**(1961) 06 AP CK 0005**

**In the Andhra Pradesh High Court**

**Case No :** Case Referred No. 22 of 1960

**In Re: In the matter of P. Butchi Rao, Pleader (First Grade) Guntur**

**Date of Decision :** 02-06-1961

**Acts Referred:**
Legal Practitioners Act, 1879 — Section 15

**Citation :** AIR 1962 AP 1

**Hon'ble Judges :** P. Chandra Reddy, C.J;Ramachandra Rao, J;Narasimham, J

**Bench :** Full Bench

**Advocate :** A.V. Krishna Rao, for Complainant, K. Kotayya and B. Rajabhushana Rao, for the Appellant;

## Judgement

Narasimham, J.—Sri Buchi Rao, a First Grade Pleader of Guntur, was indicted of professional misconduct iii that he had drawn a sum of Rs. 414 on account of money due to his client, Annam Venkatanarayana of Sattenapalli, in O. S. No. 379 of 1953 on the file of the District Munsif''s Court, Guntur, and retained the same without intimating and paying the said money to the said client. The said client, Annam Venkatanarayana filed a petition complaining against his pleader. The District Judge, Guntur, conducted an enquiry and acquitted the pleader of the said charge. The matter is before us under Sec. 15 of the Legal Practitioners Act (XVIII of 1879).

2. We have heard the learned Advocate General and Sri Konda Kotayya for the pleader.

3. Sri Buchi Rao was appearing for Annam Venkatanarayana in a number of cases during the period of 1953 to 1957 when he was practising as a pleader at Guntur. In O. S. No. 379 of 1953 on the file of the District Munsif''s Court, Annam Venkatanarayana was the successful decree-holder. His pleader Buchi Rao withdrew a sum of Rs. 414/- for and on account of the decree-holder Annam Venkatanarayana on 15th May, 1954. The pleader appeared in a number of cases subsequently also for the said client.

The present complaint relates to the said specific sum of Rs. 414/- drawn by the pleader on 15th May, 1954. The complaint is that the pleader did not inform his client Annam Venkatanarayana, about the receipt of the amount, that he came to know of the receipt of the money otherwise only in August 1958, that on demand the pleader did not pay the said amount but had resulted him and that the said amount was due to him with interest. After the complaint was laid, the pleader sent the money by a telegraphic money order which amount the client received. He claimed, however, that he is entitled to interest also which he computed at Rs. 255-9-0.

4. The client gave registered notices, Ex. A-24 dated 24th July, 1958 and Ex. A-26, dated 29th July 1958 to the pleader. In Ex. A-24 he demanded the payment of his dues. To that there was a reply by the pleader Ex. A-17, dated 31st July 1958, which did not repudiate the claim of the client. By Ex. A-26 he demanded the specific sum of Rs. 414. To that there was no reply.

5. The pleader submitted a written statement pleading that the client''s clerk was present when the amount was received by him, that even by the time he withdrew the amount there was due to him fees in the suits and in other matters and that in the circumstances the client had instructed him to appropriate the fees due to him up to date and keep the balance with him for the purpose of further expenses to be incurred in future proceedings.

He did not give a reply to the registered notice demanding the specific sum in the hope that better counsel would prevail with the client. He did not reply in sufficient detail to the earlier notice because he did not have with him the old accounts which he had left at Guntur, he having shifted to Hyderabad subsequently. He submitted that if the accounts are settled, nothing would be due to the client and that the client would be owing him money. He submitted that the petition was maliciously filed with the object of harassing him.

6. Sri Konda Kotayya for the pleader has taken us at length through the evidence of the pleader and of the client (complainant) and the correspondence which passed between the parties.

7. Prominently he has urged that it is unbelievable that the client did not know of the receipt of the money till August 1958, as is urged now, that the client owned him fees in several cases in which the pleader appeared for him and that the pleader had appropriated the money withdrawn by him for and on behalf of the client towards his fees. He has strenuously urged that the pleader should be believed when he stated that he had appropriated the amount towards the fees due to him under the client''s instructions and that the fact that the client''s account do not show the payment of fees in all the cases in which the pleader had appeared is a circumstance which lends an affirmance of truth to what the pleader has stated.

8. Thus, Sri Kotayya would seek to absolve the pleader of the alleged misconduct on the footing that there was an express agreement to appropriate the money towards the pleader''s fees.

 

9. It is an undisputed fact that the pleader has not himself intimated the fact of receipt of the amount to the client either in person or by letter. It is a further fact that the said amount was sent by telegraphic money order after the client''s complaint of misconduct against the pleader.

10. We are unable to agree with Sri Kotayya''s plea that the pleader had appropriated the amount under instructions from his client. Sri Kotayya has not been able to place before us any express averment to this effect in the correspondence that passed between the pleader and his client. For the first time it is stated by the pleader in his evidence that on 12th April, 1954, when it was expected that some amount be realised in execution of the decree in O. S. No. 379 of 1953, the client had agreed to the adjustment of the amount due to him towards fees from the said amount.

It does not appear that anybody else was present at that time. This assertion for the first time as P. W. 1 does not convince us. Further, it is stated by the pleader that he did not issue a notice to the client demanding his fees. Further, it does not appear that the Advocate had sent an account showing such adjustment to the client. Ex. B-18, dated 2nd November, 1956 is an office copy of the letter alleged to have been written by the pleader to his client sending him an extract of his account, Ex B-19.

The pleader as P. W. 1 has deposed that he has nothing to show that he sent Exs. B-18 and B-19 to his client apart from his acknowledgment by a subsequent letter. The acknowledgment letter relied on is Ex. B-12, dated 12th November, 1956. The client deposed that he did not receive the letters Exs. B-18 and B-19. About Ex. B-12 he stated that the signature on Ex. B-12 is his but the contents were not in his handwriting and that he was signing on blank letter-heads sometimes at the instance of his pleader.

We are not inclined to place any reliance on the alleged statement of account sent to the client or to hold that the client had knowledge of the appropriation. There is no reference to this account in the other correspondence. It is seen that the parties exchanged notice in terms of future settlement in their correspondence as late as 1958 and 1959 after the pleader shifted to Hyderabad in 1957.

11. Exhibit B-11, dated 22nd December, 1958, is a letter written to the pleader demanding thus :

Please write specifically whether you would come to Guntur and to Sattenapalli and settle the account there or whether we should go to Hyderabad to settle the matter according to the account.

The letter further adds that otherwise the client had to think of further course of action.

12. Exhibit A-22, dated 5th January 1959, is a letter written by the pleader stating that during the week he would settle the matter.

 

13. We may recall here that there is no mention of an account having been sent already. (Reference is to Ex. B-19). We could, therefore, safely conclude that the pleader had not demanded the fees due to him by any notice and that there was no settlement of account. We cannot, in the circumstances, presume that the client had expressly instructed the pleader to appropriate the money he had received for or on his behalf on 15th May, 1954, towards his fees which might be due by then and thereafter. We are constrained to remark that the pleader''s testimony is artificial when he has referred to this agreement as having been entered into before the receipt of the money.

14. Sri Kotayya has argued that even if it be held that there was no express agreement to appropriate, the pleader has a right to appropriate for his fees. He has not been able to place before us any authority in support of this alleged right of the pleader to appropriate the moneys of his client without his express consent.

15. The learned Advocate-General has submitted that the said plea cannot find any support. He has placed before us a ruling of a Special Bench of the Orissa High Court, The State v. Nrusingha Naik, (S) AIR 1955 Orissa 102. The Special Bench held that

in the absence of an express agreement no Advocate or Pleader is entitled to retain the moneys of his client and claim a lien to hold it until his own accounts are settled.

That was also a case where a pleader was indicted of professional misconduct in that he had realised Rs. 9 in execution of a decree in favour of his client and appropriated the same. The fact of receipt of the said money was not intimated to the client. It was contended that the appropriation was towards fees. The learned Judges repelled the argument and observed thus :

What a pleader should do in such circumstances is a matter of commonsense. He should immediately intimate to his client that he had received the amount on his behalf or sent it by money order if he does not come to receive it in person. Where duty and interest conflict, the former should prevail.

The learned Judges have also observed thus:

It is, therefore, highly desirable that in order to avoid any misunderstandings as to the amount of fee to be charged there should be a clear written contract between the parties, and the amount charged should be expressly agreed to by the client; and such an agreement should be entered into before the pleader accepts the engagement. Once he is engaged, a confidential relationship is established and the pleader occupies a privileged position which debars him from claiming more than a fair and just remuneration. If he receives any money on behalf of his client in the course of his employment, he does so as a trustee and is bound to return the same.

After discussing certain cases of the English Courts, the Special Bench expressed that:

Both according to the law in England and the law here, it is clear that the pleader is not entitled to appropriate, use, or pay himself moneys which he holds in lien because the Legislature enables the pleader to sue for his fees.

16. We are in respectful agreement with the view expressed by the Special Bench. We would wish to add that unless the client has expressly instructed the pleader to appropriate towards his fees the moneys cannot be diverted at the will of the pleader for the reason that for services rendered by him or to be rendered by him thereafter he has to be compensated by way of fees.

17. The relationship of pleader and client is fiduciary and it cannot be changed by the volition of the pleader to a relationship of debtor and creditor during the subsistence of the fiduciary relationship. There should be convincing proof of such an express instruction of the client which is lacking, in this case. We cannot, therefore, persuade ourselves to accept the contention of Sri Kotayya for the pleader that the pleader has a right to appropriate the moneys of his client for his fees even without the consent of the client.

18. Sri Kotayya has urged that even on the assumption that the pleader could not have appropriated without the express consent of his client, yet no mala fides could be imputed to him as he has been serving his client in very many cases and that these proceedings being quasi-criminal in nature, the pleader cannot be indicted of any unprofessional conduct.

19. We are not persuaded that the argument of Sri Kotayya strikes the correct line of approach.

20. Where money is entrusted to a practitioner for a specific purpose it must be applied for that purpose and any diversion of it would amount to improper conduct in the discharge of professional duty. Vide In the matter of, W. C. Asquith, Pleader, 42 Ind Cas 135 : (AIR 1917 Lah 114).

21. In another case, a legal practitioner received money from the Court on behalf of his client and retained it in his own hands without any authority from the client to retain it. Subsequently he chose to treat it as a loan and gave security which he felt himself at liberty to withdraw it at his own will and pleasure. It was held that this was a grave offence which constituted professional misconduct, for, no practitioner is entitled to hold his client''s money in his hands and use it himself for his own private purpose without the consent of his client. Vide In the matter of, In Re: R.V., Advocate, High Court,

22. The authorities need not be multiplied because it has been consistently held that there cannot be a falling off from the standards of integrity of a lawyer.

23. In relation to his clients an Advocate or Pleader bears the burden of heavy trust reposed in him on the faith of his being a member of an honourable profession.

 

24. It is not enough for him not to abuse the trust ultimately, but he is required by all the traditions of the profession, which he has inherited, not to abuse it at any time or to exploit it even temporarily for his personal advantage, for, by so doing he proves himself to be unfit to be depended on by his clients without reserve and to be incapable of acting in conformity with the standards which the profession and the public expect of him. Vide In Re: N.K. Sen, Advocate,

25. The learned Advocate-General has invited our attention to the Andhra Pradesh Bar Council Rules, Rule 30 whereof is pertinent in this context:

Rule 30. - Where monies are received from or on account of a client, the entries in the accounts shall contain a reference as to whether the amounts have been received for fees or out-fees, and during the course of the proceedings no advocate shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the out-fees towards fees.

We consider that this is a salutary rule to be observed by every practitioner.

26. It is to be noted that the pleader has been shifting positions. In his evidence he stated that on 16th December, 1955, he had told the client that the entire amount of Rs. 414 was discharged by payment and asked him to pass a receipt. The client is stated to have told him that he would do so on return from Madras. The pleader said that again the client came to him on 15th February, 1956, to attend his daughter''s marriage. But then again he did not pass any receipt. The pleader was therefore pleading a specific case of discharge. Yet he remitted the amount by telegraphic money order and the explanation that he gave was that he purchased peace as he applied to be enrolled as an Advocate of this Court. We are not convinced that this is the truth.

27. Further, in respect of a pronote which he had executed in favour of his client, he suffered a decree without contest remaining ex parte. Yet, his case is that that amount was discharged. But this case of discharge was not pleaded when a specific demand was made by registered notices.

28. The pleader has tried to persuade us that he had sent a copy of his account which does not convince us.

29. Thus, in various ways the pleader was not straight in his dealings.

30. We do not consider that the learned District Judge was right in finding that no case was made out against the pleader. We are satisfied that the case of the client, Annam Venkatanarayana, that the pleader had withdrawal the amount of Rs. 414/- and had appropriated it without informing him and did not pay back that amount till after the matter was placed before the authorities, is proved. We are not able to accept the pleas of the pleader that he ad appropriated the amount towards fees under instructions from the client. This would constitute professional misconduct and we find accordingly.

31. Sri Kotayya has appealed for clemency on the ground that the pleader had

 

already been suspended for professional misconduct for a year in 1957 and that he has not renewed his sanad and that the pleader had already suffered by being out of the profession since.

32. We do not consider that this is a matter which can commend itself for clemency. However, having regard to the dealings between the pleader and this client and the fact that he had sent the whole of the amount telegraphically after the complaint was filed, we direct that the pleader be suspended from practising in any Court of law for a period of three months.

 