

MANU/BH/0146/1918

Equivalent Citation: 45Ind. Cas.684

IN THE HIGH COURT OF PATNA

Civil Reference No. 2 of 1918

Decided On: 12.04.1918

Appellants: **Emperor**

Vs.

Respondent: **Bir Kishore Rai**

Hon'ble Judges/Coram:

B.K. Mullick, Sir Ali Imam, Kt. and Thornhill, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Government Advocate for the Crown

For Respondents/Defendant: Pugh, G.C. Pal, Lalmohan Ganguli and Gajendra Prasad Das

Subject: Civil

JUDGMENT

B.K. Mullick, J.

1. This matter arises out of a reference under the Legal Practitioners Act, XVIII of 1879, from the District Judge of Cuttack regarding a Pleader named Bir Kishore Rai. The learned Judge has found the Pleader guilty of three charges under section 13, clause (b), of the Act and has referred the case under section 14 of the Act for our orders. Pending the investigation the learned Judge has suspended the Pleader from practice with effect from the 7th of February 1918.

2. The charges are three:--the first relates to a mortgage suit of 1914 in which the Pleader signed a plaint on behalf of the plaintiff and subsequently, it does not appear how long afterwards, accepted a Vakalatnama on behalf of one of the defendants, the mortgagor, and filed a written statement in which he admitted the claim of the mortgagee, although a number of the other defendants who were transferees from the mortgagor contested it. When the case went up on appeal from the decree of the Munsiff, it was discovered that the Pleader had acted for both sides and upon that being brought to the notice of the Court, the Pleader for the mortgagee, who happened to be the Pleader's father-in-law, on behalf of his client compromised with the transferee and the case was finally disposed of on that footing.

3. The next charge relates to Execution Case No. 219 of 1915 of the Court of the Sub-ordinate Judge. In that case the Pleader on the 15th of March 1915 filed an execution petition on behalf of the judgment-creditor; on the 10th of November 1915 he filed an application on behalf of the judgment-debtor praying for an order to set aside the sale.

4. The third charge relates to Execution Case No. 347 of 1914 of the Court of the Subordinate Judge of Cuttack. In that case the Pleader filed an execution petition on

behalf of the decree-holder on the 2nd of April 1914; on the 9th of March 1915 he appeared on behalf of a claimant under Order XXI, rule 58, of the Civil Procedure Code whose claim was dismissed on the 10th of March 1915. The sale was held on the 16th of March 1915, and on the 13th of April 1915 the same Pleader filed a petition on behalf of the judgment-debtors to set aside the execution sale.

5. In the mortgage suit as well as in the two execution cases the Pleader's father-in-law was engaged on the opposite side. It is urged that the conduct of the Pleader in signing the Vakalatnamas and acting for both sides in the same case was grossly improper conduct within the meaning of clause (b) of section 13 of the Legal Practitioners Act. The Pleader's explanation is that he acted carelessly but not with any improper motive and that in the two execution cases, as soon as the matter was brought to his notice by the Court, he immediately expressed his regret and declined to take any further part in the case on behalf of the judgment-debtors. Mr. Pugh on behalf of the Pleader urges that grossly improper conduct within the meaning of section 13 means conduct involving moral turpitude and that it does not extend to cases of negligence of the rules of the profession such as that with which the Pleader has now been charged. Now, whatever the rule may be with regard to the other branches of the legal profession, so far as Pleaders are concerned, the matter seems to have been settled in this Court by the decision of the Special Bench in *In the matter of two Pleaders* 41 Ind. Cas. 328; 2 P.L.J. 259; 1 P.L.W. 483; (1917) Pat. 217; 18 Cr.L.J. 803. In that case the matter turned upon Order III, rule 4, sub-clause (2), which enacts that "every appointment of a Pleader, when accepted, shall be filed in Court and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the Pleader, as the case may be, and filed in Court or until the client or the Pleader dies or until all proceedings in the suit are ended so far as regards the client." It was held by the Special Bench in the case above referred to that although the Pleader may not have acted out of any improper motive, gross carelessness and disregard of the rules of the profession cannot be overlooked and constitute gross misconduct in the discharge of professional duties within the meaning of section 13(b) of the Legal Practitioners Act. The Pleader urges in his explanation that he had no intention to defraud any person and that in fact neither the plaintiff in the mortgage suit nor the judgment-creditors in the execution cases have so far raised any objection in regard to his conduct. He further brings it to our notice that this proceeding has been initiated upon information supplied by a discharged clerk of his. We are willing to accept the assurance of the Pleader that he had no fraudulent motive, but we cannot accept the explanation that his disregard of the rules was not intentional. In our opinion his disregard of the rules was gross and intentional, and we do not think that a mere warning will have the effect of impressing upon members of the Bar in the Mufassil the necessity of strict observance of the provisions of the law. We are unable to accept Mr. Pugh's contention that in order to make the Pleader liable to punishment under section 13, it is not sufficient to prove that he has intentionally disobeyed the rules but that there must be some act involving a moral stigma or proof of actual injury to a litigant. That in our view is not the law as interpreted in this Court. That being so, the only question we have to consider is the punishment which should be inflicted in this particular case. We have taken into consideration the fact that the Pleader is a young man who at the time that he committed the offences had only been four years in practice, that he was working under the guidance perhaps of his father-in-law and that he did not realize the gravity of his offence. We think, however, that we must impose some period of suspension and that a mere warning will not be sufficient in this case. We direct that the Pleader, Babu Bir Kishore Rai, be suspended for a period of six months commencing from the 7th of February 1918.

Sir Ali Imam, Kt., J.

I agree.

Thornhill, J.

I agree.

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