

IN THE HIGH COURT OF PATNA

SPECIAL BENCH

Civil Ref. No. 4 of 1952

Decided On: 01.12.1953

Appellants:**In Re: Badri Narain Lal**

Legal Practitioners Act, 1879 – Section 14

A reference by the District Judge of Shahabad under Section 14 of the Legal Practitioners Act recommending a pleader practising at Buxar to, be suspended from practice of a period of three years.

All the three judges, in their respective separate judgments, found the reference defective.

It was held that the alleged misconduct took place in the court of munsif, so munsif was the proper authority to move reference, and not the District Judge, hence reference was discharged.

[Para 6, 7, 12 and 13]

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Appellants:**In Re: Badri Narain Lal**

Hon'ble Judges/Coram:

Das, Jugal Kishore Narayan and Jamuar, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Govt. Adv.

For Respondents/Defendant: A.B.N. Sinha, Adv.

JUDGMENT

Jugal Kishore Narayan, J.

1. This is a reference by the District Judge of Shahabad under Section 14, Legal Practitioners Act recommending that Shri Badri Narain Lal, a pleader practising at Buxar, be suspended from practice for a period of three years.

2. The facts giving rise to the proceeding may briefly be stated as follows. One Chhatradhari Dubey, the decree-holder in Execution Case No. 373 of 1949 pending in the Court of the 2nd Munsif of Buxar, applied in November, 1951, for withdrawal of the instalment money which had been deposited by the judgment-debtor in the said execution case. The petition for withdrawal had been filed through the pleader, Shri Badri Narain Lal, and, on 28-11-1951, the amount was withdrawn. On 25-3-1952, Chhatradhari Dubey filed a petition before the Munsif alleging that the pleader, though he had withdrawn Rs. 1,133/8, had not paid the amount to him, and was not inclined to pay it. This petition was registered as an application under Section 14, Legal Practitioners Act, on 27-3-1952, and the Munsif directed that notice be issued to the opposite party to show cause by 10-4-1952, why his conduct should not be reported to this Court for necessary action. The notice was served by 21-4-1952, on which date the pleader appeared and filed a petition for time.

On 3-5-1952, the applicant Chhatradhari Dubey, filed a petition stating that he had received Rs. 1,133/8/- from the opposite party, and hence did not want to press his application. This petition was put up before the learned Munsif on 5-5-1952, and, because it did not contain a revenue stamp, a revenue stamp was allowed to be affixed to it. On 10-5-1952, which was the next date fixed, neither the applicant nor the opposite party turned up, and the learned Munsif, after stating the facts, expressed the opinion that the pleader, who had not paid the amount to the decree-holder, was guilty of "temporary embezzlement". He then sent the record of the case to the District Judge for necessary action.

The District Judge took up the matter, and ordered notice to be issued to the pleader calling upon him to show cause why the matter should not be reported to the High

Court. Cause was shown by 17-6-1962, & on 14-7-1952, the District Judge passed an order that he would hear this matter on 26-7-1952, at Buxar where he would be inspecting the Criminal Courts. Though the learned District Judge had fixed 26-7-1952, as the date, he took up the matter at Buxar on 25-7-1952, on which date he examined Chhatradhari Dubey and Babu Babbanji Lall, a leading lawyer of the Buxar Bar, and, on 5-8-1952 he submitted this report to the High Court recommending that the pleader be suspended from practice for a period of three years.

3. Mr. A.B.N. Sinha, who has appeared before us for the pleader has drawn our attention to the fact that though the matter was to be heard on 26-7-1952, the District Judge examined the witnesses on 25-7-1952, and that, after examining the two witnesses, Chhatradhari Dubey and Babu Babbanji Lall, he did not allow any opportunity to Shri Badri Narayan Lal for examining his own, witnesses. The order-sheet does not also show that, any argument was heard. Learned Counsel has further urged that, as there is no report by the presiding officer, that is, the Munsif of Buxar, the reference by the District Judge to this Court is incompetent, and no action can be taken on his report.

Certain decisions of this Court have been relied on by the learned Counsel, and they are the decisions in -- 'Mt. Janak Kishore In the matter of AIR 1916 Pat 115 (A); -- 'Emperor v. Satyendra Nath' AIR 1920 Pat 274 (B) & -- 'Mukhtar Manzurul Haq v. King Emperor' MANU/BH/0273/1922 : AIR 1923 Pat 185 (1) (SB) (C). In the first case, Mullick, J. pointed out that the terms of Section 14, Legal Practitioners Act make it incumbent that the enquiry should be made by the presiding officer of the Court, and Atkinson, J. observed that Section 14 provides a procedure to be followed, and nominates the person who should hold the enquiry and make the charge. In the second case, it was distinctly held that the section contemplates that the enquiry should take place before the presiding officer of the Court in which the misconduct or offence is alleged to have taken place. This case and the case in -- 'MANU/BH/0063/1922 : AIR 1923 Pat 185 (1) (SB) (C)', are Special Bench decisions of this Court, and they are to the same effect.

These decisions, no doubt, support the contention of Mr. Sinha before us; but the learned Government Advocate has submitted that these cases were wrongly decided, and he has cited the cases reported in 'A, a Mukhtar In the matter of MANU/BH/0208/1937 : AIR 1938 Pat 17 (SB) (D); -- 'In re Rabindrachandra Chatterjee' MANU/WB/0384/1922 : AIR 1922 Cal 484 (E) and -- 'In re Venugopala Nayudu' MANU/TN/0758/1925 : AIR 1926 Mad 1044 (P). The decision in -- 'MANU/BH/0208/1937 : AIR 1938 Pat 17 (SB) (D)', is also a Special Bench decision; but in this case no reference is made to the earlier decisions of this Court.

4. There is also another Special Bench decision of this Court -- 'In re Banamali Das' MANU/BH/0237/1922 : AIR 1922 Pat 603 (2) (G) in which it was held that when a Munsif, in whose Court a pleader had filed a written statement on behalf of a party, without being instructed and authorised to do so, declined to take action under the Legal Practitioners Act, the District Judge had no jurisdiction to refer the matter to the High Court, as under Section 14 it was only the presiding officer of the Court in which the offence was committed who had the power to make the reference. These decisions, unfortunately, have not been mentioned in the Special Bench decision in -- 'MANU/BH/0208/1937 : AIR 1938 Pat 17 (SB) (D)'. The Calcutta case reported in -- 'AIR 1922 Cal 434 (E)', was referred to with approval by the Special Bench in -- 'MANU/BH/0208/1937 : AIR 1938 Pat 17 (SB) (D)', and this Calcutta decision, no doubt, supports the view that the District Judge can institute proceedings against a

pleader practising before him even though the offence has been committed in the Court of a Judge subordinate to him.

5. Besides these decisions, the learned Government Advocate has referred to the Madras case, in -- 'MANU/TN/0758/1925 : AIR 1926 Mad 1044 (P)', in which the decisions of "this Court, referred to above, have been expressly dissented from. In this Madras case, their lordships have observed that Section 14, Legal Practitioners Act does not limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed, and that to say that it does is to read into Section 14 something that is not there. In my opinion, even if this decision is followed, we would not be able to hold in this particular case that the reference that has been made by the District Judge is competent. The District Judge did not institute the proceedings in this case in connection with any offence committed before him. There can be no warrant for the proposition that, while the Munsif could draw up the charge and deal with the matter upto a certain stage, the report could be submitted to this Court by the District Judge. Even on the authority of the Madras case, the report submitted by the District Judge cannot be regarded as competent. The position in this case is a peculiar one, inasmuch as, while the Munsif started the proceeding, the report to this Court had to be submitted by the District Judge. None of the authorities cited can support the procedure adopted in this case, and, therefore, without making any attempt to resolve the conflict of judicial opinion, ap-parent or real, we can, in this case, reject the reference as thoroughly incompetent.

We cannot overlook the fairly elaborate provisions contained in Section 14, and it is manifest that these provisions were not complied with by the Munsif in this case. It is the Munsif in whose Court the execution case in which the money had been deposited was pending, and it is the Munsif before whom the complaint was made. The Munsif took cognizance, and, without taking any evidence, recorded a finding and sent the record to the District Judge who held some further enquiry and reported the matter to the High Court. The report, according to the provisions of Section 14, had to be submitted to this Court through the District Judge, end, according to the last paragraph of Section 14, the report had to be accompanied by the opinion of the District Judge. The learned Government Advocate candidly conceded that this reference could not be accepted because there was no complete enquiry by the Munsif.

The learned Counsel for the pleader has produced before us the licence under which the pleader has been practising & this licence is dated 13-5-1953. The pleader has got the license for practising only in the Munsifs' Courts; and we have been assured that the previous licences were also of this nature. If this is the position, the learned District Judge could not deal with the matter simply because he was the judicial head of the district or because the Munsif was his subordinate. The pleader cannot be said to be practising before him, and, therefore, he had no jurisdiction to draw up any proceeding or hold any enquiry under Section 14, Legal Practitioners Act. In any view, the contention urged by Mr. Sinha must succeed, and the reference has to be discharged.

6. No doubt, under the law we can ourselves hold an enquiry & suspend or dismiss the pleader if he is found guilty. But this is not a fit case in which we j should take any action. The facts of this case are somewhat peculiar. The pleader had, no doubt, withdrawn the money; but he had stated that the money had actually been withdrawn in the presence of Chhatradhari Dubey, the decree-holder, and that he himself had spent something out of the withdrawn money. A sum of Rs. 206/- was said to have

been spent in purchasing Court-fee in Money Suit No. 201 of 1951 which Chhatradhari Dubey had filed in the Court of the 1st Munsif of Buxar against one Man Rakhan Ahir. Shri Babbanji Lal, a very senior pleader of the Buxar Bar, took some interest in the matter, probably because he thought that the prestige of the Bar was involved; but, even after hearing the representations of the parties, that is, Chhatradhari Dubey and the pleader, Shri Badri Narain Lal, he could not make sure that this was really a case of misappropriation or temporary embezzlement. The complaint that had been made by Chhatradhari Dubey against the pleader disclosed a serious criminal offence on the part of the pleader; but, though Chhatradhari Dubey had boldly asserted that the pleader had misappropriated the decree money amounting to Rs. 1,133/8/-, he did not file any criminal case against the pleader.

As was pointed out by the Calcutta High Court in -- 'Chandi Charan Mitter, A Pleader, in the matter of AIR 1920 Cal 565 (H), though there is no inflexible rule that there must in every case be a trial and conviction for criminal misconduct before disbarment will be ordered, that should be the ordinary rule where the misconduct alleged has no direct connection with the conduct of the pleader in his practical and immediate relation to the Court. I respectfully agree with Mookerjee, A.C.J. that the test to be applied in each case is whether the person concerned will be prejudiced by the adoption of summary procedure for the investigation of what is in reality a grave Criminal charge, undoubtedly, if the procedure followed in the present case is approved, the result may be an obvious injustice to the pleader. A proceeding under the Legal Practitioners Act is, after all, a summary proceeding where the pleader will not have the same advantage which would be available to him if there is a regular trial in a Criminal Court.

7 . A Special Bench of this Court held in -- 'In re A, Mukhtar of Bargarh' MANU/BH/0057/1942 : AIR 1943 Pat 52 (I), that where the charge brought against a legal practitioner amounts to an allegation of the commission of a serious crime, the proper procedure to follow is to launch a prosecution for that crime, and, if a conviction is obtained, to institute proceedings under the Legal Practitioners Act. Harries, C.J., who delivered the judgment of this Court, further observed as follows:

"It must be remembered that if a prosecution is launched there is a full trial with a right of appeal, whereas the proceedings under the Legal Practitioners Act are of a summary character. Where serious charges are made, it would be wrong to deny the accused mukhtar a full trial and his right of appeal. In my Judgment, we should follow these decisions (his Lordship having been pointed out that in a series of cases this was the view taken) in the present case and hold that this is a case which should be tried in the criminal Courts and in the event of a conviction the matter can then be dealt with by this Court under the Legal Practitioners Act."

For this reason also, the present reference cannot be accepted, and we in this Court cannot regard this present case as one in which we should ourselves institute a separate proceeding.

8. In the result, therefore, I would discharge this reference.

Das J.

9. I agree with my learned brother that the reference should be discharged, and we should take no action against the pleader. I must say, however, that there is an apparent conflict between the view expressed in -- 'MANU/BH/0063/1922 : AIR 1923

Pat 185 (1) (SB) (C) and that expressed in -- 'MANU/BH/0208/1937 (D)'. Perhaps, the conflict of views disclosed by the aforesaid two decisions can be resolved; but in the present case nothing turns upon that conflict, and I reserve to myself the right to express myself finally with regard to the apparent conflict between the two decisions referred to above if and when an occasion arises in the future. I must not be understood to have expressed my final opinion as to the correctness of one view or the other, expressed, in the two decisions referred.

10. The present case, in my opinion, can be disposed of on two very short grounds. It has been stated at the Bar that the pleader concerned had the right to practise only in the Courts of the Munsifs at Buxar. A licence has been produced in support of that statement. Whatever view one takes of Section 14, Legal Practitioners Act, the District Judge could not initiate a proceeding against the pleader, if the pleader had neither the right to practise in his Court nor did he in fact practise in the court of the District Judge of Shahabad. As a matter of fact the decree-holder made an application to the Munsif for taking necessary disciplinary action against the pleader. Whether that application was made to the Munsif as a presiding officer of the Court in which the pleader practised or as presiding officer of the Court in relation to a proceeding in whose Court the alleged malpractice was committed, it was the duty of the Munsif to hold an enquiry as contemplated by the first part of Section 14, Legal Practitioners Act. The Munsif did not hold any such enquiry as is contemplated by Section 14.

The District Judge of Shahabad came in under the second part of Section 14 which requires that a report made by a Civil Judge subordinate to the District Judge should be made through such Judge. I have already stated that no proceeding was initiated in the Court of the District Judge. The District Judge, no doubt, examined one or two witnesses; but he also did not hold an enquiry as is contemplated under Section 14, Legal Practitioners Act. In this case the District Judge was not competent to hold an enquiry for two reasons: firstly, the pleader concerned had no right to practise in the Court of the District Judge, and, secondly, no application had been made to the District Judge for any disciplinary action against the pleader. That being the position, there was clearly non-compliance with the provisions of Section 14, Legal Practitioners Act, irrespective of the question as to whether the view expressed in -- 'MANU/BH/0063/1922 : AIR 1923 Pat 185 (1) (SB) (C)' or the view expressed in -- 'MANU/BH/0208/1937 : AIR 1938 Pat 17 (SB) (D)' is correct. Section 14, Legal Practitioners Act not having been complied with, the reference is incompetent.

11. My second ground for rejecting the reference is this: the facts alleged on behalf of the decree-holder, if true, disclose a very serious criminal offence, and there are many decisions of this Court which have laid down that when the facts alleged against a member of the Bar disclose a serious criminal offence and the facts are totally denied, as in the present case, it is not proper that an enquiry should be made under the summary procedure provided under Section 14, Legal Practitioners Act. Though there is no inflexible rule in the matter, the question of prejudice is relevant and of importance. There can be no doubt that the pleader will be greatly prejudiced if an enquiry is held under the summary procedure in respect of charges which disclose a serious criminal offence and which the pleader took the earliest opportunity to deny. This is also a ground why the reference should not be accepted in the present case.

12. For the aforesaid two reasons, I agree with my learned brother that the reference should be rejected and we should take no action against the pleader concerned. In view of these two reasons, it is unnecessary to express any opinion on the merits of

the allegations made against the pleader.

Jamuar, J.

13. In view of the enquiry said to have been made in this case not being in accordance with the provisions of Section 14. Legal Practitioners Act, I agree that this reference ought to be discharged. The pleader is alleged to have committed a certain offence. This offence, if committed, was a serious criminal offence, and, in my opinion, in the particular circumstances of this case, it ought not to have been investigated in a summary procedure provided by the Legal Practitioners Act.
