 1 K. B. 256, *Rex* v. *Essex Justices, Ex parte Perkins* [1927] 2 K. B. 475, followed.

Rex v. *Williams, Ex parte Phillips* [1914] 1 K. B. 608, explained.

The objection to the constitution of the tribunal can be waived. Waiver can be inferred from the failure of the party to take the objection only if and after it is shown that the party

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knew about the relevant facts and was aware of his right to take the objection. Since M knew that C had appeared for P and must be deemed to have been conscious of his legal rights, his failure to take the objection before the tribunal creates an effective bar of waiver against him.

Vyvyan v. *Vyvyan* (1861) 30 Beav. 65; 54 E. R. 813 relied on.

Even in quasi-criminal proceedings all important and relevant evidence must be laid before the tribunal, but it is generally for the prosecutor to decide which witnesses are necessary for the unfolding of the case. No adverse inference can be drawn against the complainant's case for failure to examine a witness who was no better than an accomplice.

The order of the High Court removing M's name from the roll of advocates is fully justified. The misconduct proved is of a very serious character. Disapproval of such unworthy conduct must be expressed emphatically as the legal profession must be saved from persons who do not feel any hesitation in corrupting public officers by unworthy and illegal means for the benefit of their clients.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 246 of 1956.

Appeal by special leave from the judgment and order dated the November 11, 1955, of the Rajasthan High Court in Civil Misc. Case No. 3 of 1952.

C. K. Daphtary, Solicitor-General of India, Veda Vyasa, S. K. Kapur and *N. H. Hingorani,* for the appellant.

H. J. Umrigar and *T. M. Sen,* for the respondent No. 2.

1957. February 6. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—The appellant Sri Manak Lal was an advocate practising at Sojat. A complaint was filed against him under s. 13 of the Legal Practitioners Act by Dr. Prem Chand Singhvi. It was alleged that the appellant was guilty of professional misconduct and the complainant requested that suitable action be taken against him in that behalf. Since the appellant was not a pleader or a mukhtear but an advocate of the High Court of Rajasthan, the complaint was sent for enquiry to the tribunal nominated by the Chief Justice of the High Court of Rajasthan under s. 10(2)

of the Bar Councils Act. The tribunal held an enquiry, recorded evidence and came to the unanimous conclusion that the appellant "was guilty of professional misconduct in having got a false stay order written by the clerk by improper means and thereby he managed to take an illegal and undue advantage for his clients and therefore deserves to be punished for the same." When this report was received by the High Court, the matter was argued before the Court. In the result the High Court agreed with the findings made by the tribunal and directed that the appellant should be removed from practice. It is against this order that by Special Leave the appellant has come to this Court.

The facts giving rise to the complaint against the appellant are very few. It appears that there was a dispute concerning Jhalra well and certain agricultural plots surrounding the well between Pukhraj and others on the one hand and Dr. Prem Chand and others on the other. These parties were described in the said proceedings as Party No. 1 and Party No. 2 respectively. The appellant was the counsel for Party No. 1. As a result of this dispute the police presented a report in the court of the Sub-Divisional Magistrate, Sojat, that the dispute was likely to cause breach of peace and suggested that proceedings under s. 145 of the Code of Criminal Procedure should be taken. The Sub-Divisional Magistrate drew out a preliminary order on July 5, 1951 (Ex. A-1). By this order both the parties were called upon to put in their written statements as regards their claims to possession of the property in dispute. The learned Magistrate also passed an order attaching the property in dispute pending the decision of the proceedings under s. 145. This was followed by another order passed on August 9, 1951, that the crop which was on the field should be auctioned, its price deposited in court and the land itself should be given for cultivation to the highest bidder for the next year. It appears that the hearing of the case was fixed for August 21, 1951. Members of Party No. 1 were aggrieved by these orders and on their behalf the appellant preferred a revision application against these orders in the court of the Sessions Judge, Pali, on August 13,

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1951. The appellant presented another petition before the learned Sessions Judge on August 29, 1951. In this petition it was alleged that the crop which stood on the fields in question belonged to the cultivators described as Party No. 1, that the crop was getting spoiled and that the cultivators would be considerably prejudiced if they were dispossessed from their lands at that stage. On these allegations the application prayed that an order should be passed not to auction the crop as well as the right of future cultivation and that liberty should be given to the cultivators to go to the well and to look after the crop pending the final disposal of their revision application before the learned Sessions Judge. The learned Sessions Judge was not apparently inclined to grant *ex parte* interim stay and so on the same day he directed that notice of the revision application should be given to the other party and called upon the applicants to furnish *talbana* and a copy of the application. The case then stood adjourned for hearing on September 6, 1951. On September 6, 1951, when the case was called out before the learned Sessions Judge, the appellant was present. The learned Sessions Judge found that the appellant had not submitted a copy of his application as already directed but he was told that the appellant was submitting a copy on the same day. That is why the learned Judge ordered that notice should be issued after the said copy was filed. The hearing of the case was then adjourned to September 12, 1951. So far there is no dispute about the facts. There is, however, a serious dispute as to other events which, according to the complainant, happened on September 6, 1951. The complainant's case is that, after the hearing of the case was adjourned to September 12, 1951, and notice of the application was ordered to be issued to Party No. 2, the appellant prevailed upon Shri Maghraj, clerk of the Sessions Judge's Court to prepare an actual stay order, that the said stay order was accordingly prepared and was got signed by the Reader of the Court. Then the appellant obtained the stay order from Shri Sheolal the despatch clerk to whom it was entrusted by the Reader. Armed with this order the appellant personally took

the order to the Sub-Divisional Magistrate and presented it to him the next day. In due course the revision application was taken up for hearing on September 12, 1951. Since no notice had been served on Party No. 2 the hearing was again adjourned to September 22, 1951. It is common ground that on September 22, 1951, it was discovered that a fraudulent stay order had been issued from the office of the learned Sessions Judge's Court. The learned Sessions Judge then called for explanation from Shri Maghraj and directed the Sub-Divisional Magistrate to treat the letter of September 6, 1951, containing the alleged order of stay as cancelled. It appears that as a result of the enquiry held by the learned Sessions Judge, he found that Shri Maghraj had committed a grave mistake and held that it would be enough if Shri Maghraj was fined Rs. 11/- and administered a severe warning to behave properly in future. The complaint against the appellant is that the appellant took an active part in the commission of the fraud and was thus guilty of fraudulent and grossly improper conduct in the discharge of his professional duty. A false order had been obtained by him by unfair means and so he was guilty of professional misconduct. That in substance is the case against the appellant.

As we have already indicated, many of the facts alleged in the complaint against the appellant are not in dispute. The appellant admits that he was present before the learned Sessions Judge on September 6, 1951. It is not denied by him that he took the envelope from the despatch clerk addressed to the Sub-Divisional Magistrate, Sojat, and that he in fact handed over the envelope the next day in the office of the Sub-Divisional Magistrate. His case, however, is that he never approached Shri Maghraj in this matter and that he was not in any way instrumental in getting the draft prepared. In fact, according to the appellant, he did not know the contents of the envelope and it was only on September 22, 1951, that he knew that a false order of stay had been issued by the office of the Sessions Judge by mistake. Before the tribunal, evidence was led by both the parties. The

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complainant Dr. Prem Chand himself gave evidence and on his behalf Shri Maghraj and Shri Sheolal were examined. The appellant Manak Lal gave evidence on his behalf. Both the members of the tribunal and the learned Judges of the High Court of Rajasthan have, on the whole, accepted the complainant's version, rejected the pleas raised by the appellant and have held that the appellant is guilty of gross professional misconduct. It is this finding which, on the merits, is challenged before us by Shri C. K. Daphtary on behalf of the appellant. Shri Daphtary has also raised two points of law in support of his argument that the order passed against the appellant must be set aside. It will be convenient to deal with these points first.

Shri Daphtary contends that the tribunal appointed by the learned Chief Justice of the High Court of Rajasthan to enquire into the alleged misconduct of the appellant was improperly constituted and all proceedings taken before the tribunal, the report made by it and the subsequent order passed by the High Court pursuant to this report are all invalid. This point arises in this way. The tribunal consisted of three members with Shri Chhangani as its Chairman. It is common ground that Shri Chhangani had filed his vakalat on behalf of Dr. Prem Chand in proceedings under s. 145 of the Code of Criminal Procedure on August 23, 1952, and had in fact argued the case on that date. Shri Daphtary contends that since Shri Chhangani had appeared in the criminal proceedings in question for the opponent he was disqualified from acting as a member of the tribunal and this disqualification introduces a fatal infirmity in the constitution of the tribunal itself. There is some force in this argument. It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test

always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As Viscount Cave L. C. has observed in *Frome United Breweries Co.* v. *Bath Justices*(1) "this rule has been asserted not only in the case of Courts of Justices ond other judicial tribunals but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others". In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle", says Halsbury, "*nemo debet esse judex in causa propria sua* precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein"(2). In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties.

In support of his argument, Shri Daphtary referred us to the decision in *Rex* v. *Sussex Justices, Ex parte McCarthy*(3). In this case, the Court was dealing with a case arising out of a collision between a motor

(1) [1926] A. C. 586, 590.
(2) Halsbury's Laws of England, Vol. XXI, p. 535, para 952.
(3) [1924] 1 K. B. 256.

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vehicle belonging to the applicant and one belonging to W. At the hearing of the summons the acting clerk to the justices was a member of the firm of solicitors who were acting for W in a claim for damages against the applicant for injuries received in the collision. After the evidence was recorded the justices retired to consider their decision and the acting clerk also retired with them in case they should desire to be advised on any point of law. The applicant was convicted in the case. This conviction was challenged by the applicant on the ground that it was vitiated by the improper conduct of the justices in allowing the acting clerk to be associated with them when they deliberated about the merits of the case. An affidavit was filed on behalf of the justices that they reached their decision without consulting the acting clerk and that the acting clerk had in fact abstained from referring to the case. This affidavit was accepted as true by all the learned judges who heard the case and yet the conviction was quashed. "The question is", observed Lord Hewart C.J. "whether the acting clerk was so related to the case in its civil aspect as to be unfit to act as a clerk to the justices in the criminal matter" and the learned judge added that "the answer to that question depends not upon what exactly was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference in the course of justice." Lush J. who agreed with Lord Hewart C.J. likewise accepted the affidavit made on behalf of the justices but observed, "that they have placed themselves in an impossible position by allowing the clerk in those circumstances to retire with them into their consultation room." The same principle was enunciated with equal emphasis in *Rex* v. *Essex Justices, Ex parte Perkins*([1]). This was a dispute between a husband and his wife and it appeared that the wife had consulted the solicitor's clerk in their office about the preparation of a deed of separation from her husband and the lawyer acted in the matter for a time after which she ceased to consult him. No mention of

(1) [1927] 2 K.B. 475.

the matter was made to the solicitor himself except one very short reference to it in a weekly report from his clerk. Subsequently the solicitor acted as a clerk to the justices who tried the case. He stated in his affidavit that, when acting as a clerk to the justices on the occasion in question, he had no knowledge that his firm had acted for the wife and that he was in no way adverse to the husband. It was urged that the decision of the justices should be set aside as the justices were not properly constituted and it appears also to have been suggested that the decision might, perhaps, have been influenced by a prejudice though indirectly and to a very small extent. Rejecting the argument that the decision of the justices had been influenced even remotely by the impropriety alleged, Avory J. stated that "though the clerk to the justices and the justices did not know that his firm had acted for the applicant's wife, the necessary, or at least the reasonable, impression, on the mind of the applicant would be that justice was not done seeing that the solicitor for his wife was acting with the justices and advising them on the hearing of the summons which she had taken against him."

It has, however, been urged before us by Shri Umrigar, on behalf of the Advocate-General, that this principle should not be applied to the proceedings before the tribunal appointed under the Bar Councils Act. He contends that the tribunal is not empowered to pass final orders on the enquiry and that the report made by the tribunal is, in every case, to be submitted to the High Court for the final decision of the High Court. We are not impressed with this argument. If it is true that in judicial or quasi-judicial proceedings justice must not only be done but must appear to be done to the litigating public, it is equally true that when a lawyer is charged for professional misconduct and is given the privilege of being tried by a tribunal of the Bar Council, the enquiry before the tribunal must leave no room for a reasonable apprehension in the mind of the lawyer that the tribunal may have been even indirectly influenced by any bias in the mind of any of the members of the tribunal. In the present case, we have no hesitation in assuming that when

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Shri Chhangani agreed to work as the Chairman of the tribunal, he did not remember that he had appeared against the appellant's clients in the criminal proceedings under s. 145. We are told that Shri Chhangani is a senior member of the Bar and was once Advocate-General of the High Court of Rajasthan. Besides he had not appeared in the case at all stages but had appeared only once as a senior counsel to argue the matter. It is, therefore, not at all unlikely that Shri Chhangani had no personal contact with the client Dr. Prem Chand and may not have been aware of the fact that, in the case from which the present proceedings arose, he had appeared at any stage for Dr. Prem Chand. We are, however, inclined to hold that this fact does not in any way affect the legal argument urged before us by Shri Daphtary. It is not Shri Daphtary's case that Shri Chhangani actually had a bias against the appellant and that the said bias was responsible for the final report made against the appellant. Indeed it is unnecessary for Shri Daphtary to advance such an argument. If Shri Chhangani was disqualified from working as a member of the tribunal by reason of the fact that he had appeared for Dr. Prem Chand in the criminal proceedings under s. 145 in question, then it would not be necessary for Shri Daphtary to prove that any prejudice in fact had been caused or that Shri Chhangani improperly influenced the final decision of the tribunal. Actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not necessary in order that the appellant should effectively raise the argument that the tribunal was not properly constituted.

Shri Umrigar, however, contended that unless prejudice is actually proved the challenge to the validity of the constitution of the tribunal cannot be upheld and he sought to rely upon the decision in *Rex* v. *Williams, Ex parte Phillips*(1) in support of this contention. In this case the court was dealing with an application for a writ of certiorari. A baker had been charged under s. 4 of Bread Act of 1836. It was

(1) [1914] 1 K.B. 608.

alleged that he had sold bread otherwise than by weight and was liable to be convicted under s. 15 of the Act. In fact he was so convicted. Thereupon he obtained a *rule nisi* for a writ of certiorari to quash the conviction on the ground that one of the justices was a person concerned in the business of a baker. Section 15 disqualified persons concerned in the business of a baker to act as a justice in the trial of such cases. This application for a writ was ultimately rejected by the Court. The decision of the Court, however, was based substantially on two grounds. Channel J., who delivered the principal judgment of the Court, observed that "when objection to a conviction is taken merely by a member of the public and not by a party more particularly aggrieved the granting of a certiorari is discretionary. Where the objection is by a party aggrieved, then, as a rule, a writ is issued *ex debito justitiae*. This position, however, is subject to the exception that a party aggrieved may by his conduct preclude himself from taking objection to the jurisdiction of an inferior Court." But it is significant that the second ground on which the judgment proceeded clearly indicates that the justice whose presence at the hearing was challenged under s. 15 of the Act by the petitioner did not apparently appear to fall within the mischief of s. 15 of the Act at all. "I do not say", observed Channel J., "whether the facts shown would be enough to make him a person following or concerned in the business of a baker within the meaning of s. 15". This conclusion was accepted by the two other learned judges. It would thus appear that the decision in this case does not justify Shri Umrigar's contention that, even if the constitution of the tribunal is held to be defective or improper, the proceedings taken before the tribunal and the orders subsequently passed in pursuance of the report cannot be successfully challenged unless it is shown that the defective constitution of the tribunal had in fact led to the prejudice of the appellant. We would, therefore, hold that Shri Daphtary is right when he contends that the constitution of the tribunal appointed by the Chief Justice of the High Court of

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Rajasthan suffered from a serious infirmity in that Shri Chhangani, who had appeared for Dr. Prem Chand in the criminal proceedings in question, was appointed a member of the tribunal and in fact acted as its Chairman.

The next question which falls to be considered is whether it was open to the appellant to take this objection for the first time before the High Court. In other words, has he or has he not waived his objection to the presence of Shri Chhangani in the tribunal? Shri Daphtary does not seriously contest the position that the objection could have been effectively waived. The alleged bias in a member of the tribunal does not render the proceedings invalid if it is shown that the objection against the presence of the member in question had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of his right to challenge the presence of the member in the tribunal. It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly M. R. has observed in *Vyvyan* v. *Vyvyan*(1) "waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and, that being so, he neglects to enforce them, or chooses one benefit instead of another, either, but not both, of which he might claim". If, in the present case, it appears that the appellant knew all the facts about the alleged disability of Shri Chhangani and was also aware that he could effectively request the learned Chief Justice to nominate some other member instead of Shri Chhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from the tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High Court for the first

(1) [1861] 30 Beav. 65, 74; 54 E. R 813, 817.

time. In other words, though the point of law raised by Shri Daphtary against the competence of the tribunal be sound, it is still necessary for us to consider whether the appellant was precluded from raising this point before the High Court by waiver or acquiescence.

From the record it is clear that the appellant never raised this point before the tribunal and the manner in which this point was raised by him even before the High Court is somewhat significant. The first ground of objection filed by the appellant against the tribunal's report was that Shri Chhangani had pecuniary and personal interest in the complainant, Dr. Prem Chand. The learned Judges of the High Court have found that the allegations about the pecuniary interest of Shri Chhangani in the present proceedings are wholly unfounded and this finding has not been challenged before us by Shri Daphtary. The learned Judges of the High Court have also found that the objection was raised by the appellant before them only to obtain an order for a fresh enquiry and thus gain time. It may be conceded in favour of Shri Daphtary that the judgment of the High Court does not in terms find against the appellant on the ground of waiver though that no doubt appears to be the substance of their conclusion. We have, however, heard Shri Daphtary's case on the question of waiver and we have no hesitation in reaching the conclusion that the appellant waived his objection deliberately and cannot now be allowed to raise it. Shri Daphtary does not contend that at the material time the appellant did not remember the fact that Shri Chhangani had appeared for Dr. Prem Chand in the criminal proceedings. Indeed such a plea cannot be raised by the appellant in view of the affidavit which the appellant sought to place before us in the present appeal. Under this affidavit, the appellant's case appears to be that until he met his advocate Shri Murli Manohar for filing objections to the report of the tribunal, the appellant did not know that Shri Chhangani was legally disqualified from acting as a member of the tribunal. It is obvious that this ground necessarily implies that the appellant knew about the facts giving

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rise to the alleged disqualification of Shri Chhangani to act as a member of the tribunal. In substance, the contention is that though the appellant knew that Shri Chhangani had appeared for Dr. Prem Chand in the criminal proceedings in question, he was not aware that, in consequence, Shri Chhangani was disqualified to act as a member of the tribunal. It is this limited aspect of the matter which is pressed before us by Shri Daphtary. Shri Daphtary contends and no doubt rightly that if we are satisfied that the appellant did not know about the true legal position in this matter and his rights arising therefrom, his failure to challenge the appointment of Shri Chhangani on the tribunal would not raise an effective plea of waiver. However, in our opinion, it is very difficult to accept Shri Daphtary's argument that his client did not know the true legal position or his rights until he met Shri Murli Manohar. No doubt the appellant is a junior at the Bar but even so he can claim ten years' standing at the Bar. Besides, he had the assistance of a lawyer in defending him in the present proceedings and it appears extremely difficult to assume that neither the appellant nor his lawyer knew that the presence of Shri Chhangani in the tribunal could be effectively challenged by them. We are disposed to think that even a layman, not familiar with legal technicalities and equitable principles on which this doctrine of disability has been based, would have immediately apprehended that the lawyer who had appeared for Dr. Prem Chand was authorised to sit in judgment over the conduct of the appellant and that might cause embarassment to the appellant and might lead to prejudice against him. From a purely common sense point of view of a layman, the position was patently awkward, and so, the argument that the appellant was not conscious of his legal rights in this matter appears to us to be an afterthought. Since the appellant was driven to adopt this untenable position before the High Court in seeking to raise this point for the first time at that stage, we are not surprised that the High Court took the view that the plea had been taken late in order to gain time and to secure a fresh enquiry in

the matter. Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.

Then Shri Daphtary sought to challenge the main conclusion of the High Court that the appellant was guilty of professional misconduct on a preliminary ground. He contended that the High Court judgment shows that the learned Judges had considered some inadmissible evidence in the absence of the appellant and without giving him an opportunity to be heard on the said evidence and that had introduced an infirmity in the judgment which vitiated their final conclusions. It appears from the judgment of the High Court that the learned Judges sent for and looked into the record of Revision Application No. 31 of 1951 in the Court of the Sessions Judge, Pali, and the record of Case No. 134 of 1951 in the Court of the Sub-Divisional Magistrate, Sojat. Shri Daphtary has made pointed reference to the fact that the record in Case No. 134 of 1951 was sent for by the High Court after this matter had been argued before them. If we had been satisfied that the learned Judges of the High Court had taken into consideration material documents which were not before them at the time the case was argued before them, we would certainly have considered Shri Daphtary's grievance more seriously. We are, however, not satisfied that the grievance made by Shri Daphtary against this alleged irregularity is really justified. The High Court judgment shows that the appellant argued before the High Court that he could not have been concerned with the fabrication of the false order because his subsequent conduct showed that he was not at all interested in seeing that the said order was implemented. In fact, this argument has been characterised

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by the High Court as plausible but not sound. It was this argument which provoked the reply from the other side that in fact the fabricated order had been implemented and in support of this reply reference was made to the application made by Dr. Prem Chand and his men in which it had been specifically alleged that the appellant's clients had taken possession of the crops and that they had also removed them. This application had been made on September 24, 1951, and it requested the Sub-Divisional Magistrate to prevent the appellant's clients from taking illegal possession of the land and removing the crops. It is these two rival contentions which the learned Judges of the High Court had to examine. The judgment shows that it was substantially with a view to satisfy themselves that the application referred to by the respondent before the High Court in the course of the argument had in fact been made that the High Court subsequently called for and examined the relevant records. It may be that in the earlier part of the judgment the learned Judges have stated somewhat generally that they had looked at the records of both the cases; but it is clear from the reasons given by the learned Judges that the perusal of the records in the said two cases had played no part in the final decision of the High Court. We are, therefore, not satisfied that the procedure adopted by the High Court in dealing with this matter suffers from any serious irregularity as a result of which their final orders should be set aside and a fresh hearing of the matter should be ordered.

Then remains the question of the merits of the finding recorded by the High Court. Shri Daphtary himself was aware that this part of his case is bound to be weak in an appeal which has been admitted on Special Leave under Art. 136 of the Constitution. Both the tribunal and the High Court have made concurrent findings of fact against the appellant and it is difficult to accept the argument that this finding of fact should be re-examined on the merits by us in the present appeal. We may, however, incidentally point out that there are some salient features of the case which unequivocally support the view taken by the High

Court against the appellant. It is common ground that the appellant's clients were not present before the Sessions Judge on September 6, 1951. It is admitted that the appellant was present and that he took the envelope containing the order to the Sub-Divisional Magistrate. It may be that, in the State of Jodhpur, lawyers practising in subordinate courts sometimes assisted the court officers by taking packets containing judicial orders from one court to another; but, if the appellant's clients were not present in the court, it is difficult to understand how the fabricated order came to be prepared without instigation by the appellant. It is inconceivable that officers of the court would *suo motu* think of fabricating the order. The order was intended to benefit the appellant's clients and, on the whole, it is an irresistible inference that the appellant must have corrupted the officers of the court by the offer of illegal consideration and induced them to fabricate the order. Shri Daphtary attempted to rely on the view taken by the learned Sessions Judge in the enquiry which he held soon after he learnt about the issue of this fabricated order. We are free to confess that we are not at all satisfied with this enquiry and its final decision. However, we are really not concerned to consider the merits of this enquiry and we cannot attach any importance to an argument based on the view taken by the learned Sessions Judge in this enquiry. The High Court has taken the view, and we think rightly, that the conduct of Shri Loya should also be examined as it is obvious that both Shri Loya and Shri Maghraj were interested in persuading the Sessions Judge to take the view that the fabrication of the order was due to a mistake committed by Shri Maghraj. The theory of a mistake committed by Shri Maghraj is, in our opinion, wholly unreasonable, if not fantastic. The order passed by the learned Sessions Judge on September 6, 1951, is clear beyond any doubt. Shri Maghraj read this order and it is suggested that he misconstrued its effect. How an order directing notice of the application to the opponent along with a copy of the application to be served on the opponent could ever have been construed to mean an order

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directing the issue of stay, it is impossible to understand. Then again, the order actually issued is elaborate in its terms and its object clearly was to require the Sub-Divisional Magistrate to give effect to the prayers made by the appellant in his application without any delay. Besides, the endorsement made by Shri Maghraj showing that the order had been complied with and his silence on September 12, 1951, when the learned Sessions Judge found that notice had not been served are very eloquent. If Shri Maghraj had committed an honest mistake, he would have immediately reported to the learned Sessions Judge that notice had not been issued and instead erroneously an order of stay had been sent in the said proceedings. Besides, when Shri Maghraj gave evidence in the present proceedings, he did not adhere to the theory of mistake. His present version is that he prepared the draft order at the instance of the appellant before the case was argued and when he received it back duly signed by the Reader Shri Loya, it was given to the despatcher and from him it reached the hands of the appellant. There is no doubt that Shri Maghraj is an accomplice and, so like all accomplices, he has tried to minimise the part played by him in this transaction. It is true that the evidence against the appellant is substantially circumstantial and there is no doubt that the finding against the appellant cannot be made on such circumstantial evidence unless the evidence is wholly inconsistent with his innocence and leads irresistibly to the inference of his guilt. The judgment of the High Court shows that the learned judges were fully conscious of this legal position. They have held that, having regard to all the circumstances of the case it is impossible to hold that the fabricated order could have come into existence and would have been despatched hurriedly without the active assistance and collaboration of the appellant.

Shri Daphtary then argued that the failure of the complainant to examine Shri Loya, the Reader, was deliberate and he suggested that adverse inference against the complainant should be drawn in consequence. Indeed this was the only point which Shri

Daphtary placed before us seriously in regard to the merits of the finding recorded by the High Court against the appellant. It may be conceded in favour of Shri Daphtary that, even in quasi-criminal proceedings like the present, all important and relevant evidence must be laid before the tribunal; but this requirement is always subject to the proviso that it is generally for the prosecutor who is in charge of the case to decide which of the witnesses are necessary for the unfolding of the case. The prosecutor no doubt must act bona fide and fairly by the court and the person against whom the proceedings have been started. Acting bona fide, if the prosecutor takes the view that certain witnesses need not be examined, generally the court would be reluctant to draw an adverse inference against the prosecution. Besides, in the present case, there is no justification for drawing any such adverse inference against the complainant because Shri Loya is no better than an accomplice and it is difficult to assume that the failure of the complainant to examine an accomplice can ever give rise to an adverse inference against the complainant's case. If that be the true position, it would be idle to contend that the finding of the High Court is vitiated by reason of the fact that the High Court did not consider the effect of the complainant's failure to examine Shri Loya before the tribunal. Incidentally this point does not appear to have been pressed before the High Court. In the result, we have no hesitation in holding that no case has been made out for our interference with the conclusions of the High Court under Art. 136 of the Constitution.

That leaves only one point to consider and that is the correctness or the propriety of the order passed by the High Court directing the removal of the appellant's name from the roll of legal practitioners. Shri Daphtary contends that this order is unduly severe and he has appealed to us to consider the fact that the appellant was a junior at the Bar and the removal of his name from the roll of legal practitioners would deprive him of the source of his livelihood. We are not impressed with this argument at all. Unfortunately

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it appears that this is not the first time that the appellant has come into trouble on the ground of professional misconduct. In 1952 he was suspended for a period of two months for misappropriating some money given to him by his clients for the payment of court fee. This is one fact which is against the appellant. Besides, the misconduct which is proved in this case is, in our opinion, of a very serious character. In the administration of law and justice, lawyers have to play an important part. They are, in a sense, officers of the court and as such they are given special rights and privileges. The profession of law enjoys high and respected status and reputation of its own and this status carries with it corresponding obligations. Naturally the Bar must zealously safeguard the highest standards of professional morality and integrity. In fairness to the Bar, we ought to add that cases of this nature are very rare but unfortunately when such cases come before the courts, the courts must take a serious view of such reprehensible lapses and must pass deterrent orders. It is our duty to express our disapproval of such unworthy practices as emphatically as we can because the legal profession must be saved from persons who do not feel any hesitation in corrupting public officers by unworthy and illegal considerations for the temporary and immediate benefit of their clients. We must, therefore, hold that the order passed by the High Court directing the removal of the appellant's name from the rolls is fully justified. In the result, the appeal fails and must be dismissed with costs.

Appeal dismissed.

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