

State Vs. Mahendranath Dutta and anr.

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Court : Orissa

Decided On : Nov-13-1956

Reported in : AIR1957Ori49

Judge : Narasimham, C.J., ;Mohapatra and ;Das, JJ.

Acts : [Legal Practitioners Act, 1879](#) - Sections 13

Appeal No. : Civil Ref. Nos. 2 and 4 of 1955

Appellant : State

Respondent : Mahendranath Dutta and anr.

Advocate for Def. : S.K. De and ;S.C. Palit, Advs. for Dutta, ;M.S. Rao, Adv. for Sen

Advocate for Pet/Ap. : Adv. General

Judgement :

Mohapatra, J.

1. It will be convenient to take up both the cases together. They were heard together as they arose out of the same incident. This Judgment of ours should cover both the cases which arise out of proceedings under the provisions of the Legal Practitioners Act, 1879 for the professional misconduct of two lawyers who

usually practise in the Munsiff's Court at Jajpur. The circumstances giving rise to the cases are as follows:

2. In Execution Case No. 97 of 1953 of the Munsiff of Jajpur Durjyodhan Pati was the decree-holder and Muralidhar Kar was the judgment-debtor. Sri Mahendranath Dutta and Sri Narendranth Sen, Pleaders of the Munsif Court at Jaipur, represented the decree-holder and the judgment-debtor respectively. The decretal amount was to be paid in four instalments. The three previous instalments having been paid in time, the fourth was payable on 14-11-1954.

There being a default, the sale in execution of the decree took place on 15-11-1954 which covered the homestead of the Judgment-debtor including other immovable properties. The execution case was posted to 16-12-1954 for confirmation of sale. But however on 14-12-1954 a petition certifying payment of the entire dues of the decree-holder and the compensation money in all amounting to Rs. 36/8/- was filed and the petition contained a prayer for setting aside the sale. The petition was signed by Sri Dutta after the endorsement that he received the amount mentioned in the petition. Accordingly the sale was set aside and the execution case was dismissed on full satisfaction on 16-12-1954. But the decree-holder not having received the amount approached his lawyer Sri Dutta for payment of the aforesaid amount of Rs. 36/8/-. Sri Dutta however explained to the decree-holder that he had not received the amount from Sri Sen, representing the judgment debtor, but had signed the petition implicitly confiding in Sri Sen that he (the latter) would pay up the amount that day to him. He therefore asked the decree-holder to approach Sri Sen to receive his dues. The decree-holder approached Sri Sen on two or three occasions and met with sheer disappointment.

The decree-holder having failed in all his attempts to receive his dues in spite of his repeated approaches to both the lawyers (Sri Dutta and Sri Sen had sent a petition to this Court on 17-1-1955. On that very day, however, the decree-holder received the amount after despatching the petition to the High Court from Sri Sen, and, therefore, in his petition dated 18-1-1955 he informed this Court about the payment and prayed for dropping up of the proceedings under the Legal Practitioners Act.

3. But however an inquiry was made against Sri Dutta, under the direction of this Court, by the District Judge of Cuttack, and the District Judge filed a report to this Court making an observation that Sri Dutta did not in fact misappropriate the amount which was never received by him either from the judgment-debtor or his pleader; but nevertheless Sri Dutta was negligent in his professional duty. Thereafter on the basis of a letter dated 8-7-1955 of the Registrar of this Court, proceedings were also started against Sri Sen as in the inquiry against Sri Dutta it transpired that Sri Dutta had never received the amount and the amount was really left with Sri Sen who had not only misappropriated the amount but had duped his colleague.

3a. It will be pertinent to give the cases of the two pleaders at this stage. According to Sri Dutta, he had never received the amount either from the judgment-debtor or from Sri Sen; the decree-holder was absent on 14-12-1954; Sri Dutta was busy in the Criminal Court; and during the short time that he had come to the Civil Court he had signed this petition of satisfaction having full reliance on Sri Sen, who was his student in the early days of his life and is his colleague in the Bar for a long time and who represented that the money would be paid soon; he thereafter left for the Criminal Court requesting Sri Sen to pay the amount to the moharir and directed the moharir to keep the money till decree-holder would come and take the money; when he returned from the Criminal Court he did not find either his clerk or Sri Sen; he knew for the first time that the decree-holder had not been paid up his dues 2 or 3 days after the receipt was filed, when the decree-holder approached him and demanded the money he explained the situation to the decree-holder that he had not actually received the money from Sri Sen who had promised to pay the money soon. He therefore directed his client to Sri Sen to receive his dues on several occasions. (3b) The case of Sri Sen is to the effect that In fact the judgment-debtor had not paid the instalment in time; the valuable property consisting of his homestead was sold off in a Court sale at a low price; that thereafter on 14-12-1954 the entire amount including the compensation was paid to Sri Dutta on which he signed the petition of satisfaction for setting aside the sale; that he had not retained any money of his client and therefore is not guilty of any misconduct whatsoever; that subsequently Sri Dutta made a demand of Mitheikhia (an illegal amount to be paid by the judgment-debtor) as he (Sri Dutta)

was brought to task by the decree-holder for having signed the petition of Satisfaction.

4. The District Judge, before sending his report, had examined both the lawyers and the decree-holder. When the matter came up for hearing a Special Bench of this Court, finding that the depositions of the judgment-debtor and the clerk who acted on behalf of the decree-holder are essential for deciding the two cases, by Order No. 3, dated 9th January 1956, sent back the records to the District Judge for examination of the aforesaid two persons after giving notice to the two pleaders concerned and affording all reasonable facilities to the pleaders to cross-examine them. The District Judge had recorded the statements of those two persons and the cases have again been heard by us.

5. We will take up the case of Sri Narendranath Sen first. It transpires from the evidence of Sri Dutta that in fact while he signed the petition of satisfaction, he had not received any amount whatsoever from Sri Sen. Both the decree-holder and the judgment-debtor were absent on the day. The receipt of satisfaction was written by his clerk 'Jogendranath Sahu. He signed it in good faith having implicit confidence in Sri Sen that he would pay up the amount soon. Being in a hurry he went away to the Criminal Court after handing over the receipt to Sri Sen.

The decree-holder Duryodhan Pati states that he received the amount due from the judgment-debtor Muralidhar Kar only on 17th January 1955 from the hands of Sri Sen after he had despatched the petition to the Hon'ble High Court. He had been several times to Nani Babu (that is Sri Sen) for receiving the amount after 17th December 1954, but there was no payment. He categorically asserts that he never demanded any Mitheikhia, that is, any illegal gratification.

But apart from the above evidence, the most Important evidence is that of the judgment-debtor himself who was examined by the District Judge in obedience to our order dated 9th January 1956. He categorically states that he paid the amount to his pleader Nani Babu on each occasion before the instalments were due. Prior to the last kisti he had paid Rs. 26/- to him in cash which he promised to deposit in Court and asked him to leave the Court. Accordingly he went away home.

But receiving letters that his properties had been sold away in execution of the decree he again approached his pleader and made some further payment also for setting aside the sale. His pleader promised him to see that the sale is set aside anyhow. He however states that he is not at all aware of any Miteithia amount. It is important to note that this witness, the judgment-debtor, who is the client of Sri Sen, was not cross-examined at all by Sri Sen.

It is absolutely clear therefore that Sri Sen had received the amount of Rs. 26/- to pay up the last instalment which fell due on the 14th November 1954 and that in spite of it the property of the judgment-debtor was sold away on account of the fault of Sri Sen in not paying or depositing the instalment due.

6. At this stage, in my opinion, it would be very pertinent to quote Exts. 1 and 1(a), the correspondence between Sri Dutta and Sri Sen respectively on 23rd December 1954:

'My dear Nani,

I cannot understand why you told me to wait and yourself slipped off from the Court. Duryodhan Pati (Dhr) is pressing for his money. I am still waiting in the Court and to pay off his dues. I write to you to send the money per hearer urgently. Please do not bother me further.

M .N. Dutta,

Pleader. 23-12-56'

Nani Babu referred to in Ext. 1 is no other than Sri Sen who bears that nickname. On receipt of it on the same chit Sri Sen sent the reply, Ex 1 (a) quoted below verbatim:

'I have no money with me at present. I expected to have the same from one money-lender but I have not met him yet. I promise to pay at the reopening of the Court. Please excuse.

Narendranath Sen

23-12-54.'

The letter and the reply leave absolutely no doubt in our mind that in fact Sri Dutta had signed the petition of satisfaction without receiving any money whatsoever either from the judgment-debtor or from Sri Sen. It further appears that Sri Sen acknowledged his own liability to make the payment. Sri Sen in his deposition admits the genuineness of the two letters; but seeing that they stare at his face and place the case against him beyond all possible doubts, he shot up the theory of Mitheikhia saying that both the demand and the reply were in respect of Mitheikhia which he had agreed to pay.

The story of Mitheikhia appears to be fantastical on the very face of it. When Sri Sen had the entire amount due to set aside the sale with him, there was no necessity or occasion for any illegal gratification because the legal remedies were open to him to make use of the provisions of Order XXI, Rule 89, Civil P. C. and on the deposit of the said amount, the sale, as a matter of law, would be set aside without any act of grace on the part of the decree-holder.

It is to be noted that there is nothing mentioned in the letters indicative of any Mitheikhia amount. Further the case of Sri Sen regarding Mitheikhia stands self-condemned by referring to his own statement that for the first time only the question Mitheikhia cropped up when Sri Sen and Sri Dutta were talking amongst themselves during the Christmas holidays.

But these two letters are dated 23rd December 1954 which was the closing day of the Court. The letters themselves indicate that the Court was sitting on that day. Moreover on a perusal of the reply of Sri Sen, it is clear that he had taken this Mitheikhia due as his own liability which is absurd. The letter can indicate only to the effect that Sri Sen had received the entire amount, but nevertheless did not make any payment whatsoever either to the decree-holder or to Sri Dutta till 17th January 1955. till after the petition was filed: by the decree-holder in this Court.

Moreover, as we have accepted the evidence of the judgment-debtor, he had received the instalment due prior to the date, that is, prior to 14th November 1954. In these circumstances, therefore, we have no hesitation to find that Sri Sen is

guilty of serious professional misconduct on several counts. Having received the entire amount due to be paid towards instalment, he made a default on account of which the valuable property consisting of homestead of the judgment-debtor was sold away.

Thereafter even on the date of filing the petition of satisfaction for setting aside the sale, he did not make the payment to the decree-holder's lawyer. On the contrary, he duped Sri 'Dutta to believe that he would be making the payment very soon. Furthermore in spite of the decree-holder approaching him on several occasions he did not make the payment which he had manifestly mis-appropriated to his own use.

These are very serious acts which not merely are negligent acts of the pleader but involves moral turpitude of the worst type. He has disgraced himself in a way which is undoubtedly unworthy of the noble profession to which he has the proud privilege to belong. He has made serious abuse of the confidence of his client.

He has also proved false to the confidence reposed on him by his colleague. We will therefore find him guilty of professional misconduct. An order of suspension of practice for six months will meet the ends of Justice and we order accordingly.

7. Regarding Sri Mahendranath Dutta, we find, the evidence discloses that he in fact signed the satisfaction receipt for setting aside the sale without receiving any amount on behalf of his client; and as he was in haste to go to the Criminal Court he left the petition in the custody of Sri Sen who represented the judgment-debtor. 14th of December 1954 was the last day for the judgment-debtor to make a deposit of the money requisite under Order XXI, Rule 89, Civil Procedure Code, to set aside the sale.

If the judgment-debtor would not deposit the amount the decree-holder-purchaser's right to property would be mature. Handing over the satisfaction to the lawyer of the judgment-debtor is as good as filing it in Court. This part of the case that he handed over the satisfaction petition to Sri Sen gets support from his own evidence and from the evidence of his clerk.

In our opinion, his act was grossly negligent and further he acted improperly in not safeguarding the interest of his client by handing over the petition of satisfaction to the lawyer of the judgment-debtor without receiving the amount due. Furthermore it is also clear from the evidence that when the decree-holder approached him, he made him (the decree-holder) run after Sri Sen on several occasions to receive his own dues.

The decree-holder had absolutely no obligation to run after the pleader for the judgment-debtor for receiving his legal dues. When Sri Dutta had put in his signature and handed over the petition of satisfaction to Sri Sen, having implicit confidence, (in the words of Sri Sen) who promised to make the payment very soon, it was the duty and responsibility of Sri Dutta to have taken the liability himself and make the payment to the decree-holder immediately when he approached him.

His conduct in asking the decree-holder to approach the lawyer of the other side on several occasions is certainly improper and much below the standard of the conduct of a gentleman. But considering the circumstance that Sri Dutt is aged more than 71 and that his credulous habit in having implicit confidence in his colleague was responsible for this incident, we are not inclined to take any serious notice of it even though we find him technically guilty. But we will warn him not to be so foolishly credulous in future while his professional duty demands him to be very particular in not putting the rights of his clients in jeopardy.

8. In conclusion therefore we order Sri Narendranath Sen to suspend his practice as a pleader for six (6) months, from today, and Sri Mahendranath Dutta is let off with a warning as mentioned above. There will be no order as to costs.

Narasimham, C.J.

9. I agree.

Das, J.

10. I agree.

