

(1964) 08 MAD CK 0047

In the Madras High Court

Case No : C.M.P. No. 3526 of 1964 in R.C. No. 34 of 1941

In Re: Sri V.P. Chakravarthi

Date of Decision : 17-08-1964

Acts Referred:

Advocates Act, 1961 — Section 50, 58B, 58B(1), 58B(2)
Bar Councils Act, 1926 — Section 11, 12, 12(6), 14
General Clauses Act, 1897 — Section 6, 6(c), 6(e)
Penal Code, 1860 (IPC) — Section 409, 467

Citation : (1964) 08 MAD CK 0047

Hon'ble Judges : Sadasivam, J; Natesan, J; Anantanarayanan, J

Bench : Full Bench

Advocate : V. Thiagarajan, for the Appellant; The Advocate General and The Secretary, Bar Council, for the Respondent

Judgement

Anantanarayanan, J.—On 17th November 1941, the petitioner before us, Sri V.P. Chakravarthi, was struck off the roll of Advocates by a Full Bench of this Court consisting of Leach C.J. and Mockett and Kuppaswami Aiyar, JJ., in R.C. No. 34 of 1941. Admittedly, the proceedings related to an amount of Rs. 1775 (this is the figure furnished by learned counsel) delivered by the judgment debtor to the legal practitioner, for payment over to the decree-holder, which amount was not so delivered, either by gross negligence or otherwise, the retention of the moneys, thereby amounting to gross professional misconduct. Subsequent to this removal of the petitioner from the roll of Advocates, there was, admittedly, certain criminal proceedings in which he sustained convictions under Ss. 409 and 467 I.P.C. But the case of the petitioner is that all this was 23 years back, and that, since then, he has atoned for his past misdemeanour by a prolonged period of suffering and punishment. He has also been of good behaviour, and, subsequently, he has conformed to the ideals of rectitude, and turned over a new leaf. There are two certificates of character in his favour granted by senior counsels of the Madras Bar, namely, Messrs. K. Raja Aiyar and K.S. Champakesa Aiyangar. In brief, the petitioner prays for review or rescinding of the previous order and restoration to the rolls, by virtue of our powers under S. 12 (6) of the Indian Bar Councils Act. Ordinarily, the exercise of our jurisdiction would have

occasioned no difficulty, and the case itself would merely have to be dealt with on the merits. But, in the present context of the supersession of the Indian Bar Councils Act by the Advocates Act XXV of 1961, there is a question of our jurisdiction, and also of the effect of the exercise of our jurisdiction, if it still exists. This question has necessarily to be clarified first, before we proceed to the merits. In this reason, we have had the benefit of full arguments from learned Counsel for the petitioner, Sri V. Thiagarajan, and the learned Advocate General. The matter can be quite tersely stated as follows :

The effect of S. 50 of the Advocates Act of 1961 is to repeal prior enactments, in the manner provided for by that section, and as the relevant parts of that enactment came into effect. Admittedly, the power of review is vested in us under S. 12 (6) of the prior Act, which itself is liable to be repealed by the coming into force of Ch. V of the Advocates Act of 1961. Now, according to the learned Advocate-General, Ch. V came into force on 1st September, 1963 ; the situation is not in dispute that, thereby, S. 12 of the prior Act stood repealed on the date on which the petitioner sought redress at our hands, which was on 27th March, 1964. The question is, whether, notwithstanding this, our power of review is saved, either by any express provision of the new statute, or by any doctrine of inherent jurisdiction, upon any other principle recognised by law.

2. On an analysis of the relevant provisions, this would appear to be an instance of a *casus omissus* as far as Act XXV of 1961 is concerned. For the only saving provisions are to be found in S. 58-B of that Act, and the first proviso to S. 58-B (2) relates to the finding of a Tribunal constituted under S. 11 of the Bar Councils Act, and the exercise by the High Court of its powers under S. 12 in respect of certain proceedings. The second proviso to S. 58-B (2) relates to a case where the High court has referred (sic) further enquiry under Sub-S. (4) of S. 12. With regard to the first proviso, a proceeding of the present character would appear to be saved, at the first blush ; but, further scrutiny reveals that, this is not the case. For, as S. 58 B (1) specifies, the proceeding itself has to be in respect of a disciplinary matter "in relation to an existing Advocate of a High Court." Admittedly, the petitioner is not an "existing Advocate" and the first proviso will not save the present proceeding, nor confer on us jurisdiction to act under S. 12 (6) of the Bar Councils Act.

3. We are of the view that this power is indisputably saved, assuming that the case is not provided for in the new Act, by virtue of S. 6, Cls. (c) and (e) of the General Clauses Act, 1897. We do not think it can be disputed, for a moment, that the power embodied in S. 12 (6) of the Indian Bar Councils Act, is not merely a power vested in us, but is also a remedy in favour of the affected party, and this is very clear from the wording and Structure of the several Clauses of S. 12. But, if an application for review is a right vested in the affected party such right would, undoubtedly, be saved, upon the general principle of S. 6 (c) and also S. 6 (e) of the General Clauses Act. The learned Advocate General concedes this, and also concedes that this is a matter with reference to which our power is

not taken away by any express provision of the superseding statute. Consequently, we are of the view that, even apart from the amplitude of our inherent jurisdiction, which also the learned Advocate-General would appear to concede, we have the power to entertain this application and to dispose of it, as though the Indian Bar Councils Act were in full force and effect to-day.

4. Upon the merits, we are of the view, after a very careful consideration of the facts of the record, that the order may be rescinded, and that the petitioner may now be restored to the position that he originally occupied, namely, as a qualified legal practitioner entered in the roll of Advocates, and entitled to practise his profession. We agree with the submission of learned Counsel on his behalf, that considering the very long period that has since elapsed, the condign punishment undergone by the petitioner for his sins of omission and commission, and the subsequent rectitude which he has satisfactorily exhibited in his life, as borne out by the certificates of senior Counsel, this is a fit case in which we (sic) review and rescind the order and direct that the petitioner be restored to his profession and to the roll of Advocates. The learned Advocate-General submits that, if this is done, under S. 14 of the Bar Councils Act, which stands unrepealed by Act XXV of 1961 today, the petitioner will have a right to practise, as a right flowing from a valid enactment, in force today. We note this argument, and leave matters there. The actual details of the procedure that the petitioner may have now to adopt, with reference to the Bar Council, for formal admission of his name to the Rolls, do not concern us in this proceeding. The petitioner would not appear to be an "existing Advocate," and the procedure provided for that case may not apply to him. But he may seek the remedy of such other procedure as is available to him for having his name formally inscribed in the rolls. With these observations the proceeding is allowed. No costs.