

MANU/BH/0065/1934

Equivalent Citation: AIR1934Pat598, 152Ind. Cas.313

## IN THE HIGH COURT OF PATNA

Decided On: 16.08.1934

Appellants:**In Re: K., a pleader and Ors.**

### Hon'ble Judges/Coram:

*Mohamad Noor, Varma and James, JJ.*

## JUDGMENT

### Mohamad Noor, J.

1. These are two references made by the Munsif of Buxar, through the District Judge of Shahabad, recommending that action be taken under Section 13, Legal practitioners Act, against K and A, two pleaders practising in the Buxar Court. The charges against them are the same and arise out of the same suit. They are therefore being decided by one judgment. The facts leading up to the drawing of the charges are these:

On 16th August 1932, fifty bags of flour belonging to the firm of Brijmohan Lal Madan Lal of Buxar were seized by the Sanitary Inspector of the Buxar Municipality, as in his opinion the flour was unfit for human consumption. Later in the day on the application of Babu Kali Prasad Sinha, Chairman of the Municipality, accompanied by a report from the Assistant Surgeon who had examined some sample of the flour, the then Sub divisional Officer (Rai Sahib Sukhdeo Narayan) passed a formal order of seizure of the bags under Section 287, Municipal Act.

2. The bags were kept in the Municipal Office, and later on the report of the Assistant Surgeon of Buxar that the flour was unfit for human consumption, the Sub-divisional Officer on 22nd August 1932, passed an order for its destruction under Section 288 of the Act, and in pursuance of it the flour was destroyed on 25th August 1932. It does not appear from the materials before us whether the Sub-divisional Officer had the bags brought before him, or any evidence was taken by him, or any notice was given to the owners of the flour, calling upon them to show cause why the order for destruction should not be passed. On 14th September 1932, the firm gave a notice under Section 80. Civil P.C., to the Chairman of the Municipality, the Sub-divisional Officer and the Sanitary Inspector of an intended suit claiming damages from them for the destruction of the flour.

3. A copy of the proposed plaint was also sent along with the notice. The notice was given by A, one of the pleaders involved in these proceedings. The plaint contained, among others, an allegation that:

the flour was destroyed by the defendants in conspiracy and collusion with one another under the cover of their authority and was entirely malicious and illegal and ultra vires.

The suit was instituted on 16th November 1932, and the plaint was signed by the two pleaders K and A. It was dismissed for the plaintiffs' default on 8th November 1933, and compensatory costs were awarded to the defendants. There-after the learned

Munsif drew up the present proceedings against the two pleaders under Section 13(b) and (f), Legal Practitioners Act. The charge against them was that:

they signed and filed the plaint, containing the aforesaid statement (charging the Sub-divisional Officer with malice, conspiracy and collusion) with the apparent knowledge of the fact that what was done by him (the Sub-divisional Officer) must have been done in good faith and in the honest discharge of his duties and that they did not apparently satisfy themselves as to the truth of the allegations made against the Sub-divisional Officer.

**4 .** The pleaders showed cause. They claimed a lawyer's privilege, and further contended that, apart from the privilege, as a matter of fact, they had before them materials on which they could reasonably act on the instructions of their clients and file the plaint containing the afore said allegations. The learned Munsif did not accept the explanation and has recommended that the pleaders be suspended from practice Babu K for two years and Babu A for one year. The learned District Judge has forwarded the report of the learned Munsif to this Court recommending that both the pleaders be suspended from, practice for one year.

**5.** It is unnecessary to discuss in detail the duties of a pleader when filing pleadings and petitions in Courts or asking questions from witnesses. It has been laid down more than once that when their clients ask them to write in a pleading or petition accusations of dishonesty, criminality, etc., against anybody, or instruct them to ask questions of that nature, the lawyers are not to blindly follow the instruction. They must satisfy themselves that apart from the relevancy of those accusations or questions, there are materials on which those accusations can be made or questions asked, and that the accusations and suggestions are not recklessly made. If they do not do so, they are guilty of professional misconduct. The learned Munsif has referred to the case of S. Mukhtar Madhipura, In the matter of, 1929 Pat 151, and especially to the penultimate paragraph of the judgment on which a general letter issued by this Court for the information and guidance of the Subordinate Courts. The case related to a draft of an application for transfer prepared by a mukhtar which contained an allegation against a Sub-Deputy Magistrate.

**6.** His Lordship, the Chief Justice, who delivered the judgment of the Court, pointed out that the privilege of the legal adviser had a tendency and a very grave tendency to be very much abused and nowhere was the abuse so manifest as in an application for transfer. His Lordship pointed out that it was notorious that applications for transfer based upon the alleged prejudice and unfairness of the Magistrate had developed to an extent which had become a scandal and it would be well that professional advisers and more particularly young professional advisers should bear in mind that there were certain kinds of duties which they have to perform in setting forth the cases of their clients and in relation to which they could not take shelter as they are in the habit of doing behind the instructions of the client.

**7.** The penultimate portion of the judgment referred to by the learned Munsif runs as follows:

Statements imputing prejudice or unfairness or corruption to Magistrates should not be made unless the statements of the client as tested by the adviser are found sustainable, unless they are found to be corroborated and unless the adviser has taken some steps not necessarily to pledge himself for his client's veracity but such as to give him as a reasonable man ground for

belief that the statements at any rate are such as should be properly investigated. The duty of the legal profession is a very serious one both with regard to applications of the kind I have mentioned and also in respect of pleadings.

In the case of Dwarka Prasad Mithal In re 1924 All 253, their Lordships of the Allahabad High Court observed as follows:

Members of the legal profession are under no duty to their clients to make grave and scandalous charges either against Judges or the opposite parties on the mere wish of their clients. They are not puppets compelled to obey the dictates of their clients where matters of good faith and honourable conduct are concerned. They are responsible to the Court for the fair and honest conduct of a case. They are not mere agents of the man who pays them but are acting in the administration of justice and in matters of this kind they are bound to exercise an independent judgment, and to conduct themselves with a sense of personal responsibility. If they fail to act with reasonable care and caution they are unfit to enjoy the privileges conferred upon them by law, and serious breaches must be visited with punishment.

**8.** In another case, In the matter of a Vakil 1925 All 641 Mears, C.J. and Lindsay and Mukerji, JJ., observed as follows:

A counsel is entitled to accept the instructions of the client, subject to this: that, as a matter of prudence and for one's own reputation it is not well to associate oneself with reckless charges of fraud and criminality or to indulge in abuse; and counsel should explain the clients that these charges, if unproved, gravely injure the case, and prejudice the Judge. Counsel is not supposed to go hunting here, there and everywhere to test by extraneous circumstances the veracity of his client. It cannot be done nor is it the practice to do it. Counsel have to depend upon the statement that the client makes, the penalty being that, if the client is not telling the truth, he may probably lose the case.

**9.** In this case the pleaders have very lightly not claimed absolute privilege. Their case is that they on the materials placed before them felt justified in filing the plaint. I therefore approach this case in the light of the remarks which I have quoted above. The only question for our consideration is whether in this particular case the two pleaders acted with due care and caution and whether the materials placed before them were such on which a reasonable lawyer could feel justified in thinking that there was a case to go before a Court for investigation. The pleaders have filed some papers supplied to them by the plaintiffs as a part of the instruction.

**10.** They refer to the happening at Buxar at about the time when this plaint was drafted, notice served on the defendants and the suit instituted. It appears that the owner of the firm whose flour was destroyed was Madan Mohan Shroff. He was a Commissioner of the Municipality of Buxar, and the relations between him and the Chairman were very strained. Madan Mohan Shroff had on his side the Vice-Chairman, Latif Mia and some other Municipal Commissioners.

It seems that party feeling was rampant in the Buxar Municipality. The Chairman and his supporter belonged to the one party and the Vice-Chairman Madan Mohan Shroff and others belonged to the other.

**11.** On 28th May 1932, Latif Mia, the Vice-Chairman, Madan Mohan Shroff and perhaps one or two more persons sent a telegram to the Examiner of Local Accounts asking him to send an auditor to audit the accounts of the Buxar Municipality as some embezzlement was apprehended. In consequence of this requisition the local auditor came to Buxar on 3rd June 1932. On 6th June Madan Mohan Shroff and others sent a requisition for a special meeting of the Municipal Board and in order to remove the Chairman. On 17th June the Chairman lodged a first information before the police charging one Lachmi Narain with the removal of some Municipal papers and Madan Mohan Shroff and Latif Mia for conspiring with him. Lachmi Narain appears to have been arrested and sent to hajat. Ball was refused by the Sub-Divisional Officer, but was ultimately allowed by the Sessions Judge.

**12.** On 18th June the house of Madan Mohan was searched in connection with this conspiracy case. Madan Mohan alleged that at the time of the search he was assaulted and wrongfully confined by the police and the Chairman of Municipality. On 20th June he went to lodge a complaint against the Sub-Inspector of Police and the Chairman for this assault and wrongful confinement. The Sub-divisional Officer was about to go on tour and he could not receive the application. He asked Madan Mohan Shroff to come a few days later and in the meantime try to settle the matter. Complaint was however filed on 9th June 1932. Madan Mohan Shroff's statement is that no lawyer would accept his case and the only one who did so was a retired Sub-Inspector of Police, Babu Sital Prasad, who was practising as a mukhtar at Buxar.

**13.** He examined the complainant Madan Mohan Shroff in chief. Next day, that is on 24th June 1932, the clerk of Babu Sital Prasad was arrested in connexion with the theft of certain papers from the Magistrate's Office and next day i.e., 25th June 1932 Sital Prasad himself was arrested in that connexion.

In the course of the house search in connexion with the case one of the witnesses of the search was one Arjun. This Arjun was being prosecuted by the Municipality, and the case against him was withdrawn on 23rd June 1932, the day on which Madan Mohan Shroff's complaint was filed and Sital Prasad acted for him. It seems that the events which I have narrated created a panic among some of the residents of Buxar and a deputation waited on the Sub-divisional Officer on the 25th June to complain against the supposed highhandedness of the Chairman and the police.

**14.** It seems that the prosecution of Madan Mohan Shroff for conspiracy and Sital Prasad for theft both cases being in connexion with some papers in one case of the Municipality and in the other of the Magistrate's Office created a belief in the minds of some people that the opponents of the Chairman were being persecuted. The deputation was not satisfied with the result of the representation to the Subdivisional Officer and they waited on the District Magistrate Mr. S. Lal. Mr. Lal's evidence before a Deputy Magistrate was that the deputation told him that there was a reign of terror at Buxar. He heard them sympathetically and promised to go into the matter. Later on both the cases, namely, of the conspiracy against Madan Mohan and others and of theft of papers against Sital Prasad and his clerk, were transferred from the Court of the Subdivisional Officer of Buxar to the Courts of Arrah.

**15.** The former was made over to the Sub-divisional Officer of Arrah and soon after the Public Prosecutor withdrew it. The latter was tried by a Deputy Magistrate at Arrah who acquitted the accused Sital Prasad and his clerk and held the case to be maliciously false. He came to the conclusion that the case was concocted at the instance of the Chairman of the Municipality with the help of the police. He drew the

attention of the authorities to the conduct of the police at Buxar. In the meantime the complaint which Madan Mohan Shroff had filed against the police and the Chairman of the Municipality was dismissed by the Sub-divisional Officer of Buxar on 4th July 1932, and Madan Mohan was called upon to show cause why he would not be prosecuted under Section 182, Penal Code.

**16.** On being moved the Sessions Judge of Shahabad ordered a further inquiry so far as the case was against the police and commented upon the action of the Sub-divisional Officer in not holding a prompt inquiry into the complaint. In fact, the inquiry was delayed for several days, though the place of occurrence was within three hundred yards of the Sub-divisional Officer's Court. These were the happenings at Buxar, and it is obvious that rightly or wrongly a certain section of the residents of the town including the plaintiff Madan Mohan Shroff believed that the opponents of the Chairman were being ill-treated by him and subjected to harassment and persecutions and that they had lost their hopes in getting redress from the Sub-divisional Officer. The Examiner of Local Accounts had also become apprehensive of the safety of the Local Auditor and had asked the Sub-divisional Officer to take special care of him.

**17.** The auditor had brought to the notice of the Sub-divisional Officer some alleged cases of temporary embezzlement by the Chairman

It was in this state of affairs that on 16th August 1932, the bags of flour of Madan Mohan were seized and later on destroyed. Immediately after the seizure of the flour Madan Mohan Shroff sent a telegram to the District Magistrate in which he complained that the flour was kept in the verandah of the Municipal Office exposed to August rains and that he was unable to get any relief from the local authorities. Madan Mohan's grievances, right or wrong, were that the flour was destroyed without due inquiry and without giving him an opportunity of being heard and that in spite of the fact that the Sub-divisional Officer knew or ought to have known the relationship existing between him and the Chairman he allowed the bags of flour to be kept in charge of the Municipal Authorities and to be kept in the verandah of the Municipal Office during the month of August exposed to heavy rains. I have gathered these facts from the papers which the pleaders produced before the learned Munsif as materials shown to them by the plaintiff and on the basis of which they contend they felt justified in filing the plaint.

**18.** Most of these facts are mentioned in the judgment of Sital Prasad's case and the deposition of the Sub-divisional Officer in that case. Here I must point out that the learned Munsif was wrong in not taking these papers into evidence. These were not produced before him as evidence against the Sub-divisional Officer. They are primary evidence being original papers (not copies) on which these pleaders acted. These were produced by the pleaders in order to show that these papers were part of the instruction given to them on the basis of which they believed that there was a presentable case before the civil Court and felt justified in filing the plaint. No doubt most of them are plain copies; but according to the evidence of the pleaders they were given to them by the plaintiff. It is not necessary that at the time of receiving instructions or preparing pleadings a pleader must insist to have certified copies of all papers.

**19.** He has no business to suspect that his client is deceiving him by showing him plain copies of papers which do not exist or which had been altered: In fact there has been no suggestion before us that the copies are fabricated or that they are not

copies of real documents. The facts which I have stated above disclose circumstances which, in my opinion, justified the pleaders filing of the plaint. The fact that later on the plaintiff allowed the case to be dismissed for default will not make the filing of the plaint by the lawyers unprofessional. I must guard myself against being misunderstood.

We are not being called upon to decide whether in fact there was any collusion between the Sub-divisional Officer and the Chairman or whether the destruction of the flour was unjustified.

**20.** That issue is not before us nor are materials before us not which we can come to any conclusion in this respect. The simple question before us is whether the materials placed before the lawyers justified them in filing the plaint. While I must hold that these materials cannot lead to the conclusion that there was collusion between the Sub-divisional Officer and the Chairman of the Municipality, I have no hesitation in holding that there were materials which would justify a lawyer to accept the brief of the party who desired to institute a suit for the nature with which we are concerned, specially when the plaintiff offered to give evidence at the hearing.

**21.** The materials were in short the fact that everybody who took any step against the Chairman was involved in some case or the other. One case was judicially found to have been concocted by the Chairman with the help of the police against the Mukhtar who had accepted the brief of Madan Mohan Shroff. Another case had to be withdrawn by the Crown. The complaint of Madan Mohan Shroff against the Chairman and the police was dismissed on grounds which did not appeal to the Sessions Judge.

The District Magistrate thought fit to transfer the cases from the file of the Sub-divisional Officer and as soon as the cases were transferred both of them collapsed. Then there was the fact that apparently the flour was destroyed without giving an opportunity to Madan Mohan Shroff to show cause against the order of destruction. The distrust of Madan Mohan Shroff was not started at the time of the institution of the suit.

**22.** He had expressed it on the day the flour was seized and on 23rd August in a letter sent by three Municipal Commissioners Latif Mia, Madan Mohan Shroff and Issar Dayal to the examiner of Local Accounts it was stated that the Sub-divisional Officer had a soft corner for the Chairman for reasons best known to the Sub-divisional Officer himself. The pleaders had other good reasons for signing the plaint. The plaint was not drawn up by them. The draft has been filed. It is in evidence that it was prepared by Mr. R a senior pleader of the bar. They were drafted before the notice was served upon the Sub-divisional Officer. Mr. A who gave the notice states on oath that it was on the advice of Babu R that he gave notice. It is common knowledge that senior pleaders do not do the work of serving notices. They were also shown railway receipt of the bags of flour which Madan Mohan said he had received from Patiala. It is not suggested that the two pleaders had any malice or bias against the Sub-divisional Officer himself. Taking the circumstances of the case as a whole, I am clearly of opinion that the pleaders acted in good faith and with due care.

**23.** Unfortunately the learned Munsif has at places approached the case as if he was trying the issue of collusion against the Sub-divisional Officer. He seems to have expected the pleaders to prove the truth of the charge and to prove the papers produced by them as if they were being used against the Sub-divisional Officer. He expects them to have ascertained the truth of the allegation from the Sub-divisional

Officer himself. It is not the duty of the lawyers about to be engaged in a case to go and inquire about the truth or otherwise of the allegation from the man against whom a suit is going to be instituted. Had the pleaders done that, nobody would have given them credit for possessing commonsense.

**24.** It would have been absurd for them to go and ask the Sub-divisional Officer whether in fact he had colluded with the Chairman when he ordered the destruction of the flour. When a pleading contains allegations of fraud or collusion or other similar charges the duty of the pleader ends when he has satisfied himself that his client was not making a reckless irresponsible statement and that he has some material on which he bases his charge. It is not necessary that the pleaders themselves should have inquired into the truth of the charge as the learned Munsif seems to think and as he has mentioned in charge.

It was enough if they believed that there were grounds for making the charge. It may be sometimes difficult to draw a line between the two, namely, satisfying whether the allegations are true and satisfying whether there are grounds for making the allegation; but in practice there should be no difficulty in deciding whether the allegations were recklessly made or whether there were grounds for making those allegations. There is a difference between the responsibility of a party and that of his lawyer.

**25.** While the former makes himself responsible for the truth of the allegation the latter is only to satisfy himself that the allegation has foundation. Then I am unable to understand the relevancy of the Judicial Officers Protection Act, in connexion with this proceeding or of the discussion whether the order of destruction of flour was passed by the Sub-divisional Officer in judicial or executive capacity. The Judicial Officers are protected under the Judicial Officers' Protection Act from suits for acts done by them provided that the officer believes in good faith that he has jurisdiction to do the act in question.

**26.** In this case the plaintiff wanted to attack the good faith of the Sub-divisional Officer, and the allegations were made to that effect. It was not for the pleaders to decide whether the materials were sufficient to take away the protection. It was for the Court to come to that conclusion. Investigation of truth is function of a Court and not the duty of a lawyer. I think the learned Munsif is right in his view that the order of destruction was a judicial order, but a contrary view may perhaps be urged.

**27.** But all this is immaterial for the purposes of this case. Absolutely baseless and reckless charges against public officers are unfortunately not uncommon. It is the duty of the Courts to see that the pleaders do not recklessly make themselves parties to such allegations and take shelter under the privilege of a lawyer and escape consequences by simply stating that they were instructed. On the other hand, so much restriction should not be placed upon the lawyers that when a member of the public feels aggrieved against a public officer and wants to take up his conduct before a tribunal, lawyers may not be available to accept his brief.

**28.** I am clearly of opinion that this proceeding should not have been started at all. I would discharge these references and cancel the proceedings against the two pleaders.

**James, J.**

**30.** I agree.

**Varma, J.**

**31.** I agree.

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