

COUNCIL OF THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA

A

v.

SHRI GURVINDER SINGH & ANR.

(Civil Appeal No. 11034 of 2018)

B

NOVEMBER 16, 2018

[R. F. NARIMAN AND NAVIN SINHA, JJ.]

Chartered Accountants Act, 1949 : s.22 read with s.21, Schedule I Part IV – Other misconduct – Complaint against Chartered Accountant relating to sale of shares, transferred to the Chartered Accountant’s own name – Disciplinary Committee found his conduct derogatory in nature and held him guilty of ‘Other Misconduct’ u/s. 22/21 – Recommendation made by the Council of the Institute of Chartered Accountants to the High Court to remove the Chartered Accountant for a period of six months from the rolls, however, the High Court did not impose any penalty – Correctness of – Held: High Court did not correctly appreciate s. 21(3) – Disciplinary Committee found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant’s professional capacity – Under Schedule I Part-IV sub clause(2), the Council can hold Chartered Accountant guilty if their act brings disrepute to the profession whether or not related to his professional work – Thus, the order of the High Court is set aside and the matter remanded to the High Court to be decided afresh.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11034 of 2018.

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From the Judgment and Order dated 16.08.2016 of the High Court of Delhi at New Delhi in Chat. A. Ref. No. 4.2012.

Rana Mukherjee, Sr. Adv., Pramod Dayal, Nikunj Dayal, Ms. Payal Dayal, Advs. for the Appellant.

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Balaji Srinivasan, Ms. Pallavi Sengupta, Ms. Garima Jain, Siddhanth Kohli, Ms. Lakshmi Rao, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. Leave granted.

B 2. The present appeal arises out of a complaint dated 16.03.2005 against Gurvinder Singh - Respondent No.1, who is a Chartered Accountant, relating to sale of 100 shares in 1999, which were transferred to the Chartered Accountant's own name.

C 3. What has been pleaded before us is that the matter has ultimately been settled between the Complainant and the Chartered Accountant, despite which the Disciplinary Committee took up the case and ultimately found that the conduct of the Respondent No.1-Chartered Accountant was derogatory in nature and highly unbecoming and held him guilty of 'Other Misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 (hereinafter referred to as 'the Act').

D 4. The Council of the Institute of Chartered Accountants of India, therefore, made its recommendation to the High Court to remove the aforesaid Chartered Accountant for a period of six months from the rolls. The High Court, by the impugned judgment dated 16.08.2016, after setting out Sections 21 and 22 of the Act, arrived at the conclusion that:

E "14. In the instant case the respondent was acting as an individual in his dealings with the complainant which were purely commercial. While selling the shares held by him the respondent was not acting as a Chartered Accountant. He was not discharging any function in relation to his practice as a Chartered Accountant.

F 15. The Reference is accordingly answered by declaring the law as above and not inflicting any penalty upon the respondent."

5. We are afraid that the High Court has not correctly appreciated Section 21(3) of the Chartered Accountants Act, 1949 which states as follows:-

G "(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee."

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Schedule-I Part-IV reads as follows:- A

“Other Misconduct in Relation to Members of the Institute Generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

(1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months; B

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.” C

6. The Disciplinary Committee has, on facts, found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant’s professional capacity. This, it was entitled to do under Schedule I Part-IV sub-clause(2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work. D

7. This being the case, it is clear that the impugned judgment is incorrect and must, therefore, be set aside. We thus remand the matter to the High Court to be decided afresh leaving all contentions open to both parties. E

8. The appeal is disposed of accordingly.