

(1983) 07 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal No. 258 of 1977

Chandra Shekhar Soni

APPELLANT

Vs

Bar Council of Rajasthan and Others

RESPONDENT

Date of Decision : 20-07-1983

Acts Referred:

Advocates Act, 1961 — Section 35, 38
Bar Council of India Rules, 1975 — Rule 33

Citation : (1983) 7 ACR 486 : AIR 1983 SC 1012 : (1983) 2 SCALE 384 : (1983) 4 SCC 255

Hon'ble Judges : R. B. Mishra, J;E. S. Venkataramiah, J;A. N. Sen, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. This appeal u/s 38 of the Advocates Act, 1961 is directed against an order of the Disciplinary Committee of the Bar Council of India dated January 7, 1977 upholding the order of the Disciplinary Committee of the State Bar Council of Rajasthan, Jodhpur dated July 21, 1974 by which the appellant has been held guilty of professional misconduct and suspended from practice for a period of three years u/s 35(c) of the Act.

2. Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. The State Bar Council gave the appellant the benefit of doubt on the first charge that he changed sides in a criminal case, holding that though such conduct on his part was unprofessional, it was not tantamount to professional misconduct. The Disciplinary Committee of the Bar Council of India rightly observes that it failed to appreciate the distinction drawn by the State Bar Council as his act in accepting the brief for the accused after having appeared for the complainant was clearly contrary to r. 33 of the Bar Council of India Rules, 1975. We concur with the Disciplinary Committee. It is not in accordance with professional etiquette for an advocate while retained by one

party to accept the brief of the other. It is unprofessional to represent conflicting interests except by express consent given by all concerned after a full disclosure of the facts. The appellant would not have appeared for the other side except with the permission of the learned Magistrate. Counsel's paramount duty is to the client, and where he finds that there is conflict of interests, he should refrain from doing anything which would harm any interests of his client. A lawyer when entrusted with a brief is expected to follow the norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. The State Bar Council however found the appellant guilty of the second charge viz. that he had procured the brief of the complainant in another case on a fee of Rs. 300/- on the representation that he would secure a favourable report from the Radiologist showing that there was a fracture of the skull. The appellant was guilty of reprehensible conduct. The preamble to Chapter II Part VI of the Rules lays down that an advocate shall at all times, comport himself in a manner befitting his status as an officer of the Court, privileged member of the community and a gentleman. R. 4 of this Chapter provides that an advocate shall use his best effort to restrain and prevent his client from resorting to sharp and unfair practices etc. There is a long catena of decisions laying down that offering of bribe or giving bribe or taking money from the client for the purpose of giving bribe amounts to grave professional misconduct.

3. It appears that the complainant Bhaniya and his wife Smt. Galki were assaulted as a result of which they received head injuries. Both of them were examined by Dr. Raman Varma and he referred them to a Radiologist. Dr. Mangal Sharma, Radiologist sent a report to the Station House Officer that he found nothing abnormal in the X-ray plate of the complainant Bhaniya but from the X-ray plate of Smt. Galki he suspected a fracture of the skull and suggested that he should refer the matter to a Specialist. The appellant approached the complainant with the X-ray plates taken by Dr. Sharma and promised to get a favourable report if he was engaged as a counsel and said that Rs. 300/- had to be paid to Dr. Sharma. The appellant then sent the complainant along with a letter to Dr. Sharma to the effect :

Dear Doctor Sahib,

I am sending the man to you with X-ray plate. Your amount is lying with me. I will come to Jalore in the evening and see you. Please, do his work and it should be done positively in his favour.

Sd/-

Chander Shekhar Soni

4. Dr. Mangal Sharma sent another report to the Station House Officer saying :

There is evidence of fracture of the skull.

5. It is not in controversy that the appellant wrote the letter but he put forward a false plea which he has failed to substantiate. He pleaded that he had sent the

letter to one Dr. Surinder Singh Lodha, Homeopath and also Editor of a newspaper Jan Prahari for publication of an advertisement. He tried to substantiate his plea by examining Dr. Surinder Singh Lodha and one Mahipal Kumar through whom he is supposed to have sent the letter. The appellant in his statement stated, when confronted with the letter, that the words "I am sending the man to you with X-ray plate" relate to the X-ray 35 plate sent by him to Dr. Lodha, the words "Your amount is lying with me" relate to Rs. 20/- given to Mahipal for being handed over to Dr. Lodha for the printing of the advertisement, and the words "Please do his work and it should be done positively in his Favor" relate to the publication of the advertisement as desired by Mahipal. The defence plea was that Dr. Lodha had taken the X-ray plate of one of his relations who was suffering from tuberculosis. The Disciplinary Committee of the Bar council of India has upheld the finding of the State Bar Council disbelieving the defence version. The explanation of Mahipal is that he had lost the letter. On the contrary, the version of the complainant is that he had taken the letter to Dr. Sharma who after reading it returned the same to him. The fact remains that the incriminating letter has been produced by the complainant. This completely falsifies the plea taken by the appellant in his defence that the letter was meant for publication of an advertisement in the newspaper. Admittedly, no such advertisement was ever published.

6. In an appeal u/s 38 of the Act, this Court would not, as a general rule, interfere with the concurrent finding of fact given by the Disciplinary Committee of the Bar Council of India and of the State Bar Council unless the finding is based on no evidence or it proceeds on mere conjectures and unwarranted inferences. This is not the case here. In the facts and circumstances of the case, we are satisfied that no other conclusion is possible than the one reached. There is therefore no ground for interference with the finding of the Disciplinary Committee of the Bar Council of India.

7. It is needless to stress that in a case like this the punishment has to be deterrent. There was in this case complete lack of candour on the part of the appellant in that he, in a frantic effort to save himself, procured false evidence. The evidence on record clearly shows that the appellant had taken money to pay a bribe to the Radiologist. In a case of such grave professional misconduct, the State Bar Council observes that such practices adopted by the members of the bar bring the whole legal profession into disrepute and accordingly directed that the appellant be suspended from practice for a period of three years. The Disciplinary Committee has upheld the sentence saying that the penalty imposed does not appear to be excessive and rejected the plea of mercy observing :

It is true that the appellant was a mere junior at the bar and not much experienced when the incident is said to have taken place. The temptation for money at that stage is of course very great but at the same time it is to be realised by the appellant that he belongs to a noble profession, which has very high traditions and those traditions are not to be sullied by malpractices of this

nature.

Accordingly it declined to interfere with the punishment. We however feel that the punishment of suspension from practice for a period of three years to a junior member of the bar like the appellant is rather severe. The lapse on the part of the appellant was perhaps due to the fact that in the struggle for existence he had to resort to such malpractices. We strongly deprecate the conduct of the appellant but take a lenient view because he was an inexperienced member of the bar, and the fact that the incidents took place in 1971. In all facts and circumstances of the case, we feel it would meet the ends of justice if we reduce the period of suspension from three years to one year. We order accordingly.

8. Subject to this modification, the appeal is dismissed with no order as to costs.