

MANU/BH/0063/1922

Equivalent Citation: AIR1922Pat185, 72Ind. Cas.875, 72Ind. Cas.875

IN THE HIGH COURT OF PATNA

Decided On: 18.12.1922

Appellants:**In Re: Babu Madahva Singh**

Hon'ble Judges/Coram:

Thomas Fredrick Dawson Miller , C.J., B.K. Mullick and Kulwant Sahay , JJ.

JUDGMENT

Thomas Fredrick Dawson Miller, C.J.

1. In this case Babu Madhava Singh, a Vakil of this Court, ordinarily practising in the District Courts of Sarau, having been enrolled in the Calcutta High Court in the year 1913, has been called upon to show cause why he should not be dealt with and either removed or suspended from practice under the powers conferred on the Court by Clause 8 of the letters Patent. It appears that in January last Babu Madhava Singh was tried and convicted of an offence under Section 17, Clause (2), of the Criminal Law Amendment Act, 1908, and was sentenced to one year's simple imprisonment. The sentence was afterwards reduced by the Local Government to six months. Section 14, Clause (2), of the Criminal Law Amendment Act provides:

Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

2. It appears from the decision of the Magistrate before whom Babu Madhava Singh was tried and convicted that there were certain persons known as the Sewak Dal volunteers, and by a Notification in December last these volunteers were declared by the Local Government to be an unlawful association within the meaning of Part II of Act XIV of 1908, the Criminal Law Amendment Act. Notwithstanding this Notification, a meeting was held at which a large number of persons were present and I have no doubt many of them, if not most of them, belonged to the Sewak Dal volunteers. At that meeting speeches were made in direct defiance of the Notification and the persons present were invited to enrol themselves as volunteers. Two other persons were tried and convicted along with Babu Madhava Singh. The learned Magistrate said that he appeared to be the most educated of the accused and, although the speech he made on that occasion was not the principal speech, still he was convicted and given the same sentence as the other two. After he had served his sentence he applied for renewal to his clerk's license and the matter was brought to the notice of the Court by the District and Sessions Judge of Saran. The Court thereupon issued notice to him asking him to offer any explanation which he might be in a position to make both of his past conduct and his future attitude towards offences of the nature of which he had been convicted. In reply to that notice he stated that the action for which he was convicted was done in perfect good faith for he sincerely believed that it was necessary in those days to enlist volunteers for the preservation of the peace in the district; that the restriction of the enrolment of volunteers was unnecessary in the District of Saran, a fact of which he held a sincere conviction, and he adds that

the lack of the necessity for restricting their enrolment was proved by the fact that the restriction was withdrawn a few days after his arrest. He then concludes by saying that his conviction was on a matter of opinion which does not come under the put-view of the Legal Practitioners Act. Then, as regards his future attitude he says that he does not intend to commit any offence against any law.

3. Reading that answer, I cannot help thinking that the attitude of the Vakil is that the orders of the Local Government declaring the volunteers to be an unlawful Association are altogether unnecessary and unwarranted and that he himself knew much better than the Local Government whether such an order ought to have been issued, and knowing that such orders were unnecessary and unwarranted he felt perfectly justified in defying them and in taking part in a meeting with the object of enrolling further volunteers in an association which had been declared to be an unlawful association and that the whole matter was merely one of opinion in which he was entitled to put forward his opinion even against the orders of constituted authority. There is not a word in his reply which indicates that that feels any sense of regret for having done acts which undoubtedly amounted to defiance of the law, or that he intends in future to refrain from any such offence. It is quite obvious that whether for political considerations or for any other reasons, if we take the law into our own hands and say what we shall do and what we shall not do notwithstanding that there may be a prohibition under the law against doing certain acts, all good Government in the country would come to an end and a state of anarchy and chaos would exist, and I cannot help regretting that this young man who was enrolled as a Vakil in 1913 does not even now realise the exact nature of the offence which he has undoubtedly committed. On his behalf to-day Rai Bahadur Purnendu Narayan Singh has appeared and even now no expression of regret is put forward on his behalf, but it has been contended that, upon the facts disclosed in the Magistrate's judgment, there really was no offence committed under Section 17, Clause (2), of the Criminal Law Amendment Act and that it has not been proved that the meeting in which he took part was really a meeting of the association which had been proscribed and declared an unlawful association by the Local Government. Whether such a case could be made out or not must depend upon the evidence in the case. On further consideration, the learned Rai Bahadur did not pursue the matter or take us through the evidence before the Magistrate because it was pointed out to him that whether or not the Vakil was guilty of an offence under that section it is perfectly clear that he has deliberately taken the law into his own hands and defied the orders of constituted authority. In these circumstances, it seems to me that it would be impossible for us to take the course which I certainly had in mind to take at one time had the Vakil appeared and expressed regret for his past conduct and given some assurance as to his conduct in the future. In such a case we might have been content to let him off with a warning and to accept his assurances as to his future conduct, but having regard to the attitude which he has taken throughout, I do not think that we should be justified in acting in such a manner. With regard to the actions of persons in the position of a Vakil, who is an officer of the Court and who holds a responsible position and who certainly ought to uphold the preservation of law and order, I do not think I can do better than refer to the words of the learned Chief Justice of the High Court at Bombay in a recent case which was heard in October 1919. The learned Chief Justice in a very similar case to the present said:

Advocates and Pleaders are a privileged class enrolled not only for the purpose of rendering assistance to the Courts in the administration of justice, but also for giving professional advice, for which they are entitled to be paid, to those members of the public who require their services. Their position,

training and practice give them immense influence with, the public and their example must necessarily have a much greater effect whether for good or for evil than the example of those who do not occupy this privileged position. It is not necessary in order for us to be able to exercise our jurisdiction that any offence should have been committed, nor is it necessary that what the respondents have done should have subjected them to anything like general infamy or imputation of bad character.

4. I entirely agree with the remarks of the learned Chief Justice in that case and desire to impress them upon the respondent in this case. In these circumstances, although I have already stated I should have been willing had the respondent shown a different attitude to let him off with a warning, I think that the least we can do is to suspend him from practice for a period of six months from this date.

B.K. Mullick, J.

5. I agree.

Kulwant Sahay, J.

6. I agree.

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