

MANU/BH/0123/1954

Equivalent Citation: AIR1954Pat354, 1954(2)BLJR10

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

Civil Ref. No. 3 of 1952

Decided On: 30.11.1953

Appellants:**In Re: Bindeshwari Prasad**

Hon'ble Judges/Coram:

Das, Jugal Kishore Narayan and Jamuar, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Govt. Adv.

For Respondents/Defendant: K.D. Chatterji and Chuni Lall, Adv.

ORDER

1. This is a reference under Section 14, Legal Practitioners Act, against Sri Bindeshwari Prasad, a mukhtear practising at Chapra. Mr. K.D. Chatterji appearing for the learned mukhtear has urged as a preliminary point that the reference is incompetent inasmuch as the District Judge who has made the report has not stated his own opinion as required by the last sentence of Section 14.

2. The facts which have given rise to this reference are these. One Ramparbesh Tewari had filed five rent receipts in Money Suit No. 343/45 of 1944 in the Court of the second Munsif, Siwan. On 19th January, 1951, Ramparbesh Tewari came to Chapra and filed an application for return of the five rent receipts. He was thereupon informed that the rent receipts had already been returned on 9th January, 1951. It then transpired on enquiry that Sri Bindeshwari Prasad, Mukhtear, had identified a wrong person as Ramparbesh Tewari and on such identification the rent receipts had been returned to that man.

The Registrar of the Civil Courts at Chapra made a report of these facts to the District Judge, and the District Judge directed that a proceeding under the Legal Practitioners Act should be drawn up against Sri Bindeshwari Prasad for false identification in the discharge of his professional duty. Such a proceeding was drawn up, and evidence was gone into. The Registrar of the Civil Courts by his order dated 2nd July, 1952 found that the Mukhtear had been guilty of false identification in the discharge of his professional duty. He made a recommendation that the mukhtear should be removed from the roll of mukhteers, and submitted his finding to the learned District Judge. The learned District Judge forwarded the report and finding of the Registrar, Civil Courts, Chapra, with a letter in which he stated:

"I have to forward herewith the report and finding of the Registrar, Civil Courts, Chapra together with all connected papers in connection with proceedings under the Legal Practitioners Act against Babu Bindeshwari Prasad, a Mukhtear practising at Chapra."

3. In support of his preliminary point Mr. Chatterji has relied on two decisions; in the

matter of Mukhtear of Benares, -- 'MANU/UP/0399/1929 : AIR 1929 All 655 (FB) (A)' and In the matter of K, a Pleader, Saran, -- 'MANU/BH/0243/1937 : AIR 1938 Pat 385 (SB) (B)'. The facts of the decision in -- 'AIR 193S Pat 385 (SB) (B)', are entirely different and the principle laid down in that decision has no application to the present case. The decision of the Allahabad High Court in -- 'MANU/UP/0399/1929 : AIR 1929 All 655 (FB) (A)', is more relevant but can be distinguished on the following ground. In the Allahabad case, the reference was made by the District Magistrate direct to the High Court. Their Lordships pointed out that under Section 14, Legal Practitioners Act, every report made to the High Court under the section shall, when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District & the Sessions Judge; when made by a Magistrate of the District, be made through the Sessions Judge. Their Lordships further stated that the High Court was entitled to have the benefit of the opinion of the Sessions judge of Benares. Then they expressed themselves as follows:

"For a proper reference to this Court, the formalities required by Section 14 ought to be fulfilled and in the absence of those formalities being strictly complied with, the reference is no valid, reference".

In the case before us, the reference has been properly made by the District Judge of Chapra. The letter which the District Judge has written has to be read and understood with reference to other facts of the case, The facts alleged against the mukhtear were first reported to the District Judge and the District Judge himself directed that a proceeding should be drawn up and the finding submitted to him. When the finding was submitted to the District Judge, he wrote a letter to this Court forwarding the report and the finding. If all these facts are read together, the only reasonable inference is that the District Judge accepted the report and finding of the learned Registrar, Civil Courts, Chapra, and on that basis forwarded the papers to this Court. We are unable to hold that in the circumstances of this case there has been any substantial non-compliance with the provisions of s. 14, Legal Practitioners Act and we are unable to give effect to the contention of Mr. Chatterji that the reference is incompetent.

4. As to the facts, there is no dispute. Put baldly and without any finesse, the Mukhtear was guilty of a false identification. He did not know Ramparbesh Tewari, nor did he know any person called Bhirgunath Sukul, who, the mukhtear said, was produced before him as Ramparbesh Tewari. We have carefully read the evidence of the mukhtear, which evidence shows beyond any doubt that the mukhtear, may be due to economic reasons, indulged in a kind of practice which has been condemned more than once by this Court.

5. Mr. Chatterji has made a strong plea for clemency. He has pointed out that the mukhtear is about eighty-one years old. He has further pointed out that though there were some adverse orders by the District Judge of Chapra against the mukhtear, those orders were made without hearing the mukhtear and actually the mukhtear had not been guilty of any such conduct on any previous occasion. The orders referred to were orders which the learned District Judge had passed in 1940 by which the subordinate Courts were first asked not to accept identification by this mukhtear and another mukhtear, The order was subsequently modified by order No. 27-G of 1940 which stated that the mukhtear should not identify any person whom he did not know. This order was undoubtedly communicated to the learned mukhtear; and in spite of communication of that order, the mukhtear, it appears, has been guilty of a false identification.

6. Having regard to all the circumstances of the case, we do not think that a mere reprimand or warning will be sufficient in this case. It is necessary to impress upon the mukhtear that false identification of the kind made by him seriously impedes and affects the administration of justice in the Courts below. We accordingly accept the reference, and direct that the mukhtear should be suspended for a period of six months with effect from this day. It is stated at the Bar that the mukhtear is present in Court. There will be no order for costs.

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