

(1957) 11 AHC CK 0021
In the Allahabad High Court
Case No : Misc. Case No. 347 of 1955

Brahma Din and Others

APPELLANT

Vs

Chandra Shekhar Shukla

RESPONDENT

Date of Decision : 15-11-1957

Acts Referred:

Legal Practitioners Act, 1879 — Section 13

Citation : AIR 1958 All 415 : (1958) 28 AWR 188 : (1958) CriLJ 707

Hon'ble Judges : O.H. Mootham, C.J.;A.P. Srivastava, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; V.V. Gupta, for the Respondent

Judgement

O.H. Mootham, C.J.—This is a reference made by the District Judge of Kanpur concerning the conduct of a Vakil practising in his court. The facts which are not in dispute, are these:

2. In the year 1945 the Development Board, Kanpur, acquired certain premises belonging to two persons, Branhmadin and his brother Suraj Prasad, and a sum of Rs. 6,292/2/ was deposited with the District Judge for payment to them as compensation. Brahmadin and Suraj Prasad raised a dispute as to the amount of compensation and also sought to obtain the release of their premises. Their claims were rejected and in 1954 the premises were demolished. Thereafter they applied for payment to them of the aforesaid sum of Rs. 6, 292/2/ only to be informed that this amount had been withdrawn on behalf of Brahma Din by the Vakil in question in the year 1948.

3. What happened in 1948 was that a person, who admittedly was not Brahma Din, approached the Vakil, and after informing him that he was Brahma Din and that both his brother Suraj Prasad and his brother's wife were dead, asked the Vakil to act on his behalf and to withdraw the money then on deposit with the District Judge. The Vakil prepared an application on behalf of his client on the 29th March, 1948, for the repayment of the sum of Rs. 3,686/12/ part of the

larger sum of Rs. 6,292/ 2/.

The application was accompanied by an affidavit sworn by the client on the same date. A further affidavit was sworn by the client on the 18th May, 1948, in support of his claim for the remaining sum of Rs. 2605/6/-. The affidavit in each case is in substantially the same terms, the deponent stating that he was Brahma Din son of Hanuman Vaishya, resident of Jhakar Kati, Kanpur, that he was the owner of the house which had been acquired by the Development Board, that his brother Suraj Prasad and the latter's wife had died in the year 1947, and that he accordingly was the only person entitled to withdraw the amount awarded as compensation. Each of these applications contains an endorsement in the handwriting of the Vakil:

"Identified Brahma Din"

followed by the signature of the Vakil. On the strength of these affidavits the Vakil withdrew the two sums of Rs. 3,686/12/- and Rs. 2,605/6/-and paid them to his client.

4. The question which arises in this case is whether the Vakil in identifying his client as Brahma Din was guilty of professional misconduct within the meaning of the Legal Practitioners Act. The Vakil does not deny that the person who instructed him was not in fact Brahma Din, but he says that he acted throughout in good faith believing that he was. It is not in dispute that the client was not known to the Vakil prior to the date upon which he was first instructed in the matter, that the client produced no evidence of his identity other than certain rough notes and papers relating to the claim he was making and that the Vakil made no independent enquiry of any kind as to the client's identity.

It has been contended before us on behalf of the Vakil that remiss as his conduct was it did not amount to more than negligence, and that negligence however gross does not constitute professional misconduct. In view of the laxity which unfortunately prevails in many parts of this State with regard to the identification of persons and the importance of the question to which this case gives rise, we desired the assistance of the Advocate General or the Standing Counsel and the latter has also addressed us.

5. We have given the matter our careful consideration and, in our opinion, the conduct of the Vakil in identifying his client as Brahma Din goes beyond mere negligence. The statement made by the Vakil at the foot of each affidavit, "Identified Brahma Din", without any qualification amounts, in our opinion, to a statement by the Vakil that he knows the deponent to be Brahma Din, and that, in the circumstances of this case, was a false statement; and must have been known to the Vakil to be false.

The Vakil knew that the application and the two affidavits all three of which he himself drafted were intended solely for the purpose of enabling his client to obtain payment of sums of money somewhat in excess of Rs. 6000/- in amount,

and he must have known that unless his client was identified by a person of some standing as Brahma Din payment would not be made. It was therefore in our opinion incumbent upon the Vakil, before he identified his client as Brahma Din, to take adequate steps to satisfy himself as a responsible practitioner that his client was in fact Brahma Din.

This he did not do, and consequently his purported identification was likely to, and in this case undoubtedly did, mislead the court. We are of opinion that the Vakil was guilty of gross-misconduct in the discharge of his professional duty.

6. We think it proper to emphasise that the identification of a person swearing an affidavit for use in court is a matter of importance not to be lightly undertaken. An identification is of no value unless it is a genuine identification, and the identifier has a responsibility in the matter both to the court and to the public. We appreciate the difficulties which a person from a remote district may have in securing identification, but where identification is necessary the difficulty cannot be surmounted by a procedure which results in no identification at all.

If the person identifying a deponent is not personally acquainted with him but is satisfied from enquiries which he has made that the deponent is the person whom he purports to be the identifier, he can guard himself by stating the grounds for being so satisfied in the manner for which provision is made in Order XIX, Rule 11-A of the CPC as amended by the Court. It will then be for the court to decide whether in any particular case the identification is adequate.

7. The offence in the present case took place in the year 1948 and it is said that the Vakil was doing no more than what many other practitioners have done before and since. In the circumstances we do not propose to impose any penalty on the Vakil, but we express our strong disapproval of his conduct; and having stated the legal position, as we believe it to be, we desire to make it clear that this Court will not regard with leniency cases which may come before it in future of irresponsible identification by legal practitioners.