

In Re: Bisheshar Nath

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Court : Allahabad

Decided On : Dec-19-1917

Reported in : (1918)ILR40All147

Judge : Walsh, J.

Appellant : In Re: Bisheshar Nath

Judgement :

Walsh, J.

1. These are two applications by Bisheshar Nath, High Court Vakil, practising at Ghaziabad, against an order of the Munsif of Ghaziabad, which was really a judgement in a civil suit, (a) directing him to show cause why he should not be committed to the criminal court under Section 476 of the Criminal Procedure Code, and also (b) directing him to show cause why proceedings should not be taken against him under Section 14 of the Legal Practitioner's Act.

2. The circumstances of the case are unusual. A suit was brought in the court of the Munsif by one Chajju Mal against Jas Earn upon a promissory note alleged to have been given by the defendant on the 31st of December, 1913, for Rs. 150, with interest at Re, 14 per cent, per mensem. The claim was for Rs. 216-14, only. The plaint was filed about the 22nd of December, 1916, and the claim would therefore have been barred in a few days.

3. Paragraph 2 of the written statement alleged that the plaintiff was in jail, that the suit had not been presented on his behalf, and that the permission of the jail authorities had not been given to the plaintiff's signature. The following issue was framed:---I. 'Whether the suit was properly and duly filed on behalf of the plaintiff and is maintainable or not.' The Munsif describes it as the most important issue in the case.

4. Bakhtawar Singh, brother-in-law of the plaintiff, was called and swore that he was asked by the plaintiff's wife, in consequence of a letter written by the plaintiff from jail, to file the suit, and he accordingly instructed the applicant, Bisheshar Nath. Hardwari Lal, the plaintiffs munim, called by the defendant, attempted to identify the plaintiff's signature, but he was not certain about it. A jailor was called by the defendants who contradicted the statement of Bakhtawar Singh that the plaint was signed by the plaintiff in the presence of the jail authorities, though he stated that about the date in question, two or three people called to see Chajju Mal who was at work outside the jail, and the signature might have been obtained in the jailor's absence.

5. These witnesses, whose evidence was recorded on the 14th of February and the 13th of April, are the only relevant ones upon the point as to the manner in which the plaintiff's signature was obtained.

6. On the 19th of April, the plaintiff himself Was put into the box and was asked the question 'Who signed the plaint in this case?' After a highly technical discussion about the onus of proof which I confess is beyond my comprehension, the question was disallowed. So that issue No. 1 was decided after the deliberate refusal to hear the evidence of the principal person concerned who was in a position to speak to it. To talk of forgery under such circumstances is of course out of the question.

7. I will assume that the plaintiff's signature was appended so as to constitute a breach of the jail regulations. I will assume further, though it is by no means proved, that he did not write it himself, although he had authorized the suit, and that although he might have authorized some one to sign his own name, he was prepared, or badly advised, under a mistaken fear of the consequences of telling

the truth, to commit perjury by swearing that a signature written by some one for him was written by himself. There is not, so far as I can see, in the absence of a repudiation of his signature by the plaintiff himself, a scrap of evidence of forgery, and not a shadow of a suggestion in the evidence that the present applicant knew it was forged.

8. The learned Munsif appears to have felt the difficulty himself. He says the signatures of the plaintiff to the plaint and vakalatnama were 'most probably forged.' He further concludes that the applicant was guilty of gross negligence in not concluding that there had been a breach of the jail regulations. It is impossible to reconcile this finding with the ultimate conclusion that the applicant produced two documents in court which he either knew or had reason to believe were forged. Without considering whether the Munsif had jurisdiction to deal with any disciplinary question under the Legal Practitioner's Act, or whether the occasion was one in which, in any event, he ought to have exercised the power given by Section 476 of the Criminal Procedure Code, I hold that on the evidence before him the course which the Munsif took with the vakil, the present applicant, had no foundation in fact and was an unwarrantable abuse of his power, and an irregular exercise of jurisdiction.

9. As, however, the judgement in this case raises several points of practical importance and the whole proceedings evidence a lamentable waste of judicial time, and a fruitless expenditure of costs, all of which apparently will fall upon one or another of these two unfortunate litigants, I think it desirable to deal with the other points raised.

10. The Munsif has entered into a learned and exhaustive examination of the Jail Manual and Regulations. These are wholly irrelevant. He says they have the force of law. This does not mean that they alter the general law. A plaint signed or a suit authorized, by a man in jail, is just as good as any other plaint or suit, however many jail regulations are broken. The breach of regulations whether by the prisoner, his friends or pleader, are matters for the Jail authorities, or the Local Government, or whoever has the duty of enforcing them or punishing their breach. They no doubt have the force of law, but they cannot destroy a cause of action or

invalidate a plaint. The second part of the second plea in the written statement which raised this point ought to have been struck out and no issue should have been framed thereon.

11. Order and 153, wh VI, rule 14, which requires a pleading to be signed by a party, is merely a matter of procedure. It is the business of the court to see that this provision is carried out. It is also the business of the court to see that a suit is authorized by the plaintiff. Of course if it is not, the suit ought to be dismissed and the persons responsible for it made to answer for their conduct. The authority for the bringing of a suit is a question of principle. But where a suit is duly authorized, the proper signing of the plaint is a matter of practice only, and if a mistake or omission has been made, it may be amended at any time. Sections 151 of the courts I. L. R., 18 All., 396.

14. It cannot be impressed too often upon the inferior courts what Bowen, L. J., said in *Cropper v. Smith* (1884) 26 Ch. D., 700.:---'The objects of courts is to decide the rights of parties, and not to punish them for mistakes which they make in the conduct of their cases, by deciding otherwise than in accordance with their rights. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy.'

15. Of course where it is sought to abuse the process of the court, or to overreach the other party by some fraud, it is another matter.

16. It is to be observed that, although according to the Munsif's judgement the defendant's below seem too often to ignore, were plainly intended for such cases. And the latter part of order VI, rule 14, enabling a person duly authorized by the party when the party is unable to sign the pleading himself to sign for him makes this clear. In the present case I see no reason why Bakhtawar Singh could not have signed for the plaintiff. I delivered a judgement recently myself upon this very point where I endeavoured to make it clear. But there is abundant authority, if any were required, for such an obvious proposition; cf. *Basdeo v. John Smidt* (1899) I. L. R., 22 All., 55. decided in this Court many years ago.

12. But the most unfortunate incident of the whole case is the proceeding of the 19th of April, when the plaintiff presented himself in the box, and the Munsif disallowed a most obvious, necessary and proper question. Why the Munsif did not then realize the position, and put an end to further waste of time and invite the plaintiff to sign the plaint and vakalatnama then and there, I am at a loss to understand. The fact that a fresh suit would probably be barred by limitation would seem an additional reason for doing so.

13. I have not thought it necessary to discuss the high technical-lies about the attestation of the vakalatnama. All defects might and ought to have been cured by the exercise of a little common sense, and may, in my opinion, still be cured if the suit is remanded or the court which hears the suit in appeal does what the Munsif might and ought to have done. Vide *Rapt Ram v. Katesar Nath* (1896) itted his signature to the note so that the onus was upon him, and the plaintiff gave evidence and the defendant did not, but relied upon a discharged servant of the plaintiff, the Munsif dismissed the suit on the merits. If he was right in so doing there was the less reason for this elaborate expenditure of time and money over a trivial matter of Rs. 200. The defendant and his representatives are partly to blame for this unfortunate miscarriage by having raised the question in the plea, apparently because the plaintiff, who was a former employer of the defendant, had been sent to jail. If there was a good' defence to the suit, it was superfluous. If there was no defence, it was irrelevant to any question, unless the suit had not been authorized by the plaintiff. This, which is the sole question of importance, has not been decided at all.

17. I will merely add that it would in my opinion be better, as a general rule, where the court has reason to think that there has been any breach of professional etiquette or any matter calling for the exercise of disciplinary powers, in the conduct of the pleader or advocates in the case, to decide the merits, and reserve any such question for further consideration after the disposal of the suit. If there were no other reason for this course, and there are several in my judgement, it is in any case not a matter which concerns the parties, or one in respect of which they ought to be penalized either by prolonging the suit or increasing the costs. This case seems to have occupied the time of the court on six days, including the

framing of the issues and the delivery of judgement, and lasted for more than six months. I direct the order of the Munsif, so far as it affects the applicant, to be cancelled.

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