

MANU/BH/0057/1942

Equivalent Citation: AIR1943Pat52

**IN THE HIGH COURT OF PATNA
SPECIAL BENCH**

Decided On: 20.11.1942

Appellants:**In Re: A, Mukhtar of Bargarh**

Hon'ble Judges/Coram:

Arthur Trevor Harries, C.J., Saiyid Fazl Ali and C.M. Agarwala, JJ.

JUDGMENT

Arthur Trevor Harries, C.J.

1. This is a reference under Section 14, Legal Practitioners Act, made by the learned District Judge of Cuttack-Sambalpur recommending that the mukhtar should be dealt with under that Section for gross unprofessional and fraudulent conduct. The case against the mukhtar is that he was given in the month of April 1941 a sum of Rs. 14-6-0 to meet court and other fees in a suit which he had been instructed to institute on behalf of one Khedu Padhan. It is said that the mukhtar did not use this money to pay court and other fees and that he deceived the petitioners by sending them a letter giving the number of the suit and the date on which it would be heard. It is said that the petitioners went to the mukhtar on that date and gave him a further sum of Rs. 8 and that they were again put off by his statement that the case would be heard on another day.

2. On the day suggested the petitioners found that no suit was down for hearing and demanded the return of the sum of Rs. 22-6-0 together with certain documents which they had handed over to the mukhtar for the purposes of the suit. The mukhtar, while admitting that Khedu did approach him about the proposed litigation, denies that he was ever given any money for the purposes of filing a suit and that he misappropriated the same. There can be no question that the allegations made against this mukhtar are very serious. If they are true, a criminal offence was clearly committed. Khedu says that money was actually given to the mukhtar for a specific purpose and that he has misappropriated it or has been guilty of fraudulent breach of trust.

3. It has been laid down in a series of cases that where the charge brought against a legal practitioner amounts to an allegation of the commission of a serious crime the proper procedure to follow is to launch a prosecution for that crime, and if a conviction is obtained to institute proceedings under the Legal Practitioners Act. It must be remembered that if a prosecution is launched there is a full trial with a right of appeal, whereas the proceedings under the Legal Practitioners Act are of a summary character. Where serious charges are made, it would be wrong to deny the accused mukhtar a full trial and his right of appeal.

4. In my judgment, we should follow these decisions in the present case and hold that this is a case which should be tried in the criminal Courts and in the event of a conviction the matter can then be dealt with by this Court under the Legal Practitioners Act. These proceedings are misconceived, and we therefore discharge

the rule. On the other hand, we direct that a copy of this judgment should be supplied to the Public Prosecutor for Orissa who will take such steps as he may think proper for bringing this matter before the criminal Courts. It must be clearly understood that we express no opinion on the merits of this case and that the fact we discharge the present rule does not mean that we express any opinion as to the innocence of the mukhtar. The question of his innocence or guilt will be entirely a matter for the criminal Courts.

Saiyid Fazl Ali, J.

I agree.

C.M. Agarwala, J.

I agree.

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