

IN THE HIGH COURT OF PATNA

SPECIAL BENCH

Civil Ref. No. 1 of 1961

Decided On: 29.04.1963

Appellants:In Re: Shashi Bhusan Dutta

Legal Practitioners Act, 1879- Sec.14- action against Pleader for casting aspersion upon Ld. Additional Subordinate Judge- moral and professional duty of the lawyer to be satisfied about the fact- there may be some foundation for allegation before filing in court- dual responsibility of litigant and lawyer- failure in not consulting the lawyer engaged in the earlier proceeding-dereliction of duty on the part of pleader cannot be exonerated from the responsibility for having made allegation- should have exercised elementary precaution. (Para-1,6)

Pleader careless in setting out ground no.2- no petition of transfer found filed before District Judge- lawyer to remain alert in making statement if relates to allegation- pleader guilty of improper conduct- Ld. Subordinate Judge justified in taking serious view. (Para-7,8)

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Appellants:**In Re: Shashi Bhusan Dutta**

Hon'ble Judges/Coram:

S.C. Mishra, Kamla Sahai and S.N.P. Singh, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Addl. Government Pleader

For Respondents/Defendant: Jaleshwar Prasad and Gupteshwar Prasad

JUDGMENT

S.C. Mishra, J.

1. This is a reference by the learned District Judge of Saran under Section 14 of the Legal Practitioners Act (Act 18 of 1879) for action against Sri Shashi Bhusan Dutta, Pleader, Chapra, in the following circumstances. Title Appeal No. 3/23 at 1960 was heard by Sri Sheo Shankar Dayal, Additional Subordinate Judge, Chapra, on the 10th of December, 1960, and 14th of December, 1960, was fixed for judgment. On the latter date, when the learned Additional Subordinate Judge was about to deliver judgment in the appeal, at about 2.30 P. M., Sri Shashi Bhusan Dutta filed a petition in his own handwriting with a fresh power executed in his favour by the appellant Mahatam Nonia in which he made the following allegations: -

"(1) That the appellant has genuine doubt that justice will not be done in the appeal for improper hearing of the argument.

(2) That the appellant has filed a petition to the District Judge for transfer of the appeal to another Court.

(3) That the respondent has disclosed in his village that he has manoeuvred to get judgment in his favour."

A prayer was made in the petition that the delivery of judgment might be stayed till the order of the District Judge in the matter was obtained.

2 . The learned Additional Subordinate Judge on receipt of the application immediately examined Mahatam Nonia, who was present in Court, in presence of the Pleader, Sri Shashi Bhusan Dutta, as also Sri Ramsewak Singh, Pleader, Sri Bisheswar Dayal Sinha and Sri Daroga Prasad, Advocates. It may be stated that Sri Bisheshwar Dayal Singh, Advocate, and Sri Ramsewak Singh, Pleader, appeared for the appellant and Sri Bisheshwar Dayal Sinha only argued the appeal on his behalf, Sri Daroga Prasad argued the appeal on behalf of the respondents. Mahatam Nonia made the following statement: -

"I do not know what is written in this petition. I did not tell my pleader that I would not get justice in this Court, nor did I tell my pleader that the respondents were giving out in the village that they have manoeuvred to obtain a judgment in their favour."

The learned Additional Subordinate Judge, in the next place, examined Sri Shashi Bhusan Dutta, Pleader. He stated, in substance, that he wrote out the petition on instructions given to him by the appellant Mahatam Nonia. He said further that he had read out the petition to him and Mahatam admitted it to be correct. He added, however, that he drafted the petition after being fully satisfied about the correctness of the statements made in the petition. The Court thereafter examined Sri Ramsewak Singh, Pleader. He said that Mahatam had approached him also with a request for filing a petition for transfer of the appeal from that Court to some other Court. He did not furnish him without (sic) ground, however, for filing the petition and, accordingly, he refused to file one. Sri Bisheshwar Dayal Sinha and Sri Daroga Prasad, appearing for the appellant and the respondents, respectively, who also examined, as I have said before, did not say anything material. They only stated that they heard Mahatam Nonia saying that he had not given any instruction to Sri Shashi Bhusan Dutta regarding the grounds contained in the petition of transfer filed on his behalf.

3. The learned Additional subordinate Judge took serious notice of the allegations, casting aspersions upon his integrity, contained in the petition and called upon Sri Shashi Bhusan Dutta to show cause as to why he should not be punished for contempt of Court. Sri Dutta showed cause and maintained therein that he had not made any statement on his own initiative but only on the instructions given to him by the appellant Mahatam Nonia. Since, however, the application, on proper examination, appeared to be improper and derogatory to the dignity of the learned Additional Subordinate Judge, Sri Dutta tendered his unqualified apology.

4. The learned Additional Subordinate Judge felt that in view of the unqualified apology he would have accepted it and would not have proceeded with the matter further. Since, however, Sri Shashi Bhusan Dutta endeavoured to justify his conduct although Mahatam Nonia plainly stated that he had not given any instruction to Sri Dutta as to the grounds of the petition, the matter could not be treated lightly and a mere apology would not meet the ends of the situation. Accordingly, he forwarded the proceeding against Sri Shashi Bhusan Dutta to the learned District Judge of Saran for reporting the matter to this Court under Section 14 of the Legal Practitioners Act for proper action against Sri Dutta.

5. Mr. G.P. Shahi appearing in support of the reference has placed before us the relevant documents as also the statements made by the lawyers referred to above. In my opinion, so far as ground No. 3 is concerned that the respondents disclosed in the village that they had manoeuvred to get judgment in their favour, it was denied by Mahatam Nonia, but the same having been communicated to the learned pleader, as claimed by him, it is a matter about which it is difficult to be positive one way or the other. It may as well be that Mahatam Nonia made that statement to the pleader in order to get the appeal transferred from the Court of the learned Additional Subordinate Judge -- a position which fits in with the statement made by Sri Ramsewak Singh to the effect that Mahatam had approached him also for getting the appeal transferred although he was not able to disclose it to Sri Ramsewak Singh, or that Sri Shashi Bhusan Dutta without any instruction put forward these grounds in order to make out a plausible case for transfer. In my opinion, however, it is not safe

to say anything one way or the other in the circumstances and Sri Dutta's statement cannot be ruled out as being unfounded.

6 . So far as ground No. 1, however, is concerned, this position is somewhat different. That contains a categorical statement that the appellant had genuine doubt that justice would not be done in the appeal for improper hearing of the argument. Whether the appeal was properly heard or not was a matter about which the lawyers engaged for the appellant were in a better position to make a statement than the client himself who, for all one knows, would not be able to follow the argument. It was the demand, therefore, of professional propriety on the part of Sri Shashi Bhusan Dutta to consult either both Sri Ramsewak Singh and Sri Bisheshwar Dayal Sinha or any one of them to be certain of the position before he could feel justified in putting forward ground No. 1 in the petition.

It may be repeated once again for the guidance of the members of the Bar that the law in regard to the allegations in a petition for transfer is that the responsibility for the allegations does not lie exclusively upon the litigant. It is the moral and professional duty of the lawyer engaged to be reasonably and generally satisfied about the fact that there may be some foundation for the allegation before he agrees to put it down on paper and sign it and file in Court. It is a kind of dual responsibility although the manner in which it is to be discharged operates differently so far as the litigant and the lawyer engaged by him are concerned. Failure, in the circumstances, to have taken the obvious precaution, as in the present case of not consulting the lawyer engaged, shows dereliction of duty on the part of Sri Shashi Bhusan Dutta and he cannot be exonerated from the responsibility for having made the allegation. It may also be emphasised that it is curious indeed that the suspicion of Sri Dutta was not roused when the appellant, who had never engaged him before in the appeal, preferred to go to him and execute a fresh power in his favour only for making the petition for transfer containing allegations regarding the manner of the hearing of the appeal when he himself was not present during the hearing of the case. The amount of care required of a professional man, in the circumstances, like those in the present case, is on par with that of a lawyer when he is engaged by a party only to enter into a compromise in a proceeding. Just as in the latter case it is the duty of the lawyer engaged to be satisfied as to why it is that he is being only engaged for a compromise, likewise in the present case, Sri Shashi Bhusan Dutta should have exercised the elementary precaution of feeling suspicious about the conduct of Mahatam Nonia and, as I have said before he should have, at any rate, consulted Sri Bisheshwar Dayal Sinha and Sri Ramsewak Singh or at least any of them, who only could have instructed him, and then he could have been justified in putting forth ground No. 1 in the petition.

7 . The learned pleader appears to have been careless in the matter of setting out ground No. 2 as well. It relates to a petition having been filed before the District Judge for transfer of the appeal from the Court of Sri Sheo Shankar Dayal to another Court. It transpires that no such petition was actually filed before the District Judge for transfer of the appeal and yet Sri Shashi Bhusan Dutta put down in the petition that the appellant had filed a petition of transfer before the District Judge. It is for a lawyer to remain alert as to what statement he is making, and very much more so when the statement relates to allegations that would justify a petition for transfer. To put down, therefore, in definite terms that the appellant had filed a petition for transfer when in fact no petition was filed either then or even thereafter, also shows that Sri Shashi Bhusan Dutta was careless as to what allegation was to be put down in the petition for which also he could not avoid personal responsibility. Apart from

this, as I have said above, Sri Dutta also said in his statement before the learned Additional Subordinate Judge that he drafted the petition after being fully satisfied about the correctness of the statement made in the petition, when it is clear that he could not have been at all satisfied with regard to ground NOS. 1 and 2, whatever might be said with regard to ground No. 3. Therefore, this also goes against him.

8. In the result, therefore, it appears to be dear beyond doubt that Sri Shashi Bhusan Dutta has been guilty of improper conduct in putting in a petition for transfer and the learned Additional Subordinate Judge was justified in taking a serious view. Accordingly, the reference is accepted and Sri Shashi Bhusan Dutta must be held guilty of improper conduct.

9. As to the punishment, however, to be awarded, I am not inclined to take a serious view for the reason that Sri Dutta offered an unqualified apology. Since he was confronted with the statements of Mahatam Nonia, it may very well be, as I have said before, that he felt somewhat non-plussed when Mahatam Nonia stated that he had given no instruction with regard to the content in the matter of petition for transfer, although he owned to have given his signature on the Vakalatnama as also the fact that he had engaged Sri Dutta to file a petition for transfer. As to ground Nos. 1 and 2, however, it appears that his conduct has not been proper and up to the mark as a legal practitioner of 15 year's standing. If he were a junior at the Bar, I might have been inclined to take a lenient view. Even as it is, however, since many members of the Bar do not fully appreciate their responsibility in the matter of allegations made in the petition of transfer and seem to have a feeling that the responsibility for the statement lies with the party making it and not with the lawyer concerned.

I think that it would be sufficient in the present case to suspend Sri Shashi Bhusan Dutta from practice for a period of one month from this date. It is expected that Sri Dutta will be more cautious in future in regard to this matter and members of the Bar also will take notice of this case in particular to serve as a guidance for them in regard to the allegations made in petitions for transfer, although the position has been put beyond doubt in previous judgments of this Court and other Courts as well (vide S. Mukhtar Madhepura. In the matter of MANU/BH/0098/1929 : AIR 1929 Pat 151, K A. Pleader. In the matter of 36 Cri LJ 1 : AIR 7934 Pat 598, Dwarka Prasad, In the matter of (MANU/UP/0192/1923 : ILR All 121 : AIR 1924 All 253) and Ganwar v Emperor AIR 1944 Sin 153 of pp. 161 and 162).

Kamla Sahai, J.

10. I agree.

S.N.P. Singh, J.

11. I agree.