

IN THE HIGH COURT OF PATNA (SPECIAL BENCH)

Civil Ref. No. 1 of 1958

Decided On: 09.01.1961

Appellants:In Re: Rameshwar Prasad Sinha

Legal Practitioners Act, 1879- Sec. 13(b), 14- sale proceeds belonging to applicant deposited in Execution Case in court withdrawn by pleader Rameswar Prasad Sinha in collusion with his clerk Girja Prasad. (Para-1)

In discharge of duty as pleader failed to exercise care & diligence- pleader neither bothered to satisfy nor made any enquiry from his clerk about actual payment to client- clerk who withdrew the money was also private Karperdaz of client-pleader after endorsement not thought it necessary to make enquiry about payment- pleader receiving payment order on behalf of client to confirm about the actual payment & not leave matter entirely in hands of clerk- not a case to constitute gross negligence or of professional misconduct. (Para-3)

IN THE HIGH COURT OF PATNA (SPECIAL BENCH)

Civil Ref. No. 1 of 1958

Decided On: 09.01.1961

Appellants:**In Re: Rameshwar Prasad Sinha****Hon'ble Judges/Coram:***Khaleel Ahmed, S.C. Mishra and Udai Sinha, JJ.***Counsels:***For Appellant/Petitioner/Plaintiff: Govt. Adv. and Lala Rajendra Prasad, Adv.**For Respondents/Defendant: J.C. Sinha, Adv.***ORDER**

1. On a report submitted by the District Judge, Monghyr, dated the 7th May, 1958, a rule was issued by this Bench on the 1st August, 1958, calling upon Sri Rameshwar Prasad Sinha, Pleader, Monghyr, to show cause why he should not be proceeded against under Sections 13 (b) and 14 of the Legal Practitioners Act. Sri Rameshwar Prasad Sinha, has now put in appearance, and we have heard Mr. J.C. Sinha, who appears for Sri Rameshwar Prasad Sinha. The allegation made against Sri Rameshwar Prasad Sinha is that a sum of Rs. 800-14-6, being the excess sale proceeds belonging to the applicant Babu Lal Sao stood deposited in Execution case No. 65 of 1953 in the court of the Munsif Second Court, Monghyr, and that the applicant filed a petition on the 16th November, 1956, through Sri Chaturanand Misra, Pleader, for the withdrawal of the amount.

The payment order was rejected on the ground that one payment order had already been passed for the amount sought to be withdrawn. On verification from the record, it subsequently appeared that Sri Rameshwar Prasad Sinha, Pleader, in collusion with Girja Prasad had already withdrawn the money from the State Bank of India at Monghyr, This was followed by an enquiry by Sri R.P. Tandan, Munsif, on the application filed by Babu Lal Sao. Mr. Tandan on hearing the parties held as follows :

"In the result, therefore, I come to the irresistible conclusion that the charge of professional mis-conduct namely retention and misappropriation of client's money has been established against Sri Rameshwar Prasad Sinha, Pleader, opposite party No. 1 and, therefore, the record is being submitted to the District Judge for report to the Hon'ble High Court for necessary orders under Section 14 of the Legal Practitioners Act,"

This order is dated the 30th August, 1957. Thereafter the District Judge by his order dated the 7th May, 1958, sent the entire record of the case to this court for necessary action, whereupon the rule, already referred to above, was issued by this court.

2. Sri Rameshwar Prasad Sinha in his show cause petition before the Munsif had admitted that he did receive the payment order but thereafter having endorsed the same in the name of his clerk Girja Prasad handed it over to him with a direction that

he should make the payment to Babu Lall Sao, He has, therefore, denied that the money as alleged by the petitioner was in any way withheld by him. Then the show cause petition filed by Girja Prasad shows that he withdrew the money from the said Bank, and thereafter made the payment of the same on getting a receipt for it from Babu Lall Sao.

That receipt is dated the 12th June. 1956. Subsequently, however, when the matter was still pending in the court of the District Judge, he is said to have made another payment to the petitioner Babu Lall Sao, and in support of this payment another receipt was issued by Babu Lall Sao. That is dated the 21st September 1957.

3. We have carefully gone through the entire materials on the record, and the main point that has been stressed before us as against Sri Rameshwar Prasad Sinha is that he in the discharge of his duty as a pleader failed to exercise that care and diligence which he ought to have done inasmuch as he having once endorsed the payment order in favour of his clerk, never thereafter bothered to satisfy himself that the money withdrawn from the bank on the basis of that payment order was ever in fact paid to Babu Lall Sao. Now the fact that he never made any enquiry about the actual payment is not denied.

But that indifference alone on his part, in our opinion, on the facts of the present case, is not such as to constitute conclusively either a case of gross negligence or that of professional misconduct against him; for, after all, it is the admitted case of the parties that Girja Prasad, who actually withdrew the money from the bank was not only the clerk of the pleader, but also the private karpardaz of Babu Lall Sao. For that reason, therefore, it is quite understandable that the learned pleader may not have, having once made the endorsement, thought it necessary to make any enquiry thereafter about the actual payment.

We cannot, however, at the same time help observing that as a rule in a case like this it is always safe and desirable that a Pleader when receiving a payment order on behalf of his client should make it a point to see that the same Or the money received in lieu thereof from the bank is actually paid to the person concerned and should not leave the matter entirely in the hands of his clerk alone, otherwise there is every danger that the trust reposed in him may be left exposed to be abused in some form or other. We, therefore, hope that in future a better course and conduct will be followed in this respect.

4 . With the above observation, therefore, the rule is discharged but, in the circumstances of the Case, there will be no order for costs.