

(1963) 10 KAR CK 0002**Karnataka High Court****Case No:** Civil Petition No. 30 of 1962

Mana Mohamed Ismail

APPELLANT

Vs

V. Balarathnam

RESPONDENT

Date of Decision: Oct. 16, 1963**Acts Referred:**

- Income Tax Act, 1961 - Section 66 (1), 66 (2)
- Indian Bar Council Act, 1926 - Section 10 (1), 11

Citation: AIR 1965 Kar 28 : (1964) 1 MysLJ 31**Hon'ble Judges:** T.K. Tukol, J; M. Sadasivayya, J**Bench:** Division Bench**Judgement**

M. Sadasivayya, J.

(1) These proceedings pertain to the findings of a Tribunal which had been constituted u/s 11(2) of the Indian Bar Councils Act, 1926, (hereinafter referred to as the Act); the findings of the Tribunal have been forwarded to this High Court u/s 12(2) of the Act. By reason of the first proviso to sub-clause (ii) of clause (3) of the Advocate's (Removal of Difficulties) Order, 1963, this matter will have to be dealt with and disposed of by this High Court, u/s 12 of the Act.

(2) The undisputed facts of the case are as follows : The complainant Janab Mana Mohamed Ismail Saheb had engaged the services of the respondent-Advocate Shri V. Balarathnam to apply to the High Court of Mysore for directing the Income Tax Appellate Tribunal to make a reference on a question of law arising out of an Income Tax case which before the Income Tax Appellate Tribunal, Hyderabad. The respondent-Advocate, accordingly made an application for that purpose, u/s 66(2) of the Income Tax Act, to the High Court of Mysore. The Office of the High Court required that two spare copies of the order of the Appellate Tribunal as also a certificate to the effect that the assessee had not withdrawn the application for reference u/s 66(1) of the Income Tax Act, be produced. The allegation of the

complainant was that the respondent-advocate did not inform the complainant about the progress of the case nor called upon the complainant to furnish any copies of any of the proceedings. On 21-7-1958, the petition which had been filed before the High Court u/s 66(2) of the Income Tax Act and which had been numbered as C.P. 175 of 58, was dismissed on account of the failure to produce the copies that had been called for. The complainant alleges that this dismissal was due to the negligence on the part of the respondent-advocate.

Thereafter, the respondent advocate filed a petition for restoration; that was in C.P. 54 of 59. But, the High Court dismissed that petition. It was pointed out that time had been granted repeatedly from December 1957 till April 1958, as had been requested for from time to time by the respondent-advocate, for furnishing the requisite papers and that in spite of time having been so granted, there had been no compliance by the respondent-advocate, in the matter of producing the necessary documents. The complainant alleging that, he had suffered heavy loss on account of the negligence on part of the respondent-advocate, submitted a petition to the Hon"ble the Chief Justice on or about 1-3-1960 complaining against conduct of the respondent-advocate. It was thereafter that the Chief Justice constituted a Tribunal u/s 11 of the Act.

(3) It is not disputed before us that the proceedings before the Tribunal were in accordance with the provisions of the Act and the relevant rules framed thereunder. While the enquiry was pending before the Tribunal, a memo was filed on 4-11-1961, before the Tribunal, by the complainant and the respondent-advocate that the parties have arrived at a compromise by suitable apology being tendered to the complainant by the advocate; it was submitted that the proceedings against the respondent-advocate be dropped.

The Tribunal, as can be seen from the report forwarded by it to the High Court, came to the conclusion that there was, undoubtedly, serious negligence on the part of the respondent-advocate. But, having regard to the fact that the respondent-advocate, in the affidavit which he had filed in support of the petition for restoration (C.P. 54 of 59), had made a clean breast of lapse on his part, the Tribunal stated that it was of the opinion that no action is called for and recommended that the proceedings be dropped.

(4)The relevant portions of the findings of the Tribunal are as follows :

"There is no doubt that there was gross negligence on the part of Sri Balarathnam. After the petition before the High Court, C.P. 175/58, was dismissed by a Bench of this High Court on the ground that the petitioner has failed to take the requisite steps to enable the Court to proceed with the petition. Shri. Balarathnam made an application that the dismissal order be set aside and the petition restored for being heard and disposed of. That petition for restoration numbered as C.P. 54/59 came up before a Bench of this Hon"ble Court and was dismissed. Therein, their Lordships

pointed out that time was granted repeatedly from December 1957 to April 1958 as requested for by the petitioner's Counsel to furnish the requisite papers nor was the requirement complied with when the case came up for orders on 21-7-58"

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Later on, the Tribunal has stated as follows :

"There is undoubtedly serious negligence on the part of Sri Balarathnam and failure to keep the complainant informed of the real progress of the case and, what we are inclined to believe and what is worse, that the complainant was put off whenever he enquired about the progress of the case by telling him that the hearing date had not yet been announced. Whatever be the merits of the application for reference and the merits of the question that was sought to be referred, it is not disputed that it related to a large sum viz., Rs. 8,685/- for the year of assessment 1954-55.

It has to be noted however that there is no allegation against Sri Balarathnam of any action involving moral turpitude. One other relieving feature is that Sri Balarathnam has himself sworn to the affidavit in support of his petition, C.P. 54/59 where he has made a clean breast of the affair and prayed that his client may not be penalised for his (Balarathnam's) very unfortunate and regrettable remissness. It is doubtful also whether negligence on the part of Counsel may amount to professional misconduct, though undoubtedly an action may lie for damages of negligence on the part of professional man to perform his duties."

(5) From the positions of the findings of the Tribunal as extracted above, it is quite clear that the Tribunal came to the conclusion that there was "gross" and "serious" negligence on the part of the respondent-advocate. The correctness of this finding, has not been challenged before by Shri Siddappa, the learned Counsel appearing for Shri Balarathnam (who also is present in Court before us).

(6) The learned Advocate-General has submitted that the Tribunal was not correct in expressing a doubt whether the negligence on the part of the respondent-advocate, amounted to professional misconduct. It was urged by the learned Advocate General that the "gross" and "serious" negligence on the part of the respondent-advocate, as found by the Tribunal, is such as would amount to professional misconduct. In this connection, he has relied on the decision of the Supreme Court, reported in the matter of Mr. P. an advocate AIR 1963 SC 1313. At para 7 in page 1315, the Supreme Court has stated as follows:

"It is true that mere negligence or error of judgment on the part of the Advocate would not amount to professional misconduct. Error of judgment cannot be completely eliminated in all human affairs and a mere negligence may not necessarily show that the Advocate who was guilty of it can be charged with misconduct, Vide [In the Matter of Mr. B. Minuswami Naidu Vs. A., B.L., High Court Vakil](#), and In the matter of an Advocate of Agra [In Re: Prem Narain, Advocate](#) . But

different considerations arise where the negligence of the Advocate is gross. It may be that before condemning an advocate for misconduct, Courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression "moral turpitude or delinquency" is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involved moral turpitude. A wilful and callous disregard for the interests of the client may, in a proper case, be characterised as conduct unbefitting an Advocate.

In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude."

(7) Reference has also been made by the learned Advocate-General to a Full Bench decision of the Allahabad High Court, reported in Ali Mohd. Kashmiri Vs. An Advocate, where the High Court has referred to the Privy Council's view also to what has been stated in Corpus Juris Secundum. This is what has been stated at page 665 :

"The Privy Council approved of the definition in AIR 1936 224 (Privy Council) . 'Misconduct' is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though they are not inherently wrongful; see 58 Corpus Juris Secundum. 'Misconduct' 818. In Corpus Juris Secundum, "Attorney and Client ", 742, it is said that professional misconduct may consist in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it."

Having regard to what has been stated by the Supreme Court in the case above referred to, we have no doubt that the 'gross" and 'serious" negligence on the part of the respondent-advocate, amounts to professional misconduct.

(8) Shri B.T. Parthasarathy (a Member of the Bar Council) submitted on behalf of the Bar Council, that the opinion of the Tribunal that the proceedings against the respondent-advocate may be dropped, may be treated as part of the findings of the Tribunal. We are unable to agree with this submission made by Shri Parthasarathy. Properly, speaking, the finding of the Tribunal is confined to the determination of the question as to whether the Advocate concerned, is or is not guilty of professional or other misconduct. The subsequent opinion of the Tribunal that the proceedings against the respondent-advocate may be dropped or that no further

action is called for, is merely of a recommendatory nature and does not really form any part of the findings of the Tribunal, we find ourselves unable to accept its recommendation for the dropping of the further proceedings. It would not be in the interests of the legal profession or in the larger interests of the public, to drop the proceedings, in such a manner.

(9) From the facts as found by the Tribunal, there cannot be any doubt that there has been a callous disregard on the part of the Respondent-Advocate, of the interests of his client the complainant. As pointed out by the Supreme Court in the case above referred to, while dealing with the question of an Advocate's misconduct, the expression "moral turpitude or delinquency" is not to be construed in an unduly narrow and restricted sense.

(10) We are satisfied that Shri Balarathnam has been guilty of professional misconduct. As indicated above, we are not prepared to agree with the recommendation of the Tribunal that further proceedings against him should be dropped. The question which remains to be considered is as to what would be the appropriate order that should be made against him for the said professional misconduct. Unlike Mr. P. the Advocate in the Supreme Court case, Shri Balarathnam, even at the earliest stage, made a clean breast of the whole affair and frankly admitted the lapse on his part. Taking this circumstance into consideration, we are satisfied that the interests of Justice will be met by a reprimand being administered to the respondent-advocate, under S. 10(1) of the Act. Accordingly, we hereby administer a reprimand to Shri. V. Balarathnam who is present in Court, before us.

(11) No order as to costs.

T.K. Tukol, J.

(12) I agree.

(13) Order accordingly.