

MANU/BH/0067/1936

Equivalent Citation: AIR1936Pat337, 170Ind. Cas.458, 170Ind. Cas.458

## IN THE HIGH COURT OF PATNA

Decided On: 20.02.1936

Appellants:**K., a Mukhtar of Aurangabad**  
**Vs.**  
Respondent:

### Hon'ble Judges/Coram:

*Courtney Terrell , C.J., Stewart Macpherson and Saiyid Fazl Ali , JJ.*

## JUDGMENT

### Courtney Terrell, C.J.

1. In this matter the District Judge has reported upon the conduct of one K, a mukhtar, practising at Aurangabad in the District of Gaya under Section 13(b), Legal Practitioners Act. The evidence very clearly reveals the following state of facts: In the early part of the year 1935, two persons Jaddu Lohar and Doman Lohar were the accused on a charge of theft. A. relative of theirs Sardar Lohar on January 2, accompanied by three other persons Raghuni Singh, Harbans Singh and Oharitar iingh, went to the mukhtar to employ him to move an application for bail before the Sub-Divisional Officer. The mukhtar took from them a sum of Rs. 2 which has been described variously as his fee for making the required application and also as a mere retaining fee or a sagoon, for the work that he was to do for them and also Rs. 2 to pay for the necessary stamps. He went before the Magistrate and duly obtained the order that the accused persons should be released on bail, the bail being fixed at Rs. 300 for each of them. After the order was made, outside the Court and very close to it, the mukhtar had a further interview with Sardar Lohar and his friends and took from them a farther sum of Rs. 13. They say, and in our opinion with truth. that the mukhtar told them that that would be by way of kharcha and that the sum was arrived at in the following way: The bail which was ordered being Rs. 600 he said that the customary amount would be 5 per cent, which would amount to Rs. 30. Sardar Lohar had come to the Court with only Rs. 18 provided by his relatives and he said that he could not afford such a sum. Thereupon the mukhtar took all that Sardar Lohar had by way of balance out of the sum with which he started out amounting to Rs. 13.

2. The kharcha referred to was well understood in the nature of a customary exaction by the Court Sub-Inspector or by persons under his command to facilitate the release of the persons in custody pursuant to the order ' of the Court. The mukhtar, however, has told a story, and in our opinion it is a thoroughly false story, that his clients were so pleased with the result of his application for bail that they gave him Rs. 11 as a fee together with Rs. 2 to be paid to his clerk, making up the total of Rs. 13, and he has even endeavoured to produce evidence of other clients of his who purport to say that this was the mukhtar's customary fee for such services, evidence which we do not believe. The unhappy fact is that the efforts by this Court to secure in the lower Courts honest administration in the offices meets with little general public co-operation and this makes the detection of these cases of illegal exactions particularly difficult. Nevertheless this Court will not relax its endeavour to stamp out such

abuses, however difficult the task. It would appear from the evidence that while the accused persons were still in custody and not yet released, a friend of theirs, one Bechan Singh, who appears to have been quite accustomed to matters of Court procedure, came in and talked to them and they told him that they were in difficulties about being released and that they had paid to mukhtar the necessary sum to obtain their release. He immediately went to the Court Sub Inspector and complained about this matter on behalf of his friends. Thereupon the Court Sub-Inspector took them to the Sub-Deputy Magistrate to whom they told the story of the taking from them of this sum of Rs. 13 by the mukhtar for the purposes of the so-called kharcha. The Sub-Deputy Magistrate seems to have been under the impression that he was being asked to investigate a charge against the Court Sub-Inspector and his subordinate and inasmuch as these persons did not at the time mention specifically that the money was required by the Sub-Inspector he told the Court Sub-Inspector that there was no need for him to go into the matter further. The matter was again taken by the Sub-Inspector to the, Sub-Divisional Officer himself who sent the Sub-Inspector with Sardar Lohar and his friends to the Sub-Deputy Magistrate where they repeated the story of the mukhtar's conduct but were a little more specific in stating that the money was required by the mukhtar to gratify the Court Sub-Inspector's Office.

**3.** Now it would appear that shortly before this occurrence some other persons who were in custody and with regard to whom a release on bail had been ordered by the Magistrate, had complained of the fact that they were not promptly released and the Sub-Inspector had been censured by the Magistrate for not releasing the people according to his order. Moreover the friend of Sardar Lohar, that is to say Bechan Singh to whom I have already referred, had some grievance against the mukhtar. It is very clear that the Sub-Inspector and Bechan Singh saw their opportunity in revealing the state of facts before the Magistrate and that the facts were so revealed. The excuse by the mukhtar that he was not really endeavouring to obtain and had not obtained any money for the purpose of gratifying the Court Sub Inspector or his subordinates but that he had merely asked and obtained his own professional remuneration cannot be believed for a moment. The mukhtar firstly offended against the clients themselves by taking money from them on the representation that it was required for an illegal but apparently necessary gratification of the Sub-Inspector's Office: secondly he seems to have offended the Sub-Inspector by adhering to the entire sum which he got out of these persons, and thirdly he has lent himself professionally to a practice which though unfortunately common is disgraceful and leads to a serious evil in the administration of justice. We are told that the mukhtar is a man respected and occupies various public positions. To my mind instead of making the matter any better it is made substantially worse, for it would seem to indicate that a relatively low standard is required for those positions. We owe a duty first of all to the administration of justice of which we are the properly appointed guardians and the litigant public must be protected from illegal exactions. We also owe a duty to the useful professional body of mukhtars whose good name is damaged by conduct of this kind and more especially so in the case of a man holding a relatively high professional and social position. We are constrained in the circumstances to order that the mukhtar be suspended from practice for two years.

**Stewart Macpherson, J.**

**4.** I agree.

**Saiyid Fazl Ali, J.**

**5.** I agree.

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