

Safi Ullah Khan - - - - - Appellant

v.

General Medical Council - - - - - Respondent

FROM

**THE DISCIPLINARY COMMITTEE OF THE GENERAL
MEDICAL COUNCIL**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 5TH JULY 1979

Present at the Hearing :

LORD WILBERFORCE

LORD RUSSELL OF KILLOWEN

LORD KEITH OF KINKEL

[Delivered by LORD WILBERFORCE]

The appellant, Dr. Khan, is a registered medical practitioner practising at Oldham with a list of some 3,000 patients. He came to this country about ten years ago.

On 22 March 1978 he was brought before the Oldham Magistrates' Court on four charges of dishonestly obtaining property from a chemist by deception, the dates being between September 7 and November 9 1977. He pleaded guilty to these charges and asked for 23 similar offences to be taken into account. He was fined a total of £600. These charges and offences will be referred to as " the first group ".

It appears that on the previous day he was given notice of an additional charge of dishonestly obtaining monies from the Oldham Family Practitioner Committee by deception—the dates being between July 15 1977 and January 27 1978. This charge also came before the Magistrates' Court on 22 March 1978: the appellant pleaded guilty and asked that 20 similar offences should be taken into consideration. He was fined £150 and ordered to pay restitution of £188·07. This group of charges and offences will be referred to as " the second group ".

The first group was reported by the police to the respondent Council. On 10 April 1978 the Council wrote to the appellant that the Penal Cases Committee would consider " his conviction " and invited observations. The Penal Cases Committee is a body established under the General Medical Council Disciplinary Committee (Procedure) Rules 1970 and was the proper body to deal with the matter. The second group was not reported at this stage. On 2 May 1978 the appellant's solicitors wrote in reply to the Council and the appellant wrote personally on 3 May 1978.

The letter from his solicitors admitted the conviction (*sic*) on 22 March and conveyed the appellant's deep regret for what he had done. It mentioned the fine of £750, referred to a loss to public funds of under £200 and to the fact that the appellant had repaid every penny lost. From these mentions it seems clear, and the respondent did not dispute, that the appellant's solicitors were under the impression that the Council had been informed of the conviction on the second group as well as of that on the first.

The appellant's letter of 3 May stated that he had discussed the matter with his solicitors and that he wished to add something to the bare facts. This he did in three paragraphs headed as follows:—

1. As regard Drugs/dressings Charges
2. Regarding maternity Claims
3. Regarding Handling Charge (of certain sutures).

He too expressed his regret and sorrow.

A careful reading of this letter, in particular comparison of the headings of paragraphs 1 and 2 (as above), might have suggested to the Council that there was some incompleteness in the material then before it and that there might be other offences of which it was not informed. Its terms moreover suggest that the appellant, as well as his solicitors, thought that the Council was aware of the group two offences.

The Council replied to the appellant on 11 May 1978, in the following terms—

“ The Penal Cases Committee of the Council have now considered information concerning your conviction on March 22, 1978, at Oldham Magistrates' Court of four offences of dishonestly obtaining property by deception. The Committee noted that twenty-three other offences were taken into consideration by the court. The Committee also had before them a letter of May 2, 1978, from Messrs. Hempsons, Solicitors, on your behalf, and your letter of May 3, 1978.

The Committee instructed me to say that, as indicated on page 2 of the enclosed pamphlet, the Council is bound to accept a conviction as conclusive evidence that a doctor was guilty of the offences of which he was convicted. The Committee asked me to inform you that they take a grave view of offences involving dishonesty, particularly when those offences are related to a doctor's professional position and involve a misuse of public funds. They regard your dishonest conduct as deplorable and derogatory to the reputation of the medical profession. These offences have accordingly been noted in the records of the Council and you must understand that if information relating to any further conduct on your part of a similar nature were to reach the Council, the Committee may then feel obliged to refer such information to the Disciplinary Committee for an inquiry at which your recent offences would also be taken into account.

I am to request you personally to acknowledge receipt of this letter, quoting the reference given above ”.

A normally careful reading of this letter would give rise to the conclusion that the Committee had considered information relating only to the group one cases. This appeared from their reference to “ four offences of dishonestly obtaining property by deception ” and to “ twenty-three other offences ”. It may be however that this conclusion was not fully apparent to the appellant. From his own letters, it is clear that his knowledge of English, though good, is not that of an educated native, and having

written as he had on 3 May, believing apparently that the Council was informed of both groups of cases, he may have failed to see the implication of the letter. No doubt he received the Committee's decision with relief—it was indeed, in their Lordships' view, a lenient letter—and their Lordships are not prepared to disbelieve him when he says that he thought that it disposed of the whole matter of his convictions.

It does not appear from the documents when the second group was reported to the Council; it must have been between May and August 1978. On 11 August the Council wrote to the appellant stating that, in effect, the second group had been notified, and that the relevant conviction would be considered by the Penal Cases Committee on 3 October. The appellant consulted his solicitors, who wrote to the Council on 31 August. They stated that they did not realise that the second group was not dealt with in the Council's letter of 10 April and that it was encompassed in their letter of 2 May. They invited the Penal Cases Committee to accept their client's contrition and maintain their lenient view of the matter. On 6 October the Council wrote to the appellant giving him notice that the Penal Cases Committee had determined that a charge would be formulated against him and that an inquiry by the Disciplinary Committee would take place. On 23 October 1978 the appellant wrote personally to the Council's solicitors asking that the inquiry be postponed; this letter included the following passage:—

“In my letter of 3rd May 78 to General Medical I explained everything but I refer [?] a letter of General Medical Council of 11 May 78, I thought the matter had died a death and I started to work very carefully to regain my lost prestige before I leave this country as I am immigrating [*sic*] from here. I can not understand that the whole thing inquiry has started again, both these type [?] charges were on same day, as the second charge was brought only a day before the hearing.”

The reference to emigration reflected what it seems was the appellant's intention at that time: their Lordships were told that it was not his present intention.

The inquiry was held on 20 November 1978, the appellant being legally represented. The convictions were admitted, but evidence was called as to one matter relating to Dexon sutures (this was one of the offences taken into consideration in the first group) described by the Council's solicitor as particularly discreditable. A speech in mitigation was made on behalf of the appellant.

The Committee decided that the appellant's registration should be suspended for twelve months, the maximum period for which suspension is possible.

In considering the appellant's appeal it is first necessary to state that no complaint can be made as to the jurisdiction of the Disciplinary Committee or as to the manner in which this was exercised. A situation, such as this, where the Penal Cases Committee has made a determination, but then received further information, is envisaged and expressly dealt with in Rule 7. It is not necessary to elaborate this point because learned Counsel for the appellant did not dispute it: the Penal Cases Committee had undoubted power, notwithstanding that it had dealt with the first group, to refer both the first group and the second group for an inquiry, and the Disciplinary Committee had undoubted power to consider both groups. No procedural defect in the proceedings of the Disciplinary Committee existed or was suggested. The only question is whether there are any grounds for interfering with the sentence of 12 months' suspension.

Their Lordships have affirmed on many occasions that they will not interfere with the decision of professional disciplinary bodies as to the proper sentences to be imposed in cases of professional misconduct. This principle applies equally when the matters complained of also constitute criminal offences which have been sanctioned by the criminal law. If, as well as being criminal, offences also constitute professional misconduct, it is for the appropriate disciplinary body to deal with them on that aspect. There can be no doubt that these offences were capable of being so regarded. This is the general rule from which their Lordships do not wish to depart.

In the present case, there are two special factors which call for consideration.

First, though their Lordships impute no blame to anybody, they consider that there is substance in the appellant's complaint that after receipt of the Council's letter of 11 May, he thought, not unreasonably, that all matters had been disposed of and that the slate was clean. Thereafter he set himself by work in his practice to redeem his reputation. When he received the Council's communication in August 1978 that matters which he thought closed were to be the subject of an inquiry, he appears to have felt, and their Lordships are not prepared to discount this feeling, a sense of injustice. From the transcript of the proceedings at the inquiry it does not appear that this aspect of the matter was urged upon the Disciplinary Committee.

Second, a letter in support of the appellant, which was not before the Disciplinary Committee, though they had other letters from individuals, has been laid before their Lordships. This, dated 22 March 1979, is from Dr. K. S. Mackenzie, Chairman of the Local Medical Committee, and therefore a person whose view, as to local matters affecting practitioners, is entitled to respect. In this letter he makes five points: (1) that he knows of no possible criticism of Dr. Khan except in relation to his convictions of 22 March 1978; (2) that Dr. Khan's practice has grown from 3,020 patients to 3,070, this against a decline in the population of Oldham: he draws attention to the difficulty of the practice; (3) that Dr. Khan has been much stricter in issuing Medical Certificates than was his predecessor—an important factor in this type of practice; (4) that Dr. Khan has improved his service in several ways—particularised; (5) that he made no attempt to hide anything from, and indeed employed to obtain the prescriptions, a lady who was a Borough Councillor and a member of the Family Practitioner Committee; "a stranger in a strange land seems to me entitled to more guidance than he obtained".

Their Lordships also mention, though this cannot carry the same weight, that a petition has been received in favour of Dr. Khan by a number of his patients.

Their Lordships consider these to be relevant matters at this stage. A justifiable sense of injustice on the part of a convicted person is recognised by Criminal Courts as something to which regard may be had in fixing the ultimate penalty, and matters in mitigation may properly be taken into account even if arising after the trial. In medical cases there is also the interest of the patients to be thought of.

Their Lordships do not consider that they can differ from the Disciplinary Committee in treating the matter as a serious one, calling for a suspension, but within that principle they are of opinion, while fully respecting the Committee's direction on the material before them, that a

reduction of the period to six months would fairly give effect to the factors mentioned. Their Lordships will humbly advise Her Majesty that the appeal be allowed to the extent that for the direction of the Disciplinary Committee that the appellant be suspended for twelve months there be substituted a direction that he be suspended for six months. There will be no order as to costs.

In the Privy Council

SAFI ULLAH KHAN

v.

GENERAL MEDICAL COUNCIL

DELIVERED BY
LORD WILBERFORCE

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