

MANU/BH/0059/1937

**Equivalent Citation:** 172Ind. Cas.877, 172Ind. Cas.877

## IN THE HIGH COURT OF PATNA

Decided On: 11.11.1937

Appellants:**In Re: A., A Mukhtar**

### **Hon'ble Judges/Coram:**

*Courtney Terrell , C.J., James and Manohar Lall , JJ.*

### **ORDER**

1. The Deputy Commissioner of Ranch, drew up proceedings against the petitioner, a mukhtar practising in his Court, under Sections 13 and 14, Legal Practitioners' Act. After notice to the mukhtar and after evidence was recorded, the Deputy Commissioner has made a report recommending that the mukhtar should be debarred from further practising in the Courts, on the charge that the mukhtar in the month of Magh 1992 was entrusted by his client Laldeo Ohdar with a sum of Rs. 166 for deposit in the Court of the Certificate Officer, Ranchi, in satisfaction of a Certificate Case No. 76 of 1935-36 against the client, but he failed to deposit the sum in Court as a result of which the holding of the Ohdar was sold up on May 28, 1936, notwithstanding the fact that the amount was expressly deposited with the mukhtar earlier in the same year.

2. The learned Advocate for the petitioner has argued that I the proceedings drawn up by the Deputy Commissioner were entirely without jurisdiction, because in his submission the offence was committed, if any, by the mukhtar before the Certificate Officer or in the Court of the Certificate Officer? and not before the Deputy Commissioner, and, therefore, he submits that the Deputy Commissioner, not being the presiding officer of that Court, had no jurisdiction to draw up any proceedings against the mukhtar under Section 14, or Section 13, Legal Practitioners Act. He relies upon a decision of the Rangoon High Court in U Thein Nyun v. District Superintendent of Police 13 R 737 : 161 Ind. Cas. 958 : AIR 1936 Rang 158 : (1936) Cr. Cas. 242 : 37 Cri.LJ 510 : 8 R Rang 520. The facts of that case, however, were entirely different. In that case, in the course of a proceeding before a Sessions Judge, the petitioner was suspected to be guilty of professional misconduct in attempting by means of bribe to induce the witnesses for the prosecution to resile from the statements that they had made. The District Magistrate, purporting to act under Section 14, Legal Practitioners Act, drew up charges of professional misconduct against the Pleader. The learned Judges of the Rangoon High Court held that as the professional misconduct alleged took place in the course of proceedings pending before the Sessions Judge and not before the District Magistrate, the proceedings were liable to be quashed. In the course of his observations the learned Chief Justice referred to a Calcutta decision in In Re: Rabindra Chandra Chatterjee 49 C 850 : 67 Ind Cas. 985 : AIR 1922 Cal. 484 : 35 CLJ 520 (SB) and expressed his view that the observations of the learned Judges of the Calcutta High Court were not in accordance with law. In our opinion, it was not at all necessary for the learned Chief Justice to have considered the effect of that Calcutta case and, therefore, his remarks must be treated as obiter. In any case, we are of the opinion, that the decision of the Calcutta High Court is perfectly correct and that it is in accord with the plain meaning of Sections 13 and 14, Legal Practitioners Act. If, as in the present case, the Pleader

who practices in a Court commits an offence of professional misconduct in connection with any instructions which he received from his client generally or in connection with a particular case then it is within the jurisdiction of any Court before whom the Pleader is practising, if brought to its notice that the Pleader has committed any professional misconduct, to take action against him and those proceedings will be entirely within jurisdiction. In the present case the professional misconduct charged against the mukhtar was brought to the notice of the Deputy Commissioner in whose Court the mukhtar practises and that officer had ample jurisdiction to initiate these proceedings. The charge against the mukhtar is that he was entrusted with money by his client and which he has misappropriated. We, therefore, overrule the preliminary objection and hold that the proceedings before the Deputy Commissioner were intra vires and with jurisdiction.

**3.** It was next argued by the learned Advocate for the petitioner that the High Court should itself now give some notice to the mukhtar so that he may be able to offer some further evidence in support of his case. If we had felt that the mukhtar was at all hampered in his defence in putting forward his case, we would have readily given him some further opportunity, but a perusal of the proceedings, as they went on before the Deputy Commissioner, leaves the impression in our minds that the mukhtar was anxious to avoid a report by the Deputy Commissioner on the chance of having a favourable decision from his successor. Indeed a Barrister who appeared for him refused to argue or conduct his defence on this charge, but all the lawyers including the Barrister confined their attention to the second charge for which the mukhtar has been acquitted. This course was adopted for an obvious reason, because the mukhtar had no defence whatsoever to this charge. The sum of Rs. 166 was admitted by him to have been received and in the letter (Ex. 2), which is on the record, he says that the money was with him and he had spent some part of it. In truth, the real matter is that he had misappropriated the money and was unable to produce it at the proper time in accordance with the directions of his client. He endeavoured to meet the difficulty by suggesting that the deposit ought not to be made because some of the judgment debtors were minors. We do not see now this fact could be any excuse in favour of the mukhtar's conduct. If any further objections were suggested to be filed on behalf of the client, these objections would only result in enhancing the cost of litigation and in increasing the decretal amount which would ultimately have to be paid to the decree-holder in order to avoid the sale. It is clear to our minds that the mukhtar was in difficulty as he had no money in his possession. The amount, as already indicated, had been misappropriated by him for his own purposes.

**4.** It is regrettable that legal practitioners of the status of the present petitioner, who are entrusted by poor and ordinary litigants in the mufassal, do not hesitate on occasions in committing serious breaches of trust in utter violation of the confidence imposed by their clients in the hope that the usually illiterate clients will find it difficult and inexpedient to convince a Court of the moral delinquency of the mukhtar--the result very often has been that for failure to carry out the trust, the litigant has been deprived of his valuable rights and he has no remedy whatsoever except to embark on doubtful and expensive litigation with dubious chance of success against a lawyer. It is incumbent on this Court to protect the unfortunate litigants whose trusts have been betrayed by practitioners, and if it is established that the lawyer instead of discharging his duties faithfully like persons of trust and honour has betrayed that trust, such conduct must be severely dealt with.

**5.** We do not see any extenuating circumstance in favour of the petitioner. He

misappropriated the money deposited with him by a poor client whose rights to property were thereby put in jeopardy; he forced his client to raise money afresh by pawning his bicycle and by going to a mahajan frond whom he took a further loan at an exorbitant rate of interest and even then the application which he filed for the purpose of setting aside the sale was in great peril, it having been made more than thirty days beyond the date of the sale owing to causes which were entirely within the control of the petitioner. We think, therefore, that the muhhtar should be visited with the utmost penalty and he should be removed from the rolls. The civil revision application is rejected.

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