

(1912) 04 CAL CK 0020
In the Calcutta High Court
In Re: Hari Pada Mukherji

Date of Decision : 29-04-1912

Acts Referred:

Legal Practitioners Act, 1879 — Section 36

Citation : 15 Ind. Cas. 654

Hon'ble Judges : Sharfuddin, J; Brett, J

Bench : Division Bench

Judgement

1. The present petitioner, in consequence of a complaint made to the District Magistrate of Howrah on the 26th October 1911 by some members of the Criminal Court Bar Association that he was acting as a tout, was called on to show cause why he should not be dealt with under the provisions of Section 36 of the Legal Practitioners Act. The learned District Magistrate did not himself conduct the whole of the proceedings against the petitioner but he ordered the Joint Magistrate to inquire into the matter and report to him. The evidence appears to have been taken by the Joint Magistrate but the petitioner does not appear to have been present while the witnesses were examined nor does he appear to have been given an opportunity of cross-examining them. The Joint Magistrate, on the 15th November 1911, reported to the District Magistrate that the petitioner should be called on to show cause why he should not be enlisted as a tout. The learned District Magistrate recorded an order approving of the course suggested by the Joint Magistrate and thereafter it appears that a notice was served by order of the joint Magistrate on the 21st November 1911 on the petitioner calling upon him to show cause why he should not be proclaimed as a tout. On the 27th November, the petitioner showed cause and on the same day, the Joint Magistrate recorded the following order: "The cause shown is not satisfactory. I think he may be proclaimed as a tout. Forwarded to the District Magistrate." On the 9th December 1911, the District Magistrate recorded the following order,--"I am satisfied from the evidence recorded and the report submitted by the Joint Magistrate that Hari Pada, Mukerjee is a tout. The cause shown by him is not satisfactory. He will, therefore, be enlisted as a tout u/s 36 of the Legal Practitioners Act." The petitioner applied to this Court on the 12th

February 1912 and obtained this Rule on the District Magistrate to show cause why the order complained against should not be set aside on the ground that it does not appear to have been passed in accordance with the provisions of the Act.

2. The learned District Magistrate has submitted an explanation to this Court and we have also heard the learned Counsel in support of the Rule and, in our opinion, the Rule must be made absolute. From his explanation, the learned District Magistrate appears not to have been aware of the decisions of this Court determining the procedure to be adopted in proceedings u/s 36 of the Legal Practitioners Act. Those decisions are in the cases of Chandi Charan Dey, In re 12 C.W.N. 842 and In the matter of Prasanna Kumar Das 12 C.W.N. 843, note, and lay down distinctly that an inquiry u/s 36 of the Legal Practitioners Act must be made by the District Magistrate himself and that he cannot delegate his powers to any subordinate officer. In In re Siddeshwar Boral 4 C.W.N. 36, it is distinctly laid down that the words proved to their or his satisfaction" in Section 36 of Act XI of 1896 refer to proof by any of the means known to the law of the fact upon which the Court is to exercise its judicial determination and that, in fact, the decision of the Judge determining that a person is a tout must be based on substantial legal evidence. In the present case, the District Magistrate himself does not appear to have recorded the evidence. The evidence which was taken by the Joint Magistrate does not appear to have been taken in accordance with the provisions of the law and the petitioner against whom that evidence is directed does not appear to have had an opportunity of cross-examining the witnesses. We, therefore, make the Rule absolute, set aside the order of the District Magistrate passed u/s 36 of the Legal Practitioners Act and direct that, should the Magistrate think it necessary to take further proceedings against the petitioner, he will do so in strict accordance with the provisions of Section 36 of the Legal Practitioners Act.