

MANU/BH/0070/1963

Equivalent Citation: AIR1963Pat233, 1963CriLJ795

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

Misc. Judicial Case No. 735 of 1961

Decided On: 04.01.1963

Appellants:**In Re: Ram Chandra Prasad Sinha**

Hon'ble Judges/Coram:

S.C. Mishra, Udai Sinha and G.N. Prasad, JJ.

Counsels:

K.P. Verma, Standing Counsel and A.C. Sinha, Adv. for Bar Council, K.B.N. Singh and Janardan Sinha, Advs. for Ram Chandra Prasad Sinha, Adv.

ORDER

1. This proceeding under Section 10 of the Bar Councils Act (Act 30 of 1926) has been started on the report of the Sessions Judge of Darbhanga, dated the 5th October, 1959. The opposite party, Ram Chandra Prasad Sinha, is an advocate practising in the Courts at Samastipur. On the 25th of March, 1959, he moved a petition for bail on behalf of an accused, under Section 395 of the Indian Penal Code, named Chandrika Singh. The petition was however, rejected by the learned Sub-Divisional Magistrate. On the 3rd of April, 1959 the opposite party filed an application for bail on behalf of Chandrika Singh before the Sessions Judge of Darbhanga. It was put up before the learned Judge on the 7th April, 1959 and bail was granted. The bail order was handed over to the learned advocate, who, in due course, was expected to produce it before the Sub-Divisional Officer, who would order release of the accused person on furnishing the requisites of the bail for the order of release.

On the 6th April, 1959, another application was filed before the learned Sessions Judge by one. Janak Kumar, claiming to be a relation of Chandrika Singh, through a pleader, Sri Krishna Chandra Prasad. That application was put up before the Additional Sessions Judge of Darbhanga on the 8th April, 1959, and was rejected on the ground that order for bail was already passed in favour of Chandrika Singh by the learned Sessions Judge, apparently referring to the order passed on the preceding day, that is, on the 7th April, 1959. On the 9th April, 1959, at 4 P.M. an application was filed by Janak Kumar before the Sessions Judge, stating therein that he was a relation of Chandrika Singh, and praying for issue of a duplicate bail order, inasmuch as, after the refusal of the prayer for bail by the Sub-Divisional Magistrate of Samastipur, he went to arrange for money for giving an application for bail before the Sessions Judge and actually made such an application. He learnt, however, on the preceding day that bail was granted and the bail order had been handed over to the opposite party, Ram Chandra Prasad, who appeared for Chandrika Singh before the learned Sessions Judge. Accordingly, he went to Samastipur, but the Courts there being closed for Id-ul-Fitr from the 9th to the 12th April, he was informed that Ram Chandra Prasad had gone out of station on account of the holidays.

2. On receipt of this application, the learned Sessions Judge called for a report from

the Sessions Clerk as to why the bail order was handed over to the advocate. He also called for a report from the Sub-Divisional Officer as to whether he received the bail order. On the 10th April, 1959 the Sessions Clerk informed the learned Sessions Judge that the bail order was handed over to the learned advocate in accordance with the practice prevailing in the Court in regard to such bail order passed in respect of accused persons from the Sub-Divisions Madhubani and Samastipur, in whose cases bail orders are handed over to the advocate moving for the grant of bail. On the 14th April, 1959, the Sub-Divisional Officer of Samastipur also reported that the bail order relating to Chandrika Singh was not produced before him. On the 15th April, 1959, Janak Kumar filed another petition before the learned Sessions Judge, alleging therein that after he had filed the application on the 9th April and an order was passed, as referred to above, he went to Samastipur and met Sri Ram Chandra Prasad Sinha and requested him to hand over the bail order to him, but the learned advocate informed him that he would not hand over the bail order to him. On receipt of this application, the Sessions Judge ordered issue of a duplicate of the order granting bail and also called upon the advocate to show cause as to why he should not be held liable for professional misconduct. On the 22nd April, 1959, the advocate opposite party filed show cause.

3 . In the show cause petition the opposite party staged that the Vakalatnama executed by Chandrika Singh in his favour was given to him by Ramadhar Singh as a relation of Chandrika Singh on the basis of which he moved the Sessions Judge for grant of bail on behalf of Chandrika Singh. The bail order issued by the Court was handed over to him on the 7th April, 1959. When he came back to Samastipur, he happened to meet Ramadhar Singh, He was anxious to proceed to his home in the village during the Id-ul-Fitr holidays, and believing that Ramadhar Singh was a friend and well-wisher of the accused, he handed over the bail order to Ramadhar Singh to be produced before the Sub-Divisional Officer and for taking necessary steps for having Chandrika Singh released on bail. Ramadhar Singh undertook to do so. Later on, he was informed by Ramadhar Singh that the bail order was accidentally lost and accordingly, arrangement was made for issue of a duplicate bail order. Having stated -the above facts, the learned advocate admitted that the proper thing for him to be done was to produce the bail order himself and that he was sorry that it was made over to Ramadhar Singh due to which it happened to be lost, resulting in inconvenience to the accused person, who was kept in Jail when he could have been released at an earlier date. Accordingly, he offered unqualified apology for this unfortunate position resulting from an act on his part.

4. The learned Sessions Judge started an enquiry against the advocate opposite party wherein Ramadhar Singh was examined on behalf of the opposite party and Janak Kumar was examined in support of the allegations made by him in his petition dated the 15th April, 1959. Ramadhar Singh supported the statements of the learned advocate in substance, giving details as to the circumstances in which he happened to entrust the Vakalatnama executed by Chandrika Singh to the advocate, Sri Ram Chandra Prasad Singh, how he met the advocate on the 7th April in connection with another case and the bail order was made over to him by the advocate opposite party. He was requested by the advocate to produce the bail order before the Sub-Divisional Officer of Samastipur next day. He stayed at the house of the advocate that night and in the following morning he went to take his bath in river Gandak, leaving his dhoti and Ganji along with the bail order by the side of the river. When he finished his bath and came out of the river, he found that his clothings along with the bail order were stolen by some-one. He then went to the house of Chandrika Singh and informed his wife about the matter and requested her to file an application for a

fresh copy of the bail order. He then left for his village.

Janak Kumar, however stuck to his previous statement. He claimed to be an agnatic relation of Chandrika Singh. After having stated as to how he happened to file an application for bail on the 6th April, 1959, through Sri Krishna Chandra Prasad, Pleader, he repeated the statements made in the petition that on going back to Samastipur he met Ram Chandra Babu on the 12th April 2nd asked him to make over the release order to him but Ram Chandra Babu refused to make over the release order to him. He stated that Ramadhar Singh had no concern whatsoever with Chandrika Singh and that he had nothing to do with the filing of the bail petition, and further, that he was never requested by Chandrika Singh's wife to move a petition for bail before the Sessions Judge of Darbhanga. Ramadhar Singh, according to him, was a tout of Ram Chandra Babu, suggesting that he had come falsely to support the case of the advocate opposite party.

5. The learned Sessions Judge, on a consideration of the petition of Janak Kumar and the show cause petition filed by the opposite party as also the evidence given before him by Ramadhar Singh and Janak Kumar, came to the conclusion that the case of the advocate that he had handed over the bail order to Ramadhar Singh could not be accepted. Accordingly, he held that the advocate, Ram Chandra Prasad Sinha withheld the bail order with some ulterior motive, and forwarded the records of the case to this Court with the recommendation that suitable action might be taken against the advocate opposite party.

6. The Court, thereafter, referred the matter for enquiry to a tribunal of the Bihar Bar Council, consisting of three advocates of this Court, which examined the records of the case, obtained a fresh show cause petition from the advocate opposite party, Ram Chandra Prasad Singh, and recorded the conclusion that "proceedings for professional misconduct should not be started on the facts of this case andno prima facie case has been made out against Sri Ram Chandra Prasad Sinha, Advocate, Samastipur". Accordingly, the tribunal recommended that further proceeding was not warranted against him.

7. Learned Standing Counsel arguing for the reference has placed before us various considerations arising in this case. We have accordingly gone through the evidence of Ramadhar Singh as also that of Janak Kumar, in our opinion, it is unnecessary in this case to go into the question as to whether the statement of the opposite party can be accepted as correct or not, because that question does not strictly arise on the view we are going to take of the evidence In this case. Janak Kumar did not state either in the petition filed by him on the 15th April, 1959, or in his deposition that the opposite party, Ram Chandra Prasad Sinha had any particular reason for withholding that bail order. It is also remarkable that in the petition filed by him on the 15th April, 1959, he did not state that he met Ram Chandra Prasad Sinha in the Court compound on the 12th April, 1959, and that he had refused to hand over the bail order to him. He made this statement only when he was examined in course of enquiry by the learned Sessions Judge, it may well be, therefore, that the learned advocate being anxious to proceed to his village on account of the Id-ul-Fitr holidays, was not as careful as in the ordinary circumstances he would have been or he was expected to be. Having obtained the bail order and having it handed over to him, either he made it over to Ramadhar Singh or, even assuming that he failed to do so, in his anxiety to go home, it would, at the highest, constitute an act of negligence on the part of the learned advocate, although it must be said that an advocate should be very circumspect in the discharge of his duty, because upon that depends, as in this

case, liberty or valuable stake of a citizen.

But all the same, the question of any mala fide intention on his part does not arise. The advocate in his show cause petition not only expressed regret but also he has promised to be more careful in future, so that a mistake like this may not recur. In our opinion, therefore, without scrutinising the statements of Ramadhar and Janak Kumar respectively, which would not lead to anything particularly material, it is sufficient for us to say that in the absence of any improper motive or intention on the part of the advocate opposite party, he cannot be held guilty of any improper conduct, except that he should have been more careful than he was as the facts and circumstances of this case disclose. Accordingly, we accept the apology tendered by him and his promise of more careful acting on his part in future, and accept the recommendation of the tribunal that it is not a fit case to start a proceeding against Sri Ram Chandra Prasad Sinha.

8. In the result, therefore, the proceeding is dropped and it is expected that the learned advocate will avoid this kind of negligence in future.

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