

5, 1976

ON APPEAL
FROM THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

IN THE MATTER OF THE LEGAL PROFESSION ACT (CAP 217)

-and-

IN THE MATTER OF ISAAC PAUL RATNAM, an ADVOCATE and
SOLICITOR

B E T W E E N

ISAAC PAUL RATNAM

Appellant

-and-

THE LAW SOCIETY OF SINGAPORE

Respondents

CASE FOR THE APPELLANT

Record

1. This is an appeal from the judgment of the High Court of the Republic of Singapore (Wee Chong Jin, C.J., Chua and Tan Ah Tah, J.J.) dated the 20th July, 1973, which ordered that the Appellant be struck off the Roll of Advocates and Solicitors of the Supreme Court pursuant to section 84 of the Legal Profession Act (Cap.217). pp.15-21
pp.14-15

2. The relevant statutory provisions are set out in the appendix to this case.

3. At all material times the Appellant was an Advocate and Solicitor of the Supreme Court of the Republic of Singapore practising as a legal assistant in the firm of Francis T. Seow, 6A Raffles Place, Singapore, and receiving a fixed salary or 10 per centum of the annual profits, whichever was the greater. p.60 11.13-22
p.65 11-7-11

4. From the 21st April, 1972, the firm of Francis T. Seow had acted as solicitors for Gemini Chit-Fund Corporation Limited (hereinafter called "Gemini"). On the 24th July 1972, acting on the instructions of one M. Rashad, Gemini's accountant, the Appellant attended the Annual General Meeting of Gemini and was there introduced to one Abdul Gaffar, Gemini's Managing Director. On the 29th July, 1972, the Appellant was asked to attend Gaffar and one Narayanan, the Chairman p.5 11.4-8
p.60 11.23-25
p.5 11.9-20

Record

- p.5 11.21-42 of Gemini, at the Criminal Investigation Department ("C.I.D."), where they had been taken after being arrested by the police. At the C.I.D. the Appellant was informed that Gaffar and Narayanan had been charged under Section 406 of the Penal Code with the offence of committing criminal breach of trust. Gaffar and Narayanan executed an authority for the firm of Francis T.Seow to act on their behalf. Gaffar, according to the Appellant, instructed him to dispose of certain movable property belonging to Gaffar in Malaysia, an suggested that the Appellant should carry out these instructions through one S.F. Retnam, Gemini's Branch Manager in Penang.
- p.5 11.32-35 10
- p.5 11.35-38
- p.6 11.36-38 5. On the 31st July, 1972, Gaffar was charged in the 1st Magistrates' Court in Singapore. The Appellant attended to apply for bail. Francis T.Seow himself (hereinafter called 'Seow') attended to argue the matter of bail when the Appellant was informed that the Attorney-General opposed the application. On the same day, the Minister for Finance presented a petition to the High Court for the winding up of Gemini under the provisions of the Chit Fund Act, 1971. 20
- p.60 11.33-end
p.6.11 41.-42
- p.60 11.26-32 6. On the 2nd August, 1972, the Appellant went to the office of Gemini at Malayan Bank Chambers in Singapore and told one Bala Chandran, Gemini's Public Relations Officer, that certain files might be useful for the purposes of Narayanan's defence. The files in question were sent to the Appellant's office by Narayanan's secretary, together with a list of the files, which she made out. 30
- p.7 11.9-14
- p.65 11.12-21
Exhibit "IPRI"
pp.66-71
- p.7 11.20-24
Exhibit P.4
p.47
- p.7 11.24-26 7. On the 3rd August, 1972, the Appellant met S.F.Retnam at his office and after discussion dictated and signed two letters, one addressed to K.Kumaran, Gemini's Branch Manager in Kuala Lumpur, and the other to one R.Francis Retnam. The two letters were written for the purpose of carrying out Gaffar's instructions to dispose of his movable properties in Malaysia. Only the letter to K.K. Kumaran is relevant for present purposes. It read as follows:- 40

"FRANCIS T.SEOW

CONFIDENTIAL

Advocates and Solicitor

3rd August, 1972

Our Ref: IPR/CR/34/72/al

The General Manager,
Gemini Chit-Fund Corp.Ltd.,
Malaysia Branch,
No.41 Melayu Street,
Kuala Lumpur,
Malaysia.

Attn:Mr.K.K.Kumaran

Dear Sir,

10 We act for Mr.Gaffar who has instructed us to dispose of the five cars owned by the company, as well as other moveable properties immediately.

20 In this connection, we have instructions from our clients to appoint Mr.S.Francis Retnam as the agent to effect the aforesaid transactions. Please take proper inventory and acknowledgment prior to handing over these properties to Mr.Retnam and keep them confidentially in your control. At a later date, when the transactions have been completed, please let me have these documents. You may want to note that Mr.Retnam has given specific instructions as to the disposal of the funds realized from these properties and as such, he has to be allowed custody thereof.

30 We have been instructed to inform you that Mr.Retnam has been authorised by Mr.Gaffar to proceed to form a Malaysian based Gemini Chit-Fund Corporation Limited and to discontinue operations as a branch of the Singapore company. These instructions are equally applicable to Gemini Travel Service.

Please co-operate with Mr.Retnam and to do the needful to effect Mr.Gaffar's instructions.

Yours faithfully,

Sd. Francis T.Seow."

40 The Appellant explained that in this letter he referred to Gaffar's movable properties as belonging to Gemini in error. He was working under tremendous pressure when he wrote the letter. Before writing it he referred to Dicey's Conflict of Laws (7th Edition) in relation to the effect of the presentation of a petition for winding up a copy upon its property outside the jurisdiction of the court in question.

p.7 11.27-30
Exhibit P4p.47

p.7 11.30-36
p,7 11.35-39

8. On the same day (3rd August 1972) the Appellant went to the office of Gemini and pointed out to

p.7 11.42-45

Record

- p.65 11.12-21
p.7 1.43
p.8 1.2
Exhibit "IPR2"
pp.71-75
Exhibit p4 P47
9. On the 4th August, 1972, the Appellant found the copy of his letter to K.K.Kumaran on his table with some markings made thereon by Seow. The Appellant, in reply to a question by Seow, said that he had written the letter on Gaffar's instructions. Although displeased, Seow without specifying why he was displeased, initialled the copy. The markings were against the part of the letter which dealt with the appointment of S.Francis Retnam as agent and did not relate to the part which dealt with the disposal of assets in Malaysia.
- p.8 1 3-8
p.8 11.8-10
- p.8 1.13-16
p.57 11.11.19
10. On the same day ASP Sandosham telephoned the Appellant, and the Appellant told him that certain files of Gemini were in his office and that he might collect them if he wished. Later that day, Inspector Bakar went to the Appellant's office selected the files he wanted, signed an acknowledgment which the Appellant had prepared and left with those files. The Appellant later telephoned Inspector Bakar to inform him that there were more files in the main office of Francis T.Seow: Inspector Bakar said that he would collect them later. On the same day, Sergeant Balakrishnan called at the Appellant's office with Mrs.Gaffar's brother to collect certain account books. He took the account books and those files which Inspector Bakar had left behind and gave an acknowledgment which he signed. Two further books which were overlooked were handed to Sergeant Balakrishnan, who returned to collect them.
- p.8 11.16-21
p.8 11.21-24
Exhibit "IPR3"
pp.75-77
p.8 11.26-31
- p.8 11.32-38
- Exhibit "IPR3"
pp.77-78
P.8 11.39-43
11. On the 11th August, 1972, the Appellant received a letter dated the 9th August, 1972, from a firm of Solicitors in Ipoh which referred to clandestine proposals to dispose of assets of Gemini in West Malaysia. The Appellant immediately wrote and dissociated the firm of Francis T.Seow from such proposals.
- P.8 1.44-p9 12
Exhibit P2
pp.51-52
- P.9 11.2-4
12. On the 15th August, 1972, Superintendent Ng Leng Hua went to the Appellant's office with a warrant for his arrest and search warrants both for his office and for his house. Seow arrived and, in the course of a telephone conversation with the Attorney-General, asked the Appellant if there were any more Gemini files in the office. Believing there to be none, the Appellant replied that there were not, and Seow gave an undertaking to the Attorney-General that there were no files relating to Gemini in the office
- Exhibit D3p
p.53
P.9 11.5-13
- P.9 11.14-24
- P.9 11.25-26

The police then collected all the remaining files in the office. In the afternoon, the Appellant was charged in the first District Court with the following two offences:-

P.9 11.29-33

P.38 1.10-p.39
1.9

CHARGE

Exhibit P 1 p.44

10 You, Isaac Paul Ratnam, are charged that you on or about the 3rd day of August, 1972, did instigate the General Manager, Gemini Chit-Fund Corporation Limited, Malaysia Branch, Kuala Lumpur, to dishonestly remove property, to wit, five cars and other moveable properties, belonging to the said company, and you have by virtue of Section 108A of the Penal Code committed an offence punishable under Section 424 read with Section 116 of the said Code.

2nd CHARGE

Exhibit P.1A
p.45

20 You, Isaac Paul Ratnam, are charged that you on or about the 2nd day of August, 1972, having reason to believe that a certain offence, to wit, criminal breach of trust by an agent has been committed by Gemini Chit-Fund Corporation Limited, and that such offence was abetted by its directors, Abdul Gaffar and V.K.S. Narayanan, which offences are punishable with imprisonment for a term which may extend to ten years and also with a fine, did cause certain evidence of the said offence to disappear, to wit, files containing the Gemini Chit-Fund Corporation Limited's
30 correspondence, vouchers, bank statements, chit fund receipts and Abdul Gaffar's personal correspondence with the intention of screening the said Gemini Chit-Fund Corporation Limited, Abdul Gaffar and V.K.S. Narayanan from legal punishment, and you have thereby committed an offence punishable under Section 201 of the Penal Code.

40 The Appellant was allowed bail. Upon returning to his office, the Appellant discovered two Gemini files and its company seal which had been left in his custody by Rashad (Gemini's accountant). He telephoned to Rashad who collected the two files on the following day: the seal was returned to him later on that day. These two files were not the subject-matter of the 2nd Charge above as appears from the dates in the charge itself. The 2nd Charge related to the Appellant's collection of Gemini's files on the 2nd and 3rd August, 1972, set out

P.9 11.32-33

P.9 11.34-44

Record

in paragraphs 6 and 8 hereof.

- P.9 1.45-p 10 1.6
- P.10 11.7-11
- P.10 11.18-25
- P.37 11.19-30
- P.40 1.16
- P.41 11.1-3
- P.40 11.19-20
Exhibit P3p45 129-
p.46 P.42 1.9
Exhibit D.1
P.49 1.20-p
51 1.24 pp.41-43
P.53 1.30-p.57 1.21
p.57 11.24-32
p.57 1.36-p.58
1.13
p.58 11.14 -end
- P.59 11.18-35
Exhibit P.4 p.47
P.59 11.41-47
P.59 1.47 -
p.60 1.2
- pp.60-63
- p.60 1.13-p
63 1.8
- P.62 11.9-17
- P.63 11.24-26
- p.p. 65-66
13. In September, 1972, the Appellant had a series of meetings with officers of the commercial crime branch, at which the Appellant was told that if he decided to contest the charges he was likely to be imprisoned if found guilty. As a result of plea bargaining, it was agreed that the Appellant should plead guilty to the first charge and ask for the second charge to be taken into consideration, provided that the prosecution did not seek any term of imprisonment. The Appellant pleaded guilty to avoid what he believed to be the likelihood of a term of imprisonment, because he was not prepared to risk the effect that would have had upon the security of his wife and two children. 10
14. On the 24th October 1972, in the First District Court before the Senior District Judge, the Appellant pleaded guilty to the first charge and applied for the second charge to be taken into consideration. On behalf of the prosecution a written statement of facts was submitted to the Court. On the Appellant's behalf, a written statement was submitted to the Court and counsel mitigated on his behalf. In his Grounds for Decision, dated the 25th October, 1974, the Senior District Judge summarized the circumstances leading to the Appellant's plea of guilty and referred to the second charge taken into consideration. He accepted that the Appellant was an assistant in the firm of Francis T. Seow and that the letter to K.K. Kumaran dated the 3rd August, 1972, was written with the approval of Seow. The learned Judge referred to the fact that the prosecution had elected to proceed on the first charge only, which was less serious than the second, and sentenced the Appellant to one day's imprisonment - the day in Court - and a fine of \$4,000. 30
15. By a Statement of Case dated the 27th November, 1972, the Respondents set out the circumstances leading to the Appellant's conviction on the first charge and admission of the second charge. The Respondents contended that the Appellant had been convicted of a criminal offence implying a defect of character which made him unfit for his profession and that he was guilty of grossly improper conduct in the discharge of his professional duty. The Respondents pleaded that the Appellant should accordingly be dealt with under Section 84 (1) of the Legal Profession Act (Cap.217). 40
16. In his Reply, dated the 27th December, 1972,

with regard to the allegation that he had caused certain evidence to disappear, the Appellant pleaded that he had indicated to the staff of Gemini that certain of Gemini's files might be useful in the defence of Gaffar and Narayanan, both directors of Gemini, that the files had been handed to him at his office with lists made out by the two directors' secretaries, and such files had subsequently been handed over to the police at their request. With regard to the letter to K.K.Kumaran dated the 3rd August, 1972, the Appellant pleaded that his actions were done in the best interests of his client without any intention to violate the law. He pleaded that his conduct, which had been due to his inexperience in the profession, had not caused any damage or loss.

p.65 11.12-25
Exhibit "IPRI" pp
66-71
Exhibit "IPR2"
pp.71-75
Exhibit "IPR3"
pp.75-78
Exhibit P.4 p.47
p.65 11.27-30
P.65 1.33-p.66 1
2

17. On the 10th March, 1973, at a hearing before a Disciplinary Committee appointed under s.91 of the Legal Profession Act, the record of the criminal proceedings before the Senior District Judge was submitted on behalf of the Respondents, It was submitted on their behalf that the Appellant had been convicted of a criminal offence implying a defect of character rendering him unfit for the profession and that he was guilty of grossly improper conduct in the discharge of his professional duty.

Pp. 31-38

P.31 11.30-34
P.31 1.36-p.32
1.7

18. On behalf of the Appellant, it was submitted that the Committee should consider whether any offence was disclosed in law, and should take into account the circumstances surrounding the Appellant's conduct. A written submission was put in on the Appellant's behalf, wherein it was submitted, inter alia, as follows:-

P.33 11 1-16

P.33 1. 16
pp.34-38

(a) having properly obtained certain Gemini files for the purpose of preparing the defences of Gaffar and Narayanan, the Appellant did not cause such files in any way to disappear. The decided cases showed that for the offence to be committed it was necessary for the evidence in question to disappear so that it could not be utilized in court.

P.35 1.22 - p.36
1.4
P.36 11.17-20

(b) far from causing the files to disappear, the Appellant handed the same to the police upon their request.

(c) if any offence relating to Gemini's files was committed, then it was not of a serious nature.

(d) that the letter dated the 3rd August, 1972, to

Exhibit P.4 p.47

Record

K.K.Kumaran was written on Gaffar's instructions and under considerable pressure of work. The Appellant referred to Dicey's Conflict of Laws wherein it was stated that the presentation of a winding up petition in one jurisdiction did not bestow on the Liquidator in that jurisdiction control over properties in another jurisdiction.

- P.36 1.45-p.37
1.5 (e) that it was questionable whether the instigation of the removal or disposal of foreign assets was an offence under Section 424 of the Penal Code. If it was not an offence, then the Appellant could not be guilty of abetting or instigating the same. 10
- P.37 11.6 -14 (f) that the Appellant did not on the facts instigate any removal or disposal.
- P.33 11.20-end The Appellant's submissions were orally summarized on his behalf before the Committee.
- pp.23-28
p.23 1.22- p.24119 19. In their Report, dated the 23rd April, 1973, the Disciplinary Committee summarised the matters of complaint made against the Appellant and the submissions made on his behalf. The Committee held that it was not open to them to go behind the plea of guilty. They said they felt bound to take a serious view of the material before them which disclosed a conviction of a serious criminal offence and an admission of another and more serious offence and thus a deplorable absence of appreciation of his professional and moral obligations by the Appellant. In the Committee's view, the fact that the files and other evidence were missing for only two weeks could not be regarded as a relevant factor, as the act was done, they said, with the intent to screen the two directors from legal punishment. As to the letter dated the 3rd August, 1972, the Committee said that it could well have resulted in assets of Gemini being lost to the Liquidators. The Committee was of the clear opinion that the Respondent's role was not a passive one but that he was actively concerned "in all these matters". 20 30 40
- p.25 11.21-end
p.26 11.18-31
- p.27 11.1-7
- p.27 11.7-13
- p.27 11.13-16
Exhibit P.4 p.47
P.27 11.16-19
- P.27 11.29-31 20. The Committee said that they had approached the case on the footing that the burden of proof upon the Respondents was that applicable in a criminal trial. The Committee made the following findings, namely:-

Record

- (a) that the Appellant was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of Section 84 (2) (b) of the Legal Profession Act in writing and issuing the letter of the 3rd August, 1972 and in failing to take any steps to withdraw, countermand or retract or disassociate the firm or himself from the said letter. P.27 11.32-39
Exhibit P.4 p.47
- 10 (b) that the Appellant had been convicted of a criminal offence under Section 108A of the Penal Code as described in the second charge and that such offence implied a defect of character which made him unfit for his profession within the meaning of Section 84 (2) (a) of the said Act. P.27 11.40-end
- 20 (c) that the Respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of Section 84 (2) (b) of the said Act in causing or attempting to cause the said documents to disappear. P.28 11.1-5
- The Committee determined that in respect of all the matters set out in (a), (b) and (c) hereof cause of sufficient gravity for disciplinary action existed under Section 84 of the said Act. P.28 11.14-18
21. By an Originating Summons dated the 14th May 1973, the Respondents applied to the High Court under s. 98 (1) of the Legal Profession Act for an order that the Appellant do show cause why he should not be dealt with under the provisions of section 84 of that Act. On the 25th May, 1973, D'Cotta, J. made the order ex parte in chambers. Pp. 1 -2
22. In the proceedings instituted by the said originating summons, the Appellant swore an affidavit on the 28th June, 1973, setting out the full circumstances leading to his conviction on the first charge and admission of the second charge. The Appellant explained that the two files discovered by him in his office on the 15th August, 1972, and returned by him to Rashad, Gemini's accountant (mentioned in paragraph 23 of the Appellant's affidavit, not paragraph 26 as set out at line 32 on page 10 of the Record) were never the subject matter of any charge against him. When he had sought to draw his Counsel's attention to the point before the Senior District Judge, counsel pp.3 -11
P.41.41
P.10 1.25
- 40 P.10 11.26-40

Record

- P.10 11.41-p.11
1.26 had been on his feet addressing the Court and the point had been lost. In paragraph 28 of his affidavit, the Appellant said that when he had given evidence in proceedings before a Disciplinary Committee against Seow in January 1973, it had been put to him that Seow had asked him to retract the letter dated the 3rd August, 1972, when he (Seow) first saw it, that the Appellant had agreed to retract it and had told Seow that he had done so when Seow subsequently asked. None of this was true. Seow had never explained what his objection to the letter was, and the Appellant had left it at that without being conscious that there was anything unprofessional, let alone criminal, about the letter. 10
- P.11 11.7-26
23. On the 2nd July, 1973, originating summons came on before Wee Chong Jin, C.J., Chua and Tan Ah Tah, JJ., The Appellant was cross-examined on his affidavit. He agreed that he had said in evidence before the Disciplinary Committee in the case of Seow that he did not want the files to be made available to the police. He also agreed that he had not raised the matter of unintentional error in describing Gaffar's personal properties as those of Gemini before doing so in paragraph 14 of his affidavit. 20
- P.12 1.23-p.13
1.9.
- P.13 11.10-26
P.7 1.29
24. On the same day, the Court ordered that the Appellant be struck off the Roll of Advocates and Solicitors of the Supreme Court of Singapore and pay all the costs incurred by the Respondents in the originating summons and the proceedings before the Disciplinary Committee. 30
- Pp. 14-15
- Pp.15-21
- Pp. 16-19
25. On the 20th July, 1973, the High Court delivered its judgment. The Court summarized the circumstances and proceedings leading to the hearing on the 2nd July, 1973, and referred to the evidence given in cross-examination by the Appellant concerning his unintentional error in referring, in the letter dated the 3rd August 1972, to Gaffar's movable properties as those of Gemini. The Court said that the Appellant's explanation was most unsatisfactory, and they disbelieved the Appellant's continued assertion that his description of the movable properties as those of Gemini was an unintentional error. 40
- P.19 11.13-28
- P.19 1.29-p.20
1.35
26. The Court then considered the submission on behalf of the Appellant that it was open to the Court to look behind the conviction on the

Record

- first charge to see if on the admitted facts P.19 11 29-36
any offence in the terms of the first charge was
disclosed. The Learned Judge assumed that they
were entitled to do this, but held that there P.19 11.36-44
was no error on the face of the first charge and
the admitted facts had justified the Senior
District Judge in accepting the Appellant's
plea of guilty. The effect of Ss. 108A P.30 11.6-31
and 424 of the Penal Code was, they said, that
10 a person who committed in Singapore an act which
constituted dis-honestly removing property would
have committed an offence punishable under
Section 424, whether the property that had been
dishonestly removed was in or outside Singapore.
In the present case it did not matter, in the
learned Judges' view, that the movable properties
specified in the charge had been foreign assets
of the company.
- 20 27. The Court then considered the submission that P.20 1.36 -p.21
the Appellant could not be said to have 1.14
instigated Gemini's general manager dishonestly
to remove certain of Gemini's movable properties
because he was merely carrying out the p.20 11.36-41
instructions of his client, Gaffar, and acting
as an agent. In the Court's view, the admitted facts,
showing that the Appellant dictated the letter and
personally handed it to someone with instructions
to hand it to the general manager, constituted
30 sufficient prima facie evidence of instigation by p. 21
the Appellant. 11 15-28
28. The Court rejected the Appellant's submission
that, on the facts and having regard to all the
circumstances, his conviction could not be said to p.21
imply a defect of character which made him unfit 11. 15-28
for his profession. In the Court's view, it was
the nature of the offence which was the sole p.21
criterion in determining whether or not an 11.20-24
advocate and solicitor came within Section 84(2)(a)
of the Legal Profession Act.
- 40 29. The learned Judges held finally that the
extreme penalty ought to be imposed, in all the p.21
circumstances including the Appellant's admission of 11.29-35
having committed another serious criminal offence.
They ordered that the Appellant be struck off the
roll and bear all the costs of the Respondents.
30. The Appellant respectfully submits that it
was the duty of the High Court, in view of the
explanation given by him, and not challenged by the

Record

Respondents, of how he came to plead guilty, to consider whether any criminal offence had been committed. The learned Judges did refer to the submissions on this question, but wrongly concluded that it made no difference that the movable properties specified in the charge were situated outside Singapore. The petition for winding up presented in Singapore did not, in the Appellant's submission, have any effect upon these properties, and there would have been nothing dishonest or fraudulent about mere disposal of these properties by the general manager of Gemini in Kuala Lumpur. Even if the Appellant did instigate such a disposal, he was instigating only disposal, without dishonesty or fraud, of property belonging to the company. Such an act would not constitute an offence if committed in Singapore, and s.108A of the Penal Code therefore has no operation in this case.

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31. The High Court, in the respectful submission of the Appellant, was wrong in holding that the writing of the letter of the 3rd August, 1972 constituted 'instigation' on the part of the Appellant within the meaning of s.107 of the Penal Code. Alternatively, if any instigation resulted from the letter it was instigation in Kuala Lumpur, where the addressee received the letter, and so was not within the jurisdiction of the Courts of Singapore.

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32. The Appellant respectfully submits that the 'criminal offence' mentioned in s.84 (2) (a) of the Legal Profession Act is the particular act constituting the offence of which the advocate or Solicitor has been convicted, with all its attendant circumstances. The High Court was therefore wrong in holding that 'the nature of the offence' (which expression the Court used in distinction from the facts and circumstances) was the sole criterion for deciding whether s.84 (2) (a) applied. The Disciplinary Committee and the Court ought to have considered all the facts and circumstances, and upon proper consideration of them should have held that s.84 (2) (a) was inapplicable.

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33. The Appellant respectfully submits that the High Court was wrong in relying (with reference to the second charge) upon his 'admission of having committed another serious criminal offence.' In relation to the second charge, as well as the first, the Court ought to have considered whether any criminal offence had been committed, and if so, whether in all the circumstances that offence fell

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within s.84 (2) (a). Upon the facts, the Appellant, in his respectful submission, never caused any files to disappear; alternatively, if he did so, the offence was not, in all the circumstances, an offence covered by s.84 (2) (a).

10 34. The High Court ought, in the Appellant's respectful submission, to have held that the report of the Disciplinary Committee was vitiated by the following errors:

(a) The Committee held it was not open 'to them' to go behind the plea of guilty.' By this the Committee meant that they were precluded from considering whether any criminal offence had been committed.

(b) The Committee said, with reference to the second charge, that it was not relevant that 'the files and other evidence were missing for only two weeks.'

20 The Committee was apparently referring to the two files removed from the Appellant's office by Gemini's accountant on the 16th August, 1972, but these two files were not the subject of the second charge. Furthermore, in the Appellant's submission no files of Gemini were 'missing' at any stage.

(c) The Committee found the Appellant guilty of grossly improper conduct 'in causing or attempting to cause' the files to disappear; but no charge of attempting to cause any evidence to disappear had ever been made against the Appellant.

30 35. The Appellant respectfully submits that, if his conduct did constitute 'due cause' within the meaning of s.84, the 'extreme penalty' inflicted upon him by the High Court was in all the circumstances so excessive that it ought to be set aside.

40 36. The Appellant respectfully submits that the order of the High Court was wrong and ought to be set aside, and this appeal ought to be allowed with costs, for the following (among other)

R E A S O N S

1. BECAUSE his conduct did not constitute any criminal offence:

Record

2. BECAUSE the High Court misconceived the scope of its duty under the Legal Profession Act:
3. BECAUSE his offence (if he committed any) did not fall within the terms of s.84 (2) (a) of the Legal Profession ActL
4. BECAUSE of the material errors appearing in the report of the Disciplinary Committee:
5. BECAUSE the penalty inflicted upon him was excessive.

J.G.Le QUESNE.

STUART N. McKINNON.

APPENDIX OF STATUTES

Legal Profession Act, ss.84 (1)

(2) (a) (b) (h),

(4)

86 (1)

(2)

(3),

87 (1),

88,

90,

91,

93,

94,

98 (1)

(2)

(6).

Penal Codem SS 107,

108A

116,

424.

APPENDIX OF STATUTES

Power to strike off the roll or suspend or censure.

84. (1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.

Am.16 of 1970.

(2) Such due cause may be shown by proof that such person -

(a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession; or

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor; or

x x x x x

(h) has done some other act which would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England due regard being had to the fact that the two professions are fused in Singapore; or

x x x x x

(4) In any proceedings under this Part the court may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made. 287

Applications and complaints.

x x x x x
86. (1) Any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Inquiry Committee.

(2) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of a solicitor in his professional capacity and the Council shall issue a written order to the Inquiry Committee.

(3) Every written application or complaint received by the Inquiry Committee shall be supported by such statutory declarations or affidavits as the Inquiry Committee may require.

x x x x x x

Investigation

87. (1) Where the Inquiry Committee has -

- (a) received a written order;
- (b) decided of its own motion to inquire into any matter; or
- (c) received a written application or complaint and is satisfied that there may be grounds for such an application or complaint,

it shall inquire into and investigate the matter and report to the Council on the matter.

x x x x x x

88. (1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall determine -

Council's
consideration
of report.
Am. 16 of
1970

- (a) that a formal investigation is not necessary; or
- (b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under section 89 of this Act; or
- (c) that there should be a formal investigation by a Disciplinary Committee; or
- (d) that the matter be referred back to the Inquiry Committee, or adjourned for consideration.

(2) The Council shall inform the advocate and solicitor and the person who made the application or complaint of the manner in which it has determined the

Am. 16 of 1970

application or complaint and in the event of the determination being that a formal investigation is unnecessary the Council shall on the request of that person furnish him with their reasons in writing. /91

X X X X X X

90. If the Council determines under section 88 of this Act that there should be a formal investigation the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter. /93

Application to appoint a Disciplinary Committee

X X X X X X

Disciplinary Committee

Appointment of Disciplinary Committee

91. (1) The Chief Justice may from time to time appoint a committee from among solicitors who have in force a practising certificate to be known for the purpose of this Act as a Disciplinary Committee.

(2) A Disciplinary Committee shall consist of such number of members not being less than three nor more than five as the Chief Justice may from time to time think fit and shall be appointed in connection with one or more matters or for a fixed period of time or as the Chief Justice may think fit.

(3) The Chief Justice may at any time revoke the appointment of any Disciplinary Committee or may remove any member of a Disciplinary Committee or fill any vacancy in a Disciplinary Committee or subject to the limits aforesaid increase the number of the members of a Disciplinary Committee.

(4) Every Disciplinary Committee shall appoint a solicitor to be the secretary of that Disciplinary Committee.

(5) The production of any written instrument purporting to be signed by the Chief Justice and making an appointment, revocation or removal referred to in this section shall be evidence that such appointment, revocation or removal has been duly made. /94

X X X X X X

93. (1) After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine - Findings of Disciplinary Committee. Am.16 of 1970

- (a) that no cause of sufficient gravity for disciplinary action exists under section 84 of this Act; or
- (b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or
- (c) that cause of sufficient gravity for disciplinary action exists under that section.

(2) In the event of the Disciplinary Committee making a determination under paragraph (b) or (c) of subsection (1) of this section the Committee may make an order for payment by any party of costs or of such sum as the Committee may consider a reasonable contribution towards costs.

(3) The findings and determination of the Disciplinary Committee under this section shall be drawn up in the form of a report of which -

- (a) a copy shall be submitted to the Chief Justice and the Society; and
- (b) a copy shall on request be supplied to the advocate and solicitor concerned and to the person who made the application or complaint /96

Society to
 apply to
 Court.

94. (1) If the determination of the Disciplinary Committee under section 93 of this Act is that cause of sufficient gravity for disciplinary action exists under section 84 of this Act the Society shall without further direction or directions proceed to make an application in accordance with the provisions of section 98 of this Act.

(2) If the determination of the Disciplinary Committee under section 93 of this Act is that no cause of sufficient gravity for disciplinary action exists under section 84 of this Act it shall not be necessary for the Society to take any further action in the matter unless so directed by the court. /97

x x x x x x x

Order to
 show
 cause

98. (1) An application that a solicitor be struck off the roll or suspended from practice or censured or that he be required to answer allegations contained in an affidavit shall be made by originating summons ex parte for an order calling upon the solicitor to show cause.

(2) An application under subsection (1) of this section may be made to a judge and shall include an application for directions as to service if the solicitor is believed to be outside Singapore.

X X X X X X X

(6) The application to make absolute and the showing of cause consequent upon any order to show cause made under subsections (1) and (2) of this section shall be heard by a court of three judges of whom the Chief Justice shall be one and from the decision of that court there shall be no appeal except to the Judicial Committee of Her Britannic Majesty's Privy Council. For the purposes of an appeal to that Committee an order made under this subsection shall be deemed to be an order of an appellate court.

CHAPTER V ABETMENT

Abetment of
the doing
of a thing

107. A person abets the doing of a thing who -

- (a) instigates any person to do that thing; or
- (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
- (c) intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a court of justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby

facilities the commission thereof, is said to aid the doing of that act.

X X X X X X

Abatement
in
Singapore
of offences
outside
Singapore

103A. A person abets an offence within the meaning of this Code who, in Singapore, abets the commission of any act without and beyond Singapore which would constitute an offence if committed in Singapore.

Illustration

A, in Singapore, instigates B, a foreigner in Java, to commit murder in Java. A is guilty of abetting murder.

* * * *

116. Whoever abets an offence punishable with imprisonment shall, if that offence is not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Abetment
of an
offence
punishable
with im-
prisonment
if the
offence is
not
committed
in con-
sequence
of the
abetment.
If the
abettor or
the person
abetted is
a public
servant
whose duty
it is to
prevent the
offence

Illustrations

(a) A offers a bribe to B, a public servant as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery is not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a

police officer, whose duty it is to prevent that offence. Here, though the robbery is not committed. B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

x x x x x x

Dishonest
or fraudu-
lent re-
moval or
concealment
of property
or release
of claim

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

No. 10 of 1974
~~JUDICIAL COMMITTEE OF THE~~
~~IN THE PRIVY COUNCIL~~

O N A P P E A L
FROM THE HIGH COURT OF THE
REPUBLIC OF SINGAPORE

B E T W E E N

ISAAC PAUL RATNAM Appellant

-and-

THE LAW SOCIETY OF SINGAPORE
Respondents

CASE FOR THE APPELLANT

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
W.C.3.

Solicitors for the Appellant