Harish Chandra Tiwari Vs Baiju

Court: Allahabad High Court

Date of Decision: Jan. 8, 2002

Acts Referred: Advocates Act, 1961 â€" Section 35, 36B, 38

Citation: (2002) 1 UPLBEC 313

Hon'ble Judges: S.N. Phukan, J; K.T. Thomas, J

Bench: Division Bench

Advocate: M.M. Kashyap, for the Appellant;

Judgement

K.T. Thomas, J.
We are sad that the disciplinary committee of the Bar Council of India (for short ''the disciplinary committee'') despite

being the acru statutory body entrusted with the upkeep of the probity of legal profession in India opted to treat a very grave professional

misconduct in a comparatively lighter vein. The disciplinary committee held an advocate guilty of breach of trust for misappropriating the asset of a

poor"" client. But having held so, the disciplinary committee has chosen to impose a punishment of suspending the advocate from practice for a

period of three years.

2. The delinquent advocate filed this appeal u/s 38 of the Advocates Act, 1961 (for short ''the Act''). We told him that in the event of this Court

upholding the finding of misconduct, he should show cause why the punishment shall not be enhanced to remove his name from the roll of the Bar

Council of the State concerned. Notice on that aspect has been accepted by Mr. M. M. Kashyap, learned Counsel for the appellant.

3. We issued notices to the Bar Council of India and also to the Bar Council of U.P. Neither has chosen to enter appearance in this matter and

hence, we heard learned Counsel for the appellant-advocate above.

4. Appellant Harish Chandra Tiwari was enrolled as an advocate with the Bar Council of the State of U.P. in May, 1982 and has been practising

since then, mainly in the Courts at Lakhimpur Kheri district in U.P. Respondent Baiju engaged the delinquent advocate in a land acquisition case in

which the respondent was a claimant for compensation. The disciplinary committee has described the respondent as ""an old, helpless, poor illiterate person"". Compensation of Rs. 8,118/- for the acquisition of the land of the said Baiju was deposited by the State in the Court. Appellant

applied for releasing the amount and as per orders of the Court, he withdrew the said amount on 2.9.1987. But he did not return it to the client to

whom it was payable nor did he inform the client about the receipt of the amount. Long thereafter, when the client came to know of it and after

failing to ""get the amount returned by the advocate, a complaint was lodged by him with the Bar Council of the State for initiating suitable

disciplinary action against the appellant.

5. On 12.7.1988, appellant filed a reply to the said complaint before the Bar Council of the State. He admitted having been engaged by the

respondent as his Counsel in the aforesaid land acquisition case, he also admitted that he had withdrawn a sum of Rs. 8,118/- from the Court. But

he adopted a defence that he had returned the amount to the client after deducting his fees and expenses.

6. On 3.8.1988, an affidavit purporting to be that of the respondent Baiju was filed by the appellant before the State Bar Council in which it is

stated that a compromise had been arrived at between him and his client and that no further action need to be taken on the complaint filed by the

respondent. The disciplinary committee of the State Bar Council was not prepared to act on the said affidavit without verifying it from the client

concerned. Hence, they summoned the respondent and confronted him with the said affidavit. The respondent totally disowned the said affidavit,

repudiated the alleged compromise between him and the appellant and denied having received any amount from the appellant-advocate.

7. The complaint and the proceedings later stood transferred to the Bar Council of India by virtue of Section 36B(2) of the Act. The disciplinary

committee after conducting the inquiry, came to the conclusion that the affidavit dated 3.8.1988, purported to have been sworn to by the

respondent, was a forged one and that the application appended therewith was fabricated. The disciplinary committee observed as follows:

Thus, the conduct of the respondent and his evasive reply and his evasive vague deposition duly makes out that after taking the cheque from the

Land Acquisition Officer in his own name, the respondent has failed to make the payment to the complainant who is illiterate, poor person and his

money has been misappropriated by the respondent-advocate.

8. In this appeal, appellant first pleaded that he is not liable to be punished at all and then contended alternatively that he has given the money to the

client subsequently. But the factual position is so strong against the appellant that he could not show a single circumstance to accept his defence that he had paid the amount to the client. The finding of the disciplinary committee that the delinquent advocate ""has withdrawn the compensation

of Rs. 8,118/- and has not paid it to the complainant for the last more than 11 years and is thus, guilty of wrong professional conduct and has

maligned the reputation of the noble profession and has committed breach of trust which an advocate enjoys"", does not require any interference in

this appeal.

9. Now, we have the function to decide as to the quantum of punishment to be awarded to the delinquent appellant-advocate, since we feel that

the punishment awarded is not adequate in proportion to the gravity of the misconduct. Section 38 of the Act empowers the Supreme Court to

pass such order including an order varying punishment awarded by the disciplinary committee of the Bar Council of India as it deems fit"". The only

condition for varying the punishment awarded by the Bar Council of India is that if such variation is to prejudicially affect the appellant, he should

be given a reasonable opportunity of being heard. In the present appeal, we gave notice to the learned Counsel for the appellant to show cause

why the punishment should not be enhanced for removal from the roll of the Bar Council of the State. Learned Counsel for the appellant addressed

arguments on that score.

10. Three different punishments are envisaged in Section 35 of the Act : (1) reprimand the advocate; (2) suspend the advocate from practice for

such period as it may deem fit; (3) remove the name of the advocate from the State roll of advocates.

11. In determining the punishment to be awarded by the disciplinary committee on proved misconduct in each case, the committee should weigh

various factors. One of them is the acute need to cleanse the legal profession from those who are prone to misappropriating the money of the

clients. Deterrence is thus a prominent consideration. This is particularly necessary at a time when the legal profession has become crowded as it is

today, without there being any effective filtering process at the admission stage. Secondly, to keep up the professional standards, it is necessary

that nobody should form the impression that once a person is admitted to the legal profession, he would be immune to any punitive measures and is

free to indulge in nefarious or detestable activities. The only authority which can effectively maintain the probity of the legal profession is the

disciplinary committee of the Bar Council, either of the State or of India. The proper message which should go to all members of the legal

profession is that they are all being watched, regarding their professional activities, through binoculars by the Bar Council of the State as well as by the Bar Council of India and that their disciplinary committees would not acquiesce any professional delinquency with flee bite punishment.

12. Among the different types of misconduct envisaged for a legal practitioner, misappropriation of the client''s money must be regarded as one of

the gravest. In his professional capacity, the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw

money from the Court payable to the client or take money of the client to be deposited in Court. In all such cases, when the money of the client

reaches his hand, it is a trust. If a public servant misappropriates money, he is liable to be punished under the present Prevention of Corruption

Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service. But if an advocate misappropriates money

of the client, there is no justification in de-escalating the gravity of the misdemeanor. Perhaps the dimension of the gravity of such breach of trust

would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a

case where the delinquent advocate returned, the money before commencing the disciplinary proceeding.

13. In the present case, the misappropriation remained unabated even after the disciplinary proceedings commenced and it continued even till now

as the delinquent advocate did not care to return even a single pie to the client. The misconduct of the appellant-advocate became more

aggravated when he determined to forge an affidavit in the name of his client, which he produced before the disciplinary committee in order to

defraud his client and to deceive the disciplinary committee to believe that he and his client had settled the dispute by making a late payment to his

client.

14. By retaining such advocate on the roll of the legal profession, it would be unsafe to the profession. The situation in this case thus, warrants the

punishment of removal of his name from the roll of advocates.

15. Learned Counsel for the appellant cited two decisions of this Court in which the punishment awarded has not been escalated to removal from

the roll. One is Prahlad Saran Gupta v. Bar Council of India and Anr. . In that case, the finding against the delinquent advocate was that he

retained a sum of Rs. 1500/- without sufficient justification from 4.4.1978 till 2.5.1978 and he deposited the amount in the Court on the latter date,

without disbursing the same to his client. The said conduct was found by this Court as ""not in consonance with the standards of professional ethics

expected from a senior member of the profession"". On the said fact situation, this Court imposed a punishment of reprimanding the advocate

concerned.

16. The other case cited by the learned Counsel is B.R. Mahalkari Vs. Y.B. Zurange, . The findings in that case is that the advocate retained the

amount of Rs. 1,176/-, though before the commencement of the disciplinary proceedings he sent the said amount to the client. After holding that

the advocate is guilty of misconduct, this Court upheld the punishment of suspension from practice for a period of three years.

17. The facts in the aforecited decisions would speak for themselves and the distinction from the facts of this case is so glaring that the misconduct

of the appellant in the present case is of a far graver dimension. Hence, the said two decisions arc not of any help to the appellant for mitigation of

the quantum of punishment.

18. In the result, we dispose of this appeal by imposing the punishment of removal of the name of the appellant from the roll of the advocates. He

would thus stand debarred from practising in any Court or before any authority or person in India.