

MANU/BH/0022/1962

Equivalent Citation: AIR1962Pat67

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

Civil Ref. No. 3 of 1958

Decided On: 25.10.1961

Appellants:**In Re: Girindra Kishore Jha Bettiah**

**Hon'ble Judges/Coram:**

*Kamla Sahai , Udai Sinha and S.P. Singh , JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Raj Prasnath, Govt. Pleader*

*For Respondents/Defendant: Raghunath Jha and Nagendra Kumar Roy, Advs.*

**JUDGMENT**

1. Sri Z. Ahmad, a magistrate with first class powers of Bettiah has made this reference under Section 13(b) and Section 14 of the Legal Practitioners Act, through the District Magistrate and the District and Sessions Judge of Champaran at Motihari.

2. The facts may be shortly stated. Cognizance of a Criminal case under Section 188 of the Penal Code was taken against one Ramsanehi Singh on the 13th November, 1952. That case was numbered as case No. 205, O. C. of 1952. The learned Magistrate who took cognizance passed an order on the same date, directing Ramsanehi to be released on bail of Rs. 800/- with two sureties of Rs. 400/- each Bail was offered by Mohan Lal and Rafique Mian. Sri Girindra Kishore Jha, Pleader, against whom this reference has been made, certified that they were fit persons to be bailors. A Sub Deputy Magistrate named Mr. S.N. Tewari held an enquiry and reported that those two proposed bailors were not fit persons. Ram Asrey and Sukhi stood sureties to the extent of Rs. 400/- each and they were also certified by the pleader to be fit persons. On the 15th November, 1952 Kanhai Ram offered bail of Rs. 800/-. The pleader certified him to be fit and Mr. Tewari also reported that he was fit. The bail offered by Kanhai with Ram Asrey and Sukhi as sureties was accepted and Ramsanehi was released on bail. The case was then transferred to the court of Mr. S.N. Tewari. On the 26th November, 1952, fresh bail was to be offered. One Raj Kishore Prasad Singh purported to execute the bail bond and the pleader certified him to be fit. The bond was accepted and Ramsanehi was released on fresh bail.

3. Ramsanehi did not appear on a date fixed in the case. Raj Kishore Prasad Singh was, therefore, noticed to show cause why the bail bond should not be forfeited. He appeared and stated that the bail bond had not been executed by him and that some other persons appeared to have executed it in his name. Thereafter, a case under Section 465/471 of the Penal Code was started against Ramsanehi. This case was numbered as case No. 204 O. C. of 1953. Trial was held by Mr. Zahur Ahmad, who has made the present reference. Sri Girindra Kishore Jha was examined in that case as prosecution witness No. 3. At the conclusion of the trial. Mr. Ahmad acquitted the accused, but came to the conclusion that the pleader was guilty of misconduct.

**4.** On the 14th June, 1956, Mr. Ahmad drew up three charges against the pleader in a proceeding under Section 14 read with Sec. 13(b) of the Legal Practitioners Act. These charges were as follows:

"(1) That you on 13-11-52 in case No. 205 OC/52 gave a certificate that bailors Mohan Lal, son of Gopal Singh, Rafique Mian son of Hurbur Mian of Bettiah (sic) and sufficient properties to stand as sureties for accused Ramsaheni Singh to the extent of Rs. 400/- each. But on enquiry, Mr. S.N. Tewari, Magistrate, Bettiah found the bailors not fit and recommended not to accept the bail bonds. You gave another certificate with respect to other bailors Ramasrey Mahto and Sukhi Ram Sah on the same bail bond, who were also found to be not fit sureties by the same Magistrate, after enquiry that you certified the bailors named to be fit and possessing sufficient properties. But in year cross examination in case No. 204 OC of 1953 in (your cross-examination) on 26-5-58 you stated that you did not remember to know the said bailors. That from your statements it appears that you gave a false certificate.

**2.** That you on 26-11-52 in case No. 205 OC of 1952 certified one Rajkishore Singh son of Udit Narain Singh of village Barwat P.S. Naulan as a fit surety and possessing sufficient property without verifying whether there was any such person of the above name and parentage and whether the said person had signed the bail bond. You also failed to verify as to who filled in the bail bond and whether some fictitious name was inserted with a view to secure release of the accused from custody. On verification, later on the bail bond was found to be a forged one and the accused could not have been released had you not certified the bailors to be fit. (3) That you in case No. 205 OC of 1952 on 15-11-52 certified that bailor Kanhi Rout son of Khedan Rout of village Kargehia P.S. Bettiah was personally known to you and he possessed sufficient properties to stand as surety. But in your cross examination on 26-5-56 in case No. 204 OC of 1953 State v. Ramsanehi Singh AIR 465 I. P. C. (sic) you stated that you did not remember to have known Kanhi Ram son of Khedu Ram of village Kargahia P.H. Bettiah which shows that you gave false certificate of knowing the bailor personally which you did not know."

The pleader did not show cause on the date fixed i.e. the 29th June, 1956. He merely filed an application for time. The Magistrate in his order of that date stated that he was under orders of transfer and hence he could not grant one fortnight's time, as prayed for. He however, gave the pleader time until the 5th of July, 1956, and added that no further time would be given. On the 2nd of July, 1956, the pleader prayed for summons to be issued to Mr. S.N. Tewari, for his appearance as a witness. Mr. Ahmad rejected this petition, giving his reasons at length for not summoning Mr. Tewari. In that order he has expressed the view that this was only an excuse for avoiding disposal of the Legal Practitioners Act case by him and that Mr. Tewari could not really give any material evidence in the case. The Pleader then ceased to take any part in the case. On the date fixed for hearing, i.e., the 5th July, 1956, the pleader was present, but he did not file any show cause petition nor did he take any part in the case. Mr. Ahmad examined three witnesses and he came to the conclusion that the pleader was guilty of gross misconduct; he made the present reference dated the 10th July, 1956. As required by law, he submitted it through the District Magistrate and the District and Sessions Judge.

**5.** It is rather Surprising that the District Magistrate took no action at all on this

reference until 1958. Mr. C.R. Vaidyanathan, District Magistrate stated in his letter dated the 29th July/1st August, 1958 to the District and Sessions Judge that his predecessor did not take any action as he learned that the pleader had been expelled from the Bar Association of Bettiah. In our opinion, that is hardly any excuse. As the reference was addressed to the Registrar of the Patna High Court, the District Magistrate concerned acted extremely improperly in detaining it for a long period. In any case, Mr. Vaidyanathan forwarded the reference to the District and Sessions Judge and the District and Sessions Judge forwarded it with his letter dated the 13th/18th October, 1958, to this Court.

**6 .** The government Pleader has appeared in support of the reference and Mr. Raghunath Jha has appeared on behalf of the pleader. The point which the Government Pleader has urged is that the charges framed against the pleader have been made out, as his own admission in his deposition in case No. 204 OC of 1953 shows that the pleader did, not know the bailors and that he endorsed the certificates of their fitness on the bail bonds without knowing that the bail bonds had been executed by the bailors and the sureties. On the other hand, Mr. Jha has urged, firstly, that Mr. Zahur Ahmad had no jurisdiction to make the present enquiry and report, and secondly that there are mitigating circumstances in favour of the pleader.

**7 .** There has been a serious conflict of opinion in this court on the point as to whether it is the Presiding Officer of the Court in which the pleader has committed misconduct who can hold enquiry under Section 14 or the Presiding Officer of any other Court under the same District Judge or the same District Magistrate can hold it. Reference to the cases in which conflicting opinion upon this point has been expressed has been made in Special Bench decision of this Court in the case of the State of Bihar v. Chandreshwar Prasad MANU/BH/0001/1960 : AIR 1960 Pat 1 (SB) We consider it unnecessary, however, to enter into this controversy because as stated in that very decision, this Court, itself can take cognizance under Section 13(b) if all the facts are before it. It seems to us that no further enquiry is necessary in this case, because there is no fact which the pleader in question proposed to prove in addition to the facts which are already on record. We, therefore, proceed to Consider the facts.

**8 .** The pleader has filed show cause petition in this court. As we have said, he did not file any show cause petition before Magistrate concerned and, indeed, he did not take any defence there. In his deposition in case No. 204 O.C. of 1953, he admitted that the certificate of fitness (Exhibit 1(1)) on the bail bond (Exhibit 1) and the certificates of fitness (Exhibits A-1, B-1 and C-1) on the bail bonds (Exhibits A, B and C) were in his pen and he had signed them. . He further stated that he did not remember to have known Mohan Lal, Rafique and Kanhai Ram. He also stated that he knew Raj Kishore Narain Singh of Barwat, who was the richest man in his village, but he had not met Raj Kishore Singh on the date on which he signed the certificate on the bail bond purported to have been executed by Raj Kishore Singh, that he did not recognise the handwriting of Raj Kishore and that no part of the bail bond including the signature of the bailor was written in his presence. In view of these admissions, it is manifest that he gave the certificate on the bail bonds in question without ascertaining whether the bailors were really fit, and even without knowing whether the bailors, who purported to have executed the bonds, had actually executed them. If he had taken care, he would surely have known that some one other than Rajkishore had signed the bail bonds dated the 26th November, 1952.

**9 .** Mr. Jha has argued that the statements made by the pleader in his deposition in

case No. 204 O.C. of 1953 were made under a confusion as shown by an application which he filed before Mr. Ahmad. It appears that the pleader was examined in chief on the 24th November, 1955, and that he was partly cross examined on the 26th May, and partly on the 28th May, 1956. In his application dated the 28th May, 1956, before Mr. Z. Ahmad, the pleader stated that his enemy, Sri Ramawater Pd. Varma, Vakil, had been engaged to cross-examine him and that he was also under threat of assault by Ramsanehi and the men of Ramawatar Prasad Varma. It may be that he was under some apprehension of assault, but he does not say that the statements made by him in his deposition were False. He did not say at any stage before the matter came up to this court that there was any inaccuracy in any statement made by him. He did not say that even in his application dated the 28th May, 1956. Mr. Raghunath Jha has not been able to point out to us anything in his show cause petition filed in this court to the effect that any statement made by him in his deposition was inaccurate. In these circumstances, it is manifest that the pleader gave his certificates without knowing or believing that what he stated in those certificates was true.

**10.** In view of the circumstances mentioned above, we have come to the conclusion that Sri Girindra Kishore Jha has certainly been guilty of gross misconduct. The question which now arises is, what punishment should be awarded. There are some mitigating circumstances in this case, Firstly, he has stated in paragraph 13 of his show cause petition in the Court, that he acted bona fide in certifying those bailors as fit persons. This has not been controverted. But as we have said, it cannot mean that he gave those certificates after making necessary enquiries. What it may mean is that some one told him that the bailors were fit persons and that the bailors who purported to have executed the bonds had really executed them, and he acted on such information. This conduct is not excusable, because by giving the certificate he took the responsibility upon his head on both the points, namely, that the bailors and sureties had executed the bonds and that they were fit At the same time, we think that this may be a mitigating circumstance.

**11.** Another mitigating circumstance is that the proceeding has been unduly delayed for no fault of the pleader and he has been in suspense throughout a period of about 8 or 9 years.

**12.** Taking the above circumstances into consideration in mitigation, we think that suspension for two years from practice will meet the ends of justice in this case. We therefore direct that Sri Girindra Kishore Jha be suspended from the legal profession for two years with immediate effect.

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