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(2010) 11 KL CK 0088

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34403 of 2010

C.D. Johny — APPELLANT

Vs

Bar Council of Kerala and Others — RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:
Advocates Act, 1961 — Section 35, 36(2), 36(B), 36(B)(1)

Citation : (2011) 1 KLJ 56

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Mereena Joseph and R. Manoj, for the Appellant; Gracious Kuriakose, SC Bar Council, for the Respondent

Judgement

Antony Dominic, J.—Petitioner is an Advocate enrolled on the rolls of the 1st Respondent, the Bar Council of Kerala. He appeared as the counsel for the accused in Crime No. 714/06 of Kalamasserry Police Station before the Judicial First Class Magistrate Court, Aluva. On the allegation that he demanded Rs. 35,000 as bribe for the Magistrate and the Assistant Public Prosecutor to secure bail for the accused in the aforesaid case and that the aforesaid conduct of the Petitioner is a professional misconduct as defined in Section 35 of the Advocates Act, suo motu proceedings were initiated by the 1st Respondent Bar Council.

2. Accordingly, the Bar Council referred the proceedings to the Disciplinary Committee on 21/09/09. On receipt of the reference, on 29/10/09, the Disciplinary Committee issued notice to the Petitioner, posting the proceedings to 21/11/09 for his appearance. Accordingly, Petitioner appeared before the Disciplinary Committee and the proceedings are pending.

3. It is during the pendency of the aforesaid proceedings, this writ petition has been filed, mainly contending that further continuance of the proceedings before the Disciplinary Committee of the 1st Respondent is in violation of the provisions contained in Section 36B of the Advocates Act. On this ground, Petitioner contends that the proceedings before the Disciplinary Committee are void. He

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also seeks to quash the order dated 30/05/2010 of the Disciplinary Committee appointing the 3rd Respondent as the counsel for the Bar Council in the aforesaid proceedings.

4. I heard the standing counsel appearing for the 1st Respondent.

5. 1st Respondent submits that the suo motu proceedings initiated against the Petitioner was referred to the Disciplinary Committee on 21/09/09. It is also submitted that the Disciplinary Committee issued notice to the Petitioner on 29/10/09 and the first date of posting was 21/11/09. According to the 1st Respondent, as per the practice thus far followed by the 1st Respondent, the first date specified for appearance of the parties before the Disciplinary Committee is treated as the date of initiation of the proceedings. On this ground, counsel submits that since the date of first posting was 21/1172009, One year specified in Section 36B of the Advocates Act has not expired, and therefore, as at present, there is nothing illegal in continuing the proceedings.

6. Insofar as the controversy that arises for consideration in this case is concerned, what is relevant to be examined is the scope of Section 36B(1) of the Advocates Act, 1961. Section 36B(1), which is relevant reads as under:

36B. Disposal of disciplinary proceedings.--(1) The Disciplinary Committee of a State Bar Council shall dispose of the complaint received by it u/s 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date, of the receipt of complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry under Sub-section (2) of Section 36.

7. A reading of this provision shows that the Disciplinary Committee of the 1st Respondent is bound to dispose of the complaint received u/s 35 expeditiously, and in each case, the proceedings are to be concluded within a period of one year from the date of receipt of complaint or the date of initiation of proceedings at the instance of the State Bar Council, failing which, such proceedings are to be transferred to the Bar Council of India, which is to dispose of the proceedings in the manner as specified in the Act. In this case, since proceedings were initiated suo motu by the 1st Respondent, one year period has to be counted from the date of initiation of the proceedings at the instance of the State Bar Council. I cannot agree with the counsel for the 1st Respondent that for the purpose of $.36(B) of the Advocates Act, the date on which the proceedings have been initiated at the instance of the State Bar Council, shall be the date on which the parties are to appear before the Disciplinary Committee. In any case, word "initiation" occurring in Section 36B has to be understood as the earliest point of time when the Disciplinary Committee sets in motion proceedings against the delinquent. The word "initiate" has been defined in Shorter Oxford Dictionary as "to begin, commence, to enter upon, to introduce, set going; originate". If that

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be so, initiation of the proceedings has to be at least on the date on which notice was ordered by the Disciplinary Committee, when such proceedings are initiated at the instance of the State Bar Council. Therefore, in the facts of this case, at least 29/10/09, when notice was issued by the Disciplinary Committee, has to be taken as the date of initiation of the proceedings. If one year is to be counted on that basis, the said period has expired by now. Therefore, the proceedings against the Petitioner cannot be continued by the Disciplinary Committee of the 1st Respondent and the proceedings should stand transferred to the Bar Council of India, which is to dispose of the matter in accordance with the provisions of the Advocates Act.

8. In that view of the matter, I direct the 1st Respondent to withdraw the proceedings in DC 35/09 initiated against the Petitioner from its Disciplinary Committee and forward the same to the Bar Council of India in the manner as provided in Section 36B of the Advocates Act, 1961 for disposal in accordance with law.

Writ petition is disposed of as above.

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