(1927) 03 CAL CK 0017

Calcutta High Court

Case No: None

Emperor		APPELLANT
	Vs	
Satish Chandra Singha		RESPONDENT

Date of Decision: March 1, 1927

Acts Referred:

- Legal Practitioners Act, 1879 - Section 14

Citation: 110 Ind. Cas. 217

Hon'ble Judges: Panton, J; Mallik, J

Bench: Division Bench

Judgement

This is a Reference u/s 14 of the Legal Practitioners Act made by the Munsif of Bishnupur through the District Judge of Bankura. It relates to the alleged misconduct of Babu Satish Chandra Singha, a Pleader. What is reported against him is this, that he, accompanied by a clerk obtained from the officers of the Munsifs Court the record of a certain suit, on the pretext, apparently, of examining it. While the record was thus in his custody, either he or the clerk interpolated in the plaint the Bengali word "Katak" which had the effect of materially altering the sense of that document. It appears that the matter was reported to the Munsif by Babu Bhabanipat Banerji a clerk in charge of the records. This was on the 24th August last. The learned Munsif thereupon investigated the matter, and he appears to have taken the statements of Bhabanipati, Sriram Mahapatra, a clerk, Abdul Ali Khan, a peon and Satis Chandra Chaudhari, a copyist who are said to have borne out the allegations against the Pleader. The learned Munsif then called upon the Pleader to show cause why his conduct should not be reported to this Court and fixed the lath September for the hearing of the matter. On the application of the Pleader, the hearing was adjourned till the 25th September and on that date he put in a petition asserting his innocence. The hearing was then adjourned to the 20th November and then again to the 22nd November, on which date one Makhan Pramanik was examined. Thereafter the learned Munsif made the report upon which these proceedings are founded. The Crown is unrepresented.

Several points have been taken on behalf of the Pleader. In the first place, it is pointed out that the misconduct alleged against him is of a kind which would render him liable to criminal prosecution. That appears to be the case or what is so alleged is that he committed forgery within the definition of that word in the Indian Penal Code or conspired to commit that offence. That being so, the decision of this Court, founded upon earlier decisions of a similar character, in Emperor v. Rajendra Kumar Duta 94 Ind. Cas. 893 : 30 C.W.N. 186 : AIR 1926 Cal. 502 : 27 Cr. L. J. 701, is relevant. It was there pointed out that in a case where what was alleged against Pleaders amounts to a charge of aiding and abetting or conspiring to commit a criminal offence, the correct procedure to be followed is that proceedings under the Legal Practitioners Act should not be taken, but that, if it was thought necessary to take action, it should be by way of a criminal prosecution. In view of that decision, we are of opinion that these proceedings should not have been taken and must fail. It is unnecessary, therefore, for us to go into the other points urged, but possibly it is better that we should do so.

The second point is that the procedure adopted by the Munsif was in contravention of the provisions of Section 14 of the Legal Practitioners Act. It has been urged that he was wrong in recording the evidence of those clerks and the peon, before framing his charge against the Pleader. We do not see any substance in this objection. But the substantial defect in the procedure adopted is that the evidence of these persons was not received and recorded as required by Section 14 upon the date on which the enquiry was held. In other words, they were not examined as witnesses in the presence, of the Pleader. As I have pointed out, the only person who was examined was Makhan Pramanik. Nevertheless, the learned Munsif formed his opinion to a very considerable extent upon the statements made to him by the clerks and the peons in the absence of the Pleader.

The third objection taken is that, putting aside the evidence of these persons which should not be used against the Pleader, there remains only the statement of Makhan Pramanik, who, if the offence was committed, was obviously an accomplice in its commission upon whose unsupported testimony the charge could not be established.

For these reasons we are of opinion that this Reference must be rejected.