
(2022) 12 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition (L) No. 9659 Of 2022, IN-Person Application (L) No. 9661 Of 2022

Shobha Venkatesh Shet

APPELLANT

Vs

Sudhir N. Sindhe

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Advocates Act 1951 — Section 8A, 35, 35(1)
Indian Penal Code, 1860 — Section 500, 506
Code Of Criminal Procedure, 1973 — Section 345

Citation : (2022) 12 BOM CK 0026

Hon'ble Judges : Dhiraj Singh Thakur, J;Valmiki S. M. Modak, J

Bench : Division Bench

Advocate : Shobha V. Shet, Makarand Bakore, S. R. Nargolkar, Arjun Kadam

Final Decision : Dismissed/Disposed Of

Judgement

S. M. Modak, J

1. Considering the short controversy involved, we have heard the Petitioner in-person, learned Advocate Mr. Makarand Bakore for the Respondent No. 2-Bar Council of Maharashtra and Goa and learned Advocate Mr. S. R. Nagolkar, for the Respondent No. 3-The High Court Administration.

2. Heard. Rule. Rule made returnable forthwith. By consent of all parties the matter is heard finally.

3. The only issue involved in this petition is whether the Petitioner is denied right of hearing, when Special Committee of the Bar Council of Maharashtra and Goa has decided to initiate suo-moto enquiry against her and referred the complaint to the Disciplinary Committee on 17/06/2019. According to her, Special Committee while initiating suo-moto enquiry, has breached its own resolution No. 187 of 1978 dated 24/06/1978. The resolution is in two parts.

The first part says about screening of any complaint by Chairman or Member

authorized by the Chairman prior to placing it before the Bar Council as contemplated under Section 35(1) of the Advocates Act 1951.

Part two says about calling all parties and ascertain their rival versions. It is reproduced below :-

"Resolved Further that the Chairman or any other Member authorized by him may in appropriate cases and as far as practicable, call the parties and ascertain their rival version or forward a copy of the complaint to the Advocate concerned for comments, so that appropriate material is available to the Bar Council to consider whether the complaint should be summarily dismissed or the same should be referred to the Disciplinary Committee for enquiry."

4. According to the Petitioner, the Special Committee ought to have heard her. Whereas according to the Bar Council, the Special Committee has taken suo-moto cognizance. He relied upon the provisions of Section 35 of the Advocates Act. It says about referring the case by State Bar Council to its Disciplinary Committee. He emphasized on taking cognizance in two manners.

One is on receipt of a complaint and Secondly, otherwise than on receipt of the complaint.

5. According to him, only pre-condition is satisfying test of "as reason to believe". He relied upon the following two judgments:-

(i) Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra Bombay and Others (1984) 2 SCC 556.

(ii) R. D. Saxena Vs. Balram Prasad Sharma (2000) 7 SCC 264.

6. That is how one of the prayer is to quash and set aside the notice dated 17/06/2019. She has also prayed for taking disciplinary action against the Respondent No.1-learned Metropolitan Magistrate, Court No.32, who was working at that time and who has referred the issue to Bar Council.

7. This is opposed by the Respondents, for the reason that disputed question of facts are involved and there is no violation of principles of natural justice and the Hon'ble Chief Justice has already dismissed the complaint filed by the Petitioner against the Respondent No. 1.

Background

8. Little background needs to be stated. The Petitioner has filed private complaint before the Court of Metropolitan Magistrate, 37 th Court, Bandra against two private persons for the offences punishable under Sections 500 and 506 of the Indian Penal Code. After full-fledged trial, the complaint was dismissed on 12/03/2019. According to the Petitioner, this Judgment of acquittal has disturbed her and that is how she wrote a letter to the learned Magistrate on 28/03/2019. There were certain remarks against the learned Metropolitan Magistrate and they were inappropriate. Hence learned Magistrate wrote a letter dated 30/03/2019 to

the President Bar Council of Maharashtra and Goa thereby requesting to take appropriate action under the law. Copy of the minutes of meeting of the Special Committee dated 05/05/2019 is filed on record. It says as follows:

"It is resolved to initiate suo-moto enquiry against Advocate Ms. Shobha Shet and the complaint be and is hereby referred to Disciplinary Committee for enquiry and disposal in accordance with law."

9. Thereafter, Secretary of the Bar Council has called for affidavit-in-reply of the Petitioner as per letter dated 17/06/2021.

The Petitioner made an attempt to bring it to the notice of Disciplinary Committee that preliminary enquiry was not completed. However Disciplinary Committee was pleased to reject that grievance as per Order dated 29/07/2021. Learned Advocate for the Bar Council invited our attention to the provisions of Section 8A of the Advocates Act. It says that if the elections are not conducted then Special Committee can be constituted and Special Committee discharges the function of the State Bar Council. That is how the proceedings were initiated by the Special Committee.

10. The Petitioner made various attempts to point out various unreasonable orders passed by learned Magistrate against her. On 16/10/2019, the Petitioner interrupted the proceedings and made insulting statement against learned Metropolitan Magistrate. This happened when the complainant attended another case fixed on 16/10/2019 before the same Metropolitan Magistrate. The Petitioner protested the Order of learned Metropolitan Magistrate to refer the matter to the Lok Adalat. She has elaborated before us the events that took place in the Court hall on that date. She was asked to wait outside the Court hall and was not allowed to leave the Court premises. She was defamed in presence of various litigants and advocates. The relevant papers are filed by her. Ultimately, learned Magistrate issued show cause notice to her under Section 345 of the Code of Criminal Procedure and fined her Rs. 200/-. She has challenged the said decision by way of Criminal Appeal.

11. She submitted that when she filed an application for transfer of that proceedings, the concerned learned Metropolitan Magistrate submitted false report and request for transfer was rejected by Additional Chief Metropolitan Magistrate, on 17/03/2021. That is how she has prayed for suspension of the concerned Magistrate.

12. Even she went to the extent of making comments about the members of the Special Committee who have decided to recuse themselves. The minutes are filed at page no. 75.

13. So the only issue is whether the proceedings of Disciplinary enquiry gets vitiated merely because the complaint made by the learned Metropolitan Magistrate was placed directly by the Special Committee before the Disciplinary Committee. In above two referred judgments the Hon'ble Supreme Court and

Division Bench of this Court has interpreted what is meant by "The reason to believe".

14. In the case of The Bar Council of Maharashtra Vs. M. V. Dabholkar and Others (1976) 2 SCC 291, the complainant supported disciplinary enquiry, when the High Court has made complaint against, in all, sixteen advocates and enquiry for professional misconduct was started. It was observed that "requirement of 'reason to believe' cannot be converted into formalised procedural roadblock, it being essentially a barrier against frivolous enquiries. It is implicit in 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".

15. Whereas in case of Gopalrao Ambadasrao Borikar Vs. Bar Council of Maharashtra and Goa 1999 (3) MH.L.J, it was the case of litigant filing complaint against the Advocate alleging that he has committed professional misconduct. The litigant was informed that the complaint was referred to the Disciplinary Committee on facts. It was observed that :-

"allegations, prima facie, were made out and there was no question of appointing any Member to hold preliminary enquiry into the allegations made by the Petitioner. In such circumstances, the matter ought to have been referred to the Disciplinary Committee".

16. So even though it is true that Part 2 of the resolution of the year 1978 says about hearing the parties, in above referred judgments the provisions of Section 35 (1) of the Advocates Act are interpreted. The test of 'has reason to believe' is to be satisfied. It can be satisfied by hearing the parties on the basis of the averments in the complaint documents or on reading the documents also.

17. The contention of the Petitioner is that in each and every case the hearing of the Advocate against whom the complaint is made is mandatory. The Bar Council of Maharashtra was not justified in initiating suo-moto enquiry on the letter written by learned Metropolitan Magistrate. Bar Council has relied on a letter written by learned Magistrate and decided to take suo moto action. It is but natural for them to trust the letter and to dispense with an inquiry as contemplated under part 2 of the resolution. It is important to note that still further inquiry will be conducted and Petitioner will certainly get a right of audience. So we do not find that the grievance about violation of the principles of natural justice were breached by the Special Committee. Hence we reject that contention.

18. The Petitioner made various allegations against learned Metropolitan Magistrate. She has also complained to the Hon'ble Chief Justice and it is rejected. Even though the Petitioner may be having grievance against the learned Magistrate of imposing fine on the Petitioner, she has already filed an appeal. So we do not find that grievance about suspension of the learned Metropolitan Magistrate needs to be gone into.

19. In fact such prayer is part of service jurisprudence and that has been taken care when her complaint is filed. So we do not find any merit in that grievance. She has sought information from Public Information Officer of this Court. It was denied. It is communicated to her vide letter dated 05/02/2020. She says that her appeal as per the provisions of the Right to Information Act is pending. That is not the matter of enquiry in this petition.

20. For the above reasons, there is no merit in contention of the Petitioner. Hence petition is dismissed. Rule is discharged. Application, if any, also stands disposed of.