
(2014) 07 MAD CK 0115

In the Madras High Court

Case No : Writ Petition Nos. 18478 and 18479 of 2009

R. Swaminathan

APPELLANT

Vs

Bar Council of Tamil Nadu

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Advocates Act, 1961 — Section 35, 36
Chartered Accountants Act, 1949 — Section 21
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120(b), 419, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2014) 7 MLJ 61

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—The petitioners are active practitioners of law, enrolled with the Bar Council of Tamil Nadu and Pondicherry. They have come up with these writ petitions, challenging the resolutions passed by the Bar Council of Tamil Nadu and Pondicherry, for referring the complaint made by the second respondent in these writ petitions, to the Disciplinary Committee of the Bar Council for disposal after due enquiry. I have heard Mr. R. Krishnamurthy, learned senior counsel appearing for the petitioners, Mr. S.R. Rajagopal, learned counsel appearing for the first respondent-Bar Council and Mr. R. Raghunandan, the second respondent appearing as a party-in-person.

2. These writ petitions were actually admitted on 10.9.2009 and an interim stay of further proceedings was also granted. After about four years, the writ petitions came up for final hearing before me. Though the second respondent was served with notice, he had not entered appearance. Therefore, the writ petitions were taken up for final disposal by me and by an order dated 05.4.2013, the writ petitions were allowed by me.

3. Thereafter, the second respondent herein came up with applications in Review Application Nos. 1 and 2 of 2014, seeking a review of the order passed by me on

05.4.2013 in both the writ petitions. The review was sought by the second respondent in these writ petitions, on the ground that he did not have an opportunity to contest the writ petitions. Therefore, by an order dated 10.3.2014, I allowed the review applications and re-called the order dated 05.4.2013 passed in both the writ petitions. Thereafter, the second respondent filed a counter to the main writ petitions along with a set of documents. Therefore, the writ petitions were heard, on the basis of the pleadings, documents filed by the petitioners and the second respondent and also the contentions advanced.

4. The brief facts leading to the filing of the above writ petitions are as follows:

(a) The second respondent herein lodged a complaint with the first respondent on 17.10.2008, against the petitioners in these two writ petitions. The gist of the complaint of the second respondent was that he is a shareholder of a Company by name Sri Krishna Tiles and Potteries (Madras) Limited. The said Company owned land of the extent of about 34 acres. According to the second respondent, the said property is the subject matter of a series of litigation, including civil suits, writ petitions etc. But it appears that the said property was sold to a Company by name Ozone Projects Private Limited, by two Sale Deeds registered as document Nos. 981 and 982 of 2006. The grievance of the second respondent is that the purchaser obtained legal opinion from the writ petitioners herein who are Advocates. On the basis of the legal opinion tendered by the writ petitioners to the purchaser, the property was purchased. According to the second respondent, the act of the writ petitioners in advising their clients to purchase the property involved in litigation, amounted to a professional or other misconduct.

(b) The complaint filed by the second respondent on 17.10.2008 against the writ petitioners, was taken on file by the Bar Council as complaint No. 125 of 2008. The Bar Council issued notices to the writ petitioners and the writ petitioners filed their objections to the complaint lodged. The complaint filed by the second respondent and the objections filed by the writ petitioners were placed before the Bar Council in its meeting held on 21.6.2009.

(c) In the meeting, the Bar Council passed a Resolution bearing No. 45 of 2009. The Resolution reads as follows:

"On perusal of the complaint and reply, it appears that the complaint relates to grabbing of land. The respondent appears to have abetted the deal by giving wrong legal opinion. The allegation made against the respondent is being a serious one, needs to be investigated in detail. Therefore, the Council has reason to believe that the respondent-Advocate is guilty of professional misconduct and hence it is resolved to refer the complaint to the Disciplinary Committee for disposal after due enquiry."

(d) On the basis of the above Resolution, the files were forwarded to the Disciplinary Committee. The Registrar of the Disciplinary Committee thereafter

issued a notice of hearing under Rule 5, read with Sections 35 and 36 of the Advocates Act, 1961 in D.C.C. No. 6 of 2009, calling upon the petitioners to submit a statement of defence and informing them of the date of enquiry. Immediately, the petitioners have come up with the above writ petitions.

5. At the outset, it should be pointed out that the second respondent, who was the complainant before the Bar Council, was not the client of the writ petitioners. Even according to his complaint, he was only one of the several shareholders of a Company, whose property was purchased by another Company, on the basis of the legal opinion tendered by the writ petitioners. In other words, the petitioners were not the complainant's Lawyers. The petitioners and the second respondent never had any jural or contractual relationship of lawyers and litigant. Therefore, I do not know how the second respondent could make a complaint of professional misconduct of giving a wrong opinion against the petitioners herein, when the clients of the petitioners were satisfied with such an opinion and have not raised an issue so far. This is an aspect which the Bar Council appears to have completely overlooked before passing a Resolution to refer the matter to the Disciplinary Committee.

6. As and when a complaint is made against any Advocate, by a litigant alleging professional misconduct, the Bar Council is obliged to consider at least, prima facie, whether the allegations constitute a professional or other misconduct. Sections 35 of the Advocates Act, 1961, enables the Bar Council to inquire into (i) complaints of professional misconduct and (ii) complaints of other misconduct. In the case on hand, the second respondent has not alleged against the petitioners, any "other misconduct". He has alleged professional misconduct against the petitioners. But he did not have any relationship with the petitioners.

7. The expression "misconduct" is not defined in the Act. Therefore, the Supreme Court held in *R.D. Saxena Vs. Balaram Prasad Sharma*, that the word "misconduct" is a relative term and that it had to be considered with reference to the subject matter and the context in which it appears.

8. It is true that in *R.D. Saxena v. Balram Prasad Sharma* (supra), as well as in *D.P. Chadha Vs. Triyugi Narain Mishra and Others*, , the Supreme Court held the expression "misconduct" to have a wide connotation. It need not necessarily involve moral turpitude. But it has to be understood with reference to the subject matter and the context in which it is employed.

9. In *Noratanmal Chouraria Vs. M.R. Murli and Another*, an Advocate was a party litigant in a Rent Control Proceeding. The opposite party made a complaint to the Bar Council that as a party appearing in the Rent Control Proceedings, the Advocate entered into an altercation with him. The Bar Council refused to entertain the complaint, as the conduct complained of, was not against any act of omission or commission by the Advocate in his professional capacity. The opposite party appealed. The Supreme Court dismissed the appeal, pointing out that to constitute misconduct, there must be improper behaviour or intentional

wrong doing or deliberate violation of a rule or a standard of behaviour.

10. As pointed out earlier, the second respondent herein did not engage the services of the petitioners, for rendering any professional assistance. On the contrary, the petitioners were engaged by persons against whom the second respondent herein is actually waging a war over a property. Therefore, if any action is initiated against the petitioners, on a complaint made by a person like the second respondent, against whose interests the petitioners are engaged as advocates, no advocate can carry out his professional duties and responsibilities without fear. A professional is obliged to render services to his client. The services rendered by an Advocate to his client, would naturally invite the displeasure and wrath of such client's opposite party. Therefore, if parties to a litigation are allowed to take up the battle to the door steps of the counsel for the opposite party, the profession itself will be in jeopardy.

11. Moreover, it is highly doubtful if a legal opinion given by an Advocate could constitute misconduct at all. An opinion is always an opinion and even if that opinion turns out to be wrong, in the course of a judicial proceeding, an allegation of professional misconduct cannot be made against an Advocate. If at all, anyone could make such an allegation against an Advocate for a wrong or improper legal opinion tendered by him, it would be his own client and certainly not the party against whom the litigation is fought.

12. Under identical circumstances, S. Nagamuthu, J., quashed the disciplinary proceedings initiated against an Advocate, in N.S. Varadachari Vs. The Bar Council of Tamil Nadu and Others, . In that case also, the Advocate concerned gave a legal opinion to his client for the purchase of a property. With that person, some third parties entered into agreements. Thereafter, they came up with a complaint on the ground that the legal opinion given by the counsel to his client was defective. While quashing the said complaint, the learned Judge referred to the decision of the Full Bench of this Court in U. Dakshinamoorthy Vs. The Commission of Inquiry, presided over by the Hon'ble Mr. Justice C.J.R. Paul, constituted under G.O. Ms. No. 695, Public (Law and Order-A) and Others, and the decision of the Supreme Court in Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Others, .

13. Mr. R. Raghunandan, the second respondent appearing in person has filed a counter affidavit running to about 45 pages. He has also filed a huge volume of papers, containing the details of the litigation in which he is involved. Though it may not be absolutely necessary to go into the details of the litigation in which the second respondent is involved, I am constrained to have a peep into the same, in view of the nature of the allegations made in the voluminous counter.

14. The second respondent has claimed, in his counter affidavit, to be a Senior Fellow Member of the Institute of Chartered Accountants of India and an Economist as well as an Investment Banker. He has extensively quoted in his counter affidavit, various decisions of various Courts, including the Supreme

Court. Not stopping at that, the second respondent has repeatedly mentioned the names of several Judges of this Court as well as several Advocates and Senior Advocates of this Court in his counter affidavit. It appears from the counter affidavit filed by the second respondent that he is a seasoned litigant and a Court-bird, haunting and taunting not only persons against whom he is fighting a series of litigation, but also his own lawyers and lawyers on the opposite side. As seen from the counter affidavit, the second respondent is represented in some cases by some senior counsel as well as other counsel. But, in some cases, he is appearing as a party in person. The names of several lawyers of this Court as well as that of the Supreme Court, who appear for him as well as against him, find a place in his counter affidavit. The counter affidavit also discloses another interesting fact, namely that the second respondent has not spared even the members of his own profession. He seems to have filed a writ petition in W.P. No. 4353 of 2008 under Section 21 of the Institute of Chartered Accountants Act, against CNGSN and Associates, alleging that they were guilty of conducting improper diligence on a property plagued by family disputes. It appears that one of the partners of the said firm of Chartered Accountants filed a criminal complaint for defamation against the second respondent, after which the second respondent withdrew his writ petition. This is stated by the second respondent in paragraph 14 of the counter affidavit, which requires to be extracted.

"Again I bring to the attention of this Hon"ble Court that as a senior member of the Institute of Chartered Accountant of India, I filed a writ petition in W.P. No. 4353/2008 under Section 21 of the Chartered Accountant Act in Delhi High Court against Mr. S. Neelakantan, F.C.A. of CNGSN and Associates, Chartered Accountants, for conducting an improper diligence review on a property plagued by family disputes and lis pendens to order an investigation by the Institute of Chartered Accountants of India to be directed by the Delhi High Court. The said Neelakantan filed in the Court of XVII Metropolitan Magistrate criminal defamation suit while the matter was pending with the Institute of Chartered Accountants of India, we ourselves withdrew the case from the purview of the institute to pursue this case and vindicate truth which is subsisting even now."

15. From the counter affidavit filed by the second respondent, it appears that the genesis of his litigation with the other members of his family as well as third parties, started in 1998 with a Memorandum of Agreement and family settlement entered into on 04.7.1999 between a company by name Sri Krishna Tiles and Potteries (Madras) Private Limited and two groups of shareholders of the same company, who claimed to hold 94% of the equity shares in the company. It appears that 17 other persons who were not part of the two groups of family members, also held about 5-12% of the shares in the company. The second respondent herein was one among those 17 persons, who, together held 2865 equity shares out of a total of 56026 shares in the company Shri Krishna Tiles and Potteries (Madras) Private Limited.

16. It appears that another company by name M/s. Ozone Projects Private

Limited purchased the land of an extent of about 42.53 acres from the said company Shri Krishna Tiles and Potteries (Madras) Private Limited under various sale deeds dated 02.3.2006. Ever since the date of purchase, the parties are plunged into a series of litigation, to some of which the second respondent herein is a party. The details of the litigation in which the second respondent is involved, in respect of the property sold by M/s. Shri Krishna Tiles and Potteries (Madras) Private Limited are tabulated for easy appreciation as follows:

17. It is seen from the above tabulation that the second respondent herein, who holds a minuscule minority of shares in the company which owned the property in question, is waging a huge war against the company and the majority shareholders. In the first suit filed by him, he claims to be holding 4% of the equity shares. In the counter affidavit now filed in this writ petition, he claims to be holding about 10% of the shares. I do not wish to get into the question as to what percentage of shares the second respondent holds in the company that sold the property. But, his grievance, as seen from his counter affidavits is that the petitioner should have directed his client to negotiate with him. Therefore, the complaint of the second Respondent is nothing but frivolous.

18. It is a matter of record that one of the writ petitioners Mr. V. Kuberan is appearing as a counsel for the company which purchased the property and is developing and promoting the same, in all the proceedings mentioned in the table above. Therefore, the complaint given by the second respondent herein, as against the petitioners, is obviously to cause a collateral damage to the other side. It appears that the second respondent wants to silence the professionals taking up the cause of his opponents. The second respondent has not spared even the members of his own profession, who did due diligence for the company which purchased the property from the opponents of the second respondent herein. Unfortunately, the Bar Council has fallen a prey to the devious tactics adopted by the second respondent in attacking the professionals who advised his opponents.

19. Mr. R. Raghunandan, the second respondent appearing in person, relies upon certain decisions:

(a) In Mangu Srihari Vs. Bar Council of State of Andhra Pradesh and Another, , there was a civil dispute between the complainant and the lawyer and his wife with regard to the title to a property. There were common allegations that the advocate had fabricated the documents. It was in that context that a Division Bench of the Andhra Pradesh High Court went into a question whether parallel proceedings could be permitted or not. The ratio laid down in that judgement has nothing to do with the case on hand. The second Respondent herein has no dispute with the petitioners herein except that the petitioners happened to be advising the opponents of the second Respondent.

(b) In C. Dinakar Vs. Karnataka State Bar Council, , a learned Judge of the Karnataka High Court was concerned with a case where the advocate concerned

was formerly the head of the Karnataka State Police Force who later became an advocate. The person who gave a complaint against him in the Bar Council was also a former Director General of Police. The complaint given to the Bar Council was that the lawyer assaulted the complainant, wearing lawyer's robes and that in a press conference, the lawyer distributed copies of a matrimonial petition filed by the complainant's wife. The Karnataka High Court refused to set aside the notice, on the ground that there were allegations of assault etc., which had to be gone into. But in the case on hand, the second Respondent herein does not have, even according to his own statement, any personal animosity with the petitioners. The only grievance of the second Respondent is that the petitioners ought not to have given the legal advice that they actually gave to their clients.

(c) In *A.K. Subbaiah Vs. Karnataka State Bar Council and Others*, , the Supreme Court was concerned with a complaint given by a person, whose father was the client of the lawyer concerned. The complainant's father died, but no steps were taken to bring on record the legal representatives of the deceased person. Therefore the writ petition filed by him was dismissed as abated. Hence a complaint was made by the client's son against the counsel. It is in these circumstances, that the Karnataka High Court refused to uphold the challenge to the initiation of proceedings by the Bar Council. That case was a clear case of a dispute between the lawyer and his client's son. Therefore the ratio laid down therein has no application to the case on hand.

(d) In *Supreme Court Bar Association Vs. Union of India and Another*, , the Supreme Court was concerned only with the question whether the Court can debar an advocate from practice for a specific period, as a measure of punishment for established contempt of Court or not. The Constitution Bench held that it was within the exclusive domain of the Bar Council to deal with the professional misconduct of a lawyer and not for the Court to suspend the licence, as a measure of punishment. Therefore this decision is also of no relevance to the case on hand.

(e) In *P.D. Gupta Vs. Ram Murti and Another*, , the main question which the Supreme Court was concerned with, was as to whether a lawyer could purchase a property from his client, when that property was the subject matter of dispute in a Court of law. This question was answered against the lawyer by the Supreme Court in paragraph 14 of its decision, holding that his conduct in buying the property subverted the process of justice. But in this case the petitioners herein have not purchased any property from their client.

(f) In *Union of India (UOI) and Others Vs. Gulshan Bajwa*, , the case of an advocate was referred by the Supreme Court to the Bar Council, on the ground that he was guilty of contempt of Court. I do not know how the second respondent places reliance upon this decision.

(g) In *Ramniklal Tulsidas Kotak and others Vs. Varsha Builders and others*, , a learned Judge of the Bombay High Court was concerned with a civil suit and not

any disciplinary proceedings initiated by the Bar Council against any lawyer. While passing orders in the civil suit, the learned Judge of the Bombay High Court indicated the duties and responsibilities of lawyers before issuing certificates of title to their clients. The learned Judge also held that if an advocate issues a certificate of title without proper verification and if any party suffers any injury by following such certificate of title, the lawyer is obliged to indemnify the client. Therefore this case is also not on the question whether a party to a litigation can accuse the lawyer appearing for his opponents, of misconduct.

Therefore, none of the decisions relied upon by the second respondent, is of any assistance to him.

20. In *Allinson v. General Council of Medical Education & Registration*, (1894) 1 QB 750, the Court defined misconduct as "infamous conduct in a professional respect." It was observed therein: "If it is shown that a medical man, in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council to say that he has been guilty of infamous conduct in a professional respect." This definition of misconduct with reference to the practitioners of medicine. was adopted by Darling, J for the practitioners of the profession of law, In *Re, A Solicitor Ex parte the Law Society*, (1912)1 KB 302. The Privy Council approved of this definition in AIR 1936 224 (Privy Council). The Supreme Court also adopted the same.

21. If the test laid down in *Allinson* and adopted by DARLING, J., is applied, it could be easily discerned that the petitioners did nothing which could be regarded as disgraceful or dishonourable, so as to constitute infamous conduct in a professional respect. The petitioners herein advised their own clients, with regard to the title to a property. The second Respondent herein, has a battery of lawyers, both juniors and seniors, to provide him back up energy, to prepare the pleadings and also argue the cases. In some cases, the second Respondent is appearing as a party-in-person. All his pleadings are littered with (1) the names of several Judges of this Court and of the Supreme Court (2) the names of several Advocates appearing for him as well as for his opponents and (3) extracts of several decisions rendered by various High Courts and Supreme Court. Till date, the second Respondent has not been able to establish, before any Court or other forum that the clients of the petitioners have no title or at least a defective title to the disputed property and that therefore by necessary inference, the legal opinion or advise given by the petitioners to their clients was wrong or improper. Therefore the second Respondent cannot be allowed to take this war from his opponents" camp to that of their lawyers.

22. As a matter of fact, no advocate can be found fault, for a wrong legal advise. In *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra* (supra), the Supreme Court pointed out that "there is world of difference between the giving

of improper legal advise and the giving of wrong legal advise." In the same decision, the Supreme Court pointed out that when an advocate is entrusted with a brief, he 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 and that "the Counsel's paramount duty is to the client". The Supreme Court pointed out that for an advocate to act towards his client otherwise than with utmost good faith is unprofessional. Therefore what the petitioners have done to their clients, is only in the due discharge of their professional duties. A person who is in the opposite camp cannot take exception to this.

23. In Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, , the Supreme Court was concerned with an appeal filed by the Central Bureau of Investigation against a decision of the Andhra Pradesh High Court, quashing the criminal proceedings against an Advocate, who was arrayed as sixth accused in a special case filed for various offences punishable under Sections 120(b), 419, 420, 467, 468, 471, IPC, read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. The gist of the complaint against several officers of the bank and the borrowers of the bank was that the officers of the bank, the borrowers and the advocate colluded with each other and defrauded the bank by getting housing loans sanctioned and disbursed to about 22 borrowers. The specific charge against the advocate was that he was a panel advocate for Vijaya bank and that he gave a false legal opinion in respect of 10 housing loans. The advocate filed a petition under Section 482, Cr.P.C. on the file of the Andhra Pradesh High Court for quashing the proceedings and the High Court allowed the petition. When the Central Bureau of Investigation took the matter on appeal to the Supreme Court, the Supreme Court pointed out in paragraph 23 of its decision that a lawyer does not tell his client that he shall win the case in all circumstances. Like a surgeon who cannot and does not guarantee the result of any surgery, a lawyer does not guarantee the result. The only assurance that a professional can give is that he is possessed of the requisite skill in that branch of profession which he is practising and that while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. Therefore, the Supreme Court, after referring to the decision in Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay (supra), held that a professional can be held liable for negligence only on one of the two findings, namely (a) either that he was not possessed of the requisite skill that he professed to have possessed, or (b) that he did not exercise with reasonable competence, the skill which he did possess. Not stopping at that, the Supreme Court pointed out in paragraph 27 that a lawyer owes an "unremitting loyalty" to the interests of his client and that it is the lawyer's responsibility to act in a manner that would best advance the interest of his client. The Supreme Court pointed out that even if his opinion may not be acceptable (to his own client) he cannot be mulcted with liability. When such is the case, the second respondent cannot accuse the petitioners of misconduct merely because their opinion to their own clients, was not palatable

or in tune with his own interests.

24. As I have pointed out earlier, what the second Respondent expected from the petitioner in W.P. No. 18479 of 2009, is spelt out by him in paragraph 7 of his counter affidavit to that writ petition, which reads as follows:

"It is not my case that the petitioner rendered any professional service to me and that there is counsel-client relationship between the petitioner and myself. The petitioner gave legal opinion in respect of the property in which I am having a share and based on that legal opinion, sale transaction took place and they are promoting flats in the above property involving innocent public. Therefore, due to the legal opinion given by the petitioner, I was put to severe hardship since it affects my rights in the property."

25. Similarly, what the second Respondent expected from the petitioner in W.P. No. 18478 of 2009, is spelt out by him in paragraph 25 of his counter affidavit to that writ petition, which reads as follows:

"The petitioner do admit that the company is the owner of the property in which I am having a share. Therefore, he should have advised the purchasers to have negotiations with me with regard to the sale of the property before giving legal opinion. The petitioner cannot claim that he is a counsel appearing for the company defending in the cases. Admittedly based on the wrong legal opinion given by the petitioner, the sale deeds were executed. The sale deeds were drafted by Mr. N. Kishorekumar, who is appearing for the petitioner in the present writ petition. Therefore it is not known as to whether the counsel for the petitioner who drafted the sale deeds and who is also involved in all the transactions, can represent the petitioners in the present writ petition."

26. From the portion of the counter affidavits of the second Respondent extracted above, it is clear that the second Respondent is unhappy about the petitioners continuing to appear for their clients. This shows that the complaint made by the second Respondent against the petitioners before the Bar Council, is motivated, with a desire to keep the petitioners away from their clients. The Bar Council ought to have seen this game plan on the part of the second Respondent. No litigant can be permitted to intimidate a lawyer appearing for his opponent. If a litigant does so, it will pollute the stream of administration of justice. Allowing the Bar Council to proceed with the enquiry into the complaint lodged by the second Respondent against the petitioners will only weaken the morale of the petitioners and prevent them from the honest and courageous discharge of their duties to their own clients. Such a sinister move on the part of the second Respondent cannot be permitted.

27. Therefore the writ petitions deserve to be allowed. They deserve to be allowed with exemplary costs in view of several facts. In the counter affidavits filed by the second Respondent in both the writ petitions, he has (1) mentioned the names of several Judges of this Court as well as other High Courts and (2) mentioned the names of several advocates who have either appeared for

different parties including the second Respondent himself or given opinion in the property litigation in which the second Respondent is involved. The object of the second Respondent, as I have stated earlier, is not really to cleanse and purify the legal profession, but to silence the advocates who appear for his opponents, so that his property litigation could be won on a different turf. Therefore I am constrained to impose exemplary costs. Accordingly the writ petitions are allowed. The second respondent shall pay costs of Rs. 50,000/- to each of the petitioners in view of the facts and circumstances stated above.