

MANU/BH/0001/1967

Equivalent Citation: AIR1967Pat1

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

Misc. Judi. Case No. 8 of 1962

Decided On: 13.05.1966

Appellants:**The State of Bihar**
Vs.

Respondent:**S.N. Pandey**

Hon'ble Judges/Coram:

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

Counsel:

For Appellant/Petitioner/Plaintiff: K.P. Verma, Standing Counsel

For Respondents/Defendant: S.K. Sarkar, Adv.

JUDGMENT

S.C. Mishra, J.

1. This proceeding has been started against Sri S.N. Pandey, Advocate, Chaibassa, under Section 10 of the Indian Bar Councils Act 1926. The Chief Justice of this Court received a letter purported to have been signed by one Sri Bhowrimul alleging that the Advocate concerned forged and fabricated certain documents in the Court of the Cess Deputy Collector, Chaibassa, in case No. 218J of 1955-56, State v. Messrs. Bengal Paper Mills, Ltd. A copy of the letter was also addressed to the Chief Secretary to the Government of Bihar. Accordingly, the Sub-divisional Officer, Chaibassa, was directed by the Deputy Commissioner, Singhbhum, to hold an enquiry and he by his report, dated the 26th of July 1957, recommended prosecution of Sri Pandey under Section 466 of the Indian Penal Code. The matter was then placed before the Law Department of the Government of Bihar, which recommended action under Section 10 of the Bar Councils Act. There was yet another enquiry by another Sub-Divisional Officer of Chaibassa who also submitted his report on the 10th of January 1959. The two enquiries, however, by the two Sub-Divisional Officers were held without giving any opportunity to the Advocate to put forth his point of view. In course of the enquiry, it was brought to the notice of the enquiring officers that a return was filed on behalf of Messrs, Bengal Paper Mills, Ltd., bearing date the 7th of February 1956, in response to a notice by the Cess Deputy Collector. The copy of that return, however, was surreptitiously taken back from the records of the Court. This was handed over to Sri Pandey and he made certain corrections in the copy in his own hand. A typed copy of the corrected return was then prepared and it was placed on the record of the case. As a result of it, an assessment was made by the Cess Deputy Collector in respect of the sabai grass removed on behalf of the Bengal Paper Mills, Ltd., and the cess on the quantity so removed was assessed at a sum of Rs. 50-10-0. The proper assessment should have been at a higher figure.

2. After assessment was over, Sri Pandey addressed a letter to Mr. Clive, Deputy Raw Materials Officer, Bengal Paper Mills Ltd., on the 11th of May 1956, in his own

signature telling him that the return filed by him was not reliable and that a fresh return was filed on which the above sum of Rs. 50-10-0 was assessed as cess for the sabai grass. Along with his letter, he also forwarded to Mr. Clive the copy of the corrected return. After this, Sri Pandey and Mr. Clive fell out with each other on some matter which gave rise to a criminal case in which the Advocate was a complainant and Mr. Clive was an accused. After this, Mr. Clive, in 1957, found the letter of the Advocate of the 11th of May 1956. His stand was that this letter was not delivered to him in due course but it found its way somehow or other into his drawer and (sic) discovered it accidentally.

3. So far as the enquiry under the Bar Councils Act is concerned, it was taken up by the Tribunal appointed by the Bar Council of the Patna High Court at the request of the Chief Justice who forwarded the letter received in this Court to the Bar Council for necessary action. Accordingly, a tribunal was constituted which received the statements of Sri Pandey and examined a number of witnesses on the relevant questions arising in the enquiry and has submitted a report the conclusion of which stands thus:--

"There is no doubt that Shri Pandey displayed too much anxiety and zeal to secure a favourable assessment. He, however, overlooked that the means he was going to adopt involved not merely a serious departure from the right course of professional conduct but actually involved a criminal act. He clearly overstepped the limits of proper conduct. He is 50 years of age and is not lacking an average intelligence. In the enquiry he made every effort to excuse himself. He did not own his fault and consequently he did not exhibit any sign of repentance. It is, therefore, a clear case where a proper action is called for".

Apart from it, it may be stated that, in terms, the tribunal has not found Sri Pandey guilty of having removed the copy of the return himself from the file of the Court, but he used this document with the knowledge that this was the document which was filed in Court, was subsequently removed surreptitiously and put in his hand. He made corrections in it and had the return refiled. Such a course of conduct on the part of the Advocate would be highly improper and would amount to professional misconduct. The tribunal has not accepted the stand of Mr. Clive that the whole thing was so done without his knowledge and that the letter found its way into his drawer in a manner completely unknown to him. It is thus clear that the finding of the tribunal that the Advocate was not only guilty of professional misconduct but did something which actually involved a criminal act, is not quite consistent. It may be stated that Sri Pandey's stand before the tribunal was, as stated in the explanation he submitted, that he had done nothing wrong in so far as the filing of a fresh cess return was concerned. According to Sri Pandey, the entire move of having a proceeding started against him was made by Mr. Clive because Sri Pandey brought a criminal case against him for trespass and he concocted false documents against him. Nevertheless, he made an admission in Para. 11 in the following words:--

"For that on and off men of Bengal Paper Mills used to come to me for advice, for correction of letters and for instructions, and it is possible that I might have corrected letter but at the time correction was made I never knew that the said document was from any case proceeding. This allegation is false that the removal was done by me."

It is true that at one stage he denied that he ever wrote the letter to the Deputy Raw

Materials Officer, Bengal Paper Mills, Ltd., on the 11th of May 1956, but in view of his admission in the explanation, it is not necessary to go into that matter, because he admitted that he handled the return which was originally filed on behalf of the Bengal Paper Mills, Ltd., and made corrections therein. He firmly maintained, however, that he had no hand in the removal of the document from the custody of the Court. Since the tribunal also has not found Sri Pandey guilty of removal of the document, the sole question for consideration is whether Sri Pandey's using that document which bore the seal of the Court and making corrections on it would amount to a criminal act or would amount to professional misconduct. In my opinion, whatever might be said in regard to the allegation that he had a hand in the removal of the document constituting a criminal act, there can be no doubt that the mere use of a document, which was once in the custody of a Court, by a Counsel would hardly come within the purview of any section of the Indian Penal Code and it is not necessary to go into that matter at length. The only arguable position, however, is as to whether it amounts to professional misconduct on the part of a counsel. In order to determine whether such act would amount to professional misconduct, we looked into the two returns purported to have been filed at different stages on behalf of the Bengal Paper Mills, Ltd., one, which was sent direct by post by Mr. Clive under the Company's letter-head and the other which was alleged to have been prepared on plain paper without the letter-head of the Company at Chaibassa after the original return was corrected by Sri Pandey. It may be stated that the learned Standing Counsel was not able to bring to our notice any material alteration in the second return from that of the contents of the first return. We have also looked into the corrections made by Sri Pandey in the copy of the return reporting to have been produced from the custody of Mr. Clive and it appears that the only alteration is that the quantity of sabai grass utilised by the Company either for the manufacturing purposes of the Paper Mills or to be sold in the open market was alone deleted. In the original, the quantity of sabai grass utilised for manufacturing purposes was mentioned as 34273 maunds and that to be sold in the open market at concessional rate was 10,000 maunds. In the return which was alleged to have been filed later on, however, these figures do not appear. The stand of Sri Pandey on this matter is that he could have no motive as a Counsel of experience to make any material alteration, because the quantity of grass removed on behalf of the Paper Mills was always checked up with reference to the records of the Forest Department and the figures supplied by the Forest Department alone were acted upon. He has referred to the assessment for the years 1954-55 and also 1957-58 the year preceding and following the assessment of 1955-56 in regard to which the proceeding has been started. His contention is that in all these years assessment was made on the basis of the quantity of grass removed as recorded in the register of the Forest Department and, therefore, there was no point in his making the alteration. Although it is not clear as to what actually he meant to say in regard to making the alteration, still it is obvious that he does not clearly deny this fact and we presume that he had admitted the deleting of the figures only. He had not done anything beyond that. The whole question is whether the act by itself would be improper on the part of Counsel advising his client. In my opinion, such an act cannot be characterised as improper on the part of a Counsel. Assuming that such a return prepared by the client could be put in the hands of a Counsel before being filed, it may very well be, as Sri Pandey seems to maintain, that knowing the fact that figures of the amount of sabai grass removed would be taken from the office of the Forest Department of the Government, it was no use supplying the figures in the cess return. It was sufficient to mention the other details with regard to the sale price of the grass, etc., but it would be superfluous to specify the actual amount which might be found to be incorrect on the final check up. Exhibit A of the 20th of December

1955, is of vital significance in this connection as to the quantity of sabai grass. It shows the attitude of Mr. Clive that weight of the grass removed recorded in the office of the Forest Department alone could be acted upon and the mill authorities could not supply it. This is of a date earlier than Ex. B, photostat copy being Ex. 1 (a). What is done is like ordinary advice by a Counsel in drawing up a pleading in a suit and, in the circumstances of the case, it cannot be regarded as being improper conduct on the part of a Counsel. Mr. K.P. Verma, learned Standing Counsel, has also conceded, in the circumstances, that the mere act of deleting the figures unaccompanied by any advice for substituting a fresh set of accounts would not by itself be unprofessional conduct on the part of a Counsel advising his client. But the conduct of Sri S.N. Pandey would be blameworthy because of the circumstance that he should have known that this paper was once in the custody of the Court, as it bore the seal of the Court, and that it was put in his hand by the client after having received it in an alleged manner from the Court, and Sri Pandey should not have used that document for making corrections. Sri Pandey, as I have already quoted, has urged in his defence that he had no hand in the removal and he did not notice at that time in the pressure of work that this was a document which bore the seal of the Court and as such must have been removed from the custody of the Court by someone and was placed in his hand. In the first place, Sri Pandey was examined in person and his statement was recorded by the tribunal. A question was put to him in cross-examination as to whether he had noticed the seal of the Court on the copy of the return which was placed before him, and he answered that he did not notice it. That being the position, it appears to me to be extremely unfair to infer that Sri Pandey must have noticed the seal of the Court on this paper. Mr. Varma, however, has relied upon the letter alleged to have been written by Sri Pandey in which he wrote to Mr. Clive that figures in the return filed by him were not relied upon by him and that a new return was subsequently filed under his advice and that a sum of Rs. 202-3-0 was incurred towards costs and miscellaneous expenses which might be paid at an early date. It is said that Sri S.N. Pandey was aware, therefore, that a sum of Rs. 202-3-0 was spent over procuring in an illegal manner the copy of the return filed, Sri Pandey, therefore, must have had a hand in the removal of the document. The argument, however, appears to be without substance, because the tribunal has rightly exonerated Sri Pandey of the charge of having a hand in the removal of the document. All that, can be said on the strength of Ex. 2 is that he was aware of the fact that a sum of Rs. 202-3-0 was spent for getting access to the document. This argument also appears to me to be misconceived because the relevant paragraph of the letter reads thus:--

"Some misc. expenses were incurred in the case besides costs of cess case itself. Both these amounts come to Rs. 202-3-0, and this may be paid at an early date".

It is thus clear that this amount consists of the costs of the cess case itself apart from the miscellaneous expenses. Sri Pandey was not asked what these miscellaneous expenses were and what the costs of the cess case itself would be and whether he was in a position to be definite as to how the sum of Rs. 202-3-0 was made up. It may even be that this figure was accepted by Sri Pandey on the statement of the agent of the paper mills who was looking after the case and it was incorporated in the letter. It is difficult to infer from this that Sri Pandey was aware of the illegal expenses incurred in procuring the paper from the custody of the Court and that amount came to Rs. 202-3-0, Sri Pandey said in cross-examination "I never acted without any instruction, unless it was of a legal nature". What the demand of Sri Pandey was in this respect is a matter between the client and the Counsel and the

client might have refused to accept this demand or might ask for further clarification from his lawyer. I see nothing in this statement, however, to support the conclusion that Sri Pandey had any knowledge of the illegal expenses incurred and, far less, that he was a privy to the payment of the amount to any clerk in the Cess Deputy Collector's office. It is curious that this point which could have been elicited from the witness from the Cess Deputy Collector's office was not brought out in course of the enquiry and, in the absence of that evidence and as to the exact manner in which the document was supplied to anyone on behalf of the Paper Mills by the person in charge of this document in Court, it will be extremely unfair to draw any adverse inference against Sri S. N Pandey.

4 . On a clear analysis of the facts and circumstances of the case the only circumstance, I think, which amounts to some land of negligence on the part of Sri Pandey is as to how it was that his curiosity was not roused as to how his client put the document in his hand which bore the seal of the Court and which, obviously, therefore, must have been procured from the Court and sought to be substituted by a new one. As I have already mentioned, Sri Pandey's stand is that he did not carefully scrutinise the document at the time that he made the correction. He looked at it in a general way and knowing that it was the copy of the document filed in the Cess Deputy Collector's office, he just suggested deleting of the figures and did not do anything more than that. In the absence of a more pointed enquiry from him, it cannot be ruled out as an incorrect explanation, and in any view of the matter, even assuming that he is not correct in making this statement, the fact remains that it is not established as to how the document reached his hand. Thus, taking into consideration all the facts and circumstances, I am satisfied that no case of professional misconduct has been made out against Sri S.N. Pandey and he must be exonerated of the charge brought against him.

5 . I may, however, point out that it is curious that no action appears to have been taken against the person in charge of the cess return filed by the parties in the case and what hand that particular individual had in returning that document. If he had been examined in the enquiry or before the Sub-Divisional Officer, he might be in a position to say specifically in what circumstances, if the matter was within his knowledge, the original return went into the hands of the party and how it was that a fresh return could be put in its place. It is true, no doubt, that the actual alteration in the present instance is of a very immaterial nature and the matter may not deserve further scrutiny having lasted for more than five years. It is, however, a serious matter that an officer of the Court should not be able to explain how a certain document passed out of the Court's custody and was substituted later on by another document. Even if what has happened in regard to the present case in the alteration is not of a material nature, nevertheless, popular confidence in the sacredness of the custody of the Court may be considerably shaken and from that point of view the authorities concerned might be more alert in future, in any case, to see that without the order of the Court no one in charge of any document, once filed in Court, should be permitted to handle it in such a manner as to allow it to go back into the hands of the party or otherwise to have dealt with it which the Court or an officer would not approve of.

6 . It is now conceded by Counsel for the parties that the High Court has jurisdiction to dispose of this matter under Section 58(B)(2) of the Advocates Act, 1961.

Udai Sinha, J.

7. I agree to the order proposed. I would like to add, however, that even if we do not hold Sri Pandey to be guilty of professional misconduct, his conduct has not been wholly blameless in this case. Sri Pandey had gone to the extent of denying having written Ex. 2. with the result that the letter had to be sent to the handwriting expert. After a report was given by the expert, Sri Pandey admitted that the letter bore his signature. Then, Sri Pandey made out a case that at the time when the first return was corrected, he did not know that the document was part of the record of the cess proceeding. This case can hardly be believed, as the seal on the document is too prominent to be missed even by a lay person. Both the stands taken by Sri Pandey, an Advocate, must be deprecated as unworthy of an officer of the Court.

S.P. Singh, J.

8. I also agree to the order proposed. For the reasons mentioned by my learned brother U.N. Sinha, J. I cannot help observing that Mr. Pandey has not displayed a proper conduct in this case.

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