

MANU/BH/0127/1963

Equivalent Citation: AIR1963Pat458, 1963CriLJ663

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

Civil Ref. No. 1 of 1960

Decided On: 14.11.1962

Appellants:**In Re: Shri S. Deyal Mokhtar**

Hon'ble Judges/Coram:

S.C. Mishra, Udai Sinha and Anant Singh, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: G.P. Sahi, Adv.

For Respondents/Defendant: Gupteshwar Prasad and Umesh Chandra Prasad Sinha, Advs.

JUDGMENT

S.C. Mishra, J.

1. This is a reference made by the learned District Judge of Muzaffarpur regarding professional misconduct of which Shri S. Dayal, a Mokhtar practising in the criminal courts at Hajipur, was alleged to have been guilty.

There, was a case No. C1/15G/356 of 1955 under Sections 323 and 324 of the Indian Penal Code pending in the Court of Mr. M. Hussain, Judicial Magistrate, 1st class, Hajipur. The complainant in the case was Charitar Rai and the accused were Bechan Rai and others. The learned Magistrate was not satisfied with the evidence adduced on behalf of the prosecution and accordingly acquitted the accused persons by his judgment dated the 22nd February 1956. In course of that judgment the learned Magistrate, however, observed that certain rent receipts filed on behalf of the complainant, Charitar Rai, by one Shyam Prasad, a witness for the prosecution, were forged. On the following day, i.e., 23rd February, 1956, accused Bechan Rai put in a petition before the learned Magistrate for filing a complaint against Shyam Prasad, Charitar Rai and others under Sections 193, 211 and 471, Indian Penal Code. The learned Magistrate, however, issued notice against Shyam Prasad to show cause as to why he should not be prosecuted under the aforesaid sections for having given false evidence and having used forged documents as genuine.

2. The petition of Bechan Rai, however, was rejected by the learned Magistrate after having considered the show cause filed on behalf of Shyam Prasad. Bechan Rai then went up in appeal against the order of the learned Magistrate to the Court of the learned Sessions Judge of Muzaffarpur, who, by his order dated the 1st October, 1956, allowed the appeal and ordered a complaint to be filed against Shyam Prasad, Charitar and three others, who were witnesses in the case, against whom Bechan Rai' moved the Magistrate for filing a complaint for having given false evidence.

A complaint was accordingly filed against them and a case proceeded against them in the Court of Mr. P. Prasad, Munsif Magistrate, Hajipur. That Magistrate discovered, in

course of the trial, that the rent receipts, which were the basis of the charge against the accused persons, were not on record. On examination of the records it appeared that a petition for withdrawal of the forged documents was filed by the complainant, Charitar Rai, endorsed by Shri S. Dayal, Mokhtar, which contained a further statement in regard to the documents having been received back from the office. The petition bore date "23-2-1956". There was no one, however, in the office of the learned Magistrate to say that the documents were returned. The only clerk posted in the office of the learned Magistrate was one Shri K.P. Sinha, who was the bench clerk of the Court and also incharge of the office. The fact, however, remains that the documents in question have not been traceable since then and it can be taken as established that the documents are not available for one reason or the other.

3 . Shri K.P. Sinha, who was also hauled up for having been a party to the disappearance of the documents, furnished an explanation on the 12th August, 1957, that he searched for the forged rent receipts but he could not trace them out and hence he prayed that this might be called for from the Court of the Sessions Judge suggesting thereby that the rent receipts were on record up to the stage when the records were sent to the Court of the Sessions Judge. He stated further that in the table of contents of the records despatched to the Court of the learned Sessions Judge it was mentioned under Sl. No. 9 that the forged rent receipts were being sent along with the other records. The explanation submitted by Shri S. Dayal, Mokhtar was that a petition for the return of the documents in question was filed by the complainant, Charitar Rai, which he had duly signed in which he also stated that he got back the documents from the office of the learned Magistrate. This petition was filed not on the 27th, but on the 23rd February 1956. He was not quite certain as to what happened thereafter because he handed over the petition to the complainant. A perusal of the petition, however, disclosed some alteration and over-writing so far as the date of signing of the petition by Charitar Rai as also the date under the signature of the Mokhtar, Shri S. Dayal were concerned. From the report of Shri G.N. Choubey, Munsif Magistrate, Hajipur, who issued notice to Shri S. Dayal to show cause, as also from the report of the learned District Judge it appears that according to them the original entry regarding date was '27-2-1956' when the petition was put up before the learned Magistrate who-ordered as follows:

"Let him file show cause against prosecution; then the question of returning rent receipts would arise. Put up on the date of hearing".

The date of hearing in the case was the 23rd March, 1956. According to the report of the learned District Judge the alteration was made by Shri S. Dayal under the influence of his client, the complainant, so as to defeat the order passed by the learned Magistrate. The order having been passed on the 27th February, 1956, for not returning the documents, if it could be shown that the petition for return of the document was filed on the 23rd February, 1956, the Bench clerk might also be exonerated from any liability for returning the rent receipts because the same would happen before the passing of the order by the learned Magistrate. In the circumstances they felt that it was a case of gross professional misconduct on the part of Shri S. Dayal, Mokhtar, to have been a party to this kind of dishonest alteration in the date so as to get back the forged documents and thus avoid the penalty of law so far as Charitar Rai and others were concerned because the prosecution against them could not succeed without the rent receipts themselves being on record to support the prosecution case.

The Mokhtar produced before the learned Magistrate a number of defence witnesses

in support of his case. Ram Jiwan Prasad (D.W. 1) has stated as follows:

"I had looked into the records of the case after it was received from the appellate Court. I had seen those forged rent receipts in the records of the case. This was some time in 1957. Sri B.P. Srivastava was then the Presiding Officer."

"It is the general convention of this place to file petitions of withdrawal of documents with the endorsement of receipt of the documents by the lawyers. The papers are actually received when the order of return is passed by the Court. Generally, parties receive the documents".

He thus came to support Shri Dayal both on the question of the document not having been returned even up to the stage when the records were received back from the Court of the learned Sessions Judge of Muzaffarpur and also on the general practice prevailing in the Courts at Hajipur in the matter of petition for withdrawal of documents which contains endorsements of the receipt of the document by the lawyer though, as a matter of fact papers are actually received back by the parties. Ram Lagan Singh (D.W. 3) has stated as follows:

"I had seen those rent receipts in the records of the case when it came back from the appellate Court. My client and Ramjiwan Babu Mohhtar had also seen those rent receipts. . The records were received back from the appellate Court some time in 1957."

Bechan Rai (D.W. 4) has stated that his petition for prosecution of Shyam Prasad was rejected about two months after the filing of the petition. The rent receipts were then in the record. Anand Swaroop Singh (D. W. 2) has stated as follows:

"I have been practising at Hajipur for the last thirty years. I have filed documents in cases on behalf of the parties. I have also filed numerous petitions by now for the return of the documents. On the back of petitions, we conventionally write, 'received back the documents and made over to the party' and thereafter we sign and put the date thereon and then direct the party to go to the office and file the petition there and obtain papers therefrom."

Ram Lagan Singh, as I have stated above gave the same statement in regard to the practice prevailing at Hajipur in the matter of applications for return of documents.

Sheo Nandan Jha (D.W. 5) also made the same statement supporting the other Mukhtars examined in the case as to the practice prevailing in this regard in Hajipur. D.W. 6, Baldeo Dutt Jha, also made the same statement. Vasistha Narain Singh (D.W. 7) has also made a statement to the same effect.

Shri S. Dayal was thus supported by a number of his fellow practitioners in the matter of his stand that he had not actually received back the rent receipts as he purported to do by his endorsement in the petition for withdrawal of documents, but that he handed over the same to Charitar Rai.

As against this, there was the statement of Sri S.P. Singh, (P. W. 3), Second Officer of Hajipur. He stated as follows :

"I have not come across any instance in which any petition for the return of

documents has been filed with the endorsement of the Mukhtear or the pleader regarding; the receipt of documents."

Shri J.P. Singh, (P.W. 2), Munsif-Magistrate, Hajipur, has stated as follows:

"I have not as yet come across any such petition for return of documents which also contained the lawyer's certificate regarding the receipt of the documents."

An explanation was supplied on behalf of the witnesses for the Mokhtear, Sri S. Dayal, that that was the practice in vogue in 1956, but that was discontinued at the time when they came to depose, i.e. in 1959. This explanation has not been accepted by either the Munsif-Magistrate or the learned District Judge.

A question has been raised before us by learned counsel for Shri S. Dayal that in view of the very weighty evidence of a number of senior Mukhtears practising at Hajipur, it should not have been held by the learned District Judge that the practice prevailing in the matter of petitions for withdrawal of documents containing the formal endorsement of the lawyer but receiving back of the documents by the parties concerned was not correct and, in that view of the matter, it would have been held that there was no professional wrong and misconduct on the part of Sri Dayal in making the usual endorsement.

In my opinion, however, nothing much would turn on the evidence of witnesses for Sri Dayal in view of the other facts on record of this case which I propose to deal with, hereafter. Even as it is however, it is difficult to accept the contention that the inference drawn by the learned. Munsif-Magistrate or by the learned District Judge in regard to the practice prevailing is wrong. It is difficult to imagine that the litigants will be allowed access to the office for receiving documents because obviously the person signing the register showing the return of the document must be the lawyer and not the party concerned. In that view of the matter, I am inclined to agree with the inference drawn by the Courts below. As it is, however, as I have mentioned above, this circumstance in itself is not of great value in determining the propriety or otherwise of the conduct of Sri Dayal in the present proceeding.

4. The more important question, therefore, for consideration is whether Sri Dayal altered the date of the application from '27' to '23' which has been found against him by the Courts below. Learned counsel for the Mokhtear has urged that the Courts below were not right in drawing that inference.

It appears, however, that there is no force in this contention in view of the fact that the alteration was admitted by Sri Dayal himself in course of his statement in the enquiry. At first he denied that he made the alteration, but when his attention was drawn to a previous petition filed by him making that statement, he admitted that the alteration was made by him to this extent only that originally the petition bore the date "22-2-1956", but it could not be filed on that date; it was actually filed on 23-2-1956 and for that reason he altered the figures '22' into '23'. To test whether there is any substance in this stand we ourselves looked carefully into the alteration both with regard to the date under the signature of Shri Dayal as also in the alteration of the date under the signature of Charitar Rai. It is plain from the document that it is '27' which has been altered into '23' and not '22' into '23'. We handed over the document to the learned counsel for Shri Dayal to satisfy himself whether we were right in our conclusion and he fairly conceded that it appeared that '7' was altered into '3' and not '2' into '3'. If 27 was altered into '23' which fact was denied by Shri Dayal, his

complicity in getting back forged documents by resorting to the artifices by showing that the application was filed before the order was passed by the learned magistrate directing the documents not to be returned is certainly condemnable. His denial shows that he had an uneasy conscience in the matter and he knew full well that if he were a party to the alteration for the purpose of helping Charitar Rai, he would certainly be held liable for his action. In my opinion this circumstance in itself would be sufficient to show utter impropriety of the conduct of Shri Dayal. In that view of the matter it appears to me unnecessary to refer to the entry in the table of contents under Sl. 9 that these rent receipts were not returned up to the time when the records were sent to the learned Sessions Judge for disposal of the appeal filed against the order of the learned Magistrate rejecting the petition for filing the complaint against Charitar and others. This is a matter which does not arise in the present proceeding against the Mukhtear because it apparently relates to the conduct of Sri K.P. Sinha, the bench clerk, although it must be stated that the finding recorded by the learned District Judge in the matter of the complicity of Sri K.P. Sinha also cannot be held to be unsound.

5. In view of our contusion that the Mukhtear was really guilty of having altered '27' into '23' the statements of his fellow practitioners to the effect as to what was the practice prevailing in Hajipur regarding the formal endorsement by the lawyer on the petition for withdrawal of documents from Court is not of any importance whatsoever because if it appears that the Mokhtear deliberately altered '27' into '23' he clearly made a false entry showing the date of the endorsement as '23-2-56' when in fact it must have been done on '27-2-56', The evidence of the other Mokhtears as to the practice, therefore, is quite immaterial because the facts of this case disclose a deliberate design on the part of Shri Dayal to help Charitar Rai in getting back the documents and thus flouting the order of the Court.

6. The conduct of the Mokhtear, Sri S. Dayal, therefore, shows gross professional impropriety and the recommendation of the learned District Judge to the effect that the Mokhtear might be punished for such conduct, must be accepted. After taking all these circumstances into consideration I feel that the proper order to be passed in this case should be that the Mokhtear be suspended, from practice for a period of two years from to-day. It is expected that after he resumes his practice when the period of suspension is over, he will not allow himself to get into a position which would affect his career in the profession.

Udai Sinha, J.

7. I agree.

Anant Singh, J.

8. I agree.

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