

**IN THE HIGH COURT OF PATNA**

**SPECIAL BENCH**

Civil Ref. No. 2 of 1960

Decided On: 07.02.1962

Appellants: **In Re: Baleshwar Lal, Mokhtar**

Legal practitioners Act 1879 – Section 13(b)

This proceeding against a mukhtar practising at munsif-magistrate court relates to an identification made by him of the bailor who stood surety for availing bail by an accused . The accused was granted bail in the due course, but on the date fixed for hearing of the case, the accused did not appear and apparently absconded. Notice was issued to the bailor to show-cause as to why his bail bond should not be forfeited. Notice could not be served to the bailor inasmuch as no such person of the name, parentage and address given in the bail bond was to be found. The mukhtar who identified the bailor was directed by the court to supply the correct address of bailor, but mukhtar failed to carry out the direction of the court. Accordingly, charge u/s – 13(b) of the Legal Practitioners Act was drawn up against the mukhtar for wrongly identifying bailor who stood surety for the accused. Mukhtar did not reply to the charge. Magistrate held an enquiry and recommended for suspension or dismissal of the mukhtar to the District Judge. The District Judge recommended for Mukhtar's suspension for at least 2 years from the practices.

High Court held – ***Mukhtar identified the bailor in collusion with accused so that he might run away and no one might be held responsible in as much as no such bailor of parentage and address given in the bail bond existed. Such conduct on his part renders the Mukhtar unfit to be kept on the roll of Mukhtars.***

It is ordered that let the Mukhtar be dismissed from the list of Mukhtars and that his name be removed from the roll.

[Para 1,2, and 3]

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Appellants:**In Re: Baleshwar Lal, Mokhtar**

**Hon'ble Judges/Coram:**

*S.C. Mishra, Udai Sinha and S.P. Singh, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Addl. Govt. Pleader*

*For Respondents/Defendant: Parmanand Saran Singh, Adv.*

**ORDER**

1. This proceeding against Sri Baleshwar Lal, Mukhtar practising at Monghyr, relates to an identification made by him of the bailor one Kishun Gope who stood surety, for an accused person Baldeo Mushar in case no. 92OC2 of 1958 (State v. Baijnath Singh and others) in the court of Sri Ramkripal Singh Munsif-Magistrate, Monghyr. The accused was granted bail in due course, but on the date fixed for hearing of the case the accused did not appear and apparently absconded. Notice was accordingly issued upon Kishun Gope, the bailor, to show cause why his bail bond should not be forfeited. But notice could not be served inasmuch as no such person of the name, parentage and address given in the bail bond was to be found. The Mukhtear, Sri Baleshwarlal, identified the bailor and) accordingly he was directed by the court to supply the correct address of Kishun Gope; but the Mukhtear failed to carry out the direction of the court.

Accordingly a charge, was drawn up against him under Section 13(b) of the Legal practitioners Act\_ and he was noticed to show cause as to why action should not be taken against him for wrongly identifying Kishun Gope who stood surety for the accused, Baldeo Mushar. Notice was duly served on the 5th February, 1960. He did not show cause on the date fixed. It appears from the ordersheet, however, that on the 24th February, 1960, a petition was filed on behalf of the Moktear, Sri Baleshwarlal, for one month's time to file show cause. The learned Munsif-Magistrate made it clear that no further adjournment would be granted, and that the show cause petition must be filed by the date fixed on the 22nd March, 1960. The Moktear, however, did not put in a show cause Petition even on that date. Accordingly the learned Munsif held an enquiry on the materials available and found that

"the charge of wrong and false identification has been established against the said Moktear, vide order passed on 8-8-60 and he deserves suspension or dismissal or some other punishment under Section 13 of the Legal Practitioners Act."

He sent a report to this effect to the District and Sessions Judge, Monghyr.

The learned District and Sessions Judge, on a consideration of the facts and circumstances of the case endorsed the finding of the learned Munsif-Magistrate and has forwarded his recommendation to this Court that the Mukhtear should be suspended from practice at least for two years.

**2.** Baleshwarlal has been represented in this Court by Mr. Parmanand Saran Sinha, Advocate. Since he did not choose to file a show cause petition before the learned Munsif Magistrate we thought it proper to give him an opportunity to be heard before us in person so that he might be able to explain the circumstances in which he identified Kishun Gope, his parentage and address given in the bail bond as those of a genuine Kishun Gope of that locality although it appeared subsequently that no such person was to be found there. Learned Counsel prayed for time on the ground of illness of the Mokhtear. It is to be borne in mind that a petition was filed in the court of the Munsif Magistrate On the 24th February, 1960, for one month's time, but he failed to appear there also as stated above.

In this Court we granted time to learned Counsel once on the 17th January, 1962, adjourning the hearing to the 24th of January, 1962. On that date a prayer was again made for adjourning the hearing to this date, namely, the 7th of February, 1962, on the ground of continued illness of the Mokhtear, but Baleshwarlal has not appeared even today. It is obvious, therefore, that he has kept away in continuous disregard of the order not only of the learned Munsif-Magistrate but also of this Court. Mr. Parmanand Saran Sinha also states than he wrote to his client several letters but he did not respond to any of the letters.

The inference therefore is clear that the Mokhtear identified Kishun Gope as a bailor in the circumstances which give rise to strong suspicion of collusion against him with the accused Baldeo Mushar so that he might run away and no one might be held responsible inasmuch as no Kishun Gope of the parentage and address given in the bail bond in fact existed. Such conduct on his part renders Baleshwar Lal unfit to be kept on the roll of Mokhteers. Even the conduct of the Mokhtear is doubly reprehensible on account of the refusal on his part to file a show cause petition before the learned Munsif Magistrate and to appear in person before us. There is no extenuating circumstance in his favour.

**3.** Accordingly we order that Sri Baleshwarlal be dismissed from the list of Mokhteers and that his name be removed from the roll.