

PETITIONER:
HIKMAT ALI KHAN

Vs.

RESPONDENT:
ISHWAR PRASAD ARYA & ORS.

DATE OF JUDGMENT: 28/01/1997

BENCH:
S.C. AGRAWAL, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. AGRAWAL. J.

Ishwar Prasad Arya, respondent No.1, was registered as an advocate with the Bar Council of Uttar Pradesh and was practising at Badaun. An incident took place on May 18, 1971 during lunch interval at about 1.55 p.m. in which respondent No.1 assaulted his opponent Radhey Shyam in the court room of Munsif/Magistrate, Bisauli at Badaun with a knife. A pistol shot is also said to have been fired by him at the time of incident. After investigation he was prosecuted for offences under Section 307 of the Indian Penal Code and section 25 of the Arms Act. The Ist Temporary Civil and Sessions Judge, by his judgment dated July 3, 1972, convicted him of the said offence and sentenced him to undergo rigorous imprisonment for three years for the offence under Section 307 I.P.C. and for a period of nine months for offence under Section 25 of the Arms Act. The conviction and sentence for the offence under Section 307 I.P.C. were maintained by the High Court by its judgment dated September 10, 1975 in Criminal Appeal No. 1873 of 1972 but he was given the benefit of doubt regarding offence under Section 25 of Arms Act and the conviction and sentence for the said offence were set aside. Before he could be arrested to undergo the punishment of rigorous imprisonment for three years for offence under Section 307 I.P.C., a copy of letter No. Pr. VI/Chh. Pa XXIII - 2016-75-76 dated April 28, 1976 purporting to have been sent by Shri L.R. Singh, Deputy Secretary, Ministry of Home, U.P., Lucknow, addressed to the District Magistrate, Badaun bearing endorsement No. 1513(II)-75-76 was received in the Court of the IIIrd Additional District and Session Judge, Badaun, who was responsible for executing the order of the court of the Ist Temporary Civil & Sessions Judge on its abolition. In the said letter it was stated that the Governor has been pleased to suspend the conviction of Ishwar Prasad Arya under Article 161 of the Constitution with immediate effect and until further orders he should remain free. After receiving the copy of the said letter dated April 28, 1979, stayed the proceedings in the case and despite repeated inquiries by the court from the State Government about the suspension of

the sentences the execution of the sentence awarded to respondent remained suspended till September 27, 1977, when on receipt of a crash radiogram message from the Home Ministry, Lucknow, it was found that the letter dated April 28, 1976 was fraudulent and thereupon a warrant for the arrest of respondent no.1 was issued by the court on September 28, 1977 and he was arrested the same day and was sent to Badaun Jail to undergo the imprisonment. On December 9, 1977 Shri G.S. Sharma, IIIrd Additional District & Session Judge, Badaun, sent a complaint containing these facts to the Chairman, Bar council of U.P., for taking action against respondent No. 1 under section 35 of the Advocates Act, 1961(hereinafter referred to as the Act'). On the basis of the said complaint disciplinary proceedings (D.C. Case No. 70 of 1981) were initiated against respondent No. 1 by the Bar Council of U.P. By order dated January 30, 1982 the Disciplinary committee of the Bar Council of U.P. found respondent No.1 guilty of gross professional misconduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest. The Disciplinary Committee of the Bar council of U.P. directed that respondent No. 1 be debarred from practising as an advocate for a period of two years from the date of the service of the order. Respondent No.1 filed an appeal (D.C. Appeal No. 4 of 1982) in the Bar Council of India against the order dated January 30, 1982 passed by the Disciplinary Committee of the Bar Council of U.P. The said Civil and Session Judge, by his judgment dated July 3, 1972, convicted him of the said offence and sentenced him to undergo rigorous imprisonment for three years for the offence under section 307 I.P.C. and for a period of nine months for offence under Section 25 of the Arms Act. The conviction and sentence for the offence under Section 307 I.P.C. were maintained by the High Court by its judgment dated September 10, 1975 in Criminal Appeal No. 1873 of 1972 but he was given the benefit of doubt regarding offence under Section 25 of the Arm Act and the conviction and sentence for the said offence were set aside. Before he could be arrested to undergo the punishment of rigorous imprisonment for three years for offence under section 307 I.P.C., a copy of letter No. Pr. VI/Chh. Pa XXIII-2016-75-76 dated April 28, 1976 purporting to have been sent by Shri L.R. Singh, Deputy Secretary, Ministry of Home, U.P., Lucknow, addressed to the District and Sessions Judge, Badaun bearing endorsement No. 1513(II)-75-76 was received in the court of the IIIrd Additional District and Sessions Judge, Badaun who was responsible for executing the order of the court of the Ist Temporary Civil & Sessions Judge on its abolition. In the said letter it was stated that the Governor has been pleased to suspend the conviction of Ishwar Prasad Arya under Article 161 of the constitution with immediate effect and until further orders he should remain free. After receiving the copy of the said letter dated April 28, 1976 the IIIrd Additional District & Sessions Judge, on April 30, 1976 stayed the proceedings in the case and despite repeated inquiries by the court from the State Government about the suspension of the sentence the execution of the sentence awarded to respondent remained suspended till September 27, 1977, when on receipt of a crash radiogram message from the Home Ministry, Lucknow, it was found that the letter dated April 28, 1976 was fraudulent and thereupon a warrant for the arrest of respondent no.1 was issued by the court on September 28, 1977 and he was arrested the same day and was sent to Badaun Jail to undergo the imprisonment. On December 9, 1977 Shri G.S. Sharma,

IIIrd Additional District & Sessions Judge, Badaun, sent a complaint containing these facts to the Chairman, Bar Council of U.P. for taking action against respondent No. 1 under Section 35 of the Advocates Act, 1961(hereinafter referred to as 'the Act'). On the basis of the said complaint disciplinary proceedings (D.C. Case No. 70 of 1981) were initiated against respondent No.1 by the Bar Council of U.P. By order dated January 30, 1982 the Disciplinary Committee of the Bar Council of U.P. found respondent No.1 guilty of gross professional mis-conduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest. The Disciplinary Committee of the Bar Council of U.P. directed that respondent No.1 be debarred from practising as an advocate for a period of two years from the date of the service of the order. Respondent No. 1 filed an appeal (D.C. Appeal No.4 of 1982) in the Bar Council of India against the order dated January 30, 1982 passed by the Disciplinary Committee of the Bar Council of U.P. The said appeal was allowed by the Disciplinary Committee of the Bar Council of India by order dated June 8, 1984 and the order of the Disciplinary Committee of the Bar Council of U.P dated January 30, 1982 was set aside on the view that there was no material on the basis of which it could reasonably be held that respondent No. 1 had prepared the document which was subsequently found forged.

The appellant, Hikmat Ali Khan, had also submitted a complaint against respondent No.1 to the Secretary, Bar Council of U.P., where in it was stated that by order dated July 3, 1972 passed by the Temporary Civil & Session Judge, Badaun the respondent had been convicted and sentenced to three years rigorous imprisonment under Section 307 I.P.C. and his appeal had been dismissed by the High Court by judgment dated September 10, 1975 and even after the dismissal of his appeal respondent No. 1 he remained out of jail till September 27, 1978 on the basis of a forged and fraudulent document purported to have been sent by the Deputy Secretary, Ministry of Home, U.P., Lucknow and that during the said period he continued to practice as an Advocate. In the said complaint, it was also mentioned that the name of respondent No.1 is noted as a bad character in register No. 8 of Police Station, Wazirgang, District Badaun and further that a number of criminal case have been registered against him. It was prayed that a fresh inquiry may be made in the matter and in case the facts are proved against respondent No. 1 his registration as an advocate may be cancelled since he is a blot to the names of all the advocates. On the basis of the said complaint of the appellant proceedings (D.C. Case No. 40 of 1983) were initiated against respondent No.1 by the Bar Council of U.P. IN the said proceedings, respondent No. 1 appeared and filed his written statement, but thereafter he did not appear and participate in the proceedings. The Disciplinary Committee of Bar Council of U.P proceeded ex parte against him. By order dated March 25, 1984 the Disciplinary Committee found that respondent No. 1 was convicted and sentenced under Section 307 I.P.C and under Section 25 of the Arm Act and that his names of the bad character are entered. The Disciplinary Committee held that it is unbecoming of an advocate to earn such a bad reputation in the society and that respondent No. 1 was liable to be punished. The Disciplinary Committee of the Bar Council of U.P. directed that respondent No. 1 be debarred from practising as an advocate for a period of three years. Respondent No. 1 filed an appeal (D.C. Appeal No. 17 of 1984) against the

said order passed by the Disciplinary Committee of the Bar Council of U.P. The appellant also filed an appeal (D.C. Appeal No. 17A of 1984) against the said order. Respondent No. 1, in his appeal, prayed that the punishment imposed by the Disciplinary Committee of the Bar Council of U.P. be set aside; the appellant, in his appeal, on the other hand, wanted the said punishment to be enhanced and his name to be removed from the roll of advocates. Both the appeals were disposed of by the Disciplinary Committee of the Bar Council of India by order dated September 8, 1985. It was observed that the matter has already been considered by the Disciplinary Committee of the Bar Council of India in its order dated June 8, 1984 in D.C. Appeal No. 4 of 1982 whereby the order of the Bar Council of U.P. dated January 30, 1982 suspending respondent No. 1 from practice for three years had been set aside. The Disciplinary Committee of the Bar Council of India held that there was no choice left with it but to accept the appeal in view of the order dated June 8, 1984 passed by the Disciplinary Committee of the Bar Council of U.P. dated March 25, 1984 in D.C. Case No. 40 of 1983 was set aside. Consequently, the appeal filed by the appellant was dismissed. Feeling aggrieved by the said order dated September 8, 1985 passed by the Disciplinary Committee of the Bar Council of India allowing D.C. Appeal No. 17 of 1984 filed by respondent No. 1 and dismissing D.C. Appeal No. 17A of 1984 filed by him, the appellant has filed this appeal.

Shri Subodh Markendaya, the learned counsel for the appellant, has urged that in passing the order dated September 8, 1985 the Disciplinary Committee of the Bar Council of India has failed to appreciate that in the earlier order dated June 8, 1984 in D.C. Appeal No. 4 of 1982 the Disciplinary Committee of the Bar Council of India had given the benefit of doubt to respondent No. 1 in respect of fabrication of letter dated April 28, 1976 on the basis of which he was able to avoid being arrested for a period of about 16 months from April 30, 1976 to September 28, 1977 for undergoing the sentence of rigorous imprisonment imposed on him under section 307 I.P.C and that in the said proceedings the Disciplinary Committee of the Bar Council of India had not considered the conduct of respondent No. 1 involving his conviction for the offence under Section 307 I.P.C and his being sentenced to rigorous imprisonment for three years. According to Shri Markendaya, the said conduct of respondent No.1 was the subject matter of the complaint filed by the appellant for which conduct the Disciplinary Committee of the Bar Council of U.P. had imposed the punishment of debarring him from practising as an advocate for a period of three years. Shri Markendaya also urged that in his complaint the appellant had also pointed out that the name of respondent No. 1 is entered in Register No. 8 maintained at Kotwali Badaun and the said register contains the names of bad character and that this fact was also found established by the Disciplinary Committee of the Bar Council of U.P. and it was observed that it is unbecoming of an advocate to earn such a bad reputation in the society. The submission of Shri Markendaya is that having regard to the gravity of the mis-conduct of respondent No. 1 in assaulting his opponent in the court room with a knife and his having been committed the offence under Section 307 I.P.C and his being sentenced to rigorous imprisonment for three years in connection with the said incident, the punishment of removal of the name of respondent No. 1 from the roll of advocates should have been imposed on him and that the Disciplinary Committee of the

Bar Council of U.P. was in error in imposing the light punishment of debarring respondent No. 1 from practising as an advocate for a period of three years only and that this was a fit case in which the appeal filed by the appellant should have been allowed by the Disciplinary Committee of the Bar Council of India.

Respondent No. 1 is represented by Shri H.K. Puri. After arguing for sometime Shri Puri sought leave of the Court for being discharged as an advocate of respondent No. 1 when he was asked to address the Court on the appeal regarding enhancement of the punishment imposed on respondent No. 1. We, however, did not grant leave sought by Shri Puri for being discharged as a counsel for respondent No. 1.

The order dated March 25, 1984 passed by the Disciplinary Committee of the Bar Council of U.P. in D.C. Case No. 40 of 1983 arising out of the complaint submitted by the appellant clearly holds that from material available on record it is established that respondent No. 1 was convicted and sentenced for the offence under Section 307 I.P.C. and under Section 25 of the Arms Act and that his name is recorded in Register No. 8 maintained at Kotwali Badaun which is a register in which the names of the bad characters are entered. It is no doubt true that the conviction of respondent No. 1 for the offence under Section 25 of the Arms Act was set aside by the High Court, on appeal, but his conviction and sentence for the offence under Section 307 I.P.C. was maintained by the High Court. The said conviction under Section 307 I.P.C. was maintained by the High Court. The said conviction under Section 307 I.P.C. related to an incident which took place in the court room wherein respondent No. 1 had assaulted his opponent, Shri Radhey Shyam, with a knife. The Disciplinary Committee of the Bar Council of India, while dealing with the appeal of respondent No. 1 as well as the cross appeal of the appellant which were filed against the said order of the Disciplinary Committee of the Bar Council of U.P., failed to take note that the mis-conduct of respondent No. 1 which was the subject matter of the complaint in D.C. Case No. 4 of 1982 arising out of the complaint filed by Shri G.S. Sharma, IIIrd Additional District and Sessions Judge, Badaun, was different from the mis-conduct which had been found established on the basis of the complaint made by the appellant. The complaint of Shri G.S. Sharma, which gave rise to D.C. Case No. 70 of 1981 before the Disciplinary Committee of the Bar Council of U.P., related to fabrication of the copy of the letter No. Pr. VI/Chh. Pa XXIII-2016-75-76 dated April 28, 1976 from Shri L.R. Singh, Deputy Secretary, Ministry of Home, U.P., Lucknow, to the District Magistrate, Badaun that was received in the court of IIIrd Additional & Session Judge vide endorsement No. 1513(II)-75-76 wherein it was stated that the Governor was pleased to suspend the conviction of respondent No. 1 under Article 161 of the Constitution with immediate effect and that until further order he should remain free. In the said complaint of Shri G.S. Sharma, the Disciplinary Committee of the Bar Council of U.P., by order dated January 30, 1982, found respondent No. 1 guilty of gross professional mis-conduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest. The Disciplinary Committee of the Bar Council of India, in its order dated June 8, 1984 in D.C. Appeal No. 4 of 1982, felt that there was no material from which it could reasonably be held that respondent No. 1 had prepared the document which was subsequently found forged and that respondent No. 1

could be given the benefit of doubt and therefore, the order dated January 30, 1982 passed by the Disciplinary Committee of the Bar Council of U.P. in D.C case no. 70 of 1981 was set aside. The said order of the Disciplinary Committee of the Bar Council of India did not have any bearing on the conduct of respondent No.1 which lead to his conviction for the offence under Section 307 I.P.C and his being sentenced to rigorous imprisonment for three years and his name being entered as a bad character in Register No. 8 of Kotwali Badaun which was the subject matter of the complaint made by the appellant and on the basis of which the Disciplinary Committee of the Bar Council of U.P had passed the order dated March 25, 1984 in D.C Case No. 40 of 1983 debarring respondent No. 1 from practising as an advocate for a period of three years. The Disciplinary Committee of the Bar Council of India was, therefore, in error in setting aside the order dated March 25, 1984 passed by the Disciplinary Committee of the Bar Council of U.P merely on the basis of its order dated June 8, 1984 in D.C. Case No. 4 of 1982. The order of the Disciplinary Committee of the Bar Council of India dated September 8, 1985 allowing D.C Appeal No. 17 of 1984 filed by respondent No. 1 cannot, therefore, be sustained and has to be set aside. Having regard to the findings recorded by the Disciplinary Committee of the Bar Council of U.P. regarding the mis-conduct of respondent No. 1 that has been found established from the record, we find no merit in D.C Appeal No. 17 of 1984 filed by respondent No. 1 against order dated March 25, 1984 passed by the Disciplinary Committee of the Bar Council of U.P and the said appeal is liable to be dismissed.

We will now come to D.C. Appeal No. 17-A of 1984 filed by the appellant which raises the question whether the punishment imposed by the Disciplinary committee of the Bar council of U.P. in its dated March 25, 1984 is adequate having regard to the gravity of the mis-count of respondent No.1. The Mis-conduct of respondent No. 1 that has been found established is that he had assaulted his opponent Shri Radhey Shyam with a knife in the court room and he has been convicted of the offence under section 307 I.P.C. and has been sentenced to rigorous imprisonment for a period of three years. It has also been found established that the name of respondent No.1 was contained in register No. 8 maintained at Kotwali Badaun which is a register where in the names of bad characters are entered. The acts of mis-conduct found established are serious in nature. Under sub-section (30 of section 35 of the Act the Disciplinary committee of the state Bar council is empowered to pass on order imposing punishment on an advocate found guilty of professional or other mis-conduct. Such punishment can reprimand clause (b)] suspension from practice for a certain period [clause (c)] and removal of the name of the advocate from the state roll of advocate [clause (d)] depending on the gravity of the misconduct is such as to show that the advocate is unworthy of remaining in the profession. In this context it may be pointed out that under section 24(a) of the Act a person who is convicted of an offence involving moral turpitude which would disqualify a person from being enrolled as an advocate has to be considered serious Mis-conduct when found to have been committed by a person who is enrolled as an advocate and it would call for the imposition of the punishment of removal of the name of the advocate from the roll of advocates. In The instant case respondent no.1 has been convicted of the offence of attempting to commit murder punishment of removal of the name of respondent No. 1 from the state roll of advocates and the

Disciplinary committee of the Bar council of U.P., in passing the punishment of debarring respondent No.1 having regard to the facts of the case the proper punishment will to be imposed on respondent No.1 under section 35 of the Act should have been to direct the removal of his name from the state roll of advocates. The appeal filled by the appellant therefore deserves to be allowed.

For the reasons aforementioned the appeal is allowed the impugned order dated September 8 1985 passed by the Disciplinary committee of the Bar council of India in D.C. appeals nos. 17 and 17-A of 1984 passed by the Disciplinary committee of the Bar council of U.P. in D.C. case No. 40 of 1983 is upheld with the modification that instead of his being debarred from practising as an advocate for a period of three years the name of respondent no. 1 be removed from the state roll of advocates No. order as to costs.