
(2005) 08 CAL CK 0029
In the Calcutta High Court
Case No : Writ Petition No. 1393 of 2005

Samarjit Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-08-2005

Acts Referred:

Advocates Act, 1961 — Section 35, 36B
Criminal Procedure Code, 1973 (CrPC) — Section 144, 340

Citation : (2006) 1 CALLT 102

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; Subrata Mukherjee and Sumon Ghosh and T.K. Chatterjee,, U.K. Mjumdar and Sujay Bandyopadhyay, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The Court: The writ petitioner, a practising advocate of this Court and appearing in person, is aggrieved by the notice dated April 8, 2005 issued by the disciplinary committee of Bar Council of West Bengal. By it the committee notified to the petitioner that it would hold a meeting on April 20, 2005 to enquire into and dispose of Case No. 20 of 2002.

2. Facts of the case are these. In a case filed by the fourth respondent u/s 144 of the Code of Criminal Procedure, 1973 the fifth respondent was an opposite party. Feeling aggrieved by an order dated April 10, 2002 made in that case by the executive magistrate, the fifth respondent, engaging the petitioner as his advocate-on-record, took out a criminal revision application before this Court: it was disposed of by Debi Prasad Sengupta, J. on May 7, 2002. The petitioner communicated the gist of the order to the executive magistrate, who, by order dated May 8, 2002, disposed of the case.

3. Feeling aggrieved, the fourth respondent then took out a criminal revision application before this Court. This time also the fifth respondent engaged the petitioner as his advocate-on-record. The application of the fourth respondent

was also heard by Debi Prasad Sengupta, J. His Lordship disposed of it by order dated May 21, 2002 holding, inter alia, that the petitioner had deliberately made a wrong communication of the order dated May 7, 2002 to the executive magistrate; and that the order communicated by the petitioner had never been made.

4. In the circumstances, the fourth respondent filed an application before the executive magistrate u/s 340 of the Code of Criminal Procedure, 1973. On receipt of notice, the petitioner challenged the proceedings by filing Writ Petition No. 11726 (W) of 2002. By order dated September 17, 2002 Pinaki Chandra Ghose, J. was pleased to set aside the notice holding that the executive magistrate had no jurisdiction to initiate the proceedings and issue the notice.

5. During pendency of that writ petition, the petitioner received a notice from Bar Council of West Bengal dated September 4, 2002 asking him to submit his comments in relation to a complaint filed before the council by the fourth respondent. By filing a supplementary affidavit the petitioner brought such fact on record of that writ petition. After considering the supplementary affidavit. Pinaki Chandra Ghose, J. was pleased to dispose of the writ petition by order dated October 3, 2002.

6. His Lordship ordered: "If the West Bengal Bar Council finds any reason in the order then they will take necessary steps in the matter and to issue notice to the petitioner and shall proceed in the matter. If the bar Council is satisfied in accordance with law, it shall give hearing to the petitioner and shall place the fact before the said authorities, if occasion so arises. The writ application is disposed of."

7. Thereafter by a letter dated May 28, 2003 the council asked the petitioner to submit his comments, if any, regarding the complaint filed by the fourth respondent. The petitioner responded by writing letter saying that in view of observations made by Pinaki Chandra Ghose, J., at the time of disposing of his writ petition, the council should treat the matter as closed. He, however, wanted some time to appear before the council for explaining the matter.

8. As will appear from the opposition filed by the council, it decided to refer the matter to its disciplinary committee on June 18, 2004. The disciplinary committee of the council has chosen not to file any opposition, though liberty was given to it for the purpose. As will appear from the reply filed by the petitioner (to the opposition of the council), the disciplinary committee of the council issued a notice dated July 12, 2004 informing the petitioner that in connection with the proceedings a meeting of tile committee would be held on July 29, 2004. In its opposition the council has claimed that the disciplinary committee initiated the proceedings on August 17. 2004.

9. It seems to me that the matter did not progress before the disciplinary committee that issued the last notice dated April 8, 2005 stating that meeting would be held on April 20, 2005. Before taking out this writ petition dated June

28, 2005 challenging this notice, the petitioner had appeared before the committee and participated in the proceedings; he questioned the power of the committee to proceed with the matter. By order dated July 5, 2005 the writ petition was admitted, but no interim order was made. The admitted position is that the proceedings before the disciplinary committee, are yet to be concluded.

10. The petitioner first argues that the proceedings, initiated on the basis of adverse remarks, made by Debi Prasad Sen gupta, J. in his Lordship's order dated May 21, 2002 without giving him any opportunity to defend himself, are liable to be quashed, because the order, as to the remarks, is to be considered a nullity in the eye of law for all purposes whatsoever. He then argues that he is entitled to invoke the writ jurisdiction of this Court for expunction of the adverse remarks. He says that the order, in so far as the adverse remarks are concerned, was obtained by the fourth respondent by practising fraud on the Court.

11. He refers me to the Apex Court decisions in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , and State of A.P. Vs. S. Janardhana Rao, ; and says that an order obtained by practising fraud, being a nullity in the eye of law, can be challenged in any proceedings where it is sought to be enforced. As to the power of the writ Court to expunge the adverse remarks, he cites to me the Apex Court decisions in The State of Uttar Pradesh Vs. Mohammad Naim, ,Manfsh Dixit & Ors. v. State of Rajasthan [(2001)1 SCC 596], and in the matter of In the Matter of: K, a Judicial Officer, ; and argues that this Court, being a Court of record, possesses the inherent power to expunge the adverse remark.

12. In my view, the relief; if any, regarding expunction of the adverse remarks would have been available to the petitioner either before Debi Prasad Sengupta, J., or before the Apex Court, but he is not entitled to invoke the writ jurisdiction of this Court for the purpose. To my mind, It is totally against judicial comity to entertain a writ petition for such a purpose; when the person aggrieved, in ordinary course, is supposed to approach the same sitting judge who made the adverse remarks against him. I am also of the view that when the adverse remarks were made by this Court while exercising criminal revisional jurisdiction, for their expunction, the petitioner, while was (and may be still is) entitled to invoke the same jurisdiction, is, however, not entitled to invoke its writ jurisdiction.

13. I am unable to agree with the petitioner that in view of the authorities I am referred to, in exercise of my writ powers, I should examine the question of expunging the adverse remarks. In none of them it was held that the writ jurisdiction of a High Court can be invoked, seeking expunction of adverse remarks made by a judge of the same High Court against anyone while exercising the criminal revisional jurisdiction of such Court. Hence I am unable to entertain the contention of the petitioner connected with expunction of the adverse remarks, and I think, as a result there is no scope to make any comments regarding the merits of the contention.

14. The petitioner's second contention is that having regard to the conduct of the fourth respondent, as will appear from the grievance narrated in his complaint filed before the council, and the prayers made therein, I should exercise writ powers to quash the proceedings. In my view, there is no reason to entertain and examine such a contention; it should be left unexamined for decision of the statutory body that is empowered to examine the facts connected with the conduct of the complainant and record appropriate findings.

15. The petitioner next argues that in view of order of Pinaki Chandra Ghosh, J. dated October 3, 2002, the council was not authorised to refer the case to its disciplinary committee without hearing him and recording reasons why it believed that he had been guilty of professional or other misconduct. I do not find any merit in the contentions.

16. The duty of the council to refer the case to its disciplinary committee has been cast by section 35 of the Advocates Act, 1961. It has not created any right of the advocate concerned to be noticed and heard before the reference is made by the council. There is no reason to say that order dated October 3, 2002 created such a right of the petitioner. All Courts are presumed to pass orders only according to law; they therefore do not admit of any interpretation in favour of creation of a right, not created by the law concerned. What his Lordship meant is opportunity of hearing should be given by the appropriate authority at the appropriate stage.

17. As to the requirement of recording reasons why the council believed that the petitioner had been guilty of professional or other misconduct, I think, quoting what their Lordships of the Apex Court said in Bar Council of The Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, is enough to say that there is no merit in the contention. In para 4 of the report it was said, "The requirement of 'reason to believe' cannot be converted into a formalised procedural road block, it being the resolution of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the disciplinary committee, that it had reason to believe, as prescribed by the statute."

18. The petitioner then argues that the proceedings were initiated by the council on September 4, 2002, and hence at the expiration of one year from that date, the legal fiction contemplated by section 36B of the Advocates Act, 1961 stood automatically activated; and as a result the disciplinary committee of the council lost its power to proceed with the matter. His argument is that for such lack of power of the committee to proceed with the matter, the impugned notice dated April 8, 2005 is liable to be quashed. In support of this contention he gives me the Apex Court decisions in Supreme Court Bar Association Vs. Union of India and Another, , and Daya shankar v. O.T. Aldons (2004) 10 SCC 148.

19. Although I am unable to agree with the petitioner that the proceedings in question should be deemed to have been initiated on September 4, 2002 when the council issued notice for the first time, I think, his contention that the

disciplinary committee of the council is no longer empowered to proceed with the matter should succeed. The proceedings are not initiated before the council: they are to be initiated, if at all, by the council before its disciplinary committee concerned; the committee also does not initiate them. These are what the two relied on authorities say.

20. u/s 35 of the Advocates Act, 1961 the council is the authority to receive the complaint, but it is not the authority to impose any of the punishments mentioned in its sub-section(3). The council is to examine the complaint and form an opinion whether it should be referred to its disciplinary committee: if it forms an opinion, and consequently sends the complaint to the committee, it can perform such functions without noticing or involving anyone for any purpose whatsoever. But the committee, after receipt of the complaint, is not only under the statutory to dispose of the proceedings within one year from the date of receipt of the complaint, but is also under the obligation to give requisite notices to the parties concerned. So what is significant is the date at which the council initiates the proceedings before its disciplinary committee or the committee receives the complaint concerned from the council.

21. There is no dispute in this case that the complaint against the petitioner had been received by the disciplinary committee from the council at some date prior to July 12, 2004. The admitted position is that within one year from that date the committee failed to conclude the proceedings. This being the admitted factual position, I think, the legal fiction created by section 36B stood automatically activated, and by operation of law the proceedings stood transferred to Bar Council of India. Hence, even if it is held that on April 8th, 2005 the committee possessed the requisite power to issue the impugned notice, today it has no power to proceed with the matter. To be more precise, it can be said that after July 12, 2005 the disciplinary committee of Bar Council of West Bengal lost its power to proceed any further with the matter.

22. For these reasons I dispose of the writ petition declaring that after July 12, 2005 the disciplinary committee of Bar Council of West Bengal has lost its power to proceed any further with the proceedings (Case No. 20 of 2002), and that by operation of the legal fiction created by section 36B of the Advocates Act, 1961 the proceedings automatically stood transferred to Bar Council of India. There shall be no order for costs in the writ petition.

All parties shall act on a signed xerox copy of this Judgment and order and also on an urgent certified xerox copy thereof, both to be supplied on the usual undertaking.