
(1963) 08 KL CK 0009

In the High Court Of Kerala

Case No : Professional Misconduct Petition No. 4 of 1962

Isaac Mathai, Komatath Kizhakkathil Mayelikara, Bombay

APPELLANT

Vs

T.B. Mathew

RESPONDENT

Date of Decision : 16-08-1963

Acts Referred:

Legal Practitioners Act, 1879 — Section 13

Citation : AIR 1964 Ker 192

Hon'ble Judges : M.S. Menon, C.J;S. Velu Pillai, J;M. Madhavan Nair, J

Bench : Full Bench

Advocate : G. Rajasekhara Menon, for the Appellant; T.K.M. Unnithan, General, K. Velayudhan Nair, V.S. Moothathu and K.J. Joseph, for the Respondent

Final Decision : Allowed

Judgement

Madhavan Nair, J.—The complaint against the respondents that as the Pleader of the petitioner he had drawn from Court Rs. 790/- in O. S. No. 94 of 1104, and Rs. 3,416/- in O. S. No. 436 of 1109, both on the file of the Munsif, Mavelikara, but paid only Rs. 1,288/- odd to the petitioner and had not paid the balance in spite of repeated demands. That the respondent had drawn from Court the aforesaid amounts is not disputed. The petitioner made a complaint under the Travancore Vakils" Act, 1075 (1900), before the District Judge, Mayeli-kara, on June 20, 1952, but it came to be thrown out on August 12, 1959, as incompetent; and a revision sought against that order failed in the High Court on June 9, 1961. He has therefore filed this complaint on December 15, 1961, under the Legal Practitioners" Act, 1879, which, as per the direction of this Court has been enquired into by the District Judge, Alleppey.

In reply to the complaint, the respondent has stated that he had paid to the petitioner and his nominees Rs. 3,435/- odd before May, 1945, which was above the amount collected in O. S. No. 436 of 1109; and also Rs. 827/- odd before April 1947, which was also above the decree amount in O. S. No. 94 of 1104; and that in iegard to the amounts concerned the relation bet-ween him and the

petitioner was one of debtor and creditor involving no professional dealing.

2. In the nature of the fiduciary relationship between a client and a legal practitioner a complaint of professional misconduct against one's own Pleader can seldom be expected, except when the client is constrained to turn at bay. The large power of representation in a legal practitioner in respect of his clients' cause necessitates a careful scrutiny at the hands of the disciplinary authority whenever a complaint of the aforesaid nature is come. As observed by the Supreme Court in *In re In Re: Shri "M", An Advocate of The Supreme Court of India*,

"the high standards of the profession demand that when moneys of the client come into the possession of a legal practitioner, otherwise than as earmarked fees, he has to treat himself in the position of a trustee for the client in respect of such moneys. Even if he has a lien on such moneys, it would be improper for him to appropriate the same towards his fees without the consent of his client or without the order of the Court. It may be that in certain circumstances he is entitled to exercise a lien, but he has to give reasonable intimation both of the fact of moneys having come into his hands and of the exercise of his lien over them until his account is settled".

It is pertinent to note here that in Rule 449 of the Civil Courts Guide framed under the Travancore Vakils' Act (See Acts and Proclamations of Travancore, Vol. II, page 1136) there is a specific direction:

"The Vakils must also distinctly understand that it is their paramount duty to account to their clients for every cash received by them on their clients' behalf. Any irregularity in these matters will be dealt with as professional misconduct."

3. Admittedly, the respondent has not taken any receipt for the amounts said to have been paid to the petitioner or on his account, nor any written direction for payments said to have been made to his brother-in-law and others on his behalf. According to respondent he did not take receipts from the petitioner "because of the confidence I had in him and also because of our relationship." In Ext. D-1 letter to the respondent dated 16th April, 1945, the petitioner, while acknowledging receipt of a draft for Rs. 500/- and accepting "all those payments which you have made as stated in your letter", has intimated "you can send me a copy of any formal receipt in any particular form. I shall sign it and send it back to you." In the light of the above offer there could not have been any delicacy in respondent's taking formal receipt from the petitioner for payments made in the professional way.

4. Ext. D-2 dated 27th January, 1947, and Ext. D-10 dated 19th July, 1947, are letters by the petitioner addressed to the respondent and produced by the latter in this enquiry. Ext. D-2 reads:

"Dear M.....

27th Jan. 47

I had a letter from my brother in connection with the money due to him. I am entirely in the dark as to what is taking place there. He says that a good amount has already been drawn from the Court. Please let me have an up-to-date account of the present position in this matter. His share of the money naturally goes to him; and I have no right to hold it back. Please reply immediately.

Thanks. Affiy your, (Sd.) Isaac Mathai."

Ext. D-10 narrates a sad story that needs no comment. It reads: 19th July, '47

"Dear M.....

Re. Accounts of the moneys withdrawn from Court on my behalf.

Please refer to my letter of the 27th. Jan. '47. I had been waiting for a reply till about the 27th of April, 1947 -- About three months -- and you thought it fit to remain silent even though courtesy demanded at least a line in reply from you.

I reached Mavelikara by about the 10th May, '47, I sent word to you about half a dozen times through one Mr. G. Ayyappan Pillai, to give me the accounts, I saw you personally three or four times and told you so, and I sent word through my brother-in-law another half a dozen times. Some seven weeks passed in that way and I had to come away to Bombay. I am now requesting you again, and for the last time, by letter, to send me the accounts up-to-date. I shall wait for a fortnight from today.

Yours affly, (Sd.)Isaac Mathai."

In Ext. D-17 dated 7th March, 1949, the petitioner complained;

"I wrote to you on the 12th January, '49 for details, but you have not replied so far....." and repeated the same in Ext. D-18 dated 27th June, 1949:

"Re: My law-suits under your care.

I wrote to you sometime in the month of March for details, but you have not replied so far....."

It is admitted that the respondent sent no statement of accounts in response to these letters.

5. The accounts given by the respondent in his "explanation" in answer to the complaint are far from convincing. He has mentioned Rs. 600/- as been paid to George Panicker, the petitioner's brother-in-law, out of the amount realised in O. S. No. 436 of 1109, and has produced Ext. O-35 receipt executed by George Panicker in proof thereof; but, Ext. D-42 which is a statement of accounts produced by the respondent as written by the same George Panicker himself, shows the amount as been paid out of "the seven instalments" (obviously under the Travancore Debt Relief Act) realised in another case O. S. No. 346 of 1111.

Counsel tried to explain that O. S. No. 346 of 1111 was a mistake for O. S. No.

436 of 1109. Admittedly "the amount in O. S. No. 436 of 1109 was realised in a lump" "by sale in execution of one of the items of decree schedule properties." (See the respondent's deposition page 1 and paragraphs 2 and 3 of his "explanation". The seven instalments in O. S. No. 346 of 1111 referred to in Ext. D-42 cannot therefore relate to the lump sum recovery in O. S. No. 436 of 1109.

The averment that Rs. 100/- were paid to the petitioner for his journey to Trivandrum on 5-7-1120 (16th February 1945) is belied by Ext. D-4 of even date wherein the petitioner is mentioned to have reached Trivandrum on "Monday" (which was on 1-7-1120/12-2-1945) and been there since then.

The figures given as the sums spent on behalf of the petitioner cut of Rs. 790/- drawn in O. S. No. 94 of 1104 aggregate to Rs. 646.8 as 6 pies only, though the respondent sums up "The total amount thus I paid was Rs. 827.8" (Vide para. 15 of his explanation)

In view of these unexplained discrepancies no reliance can be had on the plea of discharge made by the respondent.

6. Though the respondent has stated that the petitioner had, in his prior complaint filed in 1952, admitted receipt of Rs. 2,454 odd which is far above Rs. 1,288 odd admitted as been received in the present petition, he has not cared to produce a copy of the prior complaint in proof of that averment. The petitioner has stated in para 6 of his present petition:

"By sheer misrepresentation the counter-petitioner had made me believe that only Rs. 2,454/-are received but subsequently, when I found out the truth, I applied for necessary correction."

The non-production of a copy of the prior complaint becomes very significant in view of these diverse versions. It cannot be that the respondent is unaware of the consequence of not proving an allegation in a pleading.

7. The main contention advanced by counsel for the respondent was that after Ext. D-4 dated 16th February, 1945, the relation between the petitioner and the respondent was not that of pleader and client, but of debtor and creditor, of principal and agent only and that any mis-feasance or non-feasance in dealings in such new capacity cannot form the basis of a proceeding for professional misconduct. The pivot of this contention is Ext. D-4 letter written by the petitioner to one Chacko who had agreed to assign a mortgage of certain paddy fields intimating him that the money required has been entrusted to the respondent who will give him a draft of the conveyance to be executed. Nothing further took place in pursuance of Ext. D-4; and on 16th April, 1945. the petitioner had written Ext. D-1 letter to the respondent forbidding any payment to Mr. Chacko and requesting him to remit the amount to the petitioner immediately.

That amounts to an express revocation of any authority given to the respondent

to pay the amount to Mr. Chacko on assignment of his mort-gage to the petitioner. Even if a new relation had been established by the direction to pay the amount to Mr. Chacko that had been terminated by Ext. D-1, the nomination of Chacko as the representative of the petitioner to receive the amount implied in Ext. D-4 ceased with Ext. D-1, and thereafter the respondent was bound to have paid the amount in his hands to the petitioner himself. The respondent's duty to pay the petitioner the amount received as his pleader cannot be said to have been discharged in any way till "his account is settled" with the petitioner.

8. The District Judge has, on a discussion of the evidence adduced by both parties, found the respondent to have "acted in negation of the most elementary responsibilities of a lawyer towards his client and is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty". After hearing the lengthy discussion at the Bar we do not feel convinced of any error in those findings. We therefore accept them.

9. Public interest demands that members of the legal profession should stand free of suspicion; and that, if ever one is found to have betrayed the trust implied in his professional engagement, he should be dealt with severely. On the finding of fact arrived at, we think the respondent has to be suspended from practice for a period of two-years with effect from the date of service on him of a copy of this order by the Additional District Judge, Mavelikara. Order accordingly.