(1959) 08 PAT CK 0020

Patna High Court

Case No: Civil Ref. No. 2 of 1957

The State of Bihar		APPELLANT
	Vs	
Chandreshwar Prasad, Pleader		RESPONDENT

Date of Decision: Aug. 12, 1959

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 476
- Legal Practitioners Act, 1879 - Section 13, 14

Citation: AIR 1960 Patna 1 : (1960) CriLJ 97

Hon'ble Judges: S.C. Misra, J; Kanhaiya Singh, J; K. Ahmad, J

Bench: Full Bench

Advocate: Baldeva Sahay, Ashwni Kumar Sinha and Kanti K. Sinha, for the Respondent

Judgement

Ahmad, J.
This is a reference made u/s 14 of the Legal Practitioners Act by the District Judge of Muzaffarpur. It relates to the conduct of one Mr. Chandreshwar Prasad, who is enrolled as a Pleader in that District Court since the 21st of March, 1950, and has been practising there as such since then. The main allegation against him as found in the order under reference which is dated 26-9-1957, is:

"that Sri Chandreshwar Prasad, pleader, intentionally took back those documents in collusion with his clients in order to help them. I would, therefore, recommend that the matter may be placed before the Hon''ble High Court for taking suitable action against Sri Chandreshwar Prasad, pleader, u/s 14 of the Legal Practitioners Act."

2. Now, the admitted position is as will appear from the facts on the record that the alleged misconduct was committed, if at all, in the Court of Mr. Kamleshwar Prasad Verma, the then presiding officer of the 2nd court of Munsif at Muzaffarpur, and not in the Court of the District Judge; but the officer who on the basis of that alleged misconduct had finally drawn the proceeding giving rise to the present reference was the District judge. Further, it is not denied that though it was the District Judge

who had drawn the proceeding, but the actual enquiry therein, as ordered by the District Judge himself was made by the Registrar of Civil Court Gaya, with the result that at the end of the enquiry what constituted the basis for the conclusions drawn by the District Judge in his order under reference was the materials, collected and the report submitted by the Registrar, and not any evidence deposed to directly before the District Judge.

3. Accordingly, on the basis of these two admitted facts, Mr. Baldeva Sahay appearing for the Pleader, in answer to the show-cause notice issued by this Court on 19-11-1957, has, to begin with, challenged the very maintainability of the reference as made here apart from any question of merit in it.

4. This necessarily takes us at once first to the wording of Section 14 of the Legal Practitioners Act itself and then to the authorities on the subject. The relevant portion of that section reads as follows :

"If any such Pleader or Mokhtar practising in any subordinate court or in any Revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Such copy and notice shall be served upon the Pleader or Mokhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mokhtar and shall proceed to adjudicate on the charge.

If such officer finds the charge is established and considers that the Pleader or Mokhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof and shall report the same to the High Court: and the High Court may acquit, suspend or dismiss the Pleader or Mokhtar." In the reading of Mr. Sahay the term "the presiding Officer" as used therein refers to the presiding officer of the Court in which the alleged misconduct is committed, and not the presiding officer of any Court other than that, though the latter may fall within the same subordinate Court in which the Pleader or Mokhtar is practising. In support of this reading of the section Mr. Sahay has laid reliance on the four decisions of this Court in (1) In the matter of Mt. Tanak Kishore 1 Pat LJ 576: AIR 1916 Pat 115 (2) Emperor v. Satyendra Nath Roy 1 Pat LT 379 : AIR 1920 Pat 274 (3) In Re: Babu Madahva Singh, Vakil, and Keshava Prasad Singh Bahadur of Damraon Vs. Mathura Kuar and others as also on a decision of the Rangoon High Court in U Thein Nyun v. District Superintendent of Police, Maubin ILR 13 Rang 737: AIR 1936 Rang 158, wherein these Patna decisions have been followed.

5. Now, so far, as the decision in 1 Pat LJ 576: AIR 1916 Pat 115 is concerned, that, in my opinion, is not of any assistance on the point raised here. Therein the main point

and the only point which arose for consideration was whether a proceeding under the Legal Practitioners Act is transferable u/s 24 of the Civil Procedure Code, or, to put it differently, whether the provisions of Section 24 of the CPC are applicable to a proceeding under the Legal Practitioners Act. To that both the learned Judges, Mullick and Atkinson, JJ., who heard and decided that case, gave the answer in the negative. And that, in my opinion, if I may say so with all respect, was sufficient to dispose of that case. It, however, appears that in the course of discussion on that point they went further ami also observed that

"the section leaves no room for the contention that the enquiry may be delegated or transferred to another officer who is not the presiding officer of Court in which the mal-practices complained of were committed."

This observation as I read the case and as is evident also from the facts stated therein was neither necessary nor called for on the point raised there. Therefore in law it is obiter.

6. Then come the other three decisions of this Court. Each of them is a Bench decision of three Judges. Two of them, namely, Dawson-Miller, C. J. and Mullick J. were common in all the three decisions, while the third Judge in two of them, namely, in 1 Pat LT 379: AIR 1920 Pat 274 and in 4 Pat LT 235: Keshava Prasad Singh Bahadur of Damraon Vs. Mathura Kuar and others was Jwala Prasad, J., and in In Re: Babu Madahva Singh, Vakil, Kulwant Sahay, J. Obviously, therefore, come as they do from four very eminent Judges of this Court they deserve all respect and inasmuch as all of them uniformly lay down in substance that "the enquiry should be made by the presiding officer of the Court, that is to say, the Court in which the offence or mis-conduct was committed, and that he alone was the proper person to hold such an enquiry" they weigh heavily in favour of the contention raised on this point by Mr. Sahay.

But a close reading of these decisions clearly shows that the latter two, namely, the decisions in In Re: Babu Madahva Singh, Vakil, : Keshava Prasad Singh Bahadur of Damraon Vs. Mathura Kuar and others are mainly based on wholly influenced by the decision in the first case, namely, in 1 Pat LT 379: AIR 1920 Pat 274. In that view of the matter the learned Standing Counsel acting for the State has submitted that unless the decision in the first case, namely 1 Pat LT 379: AIR 1920 Pat 274 is found to have been given in consonance with the law as laid down in Section 14 of the Legal Practitioners Act, none of them can be said to have any binding effect in law. On principle I think there can be no two opinions on this point and on facts it cannot be denied that the hearing in the case in 1 Pat LT 579: AIR 1920 Pat 274 was unfortunately ex parte.

Naturally, therefore, their Lordships who gave the decision in that case could not possibly have all the assistance which they would have had had the case been a contested one. Then, the language also as used in Section 14 is not after all

altogether free from certain amount of equivocation. Therefore, unless very closely examined, it is quite possible that the first impression that a bare reading of the section may leave on the mind may not be exactly what it really means. In law, however, the true construction of any section in a statute is that which is more consistent with the scheme of the Act as a whole and not less with the essential principle underlying it.

Looked at from this point of view, I think it is difficult to hold that the enquiry as is contemplated in the section is to be held exclusively, if at all, by the presiding officer of the Court in which the misconduct or offence is alleged to have taken place, and not in any Court other than that, though the latter may be one of these subordinate Courts where the Pleader or Mokhtar is actually practising. On the contrary, the more wholesome construction seems to be that the word "presiding" as used therein refers to the entire class of officers who preside in the subordinate Court where the Pleader or the Mokhtar is practising, and not only the officer in whose Court the alleged misconduct is committed. That means the scheme underlying Section 14 of the Legal Practitioners Act is that once any Pleader or Mokhtar practising in any subordinate Court or Revenue office is charged in that subordinate Court or office with any misconduct as contemplated in the Act the presiding officer of any Court that lies in the ambit of that subordinate Court or Revenue office shall have power to proceed against him for that misconduct.

This, in my opinion, necessarily follows from what is provided in the definition of the phrase "subordinate Court" as is given in Section 3 of the Act. Therein "subordinate Court" is defined to mean "all Courts subordinate to the High Court including Courts of Small Causes." Therefore, if a Pleader or Mokhtar is practising in a District Court, it means that he is practising in all the Courts including Courts of Small Causes which fall within the ambit of that District Court. As such any presiding officer of any of the Courts where the Pleader or Mokhtar is practicising has got the power u/s 14 of the Legal Practitioners Act to take cognizance of the misconduct that is committed by him in that subordinate Court and to initiate proceeding for the same as laid down therein.

In the opinion of the Calcutta High Court as elaborately discussed in In Re: Rabindra Chandra Chatterjee, this is the true construction of the section. Subsequently this Court also in In Re: A, a Mukhtar, has preferred to follow the Calcutta decision in spite of what had been laid down earlier to the contrary in the aforesaid three decisions. The learned Judge, while referring to the judgment of the Rangoon High Court in ILR 13 Rang 737: AIR 1936 Rang 158 which is on line with the earlier three decisions of this Court, have observed

"In our opinion it was not at all necessary for the learned Chief Justice to have considered the effect of that Calcutta case and therefore his remarks must be treated as obiter. In any case we are of the opinion that the decision of the Calcutta High Count is perfectly correct and that if is in accord with the plain meaning of

Sections 13 and 14 of the Legal Practitioners Act."

And finally their Lordships concluded with the observation that

"it is within the jurisdiction of any Court before whom the Pleader is practising, if brought to its notice that the Pleader has committed any professional misconduct, to take action against him rind those proceedings will be entirely with jurisdiction."

For these reasons I think the view taken on this point in the said three decisions of this Court in 1 Pat LT 576: AIR 1916 Pat 115: 4 Pat LT 97: In Re: Babu Madahva Singh, Vakil, and 4 Pat LT 235 : Keshava Prasad Singh Bahadur of Damraon Vs. Mathura Kuar and others as also in 1 Pat LJ 576 : AIR 1916 Pat 115 and in ILR 13 Rang 737 : AIR 1936 Rang 158 cannot be accepted as good law. Accordingly, the contention raised by Mr. Sahay as to the implication underlying "the phrase the presiding officer" has to fail.

7. The next contention that has been advanced on behalf of the pleader in support of the in-competeney of this reference is that even if the District Judge had jurisdiction which, in my opinion, as held above, he had, he could not however in law, having once initiated the proceeding, transfer the same to the Registrar for receiving and recording the evidence as done here. On this point I think the section as it stands gives full support to Mr. Sahay. It unequivocally lays down that "the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader and Mokhtar and shall proceed to adjudicate on the charge".

In this case unfortunately what the District Judge did was that he having framed the charge as contemplated in Section 14 of the Legal Practitioners Act and having the show-cause submitted by the Pleader, finally on the 1st July, 1957, transferred the proceeding to the Registrar to conduct the same and submit his report by 31-7-1957. This, in my opinion, was directly in contravention of the terms of the section and as such cannot be sustained in law. To this extent, therefore, the reference as matte here has to be held as technically incompetent.

8. In substance, however, I think this entire controversy on the question whether the reference is competent or not has at best, in view of what is specifically provided in Section 13 of the Legal Practitioners Act, only an academic value; for though the reference may, on the technical ground, fail, yet the facts as stated above are now before the High Court. Therefore, the High Court in the exercise of the absolute power that is given to it u/s 13 may, if it so chooses, take cognizance of the alleged misconduct and start proceedings on its own initiative as it thinks fit and proper as laid down in Banamali''s case 4 Pat L.T. 235 : AIR 1922 Pat 60S . In the present case, Mr. Sahay has conceded that all the materials necessary for the disposal of the case arc already on the record, land there is nothing further which his client may set up in support of his defence. That being so, even if the reference has to be held incompetent for the reasons as staled above, there is no reason why the High. Court

having been already apprised of the facts, should fail to take notice of them and to proceed against the pleader for the misconduct as disclosed by them.

9. Accordingly, Mr. Sahay has next taken us through the entire materials on the record & has on their basis contended that even on merits the pleader cannot be held to have committed any misconduct as contemplated in law. The facts as disclosed in these records show that there was a Title Suit bearing No. 15 of 1955 in the 2nd Court of the Munsif at Muzaffarpur. Therein Sri Tripureshwari Prasad. the client of the pleader, was one of the defendants. That case on hearing was disposed of by Mr. Kamla Prasad Sinha on 31-1-1955. By his judgment Mr. Sinha decreed the claim of the plaintiff, but further held that the rent receipts Exhibits E to E-4 and the money-order coupon Exhibit F filed by the defendants in that Court were forged documents.

Accordingly, on the basis oF that finding the plaintiff of that case on 18-8-1955. filed an APPLICATON u/s 476 of the Code of Criminal Procedure for making a complaint of that offence as provided therein. This application in the usual course was numbered as Miscellaneous Case No. 59 of 1955. Therein the appearance on behalf of Sri Tripureshwari Prasad and others who were named in that application as the party responsible for the filing of those forged documents was filed for the first time on 3-12-1955, and it is not denied that it was done through Mr. Chandreshwar Prasad alone in whose favour on the same day a vakalatnama had also been executed by his clients and filed in the Court.

So far, however, I think there was nothing wrong. But the trouble begins from now hereafter. It is said, which is not disputed that only two days after that, namely, on 5-12-1955, Sri Chandreshwar Prasad filed another vakalatnama executed in his favour by Sri Tripureshwari Prasad in the previous Title Suit No. 15 of 1953. That Title Suit, as already stated, had already been disposed of on 31-1-1955. But this vakalatnama had been filed in the suit for the withdrawal of the documents that had been filed in that case on behalf of Sri Tripureshwari Prasad and others including those which were numbered therein as Exhibits E to E-4 and F, and were already the subject matter of the proceeding u/s 476 of the Code of Criminal Procedure.

The allegation made against Mr. Chandreshwar Prasad is that this had been done by him in collusion with his client Sri Tripureshwari Prasad) with the deliberate intention of destroying the very evidence on which the proceeding u/s 476 of the Code of Criminal Procedure rested. As such it was a case of misconduct on his part. It is true that originally Mr. Chandreshwar Prasad had not worked for any of the parties in the Title Suit. But the fact remains that at least on 3-12-1955, when he filed vakalatnama for the first time in the proceeding u/s 476 of the Code of Criminal Procedure for Sri Tripureshwari Prasad and others, ho must have received all necessary instructions as to what was the subject-matter of that proceeding.

Therefore, the probabilities are more in favour of the conclusion that he was in the know of the entire scheme underlying that application for the withdrawal of the documents. But even if it be conceded that perhaps till then he had not been careful enough to take all necessary instructions, as he should have done, before filing the vakalatnama in that case, his subsequent conduct any way confirms that at least by 20-1-1956, when these documents were actually returned to him. he must have come to know about the entire facts leading to the application u/s 476 of the Code of Criminal Procedure.

This I say for the reason that though initially the application for the return of documents had been returned and repeated twice, once on 6-12-1955, and then on 18-1-1956, but even then he did not desist from the same. On the contrary, on 19-1-1956, he again filed a fresh application for the return of those documents, which is Exhibit 5 on the record, though in the meantime on 17-12-1955, he had already filed a detailed show-cause on behalf of his clients in the proceeding u/s 470 of the Code of Criminal Procedure. That show-cause is in four sheets and each of them bears the signature of the pleader Mr. Chandreshwar Prasad.

Therefore, it is too difficult to accept as pleaded on his behalf that he was not in the know of the facts which were stated in the show-cause. And if he knew the facts as stated therein, then it is difficult to accept that on 10-1-1956, when the fresh application for the return of the documents was filed, he could not realise that it was being done with the deliberate intention of destroying the very documents which were the subject of enquiry u/s 476 of the Code of Criminal Procedure. In ray opinion, any person having average common sense, and much less a pleader, even though of a short standing, could have appreciated at least this much that in those set of circumstances any attempt on the part of his client to withdraw those documents from the record was nothing but a contrivance to destroy the very basis of the allegation that was the subject-matter of enquiry in the proceeding u/s 476 of the Code of Criminal Procedure.

Mr. Chandreshwar Prasad in doing this may have thought that he would easily escape the consequences if detected by taking up the plea of ignorance and negligence in filing that application; but he should have realised that even negligence or ignorance, and much less a deliberate intention, in acting like this is not in the least consistent with the responsibility and dignity of the noble profession which he has chosen to join for his life. The responsibility of any individual acting as a pleader is very heavy, and the least that is expected of the person acting as a pleader is that his actings and doings in the course of his profession should bo always above-board and far even from suspicion. And if he is not in a position to maintain this standard, it is better of him to retire from it than to be a cause of reflection on the very profession itself.

10. Mr. Sahay, however, has very strenuously argued that even accepting that the pleader was in the know of all the facts relating to the proceeding u/s 476 of the

Code of Criminal Procedure by the time his last application for the return of documents was filed on 19-1-1956, it was difficult for him to verify from the facts stated in the application that it was about the return of those very, documents which were the subject-matter, of the proceeding u/s 476 of the Code of Criminal Procedure, and in support of this contention he has placed before us the whole of that application which is Exhibit 5 on the record.

Therein in the column of "Particulars of the documents" those to be returned have been described by Exhibit numbers alone, and, therefore, it has been argued that unless the Pleader at the time when he signed that application had remembered that such and such was the Exhibit number of the papers which were the subject-matter of the proceeding u/s 476 of the Code of Criminal Procedure, or unless he had verified the Exhibit numbers referred to therein with the actual documents which were the subject-matter of that proceeding, he could not have realised as to what it would lead to.

But in the ordinary course of business, especially when a pleader or a lawyer is busy in doing so many multifarious act''s in the course of his profession while in Court, it is difficult for him either to remember the Exhibit numbers of so many documents with which he may be connected on behalf of his clients in the discharge of his duties as a lawyer, or to verify those numbers each time when any step is to be taken about any of them in the Court as to which documents the particular Exhibit Numbers refer to. Therefore, Mr. Sahay submitted that the mere signature on such an application on behalf of the lawyer cannot be a proof of the fact that actually he had knowledge that such and such specific documents are being sought to be returned thereunder.

And in support of this contention reliance has been placed by Mr. Sahay on the principle of onus as laid down in Emperor v. Surjya Narayan Singh 1 Pat L.T. 372 : AIR 1920 Pat 84, and AIR 1930 144 (Privy Council) . In the former case a Bench of this Court has held :

"This Court is entirely unable to understand why a different standard of proof of guilt should be required in a case like the present from that which is necessary in any other legal proceedings. The proof which is required in order to convict on a criminal charge is that which leaves no reasonable doubt in the mind of the Court that the offence has been committed. To adopt a different standard of proof in cases arising under the Legal Practitioners Act would, in our; opinion, be an entirely novel departure and unjustifiable on any known principle of law."

In the latter their Lordships of the Privy Council laid down :

"Charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable or what may be mere error of judgment or indiscretion. An appropriate guide may be found in Section 13. Legal Practitioners Act, No. 18 of 1879, under which a pleader or muktar may be

suspended or dismissed, who is guilty of fraudulent or grossly improper conduct in the discharge of his. professional duty."

On principle, I think there can be no doubt, as contended by Mr. Sahay. that the standard of proof in a case under the Legal Practitioners Act has to be the same as in the case of any other accused on trial in a criminal case. As such in ordinary circumstances the mere act of signing a petition for the withdrawal of documents judged from this standard could have left some scope for what Mr. Sahay has contended. But here, having regard to the ordinary course of human conduct, as also to the ordinary responsibilities which are attached to the office of a Pleader in accepting vakalatnama and in acting in any cause on behalf of his client the chain of circumstances as stated above seems to be such as to lead to the irresistible conclusion that the pleader at the time when he signed the petition for the withdrawal of documents had knowledge of the fact that it included therein even those documents which were the subject of enquiry u/s 476 of the Code of Criminal Procedure.

This conclusion becomes all the more apparent when this act on the part of the pleader is judged not only in the light of the anxiety which his client must have had to get these documents somehow returned, but also in relation to what in this connection had happened in the office of the 2nd Munsif. Originally perhaps that office was reluctant to return those documents and that I think for good reasons but thereafter on 20-1-1956, it suddenly developed a different mood and then returned all the documents as prayed for without any further objection. This I am sure could not have happened without some deliberation and consultation on the part of the client and the pleader both,

Therefore all these facts and circumstances taken together leave no doubt at least on my mind that the return of the documents in this case was the result of a clear understanding on one side bet-ween the pleader and the client, and on the other between the client and the office of the 2nd Munsif Muzaffarpur. That being so, it cannot be raid that the signing of the application for the return of the documents was a mere mechanical act, or an ordinary incident or a conduct of an unintentional character.

11. In view, however, of the fact that this pleader has recently joined the profession only five years back, and it may be that for that reason he has not yet succeeded in adjusting himself is all the responsibilities which the profession demands from him as also in view of the fact that now he seems to be repentant for what he has done, I think the Court should this time take a lenient view of the matter and let him off only with a warning that in future he would never again give any occasion for any complaint like this.

12. Before, however, I leave the case it is necessary to mention here that in this connection the conduct displayed by the office of Mr, Kamesh war Prasad Verma,

who was then in charge of that Court does not also leave any good impression upon the mind of this Court. It is true that he was not the Munsif who had tried Title Suit No. 15 of 1953 But all the same, it cannot be denied that it was in his Court that the application u/s 476 of the Code of Criminal Procedure was then pending for disposal. Therefore, he should have been as a rule extra careful in maintaining proper custody of the documents involved in that proceeding.

Further, it is very surprising to find that though finally on 9-3-1956, he passed an order in favour of filing a complaint in connection with the forgery of those documents, he neither on that day nor on any other day in the course of the hearing of that matter took any trouble to see as to whether these documents were actually on the record or not, or at least to find cut as to whether even prima facie they look like forged documents. This conduct on his part seems to he more consistent with the conclusion that being aware of the fact that those documents had already been returned long ago on 20-1-1956, he left the matter knowingly unnoticed so that the enquiry, if any, for the recovery of those documents may be delayed as far as possible and in the meantime in the absence of those documents the criminal trial may ultimately fail which in this case actually happened. Such a conduct is not only reprehensible, but betrays utter lack both of responsibility and integrity on the part of this officer

Misra, J.

13. I agree.

Kanhaiya Singh, J.

14. I agree entirely.