
(1927) 03 PAT CK 0003
In the Patna High Court

Ugam Prasad Pandey and Another

APPELLANT

Vs

King-Emperor

RESPONDENT

Date of Decision : 04-03-1927

Acts Referred:

Legal Practitioners (Amendment) Act, 1926 — Section 36(1)
Legal Practitioners Act, 1879 — Section 36

Citation : AIR 1927 Patna 282

Hon'ble Judges : Scroope, J;Adami, J

Bench : Full Bench

Judgement

Adami, J.—These two applications, which have been heard together, are directed against the orders passed by the District Magistrate, Motihari, u/s 36, Legal Practitioners Act, 1879, declaring the applicants to be touts and directing that the their names be entered in the list of touts.

2. It appears that the District Magistrate, when dealing with applications for the grant or renewal of cards to mukhtars' clerks, suggested to the Criminal Bar Association at Motiharia that the association should consider and report whether the various applicants for cards were touts or not, since there was reason to believe that some notorious touts were masquerading in the guise of registered clerks.

3. The Criminal Bar Association,-which consists of some 22 members, appointed a Sub-Committee of seven members, and the Sub-Committee reported that the two applicants were touts. The applicants, in two separate proceedings, were called upon to show cause why they should not be proclaimed to be touts. Evidence was taken to show that the two applicants were generally regarded to be touts, and, in showing cause, the applicants examined a number of witnesses to prove that they were not so. The learned Magistrate, on the strength of the oral evidence and the evidence of general repute afforded by the report of the Sub-Committee, decided that the applicants were touts and passed the orders complained against.

4. Mr. Manuk, on behalf of the applicants, has taken two main grounds for setting aside the order. The first ground is that the District Magistrate was not entitled to use the report of the Sub-Committee as evidence of general repute. The second ground is that, on the face of the order of the District Magistrate in each case, there is no evidence to show that the applicants are touts within the definition of "tout" contained in the Act.

5. With regard to the first ground, the Explanation to Sub-section (1) Section 36 of the Act, as amended by the Legal Practitioners (Amendment) Act, 1926" (15 of 1926) runs of follows:

The passing of a resolution declaring any parson to be or not to be a tout, by a majority of the members present at a meeting specially convened for the purpose, of an association of persons entitled to practise as legal practitioners in any Court or revenue office shall be evidence of the general repute of such person for the purposes of this Sub-section

6. The resolution in the present cases was a resolution of a Sub-Committee of only seven members out of an Association of about 22 members, and therefore it was not a resolution by a majority of the members of the Criminal Bar Association present at a meeting. In fact it appears that at a subsequent general meeting several members disagreed with the finding of the Sub-Committee. It is clear then that the report or resolution of the Sub-Committee could not be used as evidence of general repute under the Explanation to Sub-section (1) of Section 36.

7. With regard to the second ground, the definition of "tout" in Section 3 of the Act, as amended by Act 15 of 1926, is:

"Tout" means a person.

(a) who procures, in consideration of any remuneration moving from any legal practitioner the employment of the practitioner in any legal business, or who proposes to any legal practitioner, or to any person interested in any legal business, to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or

(b) who, for the purposes of such procurement frequents the precincts of civil or criminal Courts ox of revenue offices, or railway stations, lauding stages, lodging places or other places of public resort.

8. Mr. Manuk urges that the learned District Magistrate has lost sight of this definition or, at any rate, of the essential ingredient necessary for the constitution of a "tout"; that is to say, the procurement of the engagement of the legal practitioner in consideration of remuneration moving from the legal practitioner or a proposal for such procurement in consideration of remuneration moving from the legal practitioner, or from a person interested in any legal business.

9. In fact it must be shown that a legal practitioner has either paid the tout for his services in bringing work to him, or that the tout has proposed to the legal practitioner or to some person interested in the legal business to procure the employment of the legal practitioner on condition that the legal practitioner or such person will pay him something as a award for bringing him a client. Mr. Manuk argues that the mere fact that a person makes it his business to -act as general agent and to find legal practitioners for those who want legal aid, without being bound as clerk or otherwise to any one legal practitioner, does not constitute such person a "tout." Such person may make his livelihood from fees taken from clients in consideration of the help rendered in procuring a legal practitioner for them, but this will not constitute him a tout within the definition. To render him a tout it must be proved that he has taken remuneration from the legal practitioners whose employment he has secured, or that he has proposed to the legal practitioner or to some person interested in the legal business that he should be given remuneration by the legal practitioner or such interested person. And, if it is shown that a person frequents the precincts of the Courts, or railway stations, ghats, lodging houses, and other places of public resort in order that he may persuade intending litigants to employ certain legal practitioners it must also be shown that the purpose and intention is to exact remuneration from the legal practitioner who, by his advice and persuasion, is to be employed.

10. I have carefully read through both the orders, and it is clear that the learned District Magistrate did not direct his mind to the essential point to be determined. It is true he states that the witnesses deposed that the applicants are "touts." In the case of Ugam Prasad Pande he says:

They have justified their opinion mainly on the ground that he has not, except for a short period ever been the registered clerk of any practitioner, that he does not work with-any one Mukhtar or pleader, and that he takes clients to and engages different pleaders and mukhtars.

11. He does not say that from all those infers that Ugam Prasad received remuneration from legal practitioners, or proposed that he should receive it. In the case of Ragho Lal, applicant, the learned District Magistrate says that the witnesses have supported their opinion by reference to Ragho Lai's behaviour in Court, and that Ragho Lal, though a mukhtar's clerk, was in the habit of securing the employment of pleaders other than his own employer. The inference stated is that Ragho Lal acted "not as a bona fide clerk but as a tout." There is no inference stated that Ragho Lal received remuneration from the pleaders he engaged.

12. The learned Government Advocate contends that there is evidence on the records of the cases which would satisfy the Court that the applicants fall within the definition of "tout" in Section 3 on the other hand Mr. Mannk and Mr. Varma deny that there is any evidence that the applicants ever received or asked for remuneration from legal practitioners.

13. The evidence is not before this Court in revision; and, as it is clear that the learned District-Magistrate misconceived the essential points to be determined, and as there may be evidence on the record showing that remuneration moved from legal practitioners, or giving rise to a reasonable inference that it so moved, it is right that the District Magistrate should consider the evidence and come to a finding whether the applicants are touts within the definition contained in Section 3 of the Act as amended. He will not take into consideration the resolution of the Sub-Committee as evidence of general repute.

14. The order of the District Magistrate in each of the two cases must be set aside and the records must be sent back to him in order that he may consider the evidence, as directed, and come to a finding.

Scroope, J.

I agree.