

MANU/BH/0202/1935

Equivalent Citation: AIR1935Pat249, 156Ind. Cas.889

IN THE HIGH COURT OF PATNA

Civil Ref. No. 5 of 1934

Decided On: 05.02.1935

Appellants:**In Re: R.S. Pleader, Samastipur**
Vs.

Hon'ble Judges/Coram:

Wort, Mohamad Noor and C.M. Agarwala, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Syed Sultan Ahmad

For Respondents/Defendant: Janak Kishore

JUDGMENT

Wort, J.

1. This is a reference under S. 14, Legal Practitioners Act, by the District Judge of Dharbhanga against one pleader of Samastipur. The charge against him is that he made certain statements knowing them to be false. Those statements were made in the course of certain proceedings to which I propose to refer. The matter arose in this way. On 20th January 1931 two rent suits were filed purporting to be on behalf of one Bhagwat Prasad Misser and other persons as the landlords of 3 bighas of land in the Samastipur subdivision. Just one month later two petitions of satisfaction were filed also purporting to be on behalf of Bhagwat Prasad Misser and the other plaintiffs. Nothing further perhaps might have been heard about the matter had it not been for the fact that Bhagwat Prasad prosecuted the person, who appeared as the defendant in those rent suits, in certain criminal proceedings alleging that Babaji Thakur (the defendant) had looted certain paddy on the disputed land. Babaji Thakur was acquitted on 4th August 1932, he having produced the papers in these-rent suits to which I have made reference and upon which the criminal Court relied. Thereupon Bhagwat Prasad Misser applied to the Munsif for prosecuting one Babaji Thakur and Nagendra Prasad who is a clerk of the pleader before us, for fraudulently filing these two rent suits. There was an inquiry before the Munsif and it was during this inquiry that the statements complained of were made by R and which, it is said, were false to his knowledge. The statement complained of was this :

I cannot state whether Bhagwat Prasad Misser whom I met during the pendency of that suit (the was referring to the rent suit) was the same Bhagwat Prasad Misser whom I met during the pendency of this miscellaneous case (that is the case before the Munsif on the inquiry as to whether the alleged defendants should be prosecuted).

2. And then pointing correctly towards the appellant Bhagwat Prasad the witness stated :

When I said that I was not sure whether the man whom I met during the

pendency of this case was the same Bhagwat Prasad Misser who presented the vakalatnama to me in the rent suit, I was really confused.

3. After that inquiry in which the Munsif had ordered the persons concerned to be prosecuted, there was an appeal to the District Judge which resulted in a remand to the Munsif when evidence was taken again and on that occasion B.S. made this statement :

I said that I know the three plaintiffs of the rent Suits Nos. 18 and 19 of 1931.

4. Then being asked by the Court, he says :

The question being in the present tense I answered in the present tense, because since the miscellaneous case I cannot be said to be not knowing the plaintiffs, because I came to know them personally during the pendency of this miscellaneous case. I said to Shyama Babu (that was the pleader for the plaintiffs) that I did not know the plaintiffs of rent Suits Nos. 18 and 19 of 1931, because at that time I had not, come across the plaintiffs to verify their identity.

5. Then he purported to enter into an explanation of what were alleged to be apparent contradictions in his statement, and then at the end of his explanation and in answer to the Court made this statement :

The present statement that I did not recognize Bhagawat Prasad Misser before the institution of the present miscellaneous case is correct, and my previous statement that this Bhagwat Prasad Mister who is the appellant in miscellaneous case, actually presented vakalatnama to me in those rent suits is incorrect.

6. That statement is a contradiction of the statement which he had made at the first inquiry before the Munsif in which he had emphatically stated that he did identify Bhagwat Prasad Misser, the alleged plaintiff in the rent suit. I have referred to these statements somewhat elaborately for reasons which will presently appear. The matter eventually came before the District Judge a second time sifter the order of the Munsif in which the Munsif had ordered the prosecution of the persons concerned and so far as that part of the order was concerned the District Judge set it aside, but the result of his order was the reference which now comes before this Court. Now it is not denied by the advocate who appears on behalf of R that the statement made on 7th May 1932, the date of the first inquiry by the Munsif, was false. That being so, the only question and there being no question as to the nature of such a statement by a member of the legal profession, which is in substance perjury and certainly gross professional misconduct is what the order of the Court should be in those circumstances. Mr. Janak Kishore on behalf of R contends that the evidence to which I have made reference discloses not a deliberate attempt by the accused to make a false statement or to mislead the Court, but nothing more than a foolish statement made under the pressure of the moment and at worst nothing more than an attempt as something in the nature of a false statement to extricate himself from the difficult position in which he found himself.

7. At first it might be supposed that R had something to do with the institution of these false rent suits other than acting as the legal adviser of the alleged plaintiffs; but neither the District Judge nor the Munsif, who held the inquiry, is of the opinion

that R is in the conspiracy and indeed, I think, we are bound to say that there is no evidence of that fact. What does sufficiently appear from the facts which are before us is that it was at the instigation of the clerk to the pleader that the identification of the plaintiffs in that action was made. Identification was necessary in the case of the petition of satisfaction on 21st February 1931. It remains to be seen whether the learned advocate's argument is justified on the evidence before us. When we come to analyze the statement made by the pleader before the Munsif in May of 1932 we see, in the first instance, that his statement was :

I cannot state whether Bhagwat Prasad Misser whom I met during the pendency of that suit was the same Bhagwat Prasad Misser whom I met during the pendency of that miscellaneous case.

8. Had his statement stopped there little more would have been heard of this case ; but he then goes on to state, pointing to Bhagwat Prasad Misser :

He is the man who presented vakalatnama to me in the aforesaid rent suits.

9. Then again in answer to the Court he stated that when he made the previous statement, that is to say, the statement in which he had expressed his doubt as to whether he was the same Bhagwat Prasad Misser when he made that statement in answer to the Court, he says : "I was really confused." That answer gives the case a somewhat serious aspect ; but apart from it we see that in the first instance he expresses doubt. Then being pressed by the Court he states emphatically that he identified Bhagwat Prasad Misser. But in this connexion we must not forget that at the later stage of the inquiry, that is to say, when the matter came before the Munsif on remand by the District Judge, he states quite frankly that the statement on the first occasion that he identified Bhagwat Prasad Misser was incorrect. We have considered this matter very carefully and the conclusion at which we arrive is this having regard to the various statements made by R that in the first instance he had no intention of misleading the Court, that his first statement could not be characterized as incorrect in any sense of the word, that he expressed the doubt whether Bhagwat Prasad Misser was the same person as the Bhagwat Prasad Misser in the miscellaneous case and it was only, to use the expression, which I used a moment ago, under the pressure of the moment that he then went on and in answer to the Court stated emphatically that he definitely identified Bhagwat Prasad Misser. I again repeat that on the later occasion he frankly stated more emphatically that his statement on the first occasion was incorrect. Nothing more need be said than that we have come to the conclusion that what Mr. Janak Kishore argues on behalf of the pleader is correct, that it was in the confusion of the moment that he made a statement which would appear on the face of it to be deliberately untrue. That it was untrue no doubt. But he is relatively a young man in practice for a few years only and, as I have said, we are satisfied that what he stated does not constitute a fraud intentionally practiced on the Court. The fact of its untruth has to be taken into consideration and the fact that he is the member of the legal profession and his duty is to realize his responsibilities not merely to his clients but to the Court before whom he practices .

10. Taking all these circumstances into consideration but not disregarding the fact that it was a statement which was admittedly incorrect, I come to the conclusion that the proper order to pass is that R be suspended for six months from to-day.

Mohamad Noor, J.

11. I agree. I have no doubt in my mind that the pleader concerned was not guilty of

any conspiracy in the institution of the bogus suits and the filing of the bogus application of satisfaction. It seems to me that his clerk took advantage of his inexperience and managed to have the work done through him imposing upon him that it was being done on behalf of the real Bhagwat Prasad Misser. Most likely the clerk put up somebody to personate the real plaintiff. That the pleader had no hand in the conspiracy will be clear from the fact that before he was examined in the Court he went and told the whole story to Babu Shyana Pada Banerji, the leader of the local Bar. He definitely told him that he knew nothing of the plaintiff himself and that he had to act upon the assurance of his clerk. Later on it seems he was without any previous warning summoned by the Court to give evidence before it. There also up to a certain stage he seems to have been speaking the truth and I think it was correct when he said that he would not be able to identify the real Bhagwat Prasad Misser as he definitely said that he was not in a position to say whether the man on whose behalf he instituted the rent suits and filed the satisfaction petition was the man who was conducting the miscellaneous proceedings for the prosecution of Babaji Thakur.

12. Something must have happened then which made him change the statement, It does not appear to me why it was necessary for the Court to ask him to identify the real Bhagwat Prasad Misser when the witness had already stated that he was not sure about his identity. When he was asked to identify the man, perhaps he thought that he had fallen into a difficulty and would not be able to get out of it unless he said that he was the man. Perjury by members of the legal profession, apart from the question that it is a criminal offence, is a very serious matter from the point of view of the profession. Apart from the fact that it harms the profession, it sets a very bad example to the general public and is a great block in the administration of justice. Therefore, if and when cases of perjury by members of the legal profession are discovered the member concerned deserves the most severe punishment which this Court can give in the exercise of its disciplinary jurisdiction on the legal profession. But I am certain that this is not one of those cases; in which that course ought to be adopted, because I am satisfied that the perjury was committed under circumstances which show that it was not intended to deceive the Court or to practise any fraud upon it. I therefore agree that in the circumstances of the case the sentence which my Lord has ordered to be passed will meet the ends of justice.

C.M. Agarwala, J.

13. I agree to the order proposed.

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