

HARISH CHANDRA TIWARI

A

v.
BAIJU

JANUARY 8, 2002

[K.T. THOMAS AND S.N. PHUKAN, JJ.]

B

Advocates Act, 1961—Sections 35 and 38

Professional misconduct—Misappropriation of client's money—Filing of forged affidavit on behalf of the client—Disciplinary Committee held him guilty of committing breach of trust—Suspended for three years—On appeal finding of Disciplinary Committee upheld—However, punishment inadequate in proportion to the gravity of the misconduct—Hence enhanced to removal from the roll of advocates.

C

Respondent, a client of appellant-advocate, filed complaint against appellant in State Bar Council alleging that appellant had mis-appropriated his asset which the appellant had withdrawn from the Court in his case. Appellant defended his case stating that he had paid the amount to the respondent. Appellant filed an affidavit purporting to be that of respondent stating therein that a compromise had been arrived at between him and the respondent. The respondent on being summoned by the Disciplinary Committee disowned the affidavit, and repudiated the alleged compromise and denied having received any amount from the appellant.

D

E

The complaint and the proceedings stood transferred to Bar Council of India. The Disciplinary Committee found that appellant had withdrawn the amount from the Court and had not paid the same to the respondent and thus guilty of wrong professional conduct and had committed breach of trust which an advocate enjoys; and that the affidavit was a forged one. Thus it imposed punishment of suspending him from practice for 3 years.

F

G

In appeal, this Court gave notice to the appellant to show cause why the punishment be not enhanced to removal from the roll of the Bar Council of the State.

H

A Disposing of the appeal, the Court

HELD : 1. The finding of the Disciplinary Committee does not require any interference in this appeal. 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. [87-F-G]

B

2.1. Punishment is enhanced to removal of the name of the appellant from the roll of the advocates since 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 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 the Court gave notice to the appellant to show cause why the punishment should not be enhanced to removal from the roll of the Bar Council of the State.

C**D**

[88-A-B-C]

2.2. 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 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 misdemeanour. 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 proceedings. [88-H; 89-A-B-C]

E**F****G**

2.3. In the present case, the misappropriation remained unabated even after the disciplinary proceedings commenced and it continued even till the date of decision as the delinquent advocate did not care to return even a single pie to the client. The misconduct of the appellant advocate became more

H

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. A

[89-D]

2.4. 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 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. 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 fee bite punishment. B C D

[88-D-E-F-G] E

Prahlad Saran Gupta v. Bar Council of India & Anr., [1997] 3 SCC 585 and *B.R. Malikari v. Y.B. Zurange*, [1997] 11 SCC 109, distinguished.

CIVIL APPELLATE JURISDICTION Civil : Appeal No. 200 of 2000. F

From the Judgment and Order dated 23.9.98 of the Disciplinary Committee Bar Council of India in B.C.I.Tr. Case No. 76 of 1991.

M.M. Kashyap for the Appellant.

The Judgment of the Court was delivered by G

THOMAS, J. We are sad that the Disciplinary Committee of the Bar Council of India (for short 'the Disciplinary Committee') despite being the some statutory body entrusted with the upkeep of the probity of legal profession in India opted to treat a very grave professional misconduct in a H

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.

B The delinquent advocate filed this appeal under Section 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 removal of 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.

C We issued notices to the Bar Council of India and also to the Bar Council of UP. Neither has chosen to enter appearance in this matter and hence we heard learned counsel for the appellant-advocate above.

D Appellant Harish Chandra Tiwari was enrolled as an advocate with the Bar Council of the State of UP 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".

E Compensation of Rs. 8118 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

F 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.

G 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. 8118 from the Court. But he adopted a defence that he had returned the amount of the client after deducting his fees and expenses.

H 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 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.

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 followed :

“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.”

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. 8118 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.

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

A 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 to removal from the roll of the Bar Council of the State. Learned counsel for the appellant addressed arguments on that score.

C 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.

D 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 the 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 affective 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.

G 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

H

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 misdemeanour. 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 proceedings.

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.

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.

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 *Prahalad Saran Gupta v. Bar Council of India & Anr.*, [1997] 3 SCC 585. 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.

The other case cited by the learned counsel is *B.R. Mahalkari v. Y.B. Zurange*, [1997] 11 SCC 109. The findings in that case is that the advocate retained the amount of Rs. 1176, though before the commencement of the disciplinary proceedings he sent the said amount to the client. After holding

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

B 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 are not of any help to the appellant for mitigation of the quantum of punishment.

C 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.

K.K.T.

Appeal disposed of.