

MANU/BH/0065/1942

Equivalent Citation: AIR1943Pat62

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

Decided On: 27.11.1942

Appellants:**In Re: Sadananda Bakshi, Pleader**

Hon'ble Judges/Coram:

Arthur Trevor Harries, C.J., C.M. Agarwala and Broogh, JJ.

JUDGMENT

Arthur Trevor Harries, C.J.

1. This is a reference made by the learned District Judge of Manbhum-Singbhum recommending that action should be taken against the opposite party, Babu Sadananda Bakshi, under Section 14, Legal Practitioners Act. Babu Sadanand Bakshi is a pleader of Purulia, who, we are told, has been in practice since the year 1917. It appears that a decree-holder, Mahananda Ojha had commenced an execution case in the Court of the Subordinate Judge, Purulia, against his judgment-debtor, Mahant Ramsewak Das. The pleader Sadananda Bakshi had been instructed by the decree-holder and had actually filed the execution case. On 7th June 1939, a petition signed by Sadananda Bakhshi on behalf of the decree-holder and by another pleader on behalf of the judgment-debtor was filed before the learned Subordinate Judge stating that a sum of Rs. 140 had been paid by the judgment-debtor to the decree-holder in the execution case and praying that the case be dismissed on part satisfaction. Later in the same day, however, the decree-holder Mahananda Ojha filed another petition stating that he had received only Rs. 61 and praying that the execution case should proceed. The Court faced with these two petitions took the only possible course and directed that the parties should be heard on the question of this alleged payment of Rs. 140 and evidence was led on behalf of the decree-holder and the judgment-debtor.

2. In that proceeding the pleader, Babu Sadananda Bakshi, who had been instructed by the decree-holder deposed in favour of the judgment-debtor and stated that the latter had paid Rs. 61 to the decree-holder on one occasion and that on another occasion he had paid Rs. 39 to the decree-holder in his presence. He further stated that the decree-holder had in his presence given a receipt for this Rs. 39 and that the witness had himself added his signature to the receipt. He further deposed that he had received another sum of Rs. 40 from the judgment-debtor which lie had set off against fees owed by the decree holder to him. The decree-holder gave evidence denying the payment of Rs. 39 by the judgment-debtor and he also denied the granting of the receipt (EX. B), acknowledging payment of this sum. He, however, admitted fiat the pleader Sadananda Bakshi had given him notice regarding the receipt of a sum of Rs. 40 from the judgment-debtor. Thus, there was an admission before the learned Subordinate Judge that the judgment-debtor had paid Rs. 61 to the decree-holder and a further sum of Rs. 40 which the pleader had retained as against fees due to him from the decree-holder. The only point in dispute, therefore, was regarding this payment of Rs. 39.

3. The pleader in his evidence stated on oath that this sum was paid by the judgment-debtor to the decree-holder in his presence and that the latter received the money in his presence and gave a receipt for the same. The learned Subordinate Judge who conducted this inquiry accepted the evidence of the pleader and disbelieved that of the decree-holder. He accordingly held that a sum of Rs. 140 had been paid as stated in the joint petition which had been filed on 7th June 1939. The Subordinate Judge took a serious view of the conduct of the decree-holder and directed that a complaint should be filed with a view to prosecuting him for perjury and making a false claim. The order of the learned Subordinate Judge, which is dated 11th March 1940, makes it clear that he was mainly influenced in the step he took by the statement on oath of the pleader, Babu Sadananda Bakshi. In due course the criminal case against the decree-holder, Maha-nanda Ojha was tried by Mr. B.B. Sen, a Magistrate of the first class. The only witness for the prosecution was the pleader Babu Sadananda Bakshi. It is to be observed that the Crown was not represented by Counsel or indeed by any one, and there was no one in Court to examine the pleader who was the one and only witness for the prosecution. He apparently went into the box, and after being sworn he had to tell the story in his own words as best he could. In this so-called examination-in-chief he made this statement:

A few days after 17th May 1939, Rs. 39 was again paid by the judgment-debtor to this accused. The receipt was written by one Santosh Kumar Sarkar of Khura in my presence. This was also attested by me and it bears my signature.

4. It will be seen that in this statement he did not say that the money was actually paid over in his presence, though the impression which the statement gives is that he was there as he states categorically that the receipt was written in his presence and was attested by him. The accused unlike the Crown thought it wise to be represented by Counsel and the pleader was cross-examined. In cross-examination he made the following statement:

It was settled that judgment-debtor would pay Rs. 39 to the decree-holder. A receipt was accordingly drawn up. After the receipt was written and signed the decree-holder entertained me with tea and refreshment. It was arranged in a different room. I took refreshment in that room. After I finished refreshment I came back. By that time parties also dispersed. I did not see actual payment of money hand to hand.

5. In cross-examination he makes it clear that he did not see money pass from the hands of the judgment-debtor to those of the decree-holder, though before the Subordinate Judge he had said that the money had actually been paid in his presence. The learned District Judge is of opinion that these statements are conflicting and that one of them must be false and false to the knowledge of the pleader. That being so, he suggests that the pleader has been guilty of gross professional misconduct in making a false statement in either of the Court of the Subordinate Judge or the Court of the Magistrate. There can be no doubt whatsoever that if a pleader does make a deliberately false statement in legal proceedings his conduct would be grossly unprofessional even if it was not criminal as it might well be. The question, therefore, arises in this case whether these statements are conflicting and whether the pleader has on one of these occasions deliberately made a false statement. The pleader in his explanation to the learned District Judge put forward an ingenious story. He stated that though he did not see the money actually pass from the (sic) of the judgment-debtor to those of (sic) holder he did see the

money placed in a sal leaf of which the decree-holder eventually took possession. I am very doubtful whether this story is true; but even if it is not, that, in my view, does not end this case.

6. One thing is clear and that is that when this Rs. 39 is alleged to have been paid the pleader was present with the parties. Before the learned Subordinate Judge, a number of other witnesses were called to prove payment of this sum of Rs. 39 and all say that the pleader was there with the parties. It is also dear that on that occasion the decree-holder did sign a receipt which was attested by Babu Badananda Bakshi, who was his pleader. Further, it is clear that at that time the decree-holder never made any complaint that he had not received the sum of Rs. 39 for which he had given a receipt. From a mere recital of those facts it seems tolerably clear that the decree-holder did receive Rs. 39 from the judgment-debtor on that occasion. Further, the pleader, Babu Sadananda Bakshi, was present either in the room in which the transaction took place or in a room adjoining it where he was given certain refreshment. In his cross examination in the Court of the Magistrate he mentions that he was offered refreshment in an adjoining room after the receipt was drawn up and signed by the decree-holder and himself, and he further states that after taking refreshment he found that the parties had dispersed. Even if he had not seen the money pass from hand to hand, I think he could have legitimately inferred from what he actually saw and from what he did that the money had passed from hand to hand in the room in which he was.

7. It is inconceivable that the decree-holder would have asked his pleader to sign the receipt and would have handed it over to the judgment-debtor if the money had not been paid. I think the pleader was fully entitled to infer that it had been paid during the time the parties were in that room, and I can well understand his saying that it was actually paid in his presence. He was not expressing himself with care and was using the phrase "in his presence" loosely. What he really meant, I think, was that the money was paid in the room on that occasion whilst he himself was in the room, though he did not actually see the money pass from hand to hand.

8. On the other hand, this pleader must realise that greater care must be exercised in the choice of language when he is giving evidence and particularly when he is called to give evidence against his own client. In my view, he should have exercised the very greatest care and have expressed himself with absolute accuracy. He failed to exercise that care, but, on the other hand, I do not think that he intended to convey any false impression. I think all he intended to convey to the learned Subordinate Judge was that the money must have passed when he was present, because he actually saw the receipt being signed, signed it himself and saw it handed to the judgment-debtor, and there was no complaint whatsoever from the decree-holder that he had not received the money. In the circumstances, I am unable to hold that it has been established that the pleader Sadananda Bakshi made what he knew to be a false statement on one of the two occasions on which he gave evidence. In my view, he never saw the money actually pass and expressed himself carelessly before the learned Subordinate Judge. That being so, it cannot be said that he was guilty of unprofessional conduct, though he was guilty of some degree of carelessness in expressing himself. The learned District Judge has also raised a question of jurisdiction, but having regard to the view which I take of the case, it is unnecessary for me to express any opinion upon it.

9. For the reasons which I have given, I would discharge this reference and find the pleader not guilty of any unprofessional conduct.

C.M. Agarwala, J.

I agree.

Broogh, J.

I agree.

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