In Re: S., Advocate

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Court : Allahabad

Decided On : Oct-31-1933

Reported in : AIR1934All109a

Appellant : In Re: S., Advocate

Judgement :

Mukerji, J.

1. Mr. S., an advocate of this Court practising at Budaun, has been called upon to show cause, why ha should not be dealt with under the disciplinary jurisdiction of this Court on the following charge, namely:

That on 8th March 1927 you filed a certificate of fees for Rs. 876 in Civil Suit No. 70 of 1925 of the Court of the Subordinate Judge of Budaun, Bhagwant Singh versus Chaudhri Bhau Singh and Lachman Singh, with a view that the said sum of Rs. 875 be taxed in costs against the plaintiff in that suit when you knew that any amount not paid before the hearing of the suit could not be entered in the schedule of costs as vakil's fee and when you knew that the said amount had not in fact been paid to you, and did succeed in having the said amount taxed against the plaintiff.

2. Mr. S has appeared in person and also through counsel. The following facts will be material to understand the nature of the case against Mr. S., One Bhagwant Singh, a hrother'a son of two persons Bhau Singh and Lachman Singh, who were

serving a term of imprisonment in jail as a result of a criminal case against thorn, instituted a suit against his uncles for a declaration that he had been adopted by Bhau Singh and his wife, and that a certain will executed by Bhau Singh in favour of Lachman was invalid. The suit was filed, as we have said, while Bhau Singh and Lachman Singh were in jail. The suit was instituted on 7th March 1925. An application was made on behalf of Bhagwant Singh for the examination of Bhau Singh in jail. A commissioner was appointed, and he recorded a certain statement said to have been made by Bhau Singh. There was no defence to the suit, and an ex parte decree was made in the plaintiff's favour on 26th March 1925. On 22nd April Bhau Singh and Lachman. Singh applied to have the ex parte decree made against them set aside. The application was contested. The applicants lost in the Court of first instance, but succeeded on appeal to this Court, which set aside the ex parte decree and directed that the suit should be heard on its merits.

3. The case was taken up by Mr. Thurston,, the learned District Judge of Budaun. For the hearing of this case Mr. S was engaged by Bhau Singh and Lachman Singh. Bhau Singh executed a power of attorney in favour of his wife Mt. Pania. The learned District Judge held that the adoption had not been proved, and dismissed the suit. An appeal against that decree was dismissed by this Court for default. While the suit was pending before Mr. Thurston Mr. S filed a certificate of fee which professed to be according to Ch. 21, Rule 1, of the General Rules (corrected up to 31st January 1926) framed by this Court for the guidance of the subordinate civil Courts. In this fee certificate he adopted a form which was materially different from the form prescribed by the High Court, and he stated that he had received some fees from his clients by means of a promissory note executed in his favour. The charge against Mr. S is that he knew that no fee which had not been paid in cash before the conclusion of the hearing of the case in which the fee certificate was being filed, could be certified as having been paid to him, and he certified that he had received his fees by means of a promissory note, although that was not in accordance with the said Rule 1 of the Court. This charge, along; with certain other charges, was investigated by three learned members of the-Bar Council who sat as the Bar Tribunal. Their finding was that the filing of the fee certificate on the basis of the promissory note was improper and contrary to the rules, but that Mr. S filed it under a bona fide misapprehension and

misinterpretation of the rule and so committed an honest mistake. This Court not being satisfied with this opinion of the Bar Tribunal, has called upon Mr. S to explain his conduct. It is conceded before us that under Ch. 21, Rule 1, no fee which has not bean paid in cash could be certified by counsel as a fee taxable in the case in favour of his client and as payable by the opposite party. In our opinion, there can be no doubt that this is what the rule means. The rule need not be quoted in extense. It will be sufficient to say that the words 'fees actually paid to him' occur more than once in the rule. The certificate has to say, among other matters, that the fees were paid to the counsel by certain persons specified below the certificate and that the fees were actually paid to him. The form appended to the certificate has the last column headed as follows : 'Address of person who actually made such payment.' What Mr. S., did was to invent a form of his own which is materially different from the form prescribed by Ch. 21, Rule 1, aforesaid. His certificate was as follows:

In the above case I, the pleader, have received as per details given below, on behalf of my client or his pairokar, fee on the undermentioned dates. I therefore certify the receipt thereof in the following manner.

4. The schedule adopted by him was not in accordance with the schedule prescribed by the High Court, and its last column and in fact any of the columns of the schedule do hot make any mention of the actual payment of any fee. On behalf of Mr. S., the explanation given is that he had never read Rule 1 in Ch. 21 of the Rules prescribed by this Court till 1924, although he started practice many years earlier and that in 1924 an extraordinary issue of the Gazette of the United Provinces so amended the rules as to entitle him to certify the payment of the fees in the form which he adopted. Today he had to admit that he is entirely wrong, and the notification to which he referred being No. 1163/44, dated Allahabad, 3rd April 1924, published in Part 2 of the United Provinces Gazette, p. 352, issued on 12th April 1924, does not at all touch the portion of the rule with which we are concerned.

5. The next defence is that what he did was done by him bona fide and openly and without any intention of departing from the rules of this Court, and that he did not

seek to obtain any benefit for himself by the procedure adopted by him. As regards the plea that what he did, he did openly, the following facts are material. On 8th March 1927 Mr. S made an application before Mr Thurston, a translation of which has been appended to this judgment and may be read as a part of it. In this application he said that he was looking after the case of his clients (Bhau Singh and Lachman Singh), and that those persons who were looking after his client's case had so far paid him Rs. 140 only, that under the Legal Practitioners Act of 1926 he was entitled to his legal fees and to realize the same by filing a suit against his clients, that his clients were in poor circumstances in those days and could not pay the full fees at that moment, that if however his clients would execute in his favour a promissory note for the amount of the balance of the fees due to him, then, as a matter of law, he would be entitled to file a certificate of fee, and that in that case, his clients would be entitled to recover the same from the opposite party. He added that if the promissory note was not executed, no fee certificate could be filed by him and his clients would suffer double loss because they would have to pay him his fees and would not be entitled to recover the same from the opposite party in the case of his clients' success. He prayed that the prisoners might be sent for, and the matter explained to them that if they would execute the promissory note, it would be in their own interest. The learned District Judge wrote the word 'permitted' as his order on this application.

6. Mr. S's argument is that he disclosed to the District Judge the fact that he proposed to take a promissory note from his clients and to file a fee certificate on the strength of that promissory note, and that therefore his application was good evidence of his honesty and straightforwardness. Several remarks may be made against this argument. To start with, the only prayer that was made before the learned Judge was that the prisoners were to be brought over to the Court and the matter should be explained to them and they should be permitted to execute a promissory note in favour of Mr. S., The learned District Judge was not called upon to express any opinion as to whether Mr. S., was entitled to a file a fee certificate on the strength of a promissory note executed in his favour by his clients. Mr. S., asserted in the application as a proposition of law, that he was entitled to file a fee certificate on the strength of a promissory note. He must have known the assertion to be false. The learned Judge might wall have been

deceived by this statement if indeed he ever considered the point. The application therefore does not indicate that the attention of the learned District Judge was likely to be drawn to the question whether it was open to Mr. S., to file a, fee certificate in compliance with the rule of the High Court on the strength of a promissory note. The next thing to be remarked is that there is nothing on the record to show that the application was heard in the presence of the counsel for Bhagwant Singh, the plaintiff in the suit, and that they were called upon to express either assent or dissent from the view of the rule taken by Mr. S., It does not appear from the record that Bhau Singh and Lachman Singh were brought before the learned District Judge and whether anybody explained the application to them. One thing is admitted, namely that Bhau Singh and Lachman Singh never executed any promissory note in favour of the applicant. The applicant took a promissory note from Mt. Pania, the wife and agent of one of his two clients, namely, Bhau Singh, and on the strength of it certified that ho had been paid by his clients.

7. The next argument on behalf of Mr, S., is that Mr. Halim the then District Judge of Budaun, held as a matter of law, that Mr. S., was within the rule in filing the fee certificate on the strength of the promissory note. The matter came up before Mr. Halim in this way. In the decree that was prepared in accordance with the judgment of Mr. Thurston dismissing the suit, a sum of money was taxed as fees payable by Bhagwant Singh to the defendants Bhau Singh and Lachman Singh on account of counsel's fees paid by the latter. Bhagwant Singh made an application to the Court asking for a correction of the decree. His case was that no fee certificate could legally be filed on the strength of a promissory note and that therefore the decree was wrongly framed by including the amount said to have been received by Mr. S., by the execution of the promissory note. This application of Bhagwant Singh came before Mr. Halim, and he did hold that according to the correct interpretation of Rule 1, Ch. 21 of the General Rules, the decree had been correctly framed. We entirely disagree with this view of Mr. Halim. A Bench of this Court has already disagreed with Mr. Halim's view and has reversed the order of Mr. Halim by which he dismissed Bhagwant Singh's application for correction of the decree. In view of the fact that Mr. Halim's judgment has been relied upon, we consider it necessary to say just a few words as to the interpretation of Rule 1, Ch.

21 of the General Rules.

8. In our opinion, the rule has been so framed as to be simply incapable of being misunderstood and misinterpreted on the point that only the fee actually paid, can be mentioned in the certificate, in para. 1 appears the following sentence:..and unless at or before such time there shall have been delivered to the Munsarim a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid to him for his own exclusive use and benefit by or on behalf of his clients.

9. Then in Sub-rule (2) in the language of the certificate to be filed, there occurs the following sentence.:..I, (the legal practitioner) hereby certify that in the above case the following fees were paid to me on the dates and by the person or persons specified below., and the entire amount so paid was actually paid to me for my own exclusive use and benefit.

10. Then in the schedule which follows the certificate and forms a part of it, in the last column, there occur the following words: 'Address of the person who actually made such payment.' Thus we find that at three places in this rule provision has been made for taxation of such fees as have been actually paid to a legal practitioner, The words 'actually paid' can never be interpreted as including a payment by means of the execution of a promissory note, a suit on which may or may not result in recovery of the money, or undertaking given by means of which may not ever he carried out.

11. On behalf of Mr. S., a Madras case has been cited as an. authority for the view that a receipt of fees by execution of a promissory note by the client is a good payment. The case is In Re Sublet, Rao A.I.R. 1930 Mad. 413. This is a judgment of a learned Single Judge of the Madras High Court. The learned Judge had to interpret a rule which was materially different from the rule of this Court, and in that rule there apparently occurred at the time the words 'otherwise adjusted.' We have not got a copy of the rule actually before the learned Judge, but in the rule now in force in the Courts subordinate to the High Court of Madras the words are:..except on production of a certificate from the legal practitioner that he has received such fee.

12. This is an extract from the actual rule, and below this rule there appear two foot-notes which indicate the circular orders and instructions issued by the High Court for the guidance of the Subordinate Courts. Note No. 2 is as follows:

The fact of a promissory note or other agreement to pay the fee having been given or made by the client does not entitle the legal practitioner to certify that he has received the fee: Civil Rules of Practice and Circular Orders, Madras High Court, Vol. 1, Rule 30, p. 251.

13. It is clear therefore that this ease does not support Mr. S's contention. A few other cases have been cited before us, but none of them being to the point we do not feel called upon to express any opinion on them. It has been further argued Shat Mr. S did not conceal the fact that he was going to file his fee certificate on the strength of a promissory note, and therefore it should be inferred that he was acting honestly. We are not impressed by this argument, for if this argument held good, one could commit an illegal act openly and in case of success, he would get the benefit of improper action, and in case of failure, he would always have the argument to put forward that his intentions were good and he never intended to act improperly knowing the nature of his act. Further, as we have pointed out, Mr. S did not act openly because although he put forward the view of the law that he was entitled to file a fee certificate on the strength of a promissory note in his rather long application before Mr. Thurston, there is nothing to show that the contents of the whole application were discussed before the Judge or that they were meant to be discussed. No doubt Mr. S when examined before us, did say in answer to questions put by his own counsel that the opposite party and his counsel were present. This aspect of the case was never put forward earlier, and it is not supported by anything on the re-cord. The argument therefore fails.

14. The fact that Mr. S has materially departed from the form of the fee certificate prescribed by this Court is a matter which cannot be overlooked. No valid explanation has been offered. Mr. S has stated that the departure from the original rule is not material; but we cannot accept his argument. The fact that the words 'actually paid,' do not occur in the fee certificate filed by him is very significant. The certificate filed by him, if it were authorised by this Court, would certainly entitle

him to certify a payment of foes on the strength of a promissory note. In order to assure that a true statement of facts is made, the rule framed by his Court not only requires that the fees actually paid should be certified but also requires the name and address: of the person who actually made the payment. The object of the rule is wall known. It is to cheek traffic in the matter of counsel's fee; in other words, to check touting. Mr. S has removed the heading which required him to state the address of the person who actually made the payment, and in the last column he has got printed the word 'moakkil' or client. With this printed fee certificates before him he could very wall say that he was never called upon to give the address of the person who actually made the payment. It is not the case that the word 'client' had to be put in where the client actually makes the payment; but, as we have said, it is already there in print, and uoles3 the word is deleted, there will be no occasion to give the address of the person who actually makes such payment. The alteration in the fee certificate to our minds clearly indicates a dishonest intention on the part of Mr. S., It shows also that he never misinterpreted the clear words of the rule.

15. Having regard be all the circumstances of the case, and having given due weight to the arguments of the learned Counsel appearing for Mr. S and having heard all that Mr. S himself has told us and also having read the written argument furnished by Mr. S before us we are clearly of opinion that Mr. S deliberately filed a fee certificate which was not in accordance with the High Court Rules, in order that a fee not actually paid to him might be taxed. The result of this fee certificate was that Bhagwant Singh wait called upon by the decree of Mr. Thurston to pay a large sum of money as the fee paid by Bhau Singh and Lachman Singh to their counsel, although Bhagwant Singh was not at all liable to make any such payment. The argument that it was the fault of the office of the District Judge if they entered the fee in the decree knowing that under the rules of this Court the taxation of such fee was illegal, and that therefore Mr. S could not be held responsible for what the learned Judge's clerk did, has no force. Mr. S is not being called upon to explain the conduct of the clerk of the learned District Judge. He is called upon to explain his own conduct, namely, why he deliberately ignored the language of the fee certificate prescribed by the High Court, and why he adopted a fee certificate form of his own which materially and substantially differed from the form prescribed by

'the High Court and which entirely nullified the object of the High Court in prescribing the form of the certificate. His explanation, as we have said, has not succeeded in satisfying us about his bona fides and straightforwardness. Convicting therefore Mr. S of serious professional misconduct, we think that he should be adequately punished, and the order of the Court is that he be suspended from practice for a period of three months. Mr. S shall pay the fees of the learned Government Advocate as part of the costs of these proceedings. The amount comes to Rs. 320, being the fees of two half-days and one full day.