

(1958) 10 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Miscellaneous No. 1780 of 1957

Bawa Mohan Singh
Sethi

APPELLANT

Vs

Babu Ram

RESPONDENT

Date of Decision: Oct. 6, 1958

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Legal Practitioners Act, 1879 - Section 13, 14

Citation: AIR 1959 P&H 160

Hon'ble Judges: I.D. Dua, J; G.L. Chopra, J; D. Falshaw, J

Bench: Full Bench

Advocate: Bar Council through H.L. Sarin, Party in person through N.S. Kawatra, for the Appellant; L.D. Kaushal D.A.G., for the Respondent

Judgement

D. FALSHAW J.

This application u/s 13 of the Legal Practitioners Act was filed in the High Court at Patiala in March, 1956 making allegations of professional misconduct against Mr. Babu Ram, an Advocate of this Court, who was then an advocate of the Pepsu High Court.

2. Briefly the facts are that the petitioner Mohan Singh Sethi claimed that certain sums amounting to over Rs. 21,000/- were due to him from the Government for certain works which he had carried out as a contractor in connection with the Ghaggar Division of the Bhakra Canal and with a view to realising these sums he engaged the respondent who admittedly drafted and sent a notice u/s 80, Civil Procedure Code, dated 23-2-1955, stating his claim in detail to the Chief Secretary of the PEPSU Government with copies to the Chief Engineer, Patiala, Superintending Engineer, PEPSU, Bhakra Circle, Patiala, and the Executive Engineer, Ghaggar Division, Nabha.

It seems that the petitioner was also alleging that the Executive Engineer, Nabha, had been conducting some sort of investigation into the petitioner's claims in the course of which the petitioner had entrusted to the Executive Engineer certain original documents on which he was relying in order to substantiate his claims, and the Executive Engineer was refusing to return these documents to him, and was also refusing to let him have the copies of the statements of some of his subordinates which he had recorded in the investigation.

It is not in dispute that in connection with these documents and statements a letter was drawn up by Mr. Ram Joginder Rai Pleader, the son-in-law and partner of the respondent, in the original draft of which (Exhibit A.W. 1/G) certain additions and corrections were made by the respondent himself and that this letter was sent to the Executive Engineer on 25-4-1955.

(2a) The notice u/s 80, Civil Procedure Code, naturally contained a threat to bring a suit against the Government if the petitioner's claims were not met, and the letter to the Executive Engineer threatened both civil and criminal action against him in case of non-compliance with the demands contained in it.

3. The petitioner alleges that he engaged Mr.

Babu Ram for the purpose of conducting this threatened litigation and that he paid him a total sum of Rs. 625/- representing Rs. 125/- for the threatened criminal proceedings and Rs. 500/- for the civil suit. The petitioner actually filed a criminal complaint in the Court of a Magistrate at Patiala on 27-5-1955 under Sections 409 and 420 read with Section 109 and Section 477. Indian Penal Code, in which he made Faqir Ghana Dhawan, Executive Engineer, Suresh Chand Jain, Sub-Divisional Officer, and. Raghu Nath Sharma, Overseer, accused, and it is not in dispute that while this complaint was still at the stage of preliminary evidence u/s 202, Criminal Procedure Code, Mr. Babu Ram appeared in the Court of the Magistrate on behalf of the accused and urged that the complaint should be dismissed u/s 203, Criminal Procedure Code, both on a technical ground regarding want of sanction u/s 197, Criminal Procedure Code, as well as on the merits. A copy of the order of the Magistrate, dated 15-7-1955, which has been placed on the file, shows that while he ordered the remainder of the complainant's evidence to be recorded u/s 202, Criminal Procedure Code, he ordered that the accused should be heard before any further order was passed.

4. The position adopted by the respondent in his reply, dated 9-4-1956, after notice of the complaint had been sent to him, was that he was not engaged by the complainant for conducting any civil or criminal case but was merely engaged for drafting and serving the notice u/s 80, Civil Procedure Code, and that the only fee he received was Rs. 25/- for this service. He denied that any confidential information had been given to him by the complainant and tried to make out that even before

the Magistrate he had only appeared to argue a technical point of law which had nothing to do with the merits of the case.

5. In due course an enquiry was held by the District and Sessions Judge of Patiala whose report forwarded to the High Court on 27-10-1956 was to the effect that the complainant's allegations had not been substantiated. However, after examining the record of the case with the assistance of Mr. L. D. Kaushal, Assistant Advocate General and counsel representing the Bar Council, I am of the opinion that

-the view taken by the learned District and Sessions Judge is not altogether correct.

6. Apart from the documents, which are admitted the main witnesses were the complainant himself and the respondent.

(6a) The complainant's story was that he had gone to the respondent in the middle of February 1955 and told him all the facts about his claims, including the withholding of his documents by the Executive Engineer, and that he showed him copies of the relevant documents which he had in his possession, and before the notice u/s 80, Civil Procedure Code, was drafted he was thoroughly questioned by the respondent on all aspects of the case. The total fee was fixed at Rs. 600/- of which Rs. 1257- were paid on 19-2-1955 while the balance was paid on 20th of April, this including an extra sum of Rs. 25/- on account of incidental expenses, He was not, however, given any receipt for these payments as the respondent did not wish to show them in his books on account of Income Tax.

7. Thereafter there was some talk between them regarding a settlement at which the respondent was trying to arrive with the Executive Engineer, but finally, when the complainant began pressing for filing cases, the respondent at last said that he was not prepared to file any case against the officers as they had approached him through same friends and it was difficult for him to appear for the complainant thereafter. The complainant then asked him to return the papers and the fee for the purposes of engaging some other counsel, but the respondent only returned some of the papers and never returned the fee.

8. The complainant then filed this complaint on 26-5-1955 having engaged Mr. Puran Chand Advocate at a fee of Rs. 100/-. He alleged that thereafter the respondent had continued refusing to refund the fee paid to him and that ultimately his own complaint failed on account of the respondent's knowledge of the weaknesses in Ms case. He said that when the respondent first appeared on behalf of the accused in the proceedings u/s 202, Criminal Procedure Code, he objected.

9. The respondent while admitting that he drafted and sent the notice and copies u/s 80, Civil Procedure Code, and that some additions and corrections in the draft of the letter which was sent to the Executive Engineer in the name of his partner were in his handwriting, stuck to his story that he was only engaged for drafting and sending the notice u/s 80, Civil Procedure Code, and that the only fee he received

was Rs. 25/- on this account. He alleged that he drafted the notice u/s 80, Civil Procedure Code, simply on the oral instructions of the complainant and denied altogether that he was given any confidential information by the complainant.

10. In coming to the conclusion that the complainant's allegations of professional misconduct were not established, the learned District and Sessions Judge seems to have attached rather more Importance to the mere question of the fee than to the question of the respondent's having appeared for the Irrigation Officers after being consulted by the complainant, and after having sent a notice u/s 80, Civil Procedure Code, as well as having a hand in drafting the other demand which was sent by his partner to the Executive Engineer.

11. Even on the question of fee I am not satisfied that the finding that only Rs. 25/- were proved to have been paid is altogether correct. On this point there was practically only the word of the complainant on the one side as against the word of the respondent and his clerk on the other, and what seems to have weighed most strongly with the learned District and Sessions Judge is the fact that admittedly no receipts were given for either of the two payments alleged to have been made. It is, however, admitted that no receipt was even given for any payment of Rs. 25/-, and in fact the respondent admitted that he had not even shown this fee in any book or register.

Thus the absence of any receipt is not at all a conclusive circumstance and it hardly seems likely that the services of the respondent, who is evidently a lawyer of some standing, could have been engaged for merely Rs. 25/- even for drafting and serving notice u/s 80, Civil Procedure Code, as well as helping in drafting a letter to the Executive Engineer regarding the suppression of the complainant's documents. Thus while the complainant's allegation that he paid a sum of Rs. 625/- in all cannot be said to be established, it seems quite probable that in fact more than the admitted sum of Rs. 25/- was paid and that there was at least some understanding if no final agreement, that the respondent should conduct the ensuing litigation on behalf of the complainant.

12. However, the more serious part of the alleged misconduct is the appearance of the respondent on behalf of the Executive Engineer and his two sub-ordinates as accused persons in the complaint filed by the complainant after he had been consulted by the latter in connection both with his proposed Civil suit and his criminal case against the Canal Officers. At the very least this must be regarded as grossly improper and in my opinion it must be held to cross beyond the shadowy border which divides mere impropriety from actual misconduct.

13. It was urged on behalf of the respondent that the complainant had not objected to the respondent's appearance on behalf of the accused officers until after the criminal case had finally been decided against him, but on this point I cannot see any sufficient reason for disbelieving the complainant's own statement that on the

very first appearance of the respondent on behalf of the accused in the preliminary stages of the case he voiced his objections to the respondent's appearance, since in my opinion it would have been very unnatural conduct on his part if he had not done so. On this aspect of the case I can only say that I should have expected any counsel on such an objection being raised, even if it was not pressed very hard at the time, to have realised the impropriety of his conduct and withdrawn from the case, but instead it appears that he carried on representing the accused up to the end of the case.

14. One matter on which I regret I cannot accept the statement of the respondent is that when he drafted the notice u/s 80, Civil Procedure Code, he did so merely on oral instructions from the complainant, and that no confidential information of any kind was disclosed to him. The details of the complainant's claims set out in the notice contain detailed figures and the sums claimed are worked out even in annas, and I do not believe for a moment that the complainant or anyone else could have carried such details in his head.

Apart from this, I cannot imagine a counsel of any standing and experience, (and the respondent himself has stated that he had been twenty years in practice,) drafting a notice u/s 80, Civil procedure Code, to be sent to the Government as a preliminary to the filing of a suit, without ascertaining from his client the fullest particulars on all relevant matters.

It must be well known to such a lawyer that in order to constitute a valid notice u/s 80, Civil Procedure Code, the notice must contain full particulars of the claim and if on the filing of the suit the notice u/s 80, Civil Procedure Code, is found to be defective in any way, the plaintiff is liable to be non-suited on this ground alone.

In the circumstances I find it hard to believe that the complainant had not laid all his cards on the table before the respondent before the notice u/s 80, Civil Procedure Code, and the subsequent letter to the Executive Engineer which deals directly with the subject-matter of the criminal case in which the respondent appeared on behalf of the opposite party, were sent.

15. The circumstances under which the respondent withdrew his services from the complainant and transferred them to the accused in the criminal case filed by the complainant must remain obscure, but I have no doubt in my mind that in the circumstances the appearance of the respondent for the accused amounts to professional misconduct.

It must, however, be regarded as a mitigating circumstance that the respondent has now submitted an unqualified apology and in the circumstances I do not consider that it is necessary to inflict any further punishment on the respondent other than a severe warning not to act in any similar manner in future and that no such leniency will be shown in the case of any repetition of his conduct. He will also pay the costs of the State and Bar Council. Counsel's fee Rs. 100/- in each case.

G. L. Chopra J.

16. I agree.

I. D. Dua J.

17. I agree.