

MANU/BH/0010/1952

Equivalent Citation: AIR1952Pat31

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

Civil Ref. No. 2 of 1950

Decided On: 17.09.1951

Appellants:**In Re: Shyam Chandra Prasad**

Hon'ble Judges/Coram:

David Ezra Reuben, Vaidynathier Ramaswami and C.P. Sinha, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Gupteshwar Prasad, Adv.

For Respondents/Defendant: Standing, Counsel

JUDGMENT

David Ezra Reuben, J.

1. This is a reference under Section. 14 of the Legal Practitioners' Act against Shayam Chan-dra Prasad, Mukhtear, practising at Muzaffarpore.

2. On 22nd of February 1946 an application for a, loan of Rs. 1200/- under the Agriculturists Loans Act, 1884, was filed before the District Magistrate of Muzaffarpore by a person who signed himself as Kantu Jha son of Phula Jha, resident of village Dhamuli Ramnath, Madhuban, District Muzaffar pore The application was enquired into by a Sub Deputy Magistrate Mr. S.M. Panjiar who reported the security offered to be sufficient for a loan of Rs. 500, which amount he recommended according!;, subject to a further enquiry as to whether the property was free from encumbrances, A ministerial officer thereupon enquired into the existence or otherwise of encumbrances and he having reported in the negative a loan of Rs. 500 was advanced to the applicant on a bond executed by him on 29th of March 1946. Upon this bond the Mukhtear figures as a witness, his endorsement being "I know Kantu Jha personally who has signed in my presence". Later in the year 1948 when a certificate-was filed for the recovery of the amount advanced it was reported by the peon sent to serve the notice in the certificate proceedings that there was no person of the name of Kantu Jha in this village. As a result of further enquiries proceedings were drawn up against the Mukhtearr and have resulted in the present reference.

3. It has been urged before us on behalf of the Mukhtear that there was in fact no wrong identification. The correctness of the report that then is in that particular village no one of the name of Kantu Jha is not contested but it is urged that 0112 Rameshwar Jha of village Basant, police station Katra, who is said to be the nephew of one Jag-dish Jha, resident of Dhamauli Ramnath, was in fact the applicant for the loan and is also known as Kantu. There is no suggestion that this Rameshwar Jha has any interest in the property which was given in security for the loan and that Government has not been defrauded. In support of the suggestion reference is made to a statement made by the village Choukidar Garbhu Chamar in cross-examination that the said Rameshwar Jha is also known as Kantu Jha. The witness did not appear

to know much about Rameshwar Jha, for he could not name his father. I am unable to accept the suggestion because it does not find place in the written explanation submitted by the Mukhtear in answer to the notice calling upon him to show cause in the proceeding. He admitted clearly in that written explanation that he had been deceived by Jagdish Jha and that the identification was not a true one. The suggestion that Rameshwar Jha is also known as Kantu Jha was denied by Mathura Ojha, resident of Dhamauli Ramnath, who was examined as P. W. 5. It was not put to Rudal Jha (P. W. 6) another resident of Dhamauli Ramnath and a 'goLia' of Jagdish Jha. Besides, identity is not a mere matter of the name. The person who took the money represented himself in the bond as son of Phua Jha and a resident of Dhamauli Ramnath. When the Mukhtear professed to know him personally he vouched for the correctness of these details, and it was because of his identification that the Sub Divisional Officer (P. W. 10) accepted the bond.

4. On the evidence as it stands I have no doubt that the person who took the money was not Kantu Jha and that he was wrongly identified as Kantu Jha. The only question which arises to my mind is whether this is a case of fraud on the part of the Mukhtear or of negligence. The Mukhtear admits that previously to this he had no acquaintance with the person whom he identified as Kantu Jha. His only reason for identifying him as such was according to him, that Jagdish Jha who is his client was sometime previous to the identification accompanied on one or two occasions by this person and addressed him as Kantu Jha, and that at the time when the bond was executed Jagdish Jha requested the Mukhtear to identify this person as Kantu Jha. There is evidence of two witnesses who have been examined on behalf of the Mukhtear to the effect that the Mukhtear has on occasion worked for this Jagdish Jha. We get it, however, from the evidence of D. W. 1 Gopalji Prasad Mukhtear, Secretary of the Mukhtear Association, Muzaffarpore, that Jagdish Jha is a tout-hardly the sort of person on whose mere request the mukhtear would be justified in regarding the identity of this person as proved. There is therefore no doubt that this is at least a case of negligence on the part of the Mukhtear. There is no positive evidence on which it is possible to come to a finding that the Mukhtear was a party to the fraud.

5. In these circumstances I hold that negligent identification has been satisfactorily established and the only point which arises for consideration is the proper punishment to be imposed. On two separate occasions this Court has warned members of the legal profession as regards their responsibility in the matter of identifying persons coming to public offices in order to receive money 'In the matter of I, a Mukhtar', MANU/BH/0042/1929 : AIR 1929 Pat 33 and 'In the matter of the District Judge, Gaya V. D. A. Mukhtar', MANU/BH/0098/1930 (1). In the circumstances of those particular cases nominal punishment was given. In the present case I am unable to take a light view and consider that the appropriate penalty will be suspension from practice for the period of one year from today and would pass an order accordingly.

Vaidynathier Ramaswami, J.

6. I agree.

C.P. Sinha, J.

7. I agree.

