

II-L-57-9

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[9]

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

Section: _____

Pro.
Serial

Nos.

II-57-9

H.M.S.

Subject.

Mr. Razi Ahmad Kidwai's Complaint against
Justice Chandrabhant in Allahabad High
Court.

Previous References.

Later References.

SECRET & PERSONAL.

NEW DELHI, the 5th August 1949.

I wrote to you from Dehra Dun some time ago about the allegations which Rafi had made against the Chief Justice and another Judge of the Allahabad High Court, Mr. Chandra Bhan Agarwala. Rafi wrote to you, presumably on receiving a copy of my letter from you, two letters, one dated the 26th and the other dated the 27th June, copies of which he was good enough to send me.

2. I do not wish to comment in detail on the points which Rafi has taken up. It is such an obvious proposition that you cannot dispose of a case merely on rumours, even though given credence to by a responsible Minister. Whatever Rafi says regarding Chief Justice's intervention in the Bar Council matters is based on conjectures, whereas what I conveyed to you on this matter was based on the proceedings of the Bar Council and the enquiries personally conducted by the Judicial Secretary of the U.P. Government, as also a statement by the income-tax authorities themselves. The facts clearly disprove the allegations which Rafi made and, if on disproof of those allegations Rafi finds himself in an embarrassing position, it is of his own seeking. All the other allegations to which Rafi refers in his letter of the 26th were enquired into by the Chief Justice on an anonymous petition received by him as well as sent by us and the U.P. Premier. Those allegations were found without any substance.

3. Regarding the case of professional misconduct, to which Rafi has referred in his letter of the 27th June and the allegations in respect of which have been buttressed by a statement from Sir Iqbal Ahmed, I am sending you herewith a copy of the letter received by me from the Chief Justice of Allahabad to whom I had mentioned it. I had asked the Chief Justice to get for me a statement from Justice Agrawala as to what exactly had happened in that case. You will see that Mr. Justice Agarwala's letter gives the

facts ...

facts of the case fairly clearly and, as far as I can see, there is no attempted concealment. Between Sir Iqbal Ahmed and Mr. Agrawala, we certainly know the former and I would hesitate to accept at their face value statements made by him. In any case, it is quite clear that his statement "that an amount that was more than sufficient to cover the court fee had been deposited by the makor with Mr. Chandra Bhan Agrawala and Mr. Agrawala desired to retain the amount deposited as his fees in the case" is definitely false. The court fee payable was Rs. 1,250/- and Mr. Agrawala was paid only Rs. 59/-. The Chief Justice tells me that the register to which Mr. Chandra Bhan Agrawala refers in the last sentence of his letter, was examined by him and corroborates his statement.

4. It seems to me that Rafi is incapable of realising the simple fact that we cannot start an enquiry into the conduct of a High Court Judge on mere rumours and conjectures. I know that he will never admit that the position that he has taken up is wrong, but it is, to my mind, quite clear that we cannot allow the honour and prestige of our Judges to be impugned in such light manner and we cannot order about enquiries on what is proved to be flimsy evidence, or, perhaps, no evidence at all. You know what difficulty we had to face in such a strong case as we had against Shiv Prasad Sinha.

Yours sincerely,

Sd. Vallabhbhai Patel

The Hon'ble
Pandit Jawaharlal Nehru,
Prime Minister,
NEW DELHI.



Top Secret.

13
HIGH COURT,
ALLAHABAD.
July 26, 1949.

My dear Sardar Sahab,

In accordance with the wishes of Mr. Justice Chandra Bhan Agerwala I am enclosing the statement required. He sent to me the register which I examined and it corroborates his statement.

Enclos:
Statement.

Yours sincerely,

A. Malik

The Hon'ble
Sardar Vallabhbhai Patel,
Deputy Prime Minister of India,
New Delhi.

25A, CAWNPORE ROAD,

ALLAHABAD.

22.7.49.

My dear Chief Justice,

In response to your suggestion that I should give a statement with regard to the facts of the Pauper F.A.-- Agha Syed Mohd. Shafi and another Vs. L. Pyarey Lal and another, I am writing this letter to you.

This was a First appeal filed In Forma Pauperis on 17.7.33. Its valuation was Rs. 63,434/9/-. The mukhtar-am of the appellants had come to me along with a local lawyer and instructed me to draft a memo of appeal and a petition for leave to appeal in forma pauperis. The appellants were said not to be possessed of funds to enable them to pay the court fee of Rs.1250/- which was payable on the memo. of appeal. I was paid Rs. 59/- in all. (Rs. 50/- as drafting fee, Rs. 5/- for the clerk and Rs. 4/- as typing charges). I drafted the memo. of appeal and the petition for leave to appeal. The mukhtar-am presented these documents in person to the then application judge, Sir Iqbal Ahmad.

I was not present in the court at that time. I learnt later that the learned judge had enquired from

the mukhtar-am as to who had drafted the said documents and whether any fee, and if so what, had been paid for it. The mukhtar-am, I was told, had foolishly stated that he had not got the documents drafted by any counsel at Allahabad, but got them drafted by his local counsel at Bulandshahr without payment of any fee. The affidavit sworn by the mukhtar-am in support of his application showed that he had been identified by my clerk. From this fact the learned judge could easily find out as to who might have drafted the documents. Consequently he sent for me, and asked me if I had drafted the documents. I replied in the affirmative. He then asked me whether I had received any, and if so, what fee. I told him that Rs. 50/- had been paid to me as my fee. This statement of mine was recorded in open court.

Thereafter the learned judge issued a notice to the mukhtar-am to show cause why he should not be prosecuted for perjury. As my statement went against the mukhtar-am, he engaged other counsel, one of them being Mr. Shiv Prasad Sinha (later Mr. Justice Sinha). The notice was ultimately, the discharged, the memo. of appeal dismissed and the petition for leave to sue in forma pauperis rejected.

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25A, CAWNPORE ROAD.
ALLAHABAD.

At no stage of the case, was I threatened for ~~proceeding~~
with ~~proceedings~~ for unprofessional conduct as there was
absolutely no occasion for the same. There was no question of
my tendering any apology.

The suggestion that I had appropriated the amount of ~~44~~
court fee ~~payable~~ towards my fee is preposterous, as the
court fee payable was Rs. 1250/- and I was paid Rs. 50/-.
This will be conclusively proved from the entries in my
Register written by a clerk who died several years ago.
I am sending you my register as well.

Yours sincerely,

Chanda Bhan Sparwala

MINISTER FOR COMMUNICATIONS,
INDIA.

5
Camp: Naini Tal
June 27, 1949.

27-6
My dear Sardar Sahab,

I am enclosing a copy of
my letter to Jawaharlalji. I
hope you have already received
copy ~~of the~~ of the letter I had
sent you earlier.

Yours sincerely,

Patel

Hon'ble Sardar Vallabhbhai Patel,
Dy. Prime Minister of India,
Camp: Dehra Dun.



6
Camp: Naini Tal
June 27, 1949.

My dear Jawaharlalji,

After I had written to you it occurred to me to enquire from Sir Iqbal Ahmed who is here and who was the presiding Judge when the application in question was presented in the High Court if he remembered the case. Accordingly I wrote to him and got a reply yesterday evening. I am enclosing herewith copies of my letter and the reply.

I have re-read Sardar Patel's letter to you and I find that both the allegations are in a way being confirmed rather than being refuted. It is admitted that two of the papers were weeded out from the files. It is also admitted that "one of the orders referred to the dropping of the proceedings after giving a general warning against two men, against whom notices were issued for prosecution for perjury." What is there to show that the two men were not the Mukhtar of the party and his Advocate the Mukhtar guilty of perjury and the Advocate of ^{un}professional conduct. It has not been explained why it should be presumed that the second paper said to have been weeded out did not in any way relate to the question of issue of a notice to Mr. Agarwal" Why should it not be presumed that one referred to the prosecution for perjury and the other to proceedings for unprofessional conduct and in noting in brief about contents one note has been made about both the papers.

As regards the allegation of giving a false certificate, Sardar Sahab in his letter says that "the enquiry against Mr. Agarwala was dropped because of the report of the Secretary" Does it not show that there was an enquiry? Does it not show that the enquiry was dropped not because any new facts were placed before the Council but because the diary which was not accepted as correct when presented was later on for some reason unknown and unexplained accepted as correct? The allegation is that the Bar Council was influenced to drop these proceedings and it is clear from the letter that proceedings were dropped not because any new material was placed before the

Committee, but on account of some influence.

In his 4th para Sardar Patel although apparently contradicting the allegation against Chief Justice in a way confirms it. It is considered improper for a Judge of the High Court to borrow money from lawyers practising in his court. I am sorry my allegations have caused some embarrassment to Pandit Govind Ballabh Pant, but it cannot be helped. I still assert that what has been alleged can be proved if we are really serious about eradicating evils.

I wonder if you had seen the comments in the Press all over the country when in one of your speeches you were reported to have said that stories of corruption were very much exaggerated. Is it not time that we should handle this problem seriously. Instead of proceeding against them, we are giving protection to corrupt men. Would Sardar Sahab agree if I ask a friend to repeat these allegations in public? Sardar Sahab could direct his officials to prosecute the friend for defamation.

I hope you remember that in 1931 'Pratap' of Kanpur had made serious allegations against a Deputy Collector in Unnao. The then Government had taken a serious view of these allegations. They directed the officer concerned to sue the editor, Pandit Balkrishna Sharma or accept the alternative of departmental enquiry against himself. Today allegations of corruption and bribery and nepotism are made in public but we do not take notice of it. Yesterday there was a public meeting here in Naini Tal organised by the Socialists. Madan Upadhaya was the principal speaker and he narrated the extent of corruption and named certain cases by way of illustration. Why the Government should not give him an opportunity to prove these allegations in the law court or to suffer the consequences?

Yours sincerely,

The Hon'ble Pt: Jawaharlal Nehru,
Prime Minister of India,
New Delhi.

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[Copy of a confidential letter dated 26th June, 1949 from Sir Iqbal Ahmed, Woldorf, Naini Tal to the Hon'ble Mr. Rafi Ahmed Kidwai, Minister for Communications, Camp: Naini Tal.

...

I am writing this in reply to your "personal and confidential" letter of today's date. The information conveyed to you by the Advocate of Allahabad which you have quoted in the first paragraph of your letter is correct. To the best of my ~~knowledge~~ recollection the facts are as follows

1. In the year 1933 or 1934 Mr. Chandra Bhan Agarwala (as he then was) appeared before me to support an application for permission to appeal as a pauper. The applicant was probably my client while I was practising at the Bar, and the application arrested my attention as I had reasons to believe that the applicant's financial condition was such that he could well afford to pay the requisite court fee. I enquired as to whether the paurokar was present and I received a reply in the affirmative. The paurokar appeared before me and it was crystal clear, from the replies that he gave to my questions, that the allegations contained in the affidavit that was filed in support of the application were untrue, and that an amount that was more than sufficient to cover the court fee had been deposited by the paurokar with Mr. Chandra Bhan Agarwala, and the application to appeal in forma pauperis was filed on false allegations and Mr. Agarwala desired to retain the amount deposited as his fees in the case. The practice in the Allahabad High Court was - and I believe that it is still the practice - that on the dismissal of an application to be allowed to appeal in forma pauperis sometime was granted for filling the requisite court fee, and I suspected that Mr. Agarwala had filed the application simply with a view to gain time. I took a serious view of the matter and I intended to take disciplinary action against Mr. Agarwala. During the lunch interval, however, Mr. Agarwala came to my chambers, admitted his mistake and offered apology. After the lunch I made it known from the Bench that, in view of the apology offered, the matter ~~will~~ will be dropped, but held out a serious warning that repetition of such a mistake will be visited with drastic penalties.]

2. I am not ~~x~~ in a position ofhand to give any particulars of the case, but I suppose that the record of the case can be traced out, and there must be papers on the record that would disclose the facts set out above. I am sure that the incident is known to many members of the Allahabad Bar and when I go next to Allahabad I shall try to ascertain the particulars of the case.

...

MINISTER FOR COMMUNICATIONS,
INDIA.

9
Camp: Naini Tal,
25th June, 1949.

My dear Sardar Saheb,

I am enclosing herewith a copy of my
letter to Jawaharlalji.

Yours sincerely,



(Rafi Ahmed Kidwai)

The Hon'ble Sardar Vallabhbhai Patel,
Deputy Prime Minister,
Dominion of India,
Camp: Dehra Dun.



10

Camp, Naini Tal
June 26, 1949.

My dear Jawaharlalji,

I have just received your letter with the enclosure that is Sardar Patel's letter about Justice Agarwala. I am surprised at the attitude taken up.

After passing LL.B Final, one has to work with an Advocate of the High Court for a year and also to keep the diary of the work he has done. After the expiry of the year the Advocate gives him a certificate of training and the candidate applies to the Bar Council for his enrolment.

Wajahat Hussain applied to the Bar Council for enrolment. The application was supported by a certificate from Mr. Chandra Bhan Agarwala and the diary. The Bar Council found that the certificate was issued without Wajahat Hussain's undergoing training and the diary was false. They called upon Mr. (now Justice) Agarwala to explain why this certificate was issued.]

At this state, the Chief Justice intervenes, talks to the Members of the Bar Council and induces them to withdraw the notice. The Bar Council meets and after a prolonged discussion stands by its previous decision. The Chief Justice again busies himself and another meeting of the Bar Council is held. There somebody moves that as Wajahat Hussain is not a domicile resident of U.P., his application for enrolment be rejected. The Resolution was accepted and, as the application was ~~x~~ no more before the Bar Council, the proceedings against Mr. (now Justice) Agarwala were dropped. Now that very diary, which was not correct, is being quoted as a proof against allegations against Justice Agarwala.]

Why the ordinary procedure of enquiry is not adopted. Wajahat Hussain is an employee of the Government and as the business hours of the High Court of Allahabad and of the office of the Wajahat Hussain's employment are the same, why is it not possible to find out how he was present in the High Court and also present in his office? This is a simple matter and there should be no difficulty to ascertain it.]

There were so many other allegations against Mr. Justice Agarwala. After appointment as High Court Judge, he had written to his clients on High Court letter-paper asking them to engage him son in cases pending before the High Court. One such original letter was sent to Pantji.

I was also shown a certified copy of a certificate he had issued of having received a certain amount from his wife as fee for his professional work. Of course, the wife was not shown as wife but as daughter of her father.

I could have dealt similarly with other points referred to in Sardar Sahab's letter but I do not want to waste your time. I realise that all attempts to eradicate corruption will prove futile. I am in the unfortunate position of one who meets all sorts of people and hear all sorts of stories. I am supposed to be taken away by the stories and carry tales without ascertaining my facts.

I wonder, if it is realised, that these stories have made us a laughing stock of the thinking public. Exaggerated stories are going round and people suffering from maladministration are ready to accept them at their face value.

It seems that I am a misfit in the Cabinet. I hope the day is not far off when I will be dropped.

I am sending a copy to Sardar Sahab.

Yours sincerely,

Sd/-
(Rafi Ahmed Kidwai)

The Hon'ble Pandit Jawaharlal Nehru,
Prime Minister of India,
New Delhi.