

MANU/BH/0109/1957

Equivalent Citation: AIR1957Pat355, 1957(5)BLJR214

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

Misc. Jud. Case No. 726 of 1956

Decided On: 18.02.1957

Appellants:**In Re: Makbool Alam Khan**

Hon'ble Judges/Coram:

Jamuar , Khaleel Ahmad and Chaudhuri , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: R.S. Chatterji and R.S. Sinha, Advs.

For State: Standing Counsel

JUDGMENT

Jamuar, J.

1. This is an application by Makbool Alam Khan for his reinstatement, permitting him to practise as a mukhtear. The circumstances are these. The petitioner was practising as a mukhtear at Sasaram from 1938 to 1946. There was a criminal case brought against him in the year 1942 as a result of which he was convicted for certain offences. This case arose in the following circumstances;

The Tikari Raj in the district of Gaya had obtained a rent decree against certain relations of the petitioner, namely (1) his sister named Najma Khatoon, who was the widow of Amanat Ali, (2) a brother of Amanat All named Asgar Ali, (3) a third brother of Amanat All named Maksood Ali, and (4) the mother of Amanat All and his brothers named Elahi Jan. One Ramkirit had obtained a lease of the tenure from the judgment-debtors, who were the tenure-holders. In order to save the property, the thicadar, namely, Ramkirit, made a deposit of the decretal money to the credit of the decree-holder, and the deposit was in the name of the Judgment-debtors. This was about Rs. 2,000/- but the sale was not set aside. Thereafter, Ramkirit and the petitioner approached a mukhtear named Harihar Prasad at Gaya and gave him a power to withdraw the money which Ramkirit had deposited. The petitioner was alleged to have signed the vakalatnama as Maksood Ali and he had also represented to the said mukhtear that he was himself Maksood All.

As a result of this representation, the mukhtear acted upon it and withdrew the money which was made over to the petitioner, and the petitioner gave a receipt for this payment and signed as Maksood Ali. When Asgar Ali came to know of these facts, he approached the mukhtear, explained to him the circumstances and asked him to file a complaint against the petitioner.

This the mukhtear did sometime in the year 1942. A complaint having been filed disclosing offences provided by Sections 419, 420 and 487 of the Indian Penal Code, the petitioner was tried for those offences and convicted. He filed an appeal against the order of conviction, and the appeal was dismissed. Thereafter, he filed an

application in this Court in its criminal revisional Jurisdiction, which application was numbered as Criminal Revn. 519 of 1945. This was filed on the 7th June, 1945.

It appears that the parties to that application desired a compromise. Two of the sections under which the petitioner had been convicted, namely, Sections 419 and 420 of the Indian Penal Code, were compoundable, but not section 467 of the Code. The compromise, however, was accepted so far as Sections 419 and 420 of the Code were concerned and given effect to with the result that the conviction of the petitioner under those sections was set aside.

The conviction under Section 467, however, had to be maintained, but the sentence of imprisonment which had been passed against the petitioner under this section was reduced to the period already undergone and a fine was imposed upon him to the extent of Rs. 300. This fine, we are informed, was paid.

2. Consequent upon the conviction of the petitioner, the District Judge of Gaya made a reference to this Court in the year 1945 under Section 12 of the Legal Practitioners Act. This was Civil Reference No, 2 of 1945. When this reference came to be heard by a Bench of this Court, an order was made on the 15th of November, 1948, dismissing the petitioner from his profession.

3. In December, 1955, the petitioner made an application in this Court for his reinstatement, but the application was withdrawn in March, 1956, Mr. Chatterji, who has appeared for the petitioner before us, has stated that the reason for withdrawal of that petition was that the petitioner had not then filed certificates for the whole of the period during which he had left his practice showing that he had conducted himself in a proper manner.

Thereafter, the present application was filed on the 20th of September, 1956, and a number of certificates have been attached with this application purporting to show that the petitioner has been of good conduct all through the period during which he has been out of practice. The question now is whether an appropriate case has been made out by the petitioner for allowing him to resume his practice as a mukhtear.

It has been urged upon us that the petitioner since the time that he was dismissed from his profession has been conducting himself in a proper manner and has been leading an honest life and that he is one who will conduct himself as a suitable member of the profession. It is unnecessary to refer to all the certificates filed by him in detail. Suffice it to say that the certificates do indicate that he has been leading an honest life.

The matter which was pressed before us was that the order dismissing him from his profession was made by this Court in November, 1946, which was some years ago, and that the petitioner has by now suffered sufficiently for what he had done in the past. The further circumstance pressed before was that the conviction of the petitioner in the criminal case brought against him was in respect of a matter which may be considered to have been a dispute amongst the family members and with which no stranger litigant or client was concerned. The Petitioner's sister was one of the judgment-debtors, as I have already stated, and after her death the petitioner was substituted in the course of the civil proceedings and the petitioner claimed to have inherited the interest of his sister.

It was pointed out that it was no doubt a great mistake which the petitioner had committed in doing what he did, but that the mistake committed was in the course of

a proceeding with which he appeared to have been personally concerned and which was with some relations of his. Although it is not possible to consider this as sufficient for relieving the petitioner from all blame, it may be a circumstance which in this particular case may be considered somewhat in his favour as he was then young in the profession, having started his practice only in 1938.

Since the petitioner has been able to show that he has been honest enough and quite straightforward during the period of his being out of his profession, and since it has been represented to us that the petitioner has fully recognised the gravity of his offence and is now penitent, I have no, doubt that the petitioner, if he is permitted to resume his practice and is reinstated, will realise that he should now become an honourable member of an honourable profession.

I must express the hope that the petitioner will be penitent and that he will do all that lies in his power to lead a life which the honourable profession, to which he once belonged, demands of him. He has, I think, now sufficiently suffered, for what he had done.

4. In these circumstances, I am of the opinion that the application should be granted. The petitioner may apply for renewal of his certificate, in the usual course, which will be renewed by the proper authorities.

Khaleel Ahmad, J.

5. I agree.

Chaudhuri, J.

6. I agree.

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