

(2004) 04 SC CK 0072

In the Supreme Court Of India

Case No : Civil Appeal No. 5476 of 1999

Noratanmal Chouraria

APPELLANT

Vs

M.R. Murli and Another

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Advocates Act, 1961 — Section 35, 38
Penal Code, 1860 (IPC) — Section 307

Citation : AIR 2004 SC 2440 : (2004) AIRSCW 2894 : (2004) 3 AWC 2167
Supp : (2004) 3 JCR 168 : (2004) 4 JT 552 : (2005) 2 LW 772 : (2004) 2 RLW
284 : (2004) 4 SCALE 755 : (2004) 5 SCC 689 : (2004) 1 SCR 266 Supp :
(2004) 3 Supreme 321 : (2004) 3 UPLBEC 2428

Hon'ble Judges : V. N. Khare, C.J.; S. H. Kapadia, J.; S. B. Sinha, J

Bench : Full Bench

Advocate : S.B. Upadhyay, R.R. Dubey and Shiv Mangal Sharma, for the
Appellant; T. Raja, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J

INTRODUCTION:

1. An order of the Bar Council of India dated 27.2.1999 passed in BCI TR No.73/1997 refusing to enquire into a complaint of purported misconduct on the part of the respondent herein is in question in this appeal preferred by the Appellant herein u/s 38 of the Advocates Act, 1961.

BACKGROUND FACTS:

2. The relationship between the appellant and the respondents herein is that of landlords and tenant. A rent control proceeding was initiated by the respondents against the appellant. While the rent control proceeding was pending in the small causes court, they allegedly misconducted themselves by reason of following acts of omissions and commissions:-

(1) On 8.10.1993 when the appellant came out of the court hall of the said court after attending the appeal pending there, the first respondent allegedly came from behind and hit him on his back and ran away.

(2) On 26.10.1993 while the appellant was coming out of the court hall, the first respondent accompanied with some rowdy elements threatened to kill him. The matter was allegedly reported to the police on the same day.

(3) On 1.3.1995 when the learned Xth Judge left for his chamber during the lunch break and while the appellant was leaving the court hall along with his advocate Shri S. Vijayranjan, the first respondent kicked him on the knee of his left leg in the court room with an intention to cause injury and further asked him not to appear in the court for evidence.

3. The disciplinary committee of the Bar Council of Tamil Nadu upon receipt of the said complaint of the appellant herein initiated a proceeding. The matter ultimately appeared to have been transferred to the disciplinary committee of the Bar Council of India.

Impugned Order of the Bar Council:

4. The disciplinary committee of the Bar Council of India noticed that in relation to the aforementioned acts of omission and commission on the part of the respondents, no criminal proceeding was initiated by filing a complaint petition by the appellant. No charge-sheet had also been filed by the police in relation to the occurrence dated 26.10.1993 where for an FIR had been lodged. It was further accepted that the first respondent had not been appearing in the aforementioned rent control proceedings as an advocate but as a party in person. Having regard to the fact that till the date of passing of the impugned order neither the appellant herein produced any document to substantiate any follow up action on his part in respect of complaint filed by him before the police authority, nor did he file any private complaint, the committee was prime facie of the view that the factum of occurrence of the said incidents are not reliable. Further, it was noticed that the first respondent appeared in the said litigation not as advocate but as litigant in person.

Submissions:

5. Mr. S.B. Upadhyay, learned counsel appearing on behalf of the appellant, inter alia, would submit that u/s 35 of the Advocates Act an advocate on the roll of the Bar Council can be proceeded against for committing any misconduct which may not be confined to professional misconduct; the Bar Council grossly erred in passing the impugned order. Strong reliance in support of the said contention has been placed on a decision of this court in D An Advocate of the Supreme Court reported in In Re: D an Advocate of The Supreme Court, . The learned counsel would contend that having regard to the fact that the first respondent assaulted the complainant, asked him not to proceed with the case and on the third occasion kicked him as a result whereof he fell down are clear pointers to the

fact that such acts are not expected of a member of a legal profession and, thus, the same must be held to be acts of misconduct. Learned counsel in support of said contention relied upon *Hikmat Ali Khan Vs. Ishwar Prasad Arya and others*, and *N.G. Dastane Vs. Shrikant S. Shivde and Another*, . Our attention has also been drawn to the preamble of the Bar Council of India Rules.

6. Mr. T. Raja learned counsel appearing on behalf of the respondents would, on the other hand, submit that the appellant herein had been harassing the respondent by initiating false cases and in fact the complaint in question against the respondents is the eighth one and no relief had been granted in the other seven complaints. Mr. Raja would urge that it is improbable that if an act of the nature complained of had taken place in a court room, the same would not be brought to the notice of the presiding officer. Neither any private complaint having been filed nor any proceeding in the criminal courts having been initiated by the appellant herein and further no evidence in support thereof having been produced before the Bar Council, the learned counsel would contend that the impugned orders should not be interfered with by this court.

Misconduct:

7. Misconduct has not been defined in the Advocates Act, 1961. Misconduct, *inter alia*, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behavior intentional wrong doing or deliberate violation of a rule of standard or behavior":

8. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law.

9. In *Delhi Cloth & General Mills Co. Ltd. v. Its Workmen* reported in (1969) 2 LLJ 755 Shah, J. stated that misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby.

10. This Court in *State of Punjab and Others Vs. Ram Singh Ex. Constable*, , noticed:-

"5. Misconduct has been defined in Black's Law Dictionary, sixth Edition at Page 999 thus:-

"A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness".

Misconduct in offence has been defined as :-

"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act".

11. P. Ramanath Aiyar's Law Lexicon, Reprint Edition 1987 at Page 821 defines 'misconduct thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment, Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillful ness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act and is necessarily indefinite. Misconduct in office may be defined as unlawful behavior or neglect by a public official, by which the right of party have been affected."

Thus it could be seen that the word 'misconduct' though not capable of precise of definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior; unlawful behavior, wilful in character; forbidden act a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-manner and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

12. [See also Probodh Kumar Bhowmick Vs. University of Calcutta and Others, and B.C. Chaturvedi Vs. Union of India and others, .

13. Section 35 of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of legal profession which is a noble one is expected to maintain a standard in dignified and determined manner. The standard required to be maintained by the member of the legal profession must be commensurate with the nobility thereof. A Lawyer is obligated to observe those norms which make him worthy of the confidence of the

community in him as an officer of the court. This Court in Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, observed:-

"The high moral tone and the considerable public service the bar is associated with and its key role in the developmental and dispute-processing activities and, above all, in the building up of a just society and constitutional order has earned for it a monopoly to practise law and an autonomy to regulate its own internal discipline."

14. Although the power of the Bar Council is not limited, the thrust of charge must be such which would necessitate initiation of disciplinary proceedings. A professional or other misconduct committed by a member of the profession should ordinarily be judged qua profession. To determine the quantum of punishment which may be imposed on an advocate, the test of proportionality shall be applied which would also depend upon the nature of the acts complained of. No universal rule thus can be laid down as regard initiation of a proceeding for misconduct of a member of the profession.

15. In 'M' an Advocate (supra), however, this court emphasized the requirement of maintaining a high standard stating:-

"As has been laid down by this Court in the matter of 'G', a Senior Advocate of the Supreme Court (A) (supra) the Court, in dealing with cases of professional misconduct is "not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to their men and which do not attach even to them in a non-professional character ...he (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable professional to whose privileges he has so long been admitted; and if he departs from the high standards which that professional has set for itself and demands of him in professional matters, he is liable to disciplinary action."

Application of the principle to the present case:

16. The disciplinary committee of the Bar Council of India is a statutory body. At the first instance the duty to arrive at a finding of facts in respect of complaint made against a member of the legal profession is upon it. This court although enjoys extensive and wide jurisdiction u/s 38 of the Act, the opinion of the Bar Council shall carry great weight. The appellant herein had lodged complaint with the State Bar Council on 5.3.1995 in relation to the 3 incidents allegedly occurred on 8.10.1993, 26.10.1993 and 1.3.1995.

17. The Disciplinary Committee had considered the conduct of the appellant herein in order to judge as to whether the acts on the part of the respondents amount to misconduct.

18. There was absolutely no reason as to why the appellant did not make any complaint to the State Bar Council immediately of the incidents which took place

on 8.10.1993 and 26.10.1993. If his contention to the effect that in relation to the incident dated 26.10.1993 he had lodged a first information report there was absolutely no reason as to why he did not pursue the same seriously. It is, as has been noticed by the Bar Council of India, accepted that the police filed final forms but despite the same the appellant did not file any protest petition or initiate any other proceeding before criminal court. In relation to the incident dated 1.3.1995 which allegedly took place inside the court room it was expected of the appellant or his advocate, who is said to be a retired district judge, to bring the same to the notice of the court. Even in relation to the incidents allegedly occurred on 8.10.1993 and 26.10.1993 no complaint was made before the presiding officer of the court. No proceeding was initiated in relation to the purported incident on 1.3.1995.

19. Can in the aforementioned fact situation, the findings of the Bar Council, be said to be so irrational meriting interference by this court is the question? We are of the opinion that it is not. We may further place on record that on a query made by us to Mr. Upadhyay as to whether any other incident had taken place after 1.3.1995, the learned counsel categorically stated that no such incident had thereafter taken place. We are, therefore, of the opinion that the matter need not be pursued further.

Case Laws:

20. Let us now consider the decision of this court cited at the Bar. In 'M' an Advocate (supra), this court was dealing with a case where an advocate who had been appearing in person had been an accused before a magistrate where his conduct was found to be such which amounted to commission of professional misconduct. He continuously and persistently attempted to hold up the trial and did everything in his power to bring the administration of justice in contempt. In the aforementioned fact-situation, it was held that the High Court was right in taking action against the advocate concerned.

21. In Hikmat Ali Khan Vs. Ishwar Prasad Arya and others, the concerned advocate assaulted his opponents with a knife. He was prosecuted and found guilty of commission of an offence u/s 307 of the IPC. In the aforementioned situation, it was held that the advocate deserves the extraordinary punishment of removal of his name from the state rolls of advocates.

22. In N.G. Dastane Vs. Shrikant S. Shivde and Another, an advocate in order to defend one of the accused persons before a magistrate sought for adjournments repeatedly and on 4.12.1993 an adjournment was sought on the premise that he was unable to speak on account of a throat infection and continuous cough but the complainant came across the said advocate "forcefully and fluently" arguing a matter before another court situated in the same building. Thereafter a complaint was lodged wherein a prime facie case was found to have been made out. This court directed the Bar Council of India to deal with the complaint.

23. The aforesaid decisions of this court are not applicable to the fact of the

present case.

Conclusion:

24. We are, therefore, of the opinion that no case has been made out for interfering with the impugned order.

25. This appeal is dismissed. But in the facts of the case there shall be no order as to costs.