

MANU/BH/0340/1920

Equivalent Citation: 57Ind. Cas.277

IN THE HIGH COURT OF PATNA

Civil Reference No. 1 of 1920

Decided On: 14.06.1920

Appellants: **Emperor**

Vs.

Respondent: **Satyendra Nath Roy**

Hon'ble Judges/Coram:

Thomas Fredrick Dawson Miller, Kt., C.J., B.K. Mullick, Kt. and Jwala Prasad, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Ashgar, Government Advocate

For Respondents/Defendant: Hasan Imam, H.L. Nandkeolyar, K. Sahay and G.C. Pal

JUDGMENT

1. This is a reference made to the High Court under section 14 of the Legal Practitioners Act by the District Magistrate of Purneah through the Sessions Judge relating to the conduct of Satyendra Nath Roy, a Pleader of Purneah. The allegation against the Pleader is that in certain criminal proceedings before the Deputy Magistrate of Purneah he wrote and filed a petition, which was verified on affidavit by himself for stay of proceedings in that matter, alleging that on the previous day the District Magistrate had himself made an order staying the proceedings.

2. There can be no doubt whatever that that statement was inaccurate, because the order made on the previous day by the District Magistrate was that he declined to stay the proceedings and the order was made in the presence of the Pleader whose conduct is now under consideration. Subsequently the matter was drawn to the attention of the District Magistrate and he called upon the Pleader for an explanation and himself instituted proceedings and took evidence relating to the circumstances under which this false statement came to be made. Unfortunately the recollection of the Magistrate as to what took place when the proceedings were before him differs materially from the recollection of the Pleader, but it is unnecessary to deal with that matter further because in the particular case before us as it seems that the provisions of section 14 of the Legal Practitioners Act have not been complied with. That section provides that where certain offences or misconduct referred to in an earlier part of the Act have taken place, a notice shall be sent of the charge against the Pleader by the presiding officer, stating also the day appointed when the charge against him shall be taken into consideration, and the section contemplates throughout that the enquiry shall take place before the presiding officer of the Court in which the misconduct or offence is alleged to have taken place. In the present case the misconduct alleged against the Pleader took place not in the Court of the District Magistrate but in the Court of the Deputy Magistrate, the Deputy Magistrate on the day in question being Mr. Khirode Chandra Roy who was sitting in place of Mr. Banerji, the permanent officer of that Court. No enquiry has been made by the Deputy Magistrate nor, so far as we are aware, has any enquiry been ordered and as the

District Magistrate was not the proper officer to hold this enquiry and as in fact the matters within the knowledge of the District Magistrate, about which it might have been necessary either to get a report from him or to call him as a witness, are in conflict so far as his recollection is concerned with the recollection of the Pleader charged, it was undesirable that he should sit as the Judge to determine the matters which arose in that enquiry and to report thereon. However that may be, even accepting the recollection of the District Magistrate as being accurate, it does appear undoubtedly that the proceedings in this case were irregular. They were tried by the wrong Court and we feel that it is not competent to this Court upon the proceedings which have already taken place to exercise our powers under the Legal Practitioners Act. The same question was the subject of a decision in *Janak Kishors*, In the matter of 37 Ind. Cas. 484 : 1 P.L.J. 576 : 18 Cr.L.J. 132 : (1917) Pat. 60 where the Court found that they were precluded from interfering, even if they wished to do so, by the terms of section 14 of the Legal Practitioners Act, which made it incumbent that the enquiry should be made by the presiding officer of the Court, that is to say, the Court in which the offence or misconduct was committed and that he alone was the proper person to hold such an enquiry. In these circumstances we consider that we ought not to take further action in the matter.

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