

MANU/BH/0106/1919

Equivalent Citation: AIR1919Pat45, 59Ind. Cas.322, 59Ind. Cas.322

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

Decided On: 05.05.1919

Appellants:**Mohan Das Pujhari**
Vs.
Respondent:**Emperor**

Hon'ble Judges/Coram:

Thomas Fredrick Dawson Miller , C.J., W.S. Coutts and Das , JJ.

JUDGMENT

Thomas Fredrick Dawson Miller, C.J.

1. This is an application in revision on behalf of one Mohan Das Pujhari asking us to set aside an order of the District Magistrate of Balasore including the name of the petitioner in the list of touts framed under Section 36 of the Legal Practitioners Act. The case for the petitioner is that there is nothing to show that the District Magistrate could be satisfied by any evidence that the petitioner was a tout; secondly, that there was no evidence recorded in accordance with the provisions of that section; thirdly, that, in so far as any inquiry was held or any evidence recorded, this inquiry was held and the evidence recorded not by the District Magistrate himself but by the Sub-Divisional Officer, and that the District Magistrate had no power under the section to delegate his authority to the Sub-Divisional Officer.

2. What happened was that, upon an anonymous petition being sent to the District Magistrate complaining of the action of the petitioner, the Deputy Magistrate, who appears to have dealt with the case, ordered the Police to make an inquiry and report. That was on the 14th November 1918. The Police apparently made some inquiries and sent a report signed by a Sub Inspector on the 2nd December 1918 in which they reported that inquiries had been made from the village chaukidar and daffadars and some villagers and they had ascertained that the petitioner was a tout and very often visited Court. Thereupon, the petitioner was called upon to show cause before Mr. Bose, the Sub-Divisional Officer of Balasore. On the 14th December, he seems to have appeared before the Sub-Divisional Officer and filed a petition to the effect that the charges against him were not true and that he was not a tout. Mr. Bose, the Sub-Divisional Magistrate, thereupon ordered Mr. Samad, a Deputy Magistrate, to make an inquiry and report and on the 3rd January, Mr. Samad reported that he had inquired of clerks and peshkars in several Courts and public offices and that nearly all of them said that the petitioner was a tout and frequently came to Court and that, in his opinion, the petitioner was a professional tout and he recommended that he should be so declared. This report was made to, and received by, the Sub-Divisional Officer either on the same day or the following day and on the following day, the 4th January, Mr. Bose, the Sub Divisional Officer, passed an order to this effect:

The cause shown by Mohan Das Pujhari cannot be accepted. Maulvi A. Samad, Deputy Magistrate, made a local inquiry and his report shows that accused habitually acts as a tout. His name may be included in the list of

touts under Section 36 of the Legal Practitioners Act, Submitted to District Magistrate.

(Sd.) S.C. BOSE,

Sub-Divisional Officer

3. In the margin of that order appear the following words: "Approved, (Sd.) M.K. Deb" and the date, the 4th January 1919, Mr. Deb is the District Magistrate of Balasore.

4. Turning to Section 36 of the Legal Practitioners Act, it is quite clear that the only person in the present instance who would be entitled to place the petitioner's name on, the list of touts would be the District Magistrate himself. That section provides, that a District Magistrate (amongst other officers) may frame and publish list of persons proved to his satisfaction by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists. It is quite clear, from what I have just said, that it would be very difficult, indeed, to say that there had been any proof whatever to the satisfaction of the District Magistrate that the petitioner was a tout. The District Magistrate held no inquiry, he recorded no evidence, he had no opportunity of seeing the witnesses who gave evidence before Mr. Samad, the Deputy Magistrate, and all he did was to approve and sign an order made by the Sub-Divisional Officer. Farther, the section nowhere provides that these duties, which are to be undertaken by the officers who are mentioned therein, can be delegated by any of those officers to their subordinates and it seems to me that in both these respects this order which was not made by Mr. Deb, the District Magistrate, but merely had his approval cannot possibly stand. The matter has been before the High Court of Calcutta on more than one occasion on facts very similar to the present and, in the case of Chandi Charan Dey, In re 12 C.W.N. 842, there is a decision of the Acting Chief Justice, Rampini and Mr. Justice Ryves which appears to me to apply to the circumstances of this case. In that case a Sub-Divisional Officer called on a person to show cause why he should not be, declared a tout. He showed cause and the Sub-Divisional Officer after recording evidence on both sides, submitted the proceedings with his report to the District Magistrate who, after perusing them, passed orders declaring the person to be a tout. In such circumstances the High Court of Calcutta, acting upon the authority of an earlier unreported decision of the Chief Justice and Mr. Justice Banerjee in 1897, set aside the order on the ground that it was made in contravention of the powers granted by Section 36 of the Legal Practitioners Act. I am unable to distinguish the facts of the present case from the material facts in the case just referred to and, in my opinion, this order must be set aside on the grounds already stated. We have no materials before us, nor is it any part of our duty to express any opinion, as to the conclusiveness or otherwise of the evidence upon which the Sub-Divisional Officer and the Deputy Magistrate acted. However that may be, before the petitioner can be declared a tout it is necessary that proceedings should be taken in accordance with Section 36 of the Legal Practitioners Act; and, moreover, that he should be given an opportunity of showing cause against the inclusion of his name in the list of touts.

W.S. Coutts, J.

5. I agree.

Das, J.

6. I agree.

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