

(2000) 07 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 3228 of 2000

Shri Vasant Devlal Bhavsar

APPELLANT

Vs

Bar Council of Maharashtra and Goa

RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Advocates Act, 1961 — Section 35, 35(1), 36B

Citation : (2001) 1 BomCR 133

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—This writ petition was heard by us on 10th July, 2000 as well as 12th July, 2000 and when we indicated our mind to dismiss it, the petitioner sought some time to file a withdrawal purshis and stated that he desired to reconsider and settle the dispute with the Bar Council and other respondents in its entirety. However, on 19th July, 2000 he submitted a purshis stating therein that he did not want to press the matter and sought leave to withdraw the petition without prejudice. In the normal course we would have disposed of the petition as withdrawn on the basis of the purshis. We are required to deviate from this normal practice taking into consideration the seriousness of the allegations levelled by the petitioner against the respondent No. 3, more so when we are fully satisfied that these allegations are scandalous, scurrilous, baseless, imaginary and aimed at maligning the character and standing of respondent No. 3, as a member of the bar as well as an office bearer of the Bar Council.

2. One Smt. S.V. Vaishnav has lodged a complaint dated 20th July, 1990 to the Bar Council of Maharashtra against the petitioner who is an Advocate by profession. The complainant had contended that she had entrusted the original papers and record relating to the Jahagir property of Village Sawata and Murambi as he was engaged for conducting the proceedings in respect of the said property, before the Sub-Divisional Officer, Nasik. There were some other

complaints also against the behaviour of the petitioner and professional misconduct. In Disciplinary Case No. 150 of 1990 a three member committee of the respondent No. 1 Bar Council recorded its findings vide judgment dated 24th April, 1992 against the petitioner and held him guilty of gross professional misconduct. By way of punishment the petitioner came to be suspended from practising as an Advocate for a period of three years with effect from 1st July, 1992. The D.C. Appeal No. 14 of 1992 filed before the Disciplinary Committee of the Bar Council of India resulted into a remand for rehearing of the arguments as per the order dated 25th April, 1994 and the proceedings stood transferred to the Bar Council of India u/s 36(B) of the Advocates Act, 1961. The Disciplinary Committee of Bar Council of India heard the parties and consequently, by order dated 5th October, 1996, reduced the punishment of suspension of three years to two years. This order came to be challenged by the petitioner before the Apex Court in Civil Appeal Nos. 2625 and 2626 of 1997 and by judgment dated 12th November, 1998 the appeal was allowed and the order of punishment passed by the Bar Council of India was set aside. Consequently, the original complaint filed against the petitioner was dismissed.

3. It appears that on 17th November, 1999 the petitioner submitted a complaint against the respondent No. 3 to the respondent No. 1 and by letter dated 30th November, 1999 he requested the Chairman of the Bar Council of India to transfer the said complaint to other State Bar Council and further requested for an order prohibiting the respondent No. 3 from taking any part as a Member in any meeting or function of the Bar Council of Maharashtra and Goa as well as Bar Council of India till the disposal of the complaint. This complaint was registered by the respondent No. 1 and a one member committee was appointed to hear the petitioner and submit a report. The petitioner has moved the instant petition challenging the notice dated 20th January, 2000 issued by the respondent No. 1 asking the petitioner to remain present on 29th January, 2000 for hearing on his complaint dated 17th November, 1999. The petition is mainly based on a judgment of this Court (Mane and Kochar, JJ.) in the case of Gopalrao Ambadasrao Borikar Vs. The Bar Council of Maharashtra and Goa and others, . This Court held that when prima facie case of professional misconduct is made out on the basis of the some of the allegations in the complaint itself, the question of holding preliminary inquiry in that matter does not arise and the matter has to be referred to the Disciplinary Committee u/s 35(1) of the Advocates Act. It is evident, on persual of the said judgment, that the issue agitated in the case of Gopalrao (supra) was no more res-integra in view of the judgment of the Supreme Court in the case of Nandlal Khodidas Barot Vs. Bar Council of Gujarat and Others, wherein it has been held by the Supreme Court that the State Bar Council must apply its mind and form a reasonable belief about existence of a prima facie case of misconduct against an Advocate before referring the case to the Disciplinary Committee u/s 35(1). It was further held that the resolution passed by the Bar Council merely referring the complaint against the Advocate to the Disciplinary Committee in a routine way, without

forming an opinion that there was a prima facie case, renders the reference incompetent. The Supreme Court, thus, upheld the right of the Bar Council to undertake preliminary investigations by appointing a one member committee so as to form a reasonable belief about existence of a prima facie case of misconduct before referring the said case to the Disciplinary Committee. The opening sentence of section 35(1) of the Advocates Act itself makes it implicit that the State Bar Council must form an opinion prima facie and has to have reasons to believe that any Advocate on its roll has been guilty of professional misconduct before it refers the case for disposal to its Disciplinary Committee and, therefore, the challenge to the impugned notice, raised in the instant petition by the petitioner, cannot be sustained.

4. The petitioner has made wild and baseless personal allegations against the respondent No. 3, who was appointed as one member committee to undertake preliminary investigations in respect of the complaint filed by Smt. Vaishnav on 20th July, 1990. Based on the said report submitted by respondent No. 3 the complaint against the petitioner was referred to the Disciplinary Committee. It is pertinent to note at this stage, that during the entire proceedings in respect of the complaint of Smt. Vaishnav the petitioner did not raise any finger against respondent No. 3 inspite of the fact that the respondent No. 1 punished the petitioner and the Bar Council of India only modified the punishment order. The Apex Court allowed his appeal on 12th November, 1998 and even till that stage the petitioner had no grievance, whatsoever, against the respondent No. 3. It is for the first time that he filed a complaint against the respondent No. 3 on 17th November, 1999 making irresponsible, fabricated and wild allegations, virtually amounting to character assassination, against respondent No. 3. We have no hesitation to observe that these allegations made by the petitioner against the respondent No. 3 in the instant petition are motivated, false, fabricated and by way of an afterthought. We, therefore, deem it necessary to direct these allegations to be deleted and they shall be deemed to be deleted forthwith from the petition memo. It was most unbecoming of an Advocate to indulge in such exercise of character assassination and mud slinging against an office bearer of the Bar Council. We hasten to add that these allegations are contemptuous in nature and as the petitioner preferred to withdraw the petition we have refrained ourselves from initiating contempt proceedings against the petitioner. Such acts, as resorted to by the petitioner, deserve to be deprecated and condemned by one and all of those who are connected with the noble profession of advocacy.

5. With these observations, we allow the purshis of withdrawal and dismiss the petition as withdrawn. However, the Bar Council, on notice, had to engage a Counsel and file affidavit in reply. This is a fit case where the petitioner must be saddled with exemplary costs even if the petition is dismissed on the basis of the purshis filed by him. We accordingly direct the petitioner to pay an amount of Rs. 1,000/-, as and by way of costs, to the respondent No. 1.