

MANU/BH/0076/1932

Equivalent Citation: AIR1932Pat289

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

Decided On: 17.08.1932

Appellants:**In Re: B, a Pleader and M, a Mukhtar**

**Hon'ble Judges/Coram:**

*Courtney Terrell, C.J., Saiyid Fazl Ali and C.M. Agarwala, JJ.*

**JUDGMENT**

**Courtney Terrell, C.J.**

**1 .** These are references by the District Judge of Darbhanga under the Legal Practitioners Act in the case of a pleader and of a mukhtar respectively. I may say at once that the pleader has given an entirely satisfactory explanation of the circumstances which appeared against him and he has made it clear that no blame attaches to his conduct in the matter. It is otherwise with the mukhtar.

**2 .** The circumstances which have given rise to the references began with a Small Cause Court suit in the year 1926 in which the plaintiff was one Jugdeo and the defendant was one Raudi Potedar. That suit was compromised. The compromise does not seem to have been effective and a second suit was begun in the Court of the Second Munsif by the same plaintiff against the same defendant. The suit was filed on 31st August 1929, but there was a deficit in the court-fee and on the 6th of the following month the deficit was made good and 6th November 1929 was fixed for the settlement of issues in the case. The defendant did not appear and an order was made by the Court that notice should be given to him by registered post, and a month later, 6th December 1929, was fixed for the settlement of the issues. Both the pleader and the mukhtar concerned had appeared for the defendant in the earlier litigation and it appears that the pleader has on several occasions been instructed by this mukhtar.

**3 .** On 6th December 1929, the day fixed for the settlement of issues, a vakalatnama was filed by which the pleader was appointed to act in the fresh litigation for the lay client. The circumstances which led up to the filing of that vakalatnama have been satisfactorily established.

**4 .** It appears that the pleader received a call by the mukhtar and took instructions from him and a vakalatnama form was filled up by the pleader's clerk. It was signed by the defendant who appears to have accompanied the mukhtar on this occasion, or it appears to have been sent by the defendant in the suit with the mukhtar, and the vakalatnama bears the endorsement "Received from M mukhtar for the defendant." In the inquiry which was ultimately made the pleader the mukhtar and the defendant respectively offered their accounts of what had taken place on the occasion of the delivery of the vakalatnama and there is no doubt whatever in my mind that the story told by the pleader is the true story. The mukhtar denies that he went to the pleader on that occasion at all. That is in my opinion absolutely and utterly untrue. On 2nd January 1930 there was a petition by the defendant praying for time on the ground

that all the papers were in the possession of the mukhtar, and on 21st February there was a petition for time filed bearing a stamp which carries the name of the mukhtar on it. On 24th February 1930 one rupee was deposited with the nazir for the witness's diet money and the receipt which was granted for the money was made out by the nazir stating that the money had been deposited by the mukhtar on behalf of the client.

**5.** The counterfoil of the receipt book which has remained in the possession of the Court contains a similar entry, but the receipt which was issued on that occasion has been produced and it has been altered to read in this way: "Received from" (here follows the name of another pleader altogether) "on behalf of the defendant, the sum of one rupee for diet money." There is also kept in the nazir's office a peremptory cash book and the entries in that book are supposed to correspond, with the receipts which are issued by the nazir for money deposited. There are two consecutive entries in that cash book: the first is No. 3197 and originally read under the head of "From whom received" the name "M for defendant." Then follows the name of the suit and in another column the amount received. That entry "M for defendant" has also been altered so as to give the name of the pleader mentioned in the alteration of the receipt as the person paying the money on behalf of the defendant.

**6.** The story of the mukhtar is this: He says that the original deposit must have been made by some person or other, whom he does not suggest, and that the person so depositing the money had wrongly and without authority stated that the deposit was made by the mukhtar and when he became aware of this fact, knowing that at the time he did not have a vakalatnama from the defendant, he went to the nazir and explained to him that there had been a mistake and that the nazir had corrected the entry. The nazir's story, on the other hand, is that the original deposit had in fact been made by the mukhtar and he admits that it is true that the mukhtar subsequently came to him and asked him to make the necessary alteration giving what he (the nazir) considered at the time was a satisfactory reason for the alteration and it is possible, and indeed probable, although the direct fact has not been elicited, that the mukhtar stated to the nazir that he had in fact no mukhtarnama at the time he made this deposit and wanted to have the matter put right. But the second entry in the peremptory cash book which is No. 3198 which must have been made immediately subsequent to the entry 3197 relates to another suit altogether.

**7.** It also contains an entry of a deposit of Rs. 5 in respect of witnesses expenses and in the column which should state the name of the person depositing is written the abbreviation "do." indicating that the person who made the deposit is the same person as the person who made the deposit in the case of the entry 3197.

**8.** Now it has been made quite manifest that the pleader whose name has been substituted for that of M in the case of the first entry cannot possibly have made the payment recorded in the next entry 3198. Indeed the person who had effected the alteration in entry 3197 could hardly have, intended to represent that the pleader had made the deposit in the case of the second entry because that pleader was in fact engaged in the second case on behalf of the other side. The omission to alter the entry 3198 so as to contain the name "M" instead of the word "do." seems to have been an oversight on the part of M but it has this important bearing on the case: that it indicates that the person who was responsible for making the deposit recorded in 3197 was in fact M because M had in fact made the deposit recorded in entry 3198 and therefore if the explanation given by M for the deposit having been made in his name in the suit of Jugdeo v. Raudi Potedar be true it is a most singular occurrence

that that entirely unauthorized entry should have immediately preceded, evidently within, a few minutes a genuine entry by M under the heading 3198.

**9.** We have further evidence that M was acting in fact as the mukhtar of the defendant throughout this period. On 26th June a list of documents was prepared which list bears the name of M, but the date 26th June 1930 has been struck out and for it has been substituted the date "18th August 1930". This list was in fact filed on 18th August 1930 which is the same date upon which a mukhtarnama was actually filed purporting to authorize M to act as mukhtar for the defendant. Some investigation seems to have been set on foot in the office of the Munsif. How that investigation originated we do not know, but notice was served upon the pleader on 27th August 1930 to show cause why his conduct should not be reported to the High Court for that he had accepted a vakalatnama from the mukhtar, the mukhtar being unauthorized to deliver a vakalatnama: and notice was also served upon the mukhtar to show cause why he had been acting as a mukhtar in delivering the vakalatnama without being so authorized; and 16th. September 1930 was fixed as the date when the two persons concerned should show cause. It was at that stage that the mukhtar put in his explanation in the form of a letter stating that he had not employed the pleader at all and also stating that he had not acted as a mukhtar for the defendant in the course of that litigation. The pleader also put in a petition in which he denied the mukhtar's story and the Munsif investigating the matter came to the conclusion that there was little cause of complaint against the parties in question, but he sent the papers to the District Judge.

**10.** The District judge sent the matter back to the Munsif for a further investigation and particularly for the purpose of explaining the entries in the cash book and in the receipt and it must have been perfectly obvious to the mukhtar that in such circumstances an explanation would be called for from him and from the nazir. The nazir gave evidence and stated that the mukhtar had come to him in circumstances which I have already narrated and asked for the alteration of the entries in regard to the deposits which the mukhtar had personally made to him (the nazir). The mukhtar thereupon cross-examined the nazir first of all in order to try and shake his memory as to the particular circumstances and to show that he could not really remember whether the person making the deposit was the mukhtar himself or some one else representing that he was acting on behalf of the mukhtar, but the witness was quite positive about the matter; and then the mukhtar had the impudence to suggest to the nazir that he was a party to a false case that was being made against him at the instance of the pleaders of that place. It must be remembered also that the mukhtar had already expressly denied the story told by the pleader and also appears to have influenced the defendant himself to set up an absolutely impossible story.

**11.** We have it therefore clearly established that the mukhtar was in fact acting as a mukhtar on behalf of the defendant in the case without filing a mukhtarnama. That in itself would have been an offence it is true against the rules which have been made for the good of the public and which must be obeyed, but it was a relatively trifling offence which was capable of simple adjustment. But he went further and had the alterations made in the receipt and in the peremptory cash book with a view to deceiving the Court and covering his traces. That in itself again though an offence and a relatively serious offence is one which might have been passed over or met with a comparatively lenient punishment had the mukhtar only had the honesty to come forward and state the facts of the matter. He did not do that. He told first of all a completely untrue story and then he accused the pleader of perjury and accused the nazir not only of perjury but of being a party to a plot to set up a false case at the

instance of envious pleaders. That combination of circumstances which has been demonstrated to our complete satisfaction by the evidence is brought to our notice in order that we may consider what should be the proper means of dealing with a man of this type. A mukhtar's profession is a laborious one. It is of great public utility. From mukhtars great qualities are expected and heavy responsibilities are placed upon their shoulders and at any rate from my experience of mukhtars I have met I may say that those I have met have appeared to me, however humble their relative position in the legal hierarchy may be as men. who endeavour to do their duty honestly and fearlessly and their reputation should be as jealously guarded by the Courts as those of pleaders or vakils or barristers. I would on their behalf resent the suggestion that a lower standard of honour should be demanded from them than is demanded, and rightly demanded, from the higher ranks of the profession.

**12.** Therefore when we have a man who has been clearly shown first of all to break the professional rules which have been laid down, and secondly who attempts surreptitiously to alter documents in the case with a view to covering up his faults and comes to the Court with a story which is manifestly untrue and lastly who attacks reputable persons with the suggestion that they have committed perjury and are setting up a false case against him, we can but conclude that that man is no longer fit to remain a member of this profession. I would therefore direct that his name be removed from the roll of mukhtars.

**Saiyid Fazl Ali, J.**

**13.** I agree.

**C.M. Agarwala, J.**

**14.** I agree.

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