

MANU/BH/0027/1964

Equivalent Citation: AIR1964Pat95, 1964CriLJ344

IN THE HIGH COURT OF PATNA

Civil Ref. No. 3 of 1960

Decided On: 13.08.1963

Appellants:**Trisuldhari Prasad**
Vs.
Respondent:**The State**

Hon'ble Judges/Coram:

S.C. Mishra, Udai Sinha and R.J. Bahadur, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: G.P. Shahi, Addl. Govt. Pleader

For Respondents/Defendant: Gupteshwar Prasad, Adv.

JUDGMENT

S.C. Mishra, J.

1. This is a reference by the learned District, and Sessions Judge of Saran recommending that Shree Trisuldhari Prasad Mokhtear, practising at. Chapra, be permanently debarred from practice under Section 13 of the Legal Practitioners Act.

2. The reference has arisen out of a case, being Trial No, 56 of 1958 in the Court of the Sub-divisional Officer, Chapra, under Section 379, Indian Penal Code. Two persons were standing trial under Section 379 being Prithvi Pad Bania and Kesar. Bania who were alleged to have run away with the clothing etc., of one Satyanarain Prasad from the bank of the Ganges at Dighwara. A prayer for bail was made on behalf of the accused persons and the learned Sub-divisional Officer granted bail, to them of the sum of Rs. 700 each,

3. Accused Prithvi Pad Bania produced a surety Ram Prasad Mahton Kurmi son of Ramayan Mahton Kurmi, resident of village Muradih, Police Station Deoria, district Deoria, Uttar Pradesh, and the other accused Kesar Bania produced as his. surety one Sukhai Mahton Kurmi son of Mangru Kurmi of the same village Muradih. The bail bonds, were accepted by the learned Sub-divisional Officer on the 16th January, 1958. It contained the following endorsement by the Mokhtear :

"I identify the bailor with his parentage and residence. He has the property of the bond and is fit. He gave his L. T. I. in my presence."

When the trial began, however the accused persons did not appear and it was clear that they had absconded. Notices were thereafter issued to the bailors, and it was reported by the peon of the Court that there were no persons of the names mentioned in the bail bonds in village Muradih. On verification it also appeared that even the two accused persons gave out fictitious names and addresses of their own and warrants of arrest which were issued against them also could not be executed. The Magistrate, therefore, being satisfied that the bailors were fictitious persons, directed

the Mokhtear Shree Trisuldhari Prasad to produce the bailors and also supply their correct address. The Mokhtear obtained several adjournments in order to supply the address of the bailors. The Magistrate issued notice to him accordingly to show cause why he should not be dealt with under the provisions of the Legal Practitioners Act.

4. The Sub-divisional Officer was transferred and the case was transferred to the file of Shree M. Prasad, Judicial Magistrate. Further adjournments were made in his Court also for securing the attendance of the accused persons so that the trial might be taken up but they were not traceable and Shree Trisuldhari Prasad did not file any show-cause petition until the 16th of August 1958; There he stated that the bailors were known to him by the local address as they used to live with his clerk Jadunandan Lal at Mahalla Salempur in Chapra town. He asserted further that the bailors put their left thumb impression on the bail bonds in his presence. He made a prayer to the Court that Jadunandan Lal might be directed to produce the bailors. He raised a technical plea of jurisdiction claiming that the proceeding under the Legal Practitioners Act could not be started against him by the Judicial Magistrate inasmuch as the bail bonds were filed in the Court of the Sub-divisional Officer. The trying Magistrate accepted the plea of the Mokhtear and the proceeding was dropped.

5. The Sessions Judge of Saran held an inspection of the Magistrate Courts and there he remarked that it was highly regrettable that justice was defeated and the trial had to be dropped in respect of the two accused persons because of improper conduct on the part of Shree Trisuldhari Prasad and further that such a legal practitioner was let off on technical grounds. The observation of the learned District and Sessions Judge came to the notice of this Court in connection with the consideration of the notes of inspection of the Magisterial Courts by the District and Sessions Judge of Saran and an order was passed by this Court for drawing up a proceeding against him. Accordingly, the matter was taken up by the learned Sessions Judge of Saran, who on a consideration of the show cause petition filed by the Mokhtear and other circumstances has made a reference to this Court holding that the conduct of the Mokhtear was grossly improper verging on dishonesty inasmuch as it appeared to be clear that the Mokhtear had deliberately identified the so-called bailors as persons whom he knew and who were possessed of sufficient property and the bail bonds by whom should be accepted. In fact, the Mokhtear did not know the persons mentioned as the bailors of the two accused and it might be that the entire scheme was dishonest in order to make gain since the Mokhtear had no practice. He recommended that he should be permanently debarred from practice and be removed from the roll of Mokhtear.

6. The plea of Trisuldhari Prasad was that he was a senior Mokhtear having put in 22 years at the bar. He knew one Jadunandan Lal for sometime past. He had been a clerk attached to the Office of a very respectable lawyer of Chapra for a very long time till the time of the lawyer's death. After his death, Jadunandan Lal came to him and was doing his work. He resided in a neighbouring Mahalla Salempur. He impressed him as an honest man doing his duty quite well and never gave him any cause of suspicion. It was Jadunandan Lal who scribed the bail bonds and at his instance the Mokhtear identified the bailors. They were putting up with him (Jadunandan Lal) at his residence and this induced him to put faith in the words of the clerk Jadunandan Lal. Were it not for the assurance given by Jadunandan Lal, he would not have identified the bailors. He asked Jadunandan Lal repeatedly to produce the bailors but he evaded it on one pretext or another. He identified the bailors in a bona fide manner and had put the endorsement on the bail bonds without the slightest intention of misleading the Court of having the accused persons released so that, they might run away. He

stated that the Sub-divisional Officer before whom the alleged offence had taken place did not take any action in the matter at all;

7. The learned Sessions Judge as I have mentioned above, did not accept the plea of the Mokhtear. He has mentioned that Jadunandan Lal was not examined by the Mokhtear in support of his plea that it was he who produced the two bailors before him and assured him that they were residents of village Muradih and that they were possessed of sufficient property. It may also be mentioned that even the name of the respectable lawyer to whom Jadunandan Lal was alleged to have been attached as a clerk was not given out by the Mokhtear so that even the identity of Jadunandan Lal might be established and that he was ever a clerk attached to any lawyer practising in the Court at Chapra. The learned Sessions Judge has further mentioned that apart from other circumstances the very fact that the Mokhtear mentioned on the bail bonds that the bailors were known to him, possessed sufficient means and that they were fit persons to act as bailors without as a matter of fact knowing them first, was an act of carelessness which in itself would indicate gross negligence. It has further been noticed that in the show cause filed by the Mokhtear before the Judicial Magistrate on the 16th of August, 1958, he said that the bailors were known to him by the local address as they used to live with his clerk Jadunandan Lal at Salempure in Chapra Town. In the present proceeding, however it is stated that he made the endorsement on the bail bonds merely on the assurance of his clerk Jadunandan Lal. This apparent contradiction between the two statements would show that the Mokhtear's statement that he put an endorsement on the bail bonds on the assurance of Jadunandan Lal was undoubtedly a false statement. Since it was established that the bailors were fictitious persons and that the accused also gave false names and addresses of their own the responsibility of the Mokhtear in a situation in which the accused escaped trial was very grave- indeed. He has found further that

"there can be no doubt that the Mokhtear knowingly and deliberately made the false endorsement on the two bail bonds regarding the identity and fitness of the bailors merely for dishonest gain."

8. Mr. Gupteshwar Prasad, appearing on behalf of Shree Trisuldhari Prasad has urged that the learned Sessions Judge should not have taken such a stringent view of the matter. He has gone so far as to say that the Mokhtear had no practice and he made identifying and certifying fitness of the bailors his sole mode of practice although there is nothing on the record to support, this view of the learned Sessions Judge. Mr. Sahi appearing for the State has, however, contended that the learned Judge must have been aware of the extent of the legal practice of Shree Trisuldhari Prasad. It is, however, unnecessary to go into that question inasmuch as the learned Sessions judge might not be right and correctly informed and there might be room for modification of that opinion, but the circumstances however, that false endorsements were made on the two bail bonds makes the conduct of the Mokhtear unworthy of the profession to which he belongs. There are good grounds for the view expressed in the order of reference that the false endorsements were made on the two bail bonds deliberately by the Mokhetar.

9. In the result, therefore, it must be held that the conduct of Shree Trisuldhari Prasad is such as to, justify the imposition of a deterrent punishment upon him. The recommendation in the order of reference is to permanently debar him so as to make an example to the other members of the legal profession. In our opinion, however, we agree with the learned District and Sessions Judge in regard to the strictures which he has passed on the conduct of Shree Trisuldhari Prasad but in my opinion,

the ends of justice would be met by suspending him from practice for a period of five years. It is expected that this may give him a chance to ponder over the errors of his ways so that if and when he resumes practice as a Mokhtear after this period, his professional character may be straight and befitting the dignified profession to which he belongs,

Udai Sinha, J.

10. I agree.

R.J. Bahadur, J.

11. I agree.

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