

(1951) 10 SHI CK 0001

High Court of Himachal Pradesh

Case No: Civil Miscellaneous Petition No. 22 of 1951

Rajendar Lal

APPELLANT

Vs

Ram Krishna Gupta

RESPONDENT

Date of Decision: Oct. 29, 1951

Acts Referred:

- Contract Act, 1872 - Section 171
- Legal Practitioners Act, 1879 - Section 13

Citation: AIR 1952 HP 11

Hon'ble Judges: Chowdhry, J.C.

Bench: Single Bench

Advocate: Bhagat Singh Chawla, for the Appellant; A.N. Bhoil and Ratan Chand, for the Respondent

Judgement

Chowdhry, J.C.

1. Shri Ram Krishna Gupta worked as an Advocate's clerk in Simla from 1.937 to 1941, in which year he was permitted by the former Koti State to practice as a Mukhtar. That State and the Bhajji State enrolled him as a Pleader in 1944, and after the formation of the present State of Himachal Pradesh, and under the then Legal Practitioners Rules, he was admitted and enrolled by this Court as a Pleader 1st Grade on 3-1-1949. During the material time he was practising at Kasumpti, headquarters of the revenue District of Mahasu, and he is doing so even now. He possesses no law degree and has passed no law examination.

2. A client of his, Shri Rajendra Lal, brought five charges of professional misconduct against him, which were entrusted for enquiry to the Registrar of this Court. The Registrar, on foot of oral and documentary evidence produced by the parties, came to the conclusion on 31-8-1951 that none of the charges had been established. Thereafter I heard learned counsel for the parties on the Registrar's report. The learned counsel for the complainant pressed three of the five charges before me.

These are charges dealt with as second, third and fourth charges in the Registrar's report. I shall take up the last one first.

3. The fourth charge against the Pleader relates to a criminal complaint u/s 447, I. P. C. for the filing of which the complainant alleges to have engaged him in or about June 1948. According to the complainant a fee of Rs. 60/- was fixed for this case and paid to him in cash at the time of engagement. The complaint was written out by the Pleader and signed, by the complainant, who also executed the vakalatnama in his favour, and the Pleader promised to file the complaint himself. The Pleader thereafter kept on telling the complainant that the complaint had been sent to the police for enquiry, and eventually the latter was informed by the former in March 1949 that the Magistrate had ordered the complaint to be consigned to the record room. On 23-4-1949 the complainant applied for a copy of the Court's Order, and on 4-7-1949 he was informed that no record of any such case was in existence. Exhibit P. A. is this petition for copy along with the office report in question. It is signed by the complainant and a part of it is admittedly in the handwriting of the Pleader.

4. The Pleader admitted receipt of Rs. 60/-, but he contended that the amount was paid to him on account, and the fee was to be settled later on. He further pleaded that he merely drafted the complaint u/s 145, Criminal P. C., according to the instructions of the complainant and handed it over to him. He denied that he was required to lodge the complaint or to do anything more than draft it. He further stated that he was subsequently informed by the complainant that the latter had himself lodged the complaint.

5. The above charge was argued before me as a charge that although the Pleader had been engaged to file a complaint against Ram Rakha Mal (irrespective of whether it was to be u/s 447, I. P. C. or u/s 145, Criminal P. C.), and paid Rs. 60/- as fee in advance for the same, the Pleader never filed the complaint. The suggestion was that he omitted to file the complaint because he had colluded with the opposite party.

6. Before proceeding further I have to dispose of a piece of argument put forward by the learned counsel for the Pleader in regard to a sentence appearing in para. 8 of the complainant's application in this Court relating to the present charge. The sentence is as follows:

"I demanded the original papers wherefrom I came to know that the respondent had made petition deliberately under wrong Section 145, Criminal P. C., which was not applicable in the case."

This was sought to be interpreted as amounting to an admission on the part of the complainant that the complaint had in fact been filed by the Pleader. No such interpretation can however be placed on the allegations of the complainant contained in the said para, when read as a whole. The said sentence is followed by another sentence as follows: "The file is not traceable, he deceived me and,

swallowed my money Rs. 60/- in the shape of fees". The sentence in question therefore only means that the complainant was led to believe from the paper handed over to him by the Pleader that the latter had filed a complaint u/s 145, Criminal P. C., but not that the complainant admitted that a complaint had in fact been filed. Indeed, it is not open to the Pleader to put the said interpretation on the sentence in question when his own case is that he never filed, the complaint and was not required to do so. The question for determination therefore is whether the Pleader failed to file the complaint" in question although he had been engaged and instructed by the complainant to do so and even paid a sum of Rs. 60 as his fees in advance. (Then after discussing evidence His Lordship concluded:) I therefore hold, disagreeing with the Registrar's report, that this particular charge has been brought home to the Pleader, and that he deserves punishment for the same.

7. The other two charges may be taken up together as they relate to the execution of a particular money decree in favour of the complainant against one Kishnu. It appears that a she-buffalo was attached in execution of a decree, and that on 27-8-1949 the Court issued an order for its sale. Two days later, i.e. on 29-8-1949, however, the judgment-debtor appeared and applied to the Court to release the she-buffalo as he was prepared to pay the decretal amount by instalments. Thereupon the Court passed an order on the same date following him to pay the decretal amount by instalments, and on the same date the judgment-debtor deposited in Court Rs. 100/- as the first instalment and secured an order for the release of the attached she-buffalo. In January 1950 this sum of Rs. 100/- was withdrawn by the Pleader and appropriated to his own use. The two charges against him are, firstly, that he entered into a compromise with the judgment-debtor for payment of the decretal amount by instalments without the consent of the complainant, and secondly, that instead of paying the said sum of Rs. 100/- to the complainant after withdrawing it from the Court, as he should have done, he retained it without authority from the complainant and thus misappropriated the amount.

8. I agree with the Registrar that the first of these two charges has not been established. It is the Pleader's contention that he was not present when on the application of the Judgment-debtor the Court allowed him instalments. The record also does not show that the Pleader was present in Court at that time. It cannot be said therefore that the Pleader had any hand in the matter.

9. The second charge appears however to be well founded. That the Pleader did in fact withdraw in January 1950 the said sum of Rs. 100/- which had been deposited in Court on 29-8-1949 is admitted by him. His explanation, however, is that he appropriated the amount towards arrears of his fees due from the complainant on an express authority of the complainant in that behalf. The first question that arises in this connection therefore, is whether any arrears of fee were outstanding against the complainant, for that fact has been categorically denied by the latter. The

Registrar has in his report accepted the correctness of the books of account filed by the Pleader, and he has held that a sum little over Rs. 100/- was due by the complainant to the Pleader in December 1949. It may be noted here that according to the Pleader it was in the month of December 1949 that the complainant had specifically authorised him to withdraw the amount and appropriate it towards his fees. The authenticity of these books of account was challenged on behalf of the complainant, and there is no doubt that there is a good deal of overwriting and interpolation in them. At the same time, there is no corroborative evidence, either oral or in the shape of receipts, in support of the payments pleaded by the complainant. That being so, the aforesaid finding of the Registrar must be accepted. It may however be stated here that the finding of the Registrar that a little over Rs. 100/- was due to the Pleader from the complainant in December 1949 is not correct, as shown by the Pleader's statement of account exhibit P. B. itself. The actual amount due according to that statement was Rs. 96/2/-, so that in the appropriating the said sum of Rs. 100/- towards arrears of his dues the Pleader overpaid himself by Rs. 3/14/-. It is somewhat strange that the complainant should have agreed to the Pleader retaining the entire sum of Rs. 100/- although only Rs. 96/2/- was actually due to him.

10. In support of the alleged authorisation the Pleader produced a colleague of his, Shri Dhian Chand Pleader Kasumpti. Although there was no particular reason for this gentleman to have remembered this small affair between a colleague of his and the latter's client, he not only did so but even remembered such minute details as the month and year of the talk and the amount in question. In cross-examination he admitted that after December 1949 and up to the date of his deposition in Court he had had no talk about the above incident with anybody. He further admitted that about two or three months previously the Pleader had approached him with a request to appear as his witness in the present proceedings. The witness however could not remember the place where, or the month in which, he was so approached. It is surprising therefore that a witness who was unable to recollect that which had happened only two or three months previously should have remembered the said minute details of an incident which did not concern him and which had taken place about a year and half previously. Under the circumstance, I agree with the argument of the learned counsel for the complainant that the Registrar should not have placed any reliance upon the testimony of this witness. In fact, after this argument against the credibility of the witness the plea of authorisation was not at all pressed before me by the learned counsel for the Pleader. In this connection it may be pointed out that a second instalment of Rs. 100/- was also deposited by the judgment-debtor, and that this sum was withdrawn by the complainant himself in July 1950, but that with regard to the first instalment he made a search application on 9-8-1950 and noted down on the back of that application on the same date that nothing could be ascertained with regard to it. There is nothing to show that on 9-8-1950 the complainant had any reason to foresee any future trouble between

himself and the Pleader, and therefore to make the said note on the back of his search application with a view to manufacturing evidence in his own favour. This endorsement dated 9-8-1950 therefore further confirms the incorrectness of the plea of authorisation, for if the complainant had in fact authorised the Pleader in December 1949 to withdraw the deposit and appropriate it towards settlement of his dues, it is incredible that he should have examined the record on 9-8-1950 with a view to ascertaining details of the deposit of the first instalment and endorsed the said note on his search application. Disagreeing with the Registrar, therefore, I hold that the plea of authorisation is unfounded.

11. As I have stated above, this plea of authorisation was not at all pressed before me. The alternative plea that was pressed before me was the legal one that even if the Pleader was not authorised to do so, he was entitled to appropriate the amount in exercise of his right of lien. And in support of this contention he cited the ruling reported as [A.K. Bijili Sahib Vs. Dadhamia Bhalambai](#), That was however a case of possessory lien, for the Pleader in that case claimed to retain his client's papers against the fees due to him. In the present case the money in question was not in possession of the Pleader but in deposit in Court. That being so, if there was any right of lien which the Pleader could have exercised it was what has been described as a particular lien in English cases. Halsbury describes it in para 271 at page 247 of volume XXXI of the second Hailsham edition of the Laws of England in these words:

"A solicitor has at common law, apart from statute, a lien, which may be actively enforced over a fund or proceeds of the judgment recovered for the client in the course of litigation or arbitration by the solicitor's exertions."

On the same principle it was held in "In re Meter Cabs Ltd. (1911) 2 Ch 557, that a solicitor had this particular lien on a sum of money recovered by way of compromise in liquidation proceeding by his exertions for his costs of recovery. In the same judgment the following passage appearing in "Guy v. Churchill" (1887) 35 Ch D 489, was cited:

"The lien of a solicitor is grounded on the principle that it is not just that the client should get the benefit of the solicitor's labour without paying for it."

This common law lien on property or funds recovered, known as particular lien, has also been recognised by the Courts in India, in cases of solicitors and attorneys. See, for example, the following cases: "Devkabai v. Jefferson, Bhaishankar and Dinsha" 10 Bom 248; "In re Tyabji & Co." 7 Bom LR 547 ; [Ved and Sopher Vs. R.P. Wagle and Co.](#), "Harnand Roy v. Gotiram" 46 Cal 1070 ; [Tyabji, Dayabhai and Co. Vs. Jetha Devji and Co.](#), and "Ghulam Moideen v. Md. Omer" AIR 1931 Mad 183. There is however one fact which is quite patent from the above decisions and the quotation from Halsbury, and that is that the fruits of the litigation must have been recovered by the solicitor's exertions. So this lien failed in the "1886 Bombay case" referred to above because it was held that the particular fund in question had not been

recovered by the aid of the solicitors. In the present case it has been seen that the deposit in question was made on 29-8-1949 on the application of the judgment-debtor and in the absence, and therefore without any aid or exertion, of the Pleader. That being so, the present Pleader was not entitled to recover and retain the deposit towards his fees in exercise of his right of particular lien.

12. There is yet one other reason why the Pleader could not have exercised this right. As its very name implies, it is a particular lien, and, therefore, it has been held that it is not available for the general balance of account between the solicitor and the client but extends only to the costs of the proceedings in which the property is recovered. See "Smith v. Betty (1903) KB 317 C A and "Lann v. Church (1820) 4 Mad 391. In the present case the lien was exercised in respect of the balance of account between the parties, and not in respect of the fees or costs of the execution proceedings in which the amount was deposited.

13. All the above English and Indian rulings relate to the cases of solicitors and attorneys, but the same principle has been applied in India in the cases of advocates and pleaders because they not only plead, but, like solicitors in England, also act for their clients. See the observations of Leach C. J. in "In re Sri K. Rajagopala Ayyangar AIR 1942 Mad 553 and in "In the matter of an Advocate Tuticorin AIR 1943 Mad 493 In the result, therefore, I hold that the withdrawal of the amount in question and its appropriation by the Pleader towards satisfaction of his dues was unauthorised, and that the Pleader was also not entitled to retain the amount in exercise of Use right of particular lien.

14. It remains to be seen what is the punishment which the Pleader deserves. Both the charges found established against him are of a serious nature. In the one case he omitted, either presumably as a result of collusion with the opposite party, or at least of gross negligence on his part, to lodge a complaint for which he had been engaged and even paid for in advance, and thereafter kept defrauding his client into the belief that the complaint had in fact been filed. In the other, he misappropriated the proceeds of litigation which were due to his client, and, when confronted with that charge in the present enquiry, he met it by setting up pleas which were quite unfounded, especially, the false plea of fact of authorisation. By a concatenation of circumstances, he was raised from a lawyer's clerk to the status of a first class pleader. Unfortunately, however, and due largely no doubt to the total absence of the necessary academic qualifications and professional training, he failed to rise to the standard of moral uprightness expected in a member of the honourable profession to which he was admitted. To my mind, nothing short of dismissal would meet the ends of justice in this" ease.

15. Shri Ram Krishna Gupta, Pleader 1st Grade, is hereby dismissed from practice as such for gross professional misconduct.