

A

BAR COUNCIL OF ANDHRA PRADESH

v.

KURUPATI SATYA NARAYANA

NOVEMBER 15, 2002

B

[V.N. KHARE AND ASHOK BHAN, JJ.]

*Advocates Act, 1961:*

C

*Section 38—Person aggrieved—State Bar Council acting in the capacity of prosecutor would be an aggrieved person—Hence appeal filed by it is maintainable.*

D

*Complaint of professional misconduct against Advocate for misappropriation of money received on behalf of his client—State Bar Council found advocate guilty of grave professional misconduct and struck off his name from the roll—Bar Council of India reversed the Order—On appeal, held, since delinquent advocate committed an act of breach of trust by misappropriation of money received on behalf of his client, such act would amount to grave professional misconduct—It would undermine the confidence of the litigant public—Removal of name of the delinquent advocate from the roll of Bar Council was the appropriate punishment, rightly awarded by the State Bar Council.*

E

F

G

**Respondent-Advocate received certain amount on behalf of his client-Complainant in an execution proceeding and misappropriated it. Complainant filed a complaint against the delinquent advocate before the Additional District Munsif, who transferred the same to State Bar Council for further action in the matter. State Bar Council referred the same to the State Disciplinary Committee. In the meanwhile, delinquent advocate made part payment to the complainant through the State Bar Council but committee found him guilty of misconduct and on its recommendations State bar Council struck off his name from the roll of Bar Council. On appeal, Bar Council of India reversed the order of State Bar Council. Hence this appeal by the State Bar Council.**

H

**It was contended for the respondent that appeal filed by State Bar Council is not maintainable as it is not the person aggrieved.**

Allowing the appeal, the Court

A

**HELD: 1. The role of the Bar Council is of dual capacity, one as the prosecutor through its Executive Committee and the other as quasi-judicial, performed through its Disciplinary Committee. Being the prosecutor the State Bar Council would be an "aggrieved person" and, therefore, the appeal under Section 38 of the Advocates Act, 1961 would be maintainable on its behalf. [208-B, C]**

B

*Bar Council of Maharashtra v. M.V. Dabholkar and Ors.*, [1975] 2 SCC 701, followed.

**2. It was neither pleaded nor shown by the delinquent that he was in dire financial difficulty which prompted him to utilise the decretal amount for his treatment which was with him in trust. This is an act of breach of trust. Such types of excuses cannot be entertained being frivolous and unsustainable. Adherence to correct professional conduct in the discharge of one's duties as an advocate is the backbone of legal system. Any laxity while judging the misconduct which is not *bonafide* and dishonest would undermine the confidence of the litigant public resulting in the collapse of legal system. This is an act of grave professional misconduct. The conduct of the delinquent, who is an elderly gentleman, is reprehensible and is unbecoming of an advocate. The finding of the Disciplinary Committee of the Bar Council of India that there was no intention on the part of the delinquent advocate to misappropriate the money of his client or to de-fraud him is not only unfounded and perverse but also lacks the serious thought which was required to be given by the Disciplinary Committee of the Bar Council of India in the discharge of quasi-judicial function while probing into the grave charge of professional misconduct by an advocate in the discharge of his duties as a counsel. Having regard to the serious nature of misconduct the punishment of removal of his name from the roll of Bar Council would be the only appropriate punishment. [209-B, H; 210-A-C]**

C

D

E

F

*Harish Chandra Tiwari v. Baiju*, [2002] 2 SCC 67, relied on.

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3412 of 2001.

From the Judgment and Order dated 28.3.1999 of the Disciplinary Committee of Bar Council of India in D.C. Appeal No. 39/97.

H

A Sudhir Nandrajog and Virendra Rawat, for the Appellant.

S. Vittal Rao and Mrs. Sudha Gupta, for the Respondent.

The Judgment of the Court was delivered by

B **BHAN, J.** Bar Council of Andhra Pradesh, for short “the State Bar Council”, has filed this appeal against the order of the Disciplinary Committee of the Bar Council of India in D.C. Appeal No. 39 of 1997 dated 28th March, 1999 by which the Bar Council of India has set aside the order passed by the State Council removing the name of Kurapati Satyanarayana, hereinafter referred to “the Delinquent”, from the roll of the State Bar Council as he was found guilty of grave professional misconduct in the discharge of his duties as an advocate.

D O.S. No. 1624 of 1991 was filed by Sri Gutta Nagabhushanam, hereinafter referred to “the de-facto complainant”, on the file of the Additional District Munsif Magistrate, West Godavari District, Eluru through the delinquent advocate. The said suit having been decreed, Execution Petition No. 112 of 1995 was instituted for realisation of the decretal amount. Delinquent was engaged as the counsel for the de-facto complainant in the execution proceedings as well. The Delinquent received a total sum of Rs. 14,600/- on various dates in the execution proceedings but did not make payment of the same to the de-facto complainant. On 18th October, 1996 the de-facto complainant filed a complaint with the Additional District Munsif, Eluru. On the said complaint Additional District Munsif, Eluru passed the following orders:

F “Decree Holder present. Sri K. Satyanarayana absent perused the entire record. The memo filed by D.H.R. along with original receipt issued by Sri K. Satyanarayana, Advocate, Dt. 2.4.1996 and the photostat copy of calculation memo dt. 16.8.1996 prepared by Sri K. Satyanarayana, Advocate, which is not signed by D.Hr. and along with this complaint and counter be submitted to the Secretary, Bar Council of A.P. in High Court premises, through the Hon’ble District and Sessions Judge, West Godavari, Eluru for taking necessary action with covering letter, D. Hr. is informed in open Court.”

H The complaint filed by the de-facto complainant along with the reply filed by the Delinquent and the connected documents were forwarded to the Bar Council of the Andhra Pradesh in the High Court premises for appropriate

action. The State Bar Council took notice of the complaint filed and issued a notice to the Delinquent. The Delinquent in spite of the service of notice did not choose to file a counter. The State Bar Council referred the matter to its Disciplinary Committee. The State Disciplinary Committee after examining the witnesses produced by the complainant came to the conclusion that the Delinquent had received a total sum of Rs. 14,600/- belonging and payable to the de-facto complainant on different dates and retained the same with him.

Assertion of the Delinquent that he had informed the complainant through a post-card about the receipt of the decretal amount was not accepted. That in spite of an undertaking (Ex.C-1) dated 24th April, 1996 given in writing by the Delinquent to pay a sum of Rs. 11,000 to the complainant, the same was not paid. The story put-forth that he paid a sum of Rs. 11,000 on 4th September, 1996 was not accepted because the Delinquent failed to produce any receipt given by the complainant evidencing the payment of the said amount to the complainant. It was noted that only on 19th August, 1997 a demand draft No. 808327 of Rs. 3,600 and a demand draft No. 0142169 dated 17th October, 1997 for Rs. 2,900 drawn on State Bank of Hyderabad in favour of the complainant were sent. The Committee directed that the said two drafts be forwarded to the complainant without prejudice to his any other right, if any. It was specifically mentioned that the payment of the said two amounts would not obliterate the misconduct of the Delinquent.

The Delinquent preferred an appeal before the Disciplinary Committee of the Bar Council of India. The Disciplinary Committee of the Bar Council of India agreed with the finding of fact recorded by the Disciplinary Committee of the State Bar Council that the Delinquent had failed to make the payment of Rs. 14,600/- received by the Delinquent on behalf of the complainant in the execution proceedings, but came to the conclusion that the Delinquent had not committed any professional misconduct though there might have been some negligence on his part which did not involve any moral turpitude. For coming to this conclusion, the Disciplinary Committee of the Bar Council of India recorded the following findings:

“...One thing is very clear from the conduct of the appellant that no doubt, he had withdrawn the money on behalf of the complainant being his counsel, but he never refused to return the same to the complainant. It has also come in evidence that the appellant had made part payment of the total amount before filing of the present

A complaint by the complainant before the Disciplinary Committee of Andhra Pradesh. Perusal of the file shows that the appellant could not make the payment of the remaining amount because of his family circumstances. There seems to be weight in the arguments of the appellant to the effect that he could not make the payment of the remaining amount to the complainant as the said amount was utilised by him on his treatment. This type of events are very common when some body is in trouble. At this stage, we are to see as what was the intention of the appellant with respect to utilisation of the said amount. We are to see whether he had the intention of misappropriating the money of his client in order to defraud him or he was compelled by the circumstances in not returning the said amount as and when demanded by the complainant. During the course of arguments it was brought to our notice that the appellant had already returned the total decretal amount with interest to de-facto complainant. He has further brought to our notice that he was still suffering from serious heart ailment and he has also sought appointment with a doctor for undergoing surgery in near future. The Committee is of the considered view that the appellant from the very beginning never wanted to misappropriate the decretal amount of the de-facto complainant and the lapse on his part to return the same was because of his domestic circumstances, as explained.”

E Counsel for the parties have been heard at length.

The first point raised before us on behalf of the Delinquent that the appeal filed by the Bar Council of the Andhra Pradesh would not be maintainable as not being the “person aggrieved” need not be dilated upon in view of the Seven-Judge Constitution Bench judgment of this Court in *Bar Council of Maharashtra v. M.V. Dabholkar and Ors.*, [1975] 2 SCC 702. It has been held in the said case that the role of the Bar Council is of dual capacity, one as the prosecutor through its Executive Committee and the other quasi-judicial performed through its Disciplinary Committee. Being the prosecutor the State Bar Council would be an “aggrieved person” and therefore the appeal under Section 38 of the Advocates Act, 1961 would be maintainable on its behalf.

H On merits we find that the order of the Disciplinary Committee of the Bar Council of India is unsustainable. It is sad that the Disciplinary Committee of the Bar Council of India, which is the highest body, to monitor the probity

of the legal profession in the country chose to trivialise and treat a very grave professional misconduct on the part of the Delinquent lightly by saying that the Delinquent did not make the payment to the de-facto complainant as he had utilised the money for his personal need for treatment and that such like instances do take place when a person is in trouble. It was neither pleaded nor shown by the Delinquent that he was in dire financial difficulty which promoted him to utilise the decretal amount for his treatment which was with him in trust. This is an act of breach of trust. We are firmly of the view that such types of excuses cannot be entertained being frivolous and unsustainable. Adherence to the correct professional conduct in the discharge of one's duties as an advocate is the backbone of legal system. Any laxity while judging the misconduct which is not bonafide and dishonest would undermine the confidence of the litigant public resulting in the collapse of legal system. This is an act of grave professional misconduct. This Court in *Harish Chandra Tiwari v. Baiju*, [2002] 2 SCC 67, held that amongst the various types of misconduct envisaged for a legal practitioner the misappropriation of the client's money must be regarded as one of the gravest. It was observed:

“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 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.”

The conduct of the Delinquent, who is an elderly gentleman, is reprehensible and is unbecoming of an advocate. It deeply pains us that the Delinquent who claimed to have practised for three decades and has worked as Government advocate for four years should have been guilty of such

- A serious misconduct. The finding of the Disciplinary Committee of the Bar Council of India that there was no intention on the part of the Delinquent advocate to misappropriate the money of his client or to de-fraud him is not only unfounded and perverse but also lacks the serious thought which was required to be given by the Disciplinary Committee of the Bar Council of India in the discharge of quasi-judicial function while probing into the grave charge of professional misconduct by an advocate in the discharge of his duties as a counsel.

- C We find the Delinquent guilty of grave professional misconduct. Having given our anxious consideration, we feel that having regard to the serious nature of misconduct the punishment of removal of his name from the roll of Bar Council would be the only appropriate punishment and accordingly we set aside the order passed by the Disciplinary Committee of the Bar Council of India and restore that of the Disciplinary Committee of the State Bar Council. Appeal is allowed.

- D Accordingly, we direct the removal of his name from the roll of the Bar Council. The appellants shall be entitled to the costs of this appeal, which we assess as Rs. 5,000.

S.K.S.

Appeals allowed.