

**In Re: Mr. H. Pleader**

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**Court :** Kolkata

**Decided On :** Nov-24-1932

**Reported in :** AIR1933Cal344

**Appellant :** In Re: Mr. H. Pleader

**Judgement :**

**Costello, J.**

1. This matter comes before us on a reference by the District Judge of Jalpaiguri, under Section. 14, of the Legal Practitioners Act of 1879. It appears that H who is a pleader practising at Alipurduar, while acting on behalf of a man named Bhojai Christian of that place in connexion with an application for remission of what is described as a jotedari donation, made a statement in the presence of the Tahasil Officer of Alipurduar who was dealing with the matter, as it appears in a judicial or a quasi judicial capacity, as a, revenue officer, which statement was to the effect that if Rs. 5 had been paid to the Peshkar of the tahsil office, the remission would have been granted. The Peshkar concerned not unnaturally took exception to that remark and construed it, as indeed it might well have been, art imputation against his honesty and integrity in the execution of his office. The Peshkar instituted a case in the criminal Court against H under the provisions of Section 500, Penal Code, which is the section dealing with defamation as a criminal offence. It appears that the complainant, the Peshkar and the accused in that criminal proceeding, that is to say, the pleader with whom we are now concerned, arrived

at some kind of compromise on the basis of which the criminal proceeding terminated.

2. As a part of that compromise H expressed his regret for what he had said and he further undertook to pay the expenses of Babu Asoke Ray who was the Thasil Officer before whom the offensive observation had been made. He had been summoned as a witness for the prosecution in the criminal proceeding. The criminal proceeding terminated in the manner as I have described on 30th November 1931. On 15th January 1932 Babu Asoke Ray submitted a travelling allowance bill in which he claimed a sum of Rs. 40-1-0; but upon H being asked to pay this amount he endorsed upon the bill a note in these terms:

I think Sarat Babu, the Peshkar, ought to pay Asoke Babu's expenses, if any, as it was to his interest that the case was compromised; otherwise the result of the case would have been most serious against him. It was he who compromised the case.

3. It appears that the real terms of the compromise with regard to the question of this travelling allowance, were that H would pay to Babu Asoke Ray his expenses if the latter insisted upon payment, whether he was disposed either to forgo it in entirety or in part. Subsequently through the intervention of the Subdivisional Officer of Alipurduar H agreed to pay to Babu Asoke Ray a sum of Rs. 27-3-0 in six monthly instalments; and thereupon the Subdivisional Officer made an order in these terms:

As H agrees to pay the reduced amount of Rs. 27-3-0 in six instalments commencing from this month at Rs. 5 a month for five months and balance in the sixth month, and as he writes that his remarks of 18th January 1932 do not arise, Sarat Babu need not take any steps now as the money will not be recovered from him. H will deposit the money with me every month, with necessary money order fee.

4. That order was dated 6th February 1932. 'We are of opinion that it must be taken that order was made by the Subdivisional Officer acting in a judicial capacity, inasmuch as he was the Magistrate who was dealing with the criminal

case to which I have referred and who would have tried H upon the charge under Section 500, I.P. C, had that case been proceeded with. The position therefore was that on 6th February 1932 there was a definite order by a Court upon H to pay the sum of Rs. 27-3-0.

5. The next thing that happened however was that the person who was entitled to the travelling allowance, Babu Asoke Roy, did not agree to accept the sum of Rs. 27-3-0 in discharge of the bill which he had put forward which bill, as I have already said, was for the sum of Rs. 40-1-0 and it is clear that he-who was himself a Subdivisional Officer-caused a letter to be sent to the Deputy Commissioner of Jalpaiguri in which he claimed the full amount. The Deputy Commissioner thereupon noted on the letter which he had received from Babu Asoke, Roy a memorandum in these terms:

S.D.O. Babu A.C. Ray has submitted this letter for my perusal. I agree that he should receive the travelling allowance to which he is entitled as a Government servant and that it should be paid in full by 15th March 1932 without fail. It is obvious that H requires firm handling.

6. Upon receipt of that memorandum the Subdivisional Officer concerned made a note to this effect: 'Inform H and ask him to pay Rs. 40-1-0 by 15th March 1932 without fail.' The information was conveyed to H in what is described, a notice on him to pay the amount, dated 24th February 1932. It is in these terms:

To Babu H., Pleader.

As directed by the Deputy Commissioner you are informed that you will have to pay Rs. 40-1-0 as travelling allowance of Babu Asoke Chandra Ray in the case under Section 500, I.P. C, against you by 15th March 1932 without fail in full. I request you therefore to deposit the money with me, with eight annas as money order commission by that date positively.

7. Now, in passing, I would point out, quite emphatically, that the question of the payment of this travelling allowance was entirely a matter to be dealt with: by the Subdivisional Officer who had functioned as the Magistrate dealing with the case

under Section 500, I.P.C. It was essentially a matter to be dealt with by a judicial officer, as something incidental to judicial proceedings and it was in no sense a matter with which any executive officer should have concerned himself as such. Therefore if the memorandum endorsed on a letter from Babu Asoke Ray, dated 19th February 1932 by the Deputy Commissioner was intended to be anything in the nature of an order or even a direction to the Subdivisional Officer, on the question of the amount which should be paid by H to Babu Asoke Ray or as to the conditions on which it should be paid, then in our view that was something which ought not to have been done.

8. We are of opinion that the Subdivisional Officer ought not, in any event, to have treated the memorandum made by the Deputy Commissioner, as if it was something in the nature of an order which he, as a judicial officer, could properly take notice of. The Subdivisional Officer ought to have dealt with the matter solely upon the footing that he was a Magistrate in charge of the criminal case. Therefore we are of opinion that the real and effective order with regard to the payment of the travelling allowance to Babu Asoke Ray was the order made by the Subdivisional Officer himself, in the first instance and dated 6th February 1932. That, in outline, is the substance of the case out of which the present proceedings before us arise. The conduct of H in connexion with this matter both as regards the observations which he made before the Tahsil officer and in connexion with the payment or rather with the non-payment of the travelling allowance to Babu Asoke Ray, was called in question and was inquired by the District Judge of Jalpaiguri and four charges were laid against H. The first was concerned with the allegation or imputation which H made against the Peshkar. The second had reference to the endorsement which he put on the travelling allowance Bill of Babu Asoke Ray to the effect that Sarat Babu ought to pay the expenses as it was to his interest that the criminal case was compromised.

9. I have already quoted the remark in question. The third charge related to H's non-payment of the promised and indeed the ordered instalments of the amount due from him to Babu Asoke Say under the terms of the compromise in connexion with the travelling expenses. And the fourth charge was a general allegation that H had procured the case, brought against him under Section 500, Penal Code, to be

compromised by means of false inducements and false promises. (After considering all the charges in seriatim, the judgment proceeded.) Looking at the matter as a whole, it seems to us that the question really resolves itself into this: as to what view we ought to take concerning this pleader's conduct in making the observations as he did and the implied insinuation against the character of the tahsil officer's Peshkar.

10. We are of opinion that it cannot be argued that this pleader was doing otherwise than in acting in his professional capacity, when he appeared on behalf of Bhojai Christian before the tahsil officer in Alipurduar. Therefore we have to ask ourselves whether we ought to come to the opinion that he has brought himself within the terms of Section 14, Legal Practitioners Act, read with Section 13, Clauses (b) and (f) of that Act; in other words, whether he was guilty of grossly improper conduct in the discharge of his professional duties. Section 14 is material even when any pleader is acting in his professional capacity on behalf of his client in a proceeding in a revenue office. Therefore there can be no question whatever that this pleader at the time when he made the remarks about the Peshkar, was acting professionally and therefore if he was guilty of any grossly unprofessional or improper conduct, he would bring himself within the disciplinary jurisdiction of this Court.

11. We are inclined to take a lenient view in this case however having regard to the fact that the aggrieved Peshkar thought fit to seek his own remedy for the insult which had been put upon him and for the injury which he suffered, by taking proceedings in a criminal Court for defamation. The Peshkar chose to compromise those proceedings accepting the apology which was offered to him by the pleader concerned. At the same time however we should not be doing our duty if we do not condemn in the strongest possible manner the action of the pleader in making an observation of the kind complained of. No doubt it was made in the heat of the moment and possibly when the pleader was irritated at having failed to secure what he was seeking on behalf of his client. At the same time no amount of irritation or disappointment would be any justification for any legal practitioner casting imputations upon the honesty and integrity of one of the officers of the Court before which he was appearing. Had the observation been made actually

when the proceedings before the tahsil officer were taking place, he might have dealt with the matter on the footing that it was a gross contempt of Court. In this case so far as the actual hearing before the tahsil officer was concerned that had been concluded. Mr. Chatterjee on behalf of the pleader H has very ably and forcibly said all that could be said in extenuation of the offence which the pleader committed and has in effect apologized once more on behalf of his client. In all the circumstances of this case we are disposed to accept that apology, believing that this pleader will take notice of what I have said with regard to the impropriety of his conduct and that he will take good care to avoid any recurrence of an offence of a like nature. As regards the other charges all of which in one way or other were concerned with the payment of the travelling allowance, we are of opinion for the reasons which I have given as to the validity of the order of 24th February 1932, that H must obey the order of the Sub-divisional Officer made on 6th February 1932, and pay to Babu Asoke Ray the sum of Rs. 27-3-0, which was directed to be paid by him. No other order is necessary and the Reference is disposed of accordingly.

**Jack, J.**

12. I agree.

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