

BAR COUNCIL OF ANDHRA PRADESH

v.

B. NARAYAN SWAMY & ANR.
(Civil Appeal No. 7133 of 2013)

SEPTEMBER 15, 2014

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
SHIVA KIRTI SINGH, JJ.]

Advocates Act, 1961 – s.35 – Professional misconduct – Complaint against Notary /Advocate alleging possession of attested blank stamp papers – State Bar Council held him responsible for violation of Notaries Act and s.35 of Advocates Act and awarded punishment of debaring him from practicing once for all – Bar Council of India set aside the punishment – On appeal, held : The alleged conduct of the advocate attracts the provisions of Advocates Act – However, the punishment is not commensurate with the degree of offence – Hence the punishment of debar from practice is modified to one year three months – Notaries Act, 1952.

Noratanmal Chouraria v. M.R. Murli and Another 2004 (1) Suppl. SCR266: (2004) 5 SCC 689; Narain Pandey v. Pannalal Pandey 2012 (11) SCR752 : (2013) 11 SCC 435 – relied on.

Case Law Reference:

Suppl. SCR 266 **relied on** **Para 5**

2012 (11) SCR 752 **relied on** **Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7133 of 2013.

From the Judgment & Order date 17.03.2012 of the Disciplinary Committee of the Bar Council of India in D.C.

A Appeal No. 31 of 2010.

P. Vishwanatha Shetty, B. Ramana Murthy, Sumanth Nookala for the Appellant.

B Annam D.N. Rao, Neelam Jain, Sudipto Sircar, Vaishali R., Ardhendumauli Kumar Prasad for the Respondents.

The Order of the Court was delivered by

C **FAKKIR MOHAMED IBRAHIM KALIFULLA J. 1.** Delay condoned.

D 1.1. Bar Council of Andhra Pradesh is the appellant. Challenge is to the order dated 17th March, 2012 passed by the Disciplinary Committee of the Bar Council of India in D.C. Appeal No. 31 of 2010 in and by which the Bar Council of India set aside the order of punishment of the appellant dated 5th December, 2009, imposed on respondent No.1 herein who is a practising Advocate in the State of Andhra Pradesh for certain alleged misconduct.

E 2. The appellant passed its order against the respondent No. 1 on 5th December, 2009 in Complaint Case No. 34 of 2008 holding that the first respondent committed the misconduct of violating the terms and conditions of his appointment as Notary in attesting the documents and misused his position as a Notary and failed to follow the provisions of F the Notaries Act and the Indian Stamp Act. Reliance was placed upon Exhibits C3 to C6 and D1 to D2 in support of its conclusion about the guilt of respondent No. 1. As a matter of G fact, the above documents C1 to C2, photocopy of which are placed before us discloses that respondent No. 1 had attested blank stamp papers of the value of Rs. 10/- and Rs.20/- of three H different dates namely, 8th March, 2007, 16th August, 2007 and 27th October, 2007 by affixing the seal of Notary and as an Advocate. The above documents were stated to have been forwarded to the appellant by the Registrar General of the High

Court based on a complaint made by one, Ramchandra Rao, a graduate and a private employee in Hyderabad who brought to the notice of the High Court about the professional misconduct of respondent No. 1 herein. A

3. In its detailed order dated 5th December, 2009 the appellant held that the conduct of the first respondent in having abused his position as a Notary by attesting blank stamp papers and by affixing signature along with the rubber stamp impression were in violation of the provisions of the Notaries Act in particular Section 35 of the Advocates Act. Though respondent No. 1 contended that his role as a Notary is different from his status as an Advocate, the said stand of respondent No. 1 was rightly rejected by the appellant. B C

4. Unfortunately, by the impugned order, the Bar Council of India without appreciating the legal position under the Notaries Act as well as the Advocates Act, in a superficial manner, proceeded to hold that violation of the provisions of the Stamp Act and Notaries Act will have no impact on the conduct of respondent No. 1 vis-a-vis his status as an Advocate. What was omitted to be noted by the Bar Council of India was that the very recognition of the respondent No. 1 as a Notary under the provisions of the Notaries Act was by virtue of his status as an Advocate. The status of a person as an Advocate was sine qua non to be recognized as a Notary. Section 2(c) defines 'legal professional' to mean an advocate entered in any roll under the provisions of the Advocates Act, 1961. Under Section 3 of the said Act, the Central and the State Governments for the whole or any part of India or for the whole or any part of the State respectively is empowered to appoint a Notary, any legal professional or other persons who possess such qualification as may be prescribed. In such circumstances, when the first respondent by virtue of his status as an Advocate was appointed as a Notary, certainly he cannot be heard to state that his role as a Notary should be delinked from his status as an Advocate and that for whatever violation he committed in his capacity as a Notary no action can be taken against him D E F G H

A by the appellant, namely, the Bar Council of Andhra Pradesh.
 Therefore, we are not in a position to sustain the reasoning of
 the Bar Council of India in setting aside the order of punishment
 imposed by the appellant in its order dated 5th December,
 2009 debaring the first respondent from practising as an
 B Advocate.

5. In this context, we also wish to refer to the Three Judge
 Bench decision of this Court reported in Noratanmal Chouraria
v. M.R. Murli and Another (2004) 5 SCC 689 wherein while
 C examining as to what would constitute 'misconduct' as an
 Advocate under the provisions of the Advocates Act, 1961, this
 Court has held as under in paragraphs 7 and 8:-

*"7. Misconduct has not been defined in the Advocates
 Act, 1961. Misconduct, inter alia, envisages breach of
 D discipline, although it would not be possible to lay down
 exhaustively as to what would constitute conduct and
 indiscipline, which, however, is wide enough to include
 wrongful omission or commission whether done or
 omitted to be done intentionally or unintentionally. It
 E means, "improper behaviour, intentional wrongdoing or
 deliberate violation of a rule or standard of behaviour".*

*8. Misconduct is said to be a transgression of some
 established and definite rule of action, where no
 discretion is left except what necessity may demand; it
 F is a violation of definite law."*

6. In such circumstances, we are convinced that the
 conduct of the first respondent in having provided scope for
 misusing the blank stamp papers with his attestation by affixing
 G his signature as well as rubber stamp impressions is a very
 serious conduct definitely attracting the provisions of the
 Advocates Act, 1961 for taking appropriate proceedings
 against him for misconduct and also for passing appropriate
 orders of punishment.

H

7. Mr. A.D.N. Rao, learned counsel appearing for respondent No. 1 contended that the issuance of blank stamp papers by the first respondent was not deliberate but the same were kept in his table drawer which was stealthily removed by some one and launched a complaint against him. When the attestation of a Notary in a document is recognized in law for various statutory requirements, we see no justifiable ground for the respondent No. 1 to state that as a matter of course he was keeping signed blank stamp papers in his custody that too in his table drawer without proper safeguards. We, therefore, do not find any substance in such a stand taken on behalf of respondent No.1 which was rightly rejected by the appellant – Bar Council of Andhra Pradesh.

8. The learned counsel, however, brought to our notice that after the initial order of punishment debaring the first respondent once and for all from practising as an Advocate was passed by the appellant Bar Council of Andhra Pradesh on 5th December, 2009, the first respondent filed his appeal by way of D.C. Appeal No.31 of 2010 before the Bar Council of India and the Bar Council of India issued an order of stay of the order dated 5th December, 2009 only on 9th January 2011. Learned counsel, therefore, pointed out that the respondent No. 1 had to necessarily suspend his practice as from 5th December, 2009 till 9th January, 2011 and that by virtue of the order of punishment passed by the appellant Bar Council of Andhra Pradesh, the Certificate of Notary was also cancelled and that he no longer continues to be a Notary Public. Learned counsel, therefore, contended that the period of one year and one month during which time the first respondent was disabled from practising as an Advocate itself was sufficient punishment undergone by him.

9. We heard Mr. P Vishwanatha Shetty, learned senior counsel appearing for the Bar Council of Andhra Pradesh on the said question and the learned senior counsel vehemently submitted that the profession of an Advocate is a noble

A profession and respondent No. 1 having proved himself to be unworthy of the said status, the order dated 5th December, 2009 passed by the appellant should be restored and he should be debarred from practising as an Advocate so that it would act as a deterrent for others also not to indulge in any such malpractice. We find force in the said submission of the learned senior counsel. However, in this context we wish to be guided by the decision of this Court reported in Narain Pandey v. Pannalal Pandey (2013) 11 SCC 435 wherein this Court in paragraphs 13 and 15 to 20 has highlighted that such punishment should be commensurate with the degree of professional misconduct and that imposition of any such punishment should achieve twin objectives of deterrence and correction.

10. When we apply the said principle we find that in the case on hand there is no specific allegation of any misconduct as against the respondent No. 1 such as any of his dealing with any of his clients with reference to any particular litigation or any such similar activity connected with his profession as an Advocate. The allegation was that he was in the habit of issuing blank attested stamp papers and thereby enabling the unscrupulous elements to misuse such stamp papers for creating false documents. Considering the nature of misconduct alleged and found proved against respondent No. 1, namely that he was found in possession of blank attested stamp papers with the signature affixed along with the rubber stamp impression, we are convinced that even while affirming the finding of misconduct found proved against respondent No.1 as per the order of the appellant-Bar Council dated 5th December, 2009, the punishment can be modified and restricted to a period of one year and three months. It will be relevant to note that his Notary Certificate has already been cancelled and, therefore, there will be no scope for reviving his functions as a Notary. We also make it clear that having regard to his past misconduct in his Notary activities, he shall never be recognised as a Notary in future. Since the appellant

admittedly did not practise between 5th December, 2009 and 9th January, 2011 by virtue of the order of the appellant dated 5th December, 2009, he shall suffer further two more months suspension of his practice which shall be carried out in the months of October and November, 2014. A

11. With the above direction, this appeal stands allowed, impugned order is set aside, the order of the appellant dated 5th December, 2009 stands restored with the above modification as regards punishment imposed. B

Kalpana K. Tripathy

Appeal allowed.