

(1962) 05 PAT CK 0005

In the Patna High Court

Case No : Misc. Judicial Case No. 77 of 1962

The State of Bihar

APPELLANT

Vs

Nanhku Tewari, Pleader, Buxar

RESPONDENT

Date of Decision : 10-05-1962

Acts Referred:

Legal Practitioners Act, 1879 — Section 13(b)

Citation : AIR 1962 Patna 382

Hon'ble Judges : U.N. Sinha, J;S.P. Singh, J;S.C. Misra, J

Bench : Full Bench

Advocate : K.P. Varma and Gobind Pd. Saha, in person for the State, for the Appellant; A.B.N. Sinha, D.P. Sharma and Kamalapati Singh, for the Respondent

Judgement

S.C. Misra, J.—This is a proceeding u/s 13 (b) of the Legal practitioners Act (Act 18 of 1879) started as a result of an application filed by One Gobind Prasad Saha. It appears that he filed his application for action against Sri Nanhku Tewari who is a pleader practising in the Munsiff's Court at Buxar, alleging that Sri Tewari did not hand over to him a sum of Rs. 25/- which had been deposited to his credit in the Court by the judgment-debtor in a money suit, Small Cause Court Suit No. 160/83 of 1960, in the Court of 2nd Munsif, Buxar. The suit was decreed and the decretal dues were to be paid in instalments. The first instalment of Rs. 25/- was received on the 15th of December, 1960, and the second instalment of Rs. 25/- was payable on the 15th of March, 1961. The amount received under the first instalment was paid to the applicant, but the amount withdrawn by the pleader under the second instalment was not paid to him. The pleader was requested several times but he was not willing to pay that amount. This matter was stated in the petition which was originally filed before the District Judge on the 28th of August, 1961, and a copy of that application was also forwarded to this Court as well.

2. This Court ordered an enquiry into the matter by the District Judge of Shahabad. The District Judge sent down the matter to the Munsif of Buxar. An

enquiry was accordingly held by him and a report was submitted after hearing the parties who were given an opportunity to file their statements in full. The learned District Judge has forwarded the report of the learned Munsif to this Court together with his own comment thereon.

3. The main allegation as set forth in the petition of rejoinder filed by the applicant Gobind Prasad Saha is that the pleader, Sri Nanhku Tewari, was engaged by him in only one Small Cause Court Suit No. 160/83 of 1960, but thereafter the pleader had signed power in several other cases in which the applicant was interested and demanded his fees in those cases as well. The applicant was annoyed at this unauthorised act of the pleader and cancelled his power in other cases after paying him his fees as demanded.

He denied the allegation in the show cause petition of the pleader that there was an agreement to pay Rs. 1/4/- on each date in each case for pairvi; Rs. 5/- per day in ex parte hearing and Rs. 10/ per day in contested cases and Rs. 5/- for filing a case. As opposed to this, Sri Nanhku Tewari in his show cause petition alleged that the agreement referred to above was entered into between him and Gobind Prasad Saha who gave him instruction to appear in all his cases and paid him fee at intervals of some dates, which would be borne out by the papers written by him. In fact, all the fees payable to him and his clerk in the 2nd of December, 1960, were cleared off on the 10th of December, 1960, and a receipt was duly granted by him showing that accounts were cleared off up to that date. From the 10th of December, 1960, till the 17th of February, 1961, his fees and the fee for his clerk were not paid. The amount was RS 27.50 np.

There was also a garden at Dumraon belonging to the applicant Gobind Prasad Saha for which he wanted rent to be fixed by the Block Development Officer, Dumraon. Gobind Prasad Saha requested him (the pleader) to work in the case and agreed to pay him Rs. 10/- per day for going to Dumraon and getting information with regard to the matter of fixation of rent. He had to go to Dumraon in that connection on four occasions for which the pleader was entitled to Rs. 40/-. The amounts taken together would bring up his dues against Gobind Prasad Saha to Rs. 67.50 np. Gobind Prasad Saha was not able to pay that amount in cash and requested him to retain the sum of Rs. 25/-, which he would withdraw out of the instalment payable by the judgment-debtor in the money suit, Ramnagina Saha, on the 15th of March, 1961.

The sum of Rs. 25/- was retained by him accordingly and he demanded the balance of his dues which his client Gobind Prasad Saha did not pay and put off the matter. In view of this reluctance on his part and evasive answers, Sri Tewari gave a notice to him dated the 24th of March, 1961, containing a full account of his dues and the balance payable within a fortnight. Instead of paying the amount, Gobind Prasad Saha felt annoyed at his demand and filed petitions in Title Suit No. 11 of 1961 and Small Cause Court Suit No. 04/119 of 1960, on the 27th of March, 1961 and 28th of March, 1961, respectively, determining his power to appear in these cases. Gobind Prasad Saha replied to the notice sent by

him (the pleader) through another lawyer Sri M. Kumar on the 30th Of March, 1961, with incorrect recitals alleging that he was not authorised to work in all the cases and that the amount was paid to him.

His denial in that reply to the effect that he did not authorise Sri Tewari to appropriate the sum of Rs. 25/- towards his fees which he would withdraw from the Court of the 2nd Munsif, Buxar, in Small Cause Court Suit No. 160/83 of 1960, was also a fraudulent denial. He stuck to the position that he was duly authorised to appear in all these cases which would be clear from the fact that Gobind Prasad Saha himself cancelled the power of Sri Tewari in Title suit No. 11 of 1961 and Small Cause Court Suit No. 64/119 of 1960.

Apart from the permission given to him by his client, Sri Tewari also urged that he had a lien upon the amounts received on behalf of Gobind Prasad Saha in respect of the instalments and he gave immediate intimation of the appropriation in exercise of his lien over that amount to his client which would show that he had no dishonest motive. No question of any violation of the rule of professional propriety could arise in the circumstances Of the case and his action was fully justified.

4. The learned Munsif in his letter dated the 7th Of October, 1961, to the District Judge of Shahabad, did not accept the allegation of Gobind Prasad Saha that Sri Nanhku Tewari appeared in his cases without being authorised by him and without instruction; and yet he came to the conclusion that Sri Tewari retained a sum of Rs. 25/- due from the judgment debtor of Small Cause Court Suit No. 160/83 of 1960 without the permission of his client. In his opinion, "Sri Tiwari should have paid back this amount to the applicant and taken recourse to such lawful means as was open to him to realise his remuneration from the applicant." The learned District Judge has forwarded the report to this court.

5. Learned counsel for the pleader has contended that in view of the finding of the learned Munsif that Sri Nanhku Tewari was engaged duly in several cases by Gobind Prasad Saha and that fees were payable for his appearance in several cases by the latter, the point is concluded that Sri Nanhku Tewari was entitled to a sum exceeding Rs. 25/, which, according to the applicant Gobind Prasad Saha, he received on account of the payment of instalment by the judgment-debtor to the credit of Gobind Prasad Saha.

In my opinion, the contention must be accepted so far as the question of the pleader's dues is concerned. The notice sent by Sri Nanhku Tewari dated the 24th of March, 1961, contains, (i) that the fees were due to him by the client and (2) that he was authorised to retain the sum of Rs. 25/- as part satisfaction of his dues and that the balance was to be paid by him. The reply to this notice dated the 30th of March, 1961, denied both the claims made by the pleader in the notice. It was alleged that the claim was altogether false and baseless and the account shown by the pleader was also false and dishonest. His claim based On his going to Dumraon for working in the Block Development Officer's office

there was also denied, in my opinion, nothing has been brought to our notice to controvert the conclusion recorded by the learned Munsif on this matter that Gobind Prasad Saha's case was not acceptable that he had not engaged Sri Nanhku Tewari as his pleader in all his cases and that he was not entitled to any fee on that account and that whatever fee he was entitled to was already paid by Gobind Prasad Saha.

6. The only question after this left to be determined is whether the pleader was permitted to retain the sum of Rs. 25/- by his client Gobind Prasad Saha. On which point there is a finding in the enquiry report by the Munsif against the pleader. On that matter, however, the materials on record appear to be insufficient. On the one hand, there was the statement of the pleader that he was so authorised and, on the other hand, there was the assertion on the part of Gobind Prasad Saha that he was not so authorised. One fact, however, which stands out in this connection as a point of considerable importance is that Gobind Prasad Saha denies that he authorised Sri Nanhku Tewari to take the amount accompanied by the further assertion that no dues were payable to Sri Nanhku Tewari as he was not authorised to appear in the cases pending in the various Courts at Buxar, nor was he instructed to proceed to Dumraon in connection with the fixation or commutation of rent of the garden of the applicant.

If, therefore, the finding Of the learned Munsif stands as valid that Sri Tewari was instructed to appear in all the cases of the applicant and fees were due to him, the denial of Gobind Prasad Saha that he had authorised his pleader to retain the sum of Rs. 25/- loses much of its force. The amount in question being a petty amount, it is only likely that instead of paying the dues of the pleader in cash out of his pocket Gobind Prasad Saha permitted him to retain that amount which was smaller than the dues by way of the pleader's fees for his appearance at Buxar Courts, and much less if the amount payable to him for working at Dumraon before the Block Development Officer is accepted. In that view of the matter, I am inclined to accept that the stand of the pleader is correct that he was authorised to retain that amount and question of professional impropriety can arise in the circumstances.

7. Even assuming, however, that Sri Nanhku Tewari was not authorised to retain the sum of Rs. 25/-, that evidence, in any case, on which reliance was placed by the learned Munsif for coming to some kind of conclusion in regard to this permission by Gobind Prasad Saha is extremely meager. There are allegations and, counter allegations on the matter and, in view of the petty nature of the amount involved, it is reasonable to hold that Gobind Prasad Saha has failed, to establish that such permission was not granted or, at any rate, Sri Tewari cannot be proceeded against for professional misconduct in this context. That was so held in the case reported in *In Re: Badri Narain Lal*, . In the matter of *Badri Narain Lal*, pleader, which quoted with approval the decision, of the Calcutta High Court in?In the matter of *Chandi Charan Mitter*, Pleader, AIR 1920 Cal 565 and in - *In Re: A, Mukhtar of Bargarh*, .

8. The claim of the pleader that he exercised his lien over, this amount is a point not free from difficulty. There is, however, on this matter a decision of the Supreme Court in - In Re: Shri "M", An Advocate of The Supreme Court of India, wherein the following observation has been made:-

We have no doubt in our mind that the high standards of the profession demand that when the moneys of the client come into the possession of an Agent or an Advocate, otherwise than as earmarked fees, he has to treat himself as in the position of a trustee for the client in respect of the said moneys. Even if he has a lien on such moneys, it, would be improper for him to retain, i.e., to appropriate the same towards his fees without the consent, express Or implied, of his client or without an order of the Court. It may be that in certain circumstances he is entitled to exercise a lien, but he has to give reasonable intimation both of the fact of moneys having come into his hands and of the exercise of his lien over them until his account is settled. If there has been no prior settlement of fees he cannot constitute himself a judge in his own cause as to what would be the reasonable fee payable to him. This position of trusteeship in respect of moneys of the client in his hands is all the greater where the moneys represent the unspent balance of what was given for a specific purpose such as for payment of printing charges, as in, this case. On any such unspent balance, it is well settled that he has no lien other under the common law or by the statute.

In this connection, it is noticeable that the pleader also intimated to big client that he had extended his lien and accordingly the criterion laid down by the Supreme Court in this, regard has also been fulfilled. Moreover, the very conduct of Gobind Prasad Saha in making an application before the District Judge on the 28th August, 1961, although he had given an making of it in the reply sent on his behalf to the notice of Sri Nanhku Tewari, on the 30th of March, 1961, and the petition having been actually filed in August, is significant. It shows that the applicant was not able to make up his mind and there was no substance in his allegation that he had no authorised Sri Nanhku Tewari to retain the sum of Rs. 25/-.

9. For the reasons stated above, in my opinion, the explanation of the pleader has to be accepted and the proceeding against him must be dropped.

U.N. Sinha, J.

10. I agree.

S.P. Singh, J.

11. I agree.