

1908.

GANGA-  
SHANKAR  
v.  
BADHUR  
MADHBHAI.

1. In section 267 of the Civil Procedure Code, there is an indication of Court's power to throw on any party the expenses of a summons to be issued by it of its own motion. The last words of the section are "and before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued."

2. Though the High Court Civil Circulars at p. 13 shows that advances are to be made by Government in the first instance, they are to be refunded under the Circular from the amount realised in execution. This means that one of the parties is ultimately to bear the expenses of summons issued by the Court of its own motion. Why not then, should the expenses be borne at the commencement in such a case as the present?

*G. N. Thakore (amicus curiæ)*, for the plaintiff.

*N. K. Mehta (amicus curiæ)*, for the defendants.

SCOTT, C. J.:—The two questions referred for our opinion are :—

(1) Whether it is necessary to pay *batta* to any agriculturist defendant summoned to be examined under section 7 of the Dekkhan Agriculturists' Relief Act?

(2) If it is, whether the same is payable by the plaintiff and whether the suit is liable to be dismissed on failure to pay it?

We answer both questions in the negative.

*Order accordingly.*

G. B. R.

## APPELLATE CIVIL.

*Before Chief Justice Scott and Mr. Justice Batchelor.*

1908.

November 16.

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY, APPLICANT,  
v. JAGANNATH MORESHVAR SAMANT, OPPONENT. \*

*Bombay Regulation II of 1827, section 56 (1)—Pleader—Misbehaviour—  
Suspension of Sanad—High Court's disciplinary jurisdiction.*

Pleaders are a privileged class enrolled for the purpose of rendering assistance to the Courts in the administration of justice. Their position, training

\* Civil Application No. 523 of 1908.

(1) Material portion of section 56 of Regulation II of 1827 is as follows :—

A pleader accused of a criminal offence, or guilty of misbehaviour or neglect of duty, shall be liable to be suspended or dismissed.

and practice gives them influence with the public and it is directly contrary to their duty to use that influence for the purpose of bringing the administration of justice into contempt.

A pleader, who presides at a public meeting and therein procures the passing of a resolution contemptuously denouncing or protesting against the conduct of a High Court Judge in passing sentence at a trial at the Criminal Sessions, is guilty of misbehaviour (under section 56 of Bombay Regulation II of 1827).

APPLICATION of the Government Pleader, Bombay, under section 56 of Bombay Regulation II of 1827, for the exercise of the High Court's disciplinary jurisdiction against the opponent with reference to his conduct.

The opponent, who practised as a pleader in the Sholapur District, presided at a public meeting held at Sholapur on the 30th July 1903 to express sorrow for and sympathy with Mr. Tilak for the punishment awarded to him by the High Court of Bombay at a trial in one of the Criminal Sessions in the year 1903. One of the resolutions passed at the meeting reflected upon and denounced the conduct of the Judge who presided at the trial. The Government Pleader of Bombay, thereupon, applied for and obtained a *rule nisi* requiring the opponent to show cause why he should not be dealt with under the disciplinary jurisdiction of the High Court in respect of his conduct at the meeting in connection with the said resolution.

*H. C. Ooyaji* (with *G. S. Mulgaumkar*) appeared for the opponent to show cause:—We offer absolute and unqualified apology for our conduct. On the merits we submit that we have filed two affidavits which show that the facts were a little different from those mentioned in the affidavits in support of the application. We contend that the term "Misbehaviour" in section 56 of Regulation II of 1827 refers only to professional misconduct in Court.

*M. B. Chaubal*, Government Pleader, in person:—The opponent's conduct complained of is not only a misbehaviour, but it is a criminal offence, inasmuch as it constitutes a contempt of Court.

The fact that the opponent put up the resolution to the meeting is in itself evidence of misbehaviour.

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SCOTT, C. J. :—This matter comes before us on the petition of the Government Pleader which states :—

(1) That Mr. Jagannath Moreshvar Samant, B.A., LL.B., is a District Court Pleader, and practises in the Courts of the District and Sessions Judge of Sholápur and Courts subordinate thereto.

(2) That on the 30th July last a public meeting was held at Sholápur for the purpose of expressing sorrow for and sympathy with Mr. Tilak for the punishment awarded to him, at which nearly a thousand persons attended.

(3) That Mr. Jagannath Moreshvar Samant, Pleader above-named, presided at the said meeting and among other things spoke in favour of the 5th resolution passed on the occasion and was in the chair when the said resolution was put to the meeting. The said resolution was in the Maráthi language and was to the following effect :—“That this meeting contemptuously denounces the Honourable Mr. Justice Davar of the Bombay High Court, who at the time of announcing sentence made unchecked and unconnected and unmeaning assertions, which even the enemies of the respected Tilak would have been ashamed to make, and thereby branded our sorrow (sore hearts) ”.

(4) Petitioner submits that such conduct at a Public Meeting in a Pleader in regard to a resolution contemptuously denouncing a Judge of the High Court in respect of his solemn duty as a presiding Judge is not only contempt of Court, but is further reprehensible as a misbehaviour falling within the purview of section 56 of Regulation II of 1827, and as such can and ought to be dealt with by this Honourable Court in its Disciplinary Jurisdiction.

The petition is supported by affidavits of Mr. Barve, Deputy Superintendent of Police and Mr. Dikshit, Sub-Inspector, Police, Sholápur.

In showing cause against the application two affidavits were made use of by counsel for Mr. Samant from which it appears that he did not speak on the 5th resolution beyond asking if there was any objection to it. The Police Officers depose to

words used by him defamatory of Mr. Justice Davar, but this is denied by Mr. Samant; we will therefore assume that they were not used.

It is admitted that Mr. Samant presided at the meeting, opened the proceedings with a speech and proposed the first two resolutions. He then called on other speakers to propose the other resolutions and took the sense of the meeting upon them. He attempts to excuse his conduct by pleading that he did not know exactly the terms of the fifth resolution until it was read out by the proposer. It is clear, however, that he not only listened to the speeches on the resolution and to the reading of the resolution without protest but also read out the resolution himself to the meeting and invited it to agree to the terms thereof.

We are of opinion that in so conducting himself at the meeting Mr. Samant was guilty of misbehaviour which renders him liable to suspension or removal from the roll of pleaders. Pleaders are a privileged class enrolled for the purpose of rendering assistance to the Courts in the administration of justice. Their position, training and practice give them influence with the public and it is directly contrary to their duty to use that influence for the purpose of bringing the administration of justice into contempt. Mr. Samant, who owes his position to a Sanad issued by this Court, has invited and procured the passing at a meeting of nearly a thousand people of a resolution contemptuously denouncing or protesting against the conduct of a Judge of this Court in passing sentence at a trial at the Criminal Sessions.

This conduct calls for more serious notice than a mere expression of disapproval. We suspend Mr. Samant from practice for six months. He must deliver up his Sanad to the District Judge or the Registrar of this Court and may apply for it again in six months' time.

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