

PETITIONER:  
J.S. JADHAV

Vs.

RESPONDENT:  
MUSTAFA HAJI MOHAMED YUSUF AND OTHERS

DATE OF JUDGMENT 07/04/1993

BENCH:  
MOHAN, S. (J)  
BENCH:  
MOHAN, S. (J)  
KULDIP SINGH (J)

CITATION:  
1993 AIR 1535                      1993 SCR (2) 1006  
1993 SCC (2) 562                JT 1993 (2) 652  
1993 SCALE (2) 429

ACT:

Advocacy--Significance of profession--Punishment whether to be commensurate with the degree and gravity of misconduct. Advocates Act, 1961--Section 38--Appeal--Misappropriation--Proof of--Enhancement of punishment and direction of Supreme Court to refund of amount pending with advocate--Legality of.

HEADNOTE:

The respondent was defendant in a suit. He engaged the appellant as an Advocate. The suit was compromised on 14.6.77 ordering that out of the amount lying with the Court receiver, plaintiff was to be paid a sum of Rs. 64,000 and the balance to be paid to the defendant-respondent and possession of suit-property to be handed over to the respondent.

During the tendency of the suit the Court Receiver inducted a tenant in a suit property. The tenant filed a suit praying for an interim injunction restraining the court receiver from handing over possession to the respondent. Tenant's suit was continued.

After the compromise decree was passed on 14.6.77, the appellant withdrew a total amount of Rs. 50,379 from the Court receiver. Out of the amount, appellant paid only Rs. 18,000 to the respondent. On 9.1.81 the respondent filed a complaint against the appellant before the Bar Council of India. On receiving a notice, the appellant submitted reply.

The Disciplinary Committee of the Bar Council rejected certain receipts produced to evidence payment to the respondent and also the plea of the appellant that the account books were lost. The Committee suspended the appellant for a period of two years and further directed to pay a sum of Rs. 500 to the respondent.

Before this Court the order of the Disciplinary Committee of the Bar Council of India was challenged contending that the Committee did not properly appreciate the evidence and that it was incorrect to hold that the

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receipt dated 8.8.77 was a suspicious document merely because the account books were not produced.

Dismissing the appeal, this Court,

HELD : 1.01. Advocacy is not a craft but a calling-, a profession wherein devotion to duty constitutes the hall mark. Sincerity of performance and the earnestness of endeavor are the two wings that will bare aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades. Therefore, an exacting standard is what is expected of an advocate. [1010 C-D, 1011-C]

1.02. The members of the noble profession must set an example of conduct worthy of emulation. If any of them falls from the high expectations, the punishment has to be commensurate with the degree and gravity of the misconduct. [1012-E]

Sharasawood on legal profession, Harry R. Blythe cited if? 21 Green Bag 224, referred to.

M. Veerabhadra Rao v. Tek Chand, [1984] Supp. SCC 571, referred to. [1011-C]

2.01. The appellant had withdrawn the money from the Court Receiver. None of the correspondence addressed to the respondent mentioned about the receipt dated 8th of August, 1977. The plea taken by the appellant based on the receipt is clearly false. The statement of the appellant that the account books had been lost in transit cannot be believed. Under these circumstances this is a clear case wherein the misappropriation by the appellant has been fully established. [1012-F]

2.02. The appellant has been withdrawing the money over 14 years and lit has illegally retained the amount. Out of a sum of Rs. 50,379 which was admittedly withdrawn from the court receiver only Rs. 18,000 was paid on different occasions. Still a sum of Rs. 22,379 is due. [1012-H, 1013-A]

2.03. In view of the established finding of misappropriation the proper punishment will be the name of the Advocate must be struck off the rolls. [1013-B]

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2.04. When Section 38 of the Advocates Act says, 'deems fit', it must be construed as to meet the ends of justice. The respondent should not be driven to a civil court for recovery of this amount even when the appellant has been found guilty. Therefore, it is directed that there shall be a decree in favour of the respondent (complainant) for a sum of Rs. 22,379 together with interest at 9% per annum from the date of the complaint till the date of payment 11013 F-G]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6120 of 1983. From the Judgment and Order dated 25.4.1983 of the Disciplinary Committee of the Bar Council of India in B.C.I. Tr. Case No. 32 of 1982.

Bharat Sangal for the Appellant.

V.R. Reddy, Addl. Solicitor General, T. Ratnam and D.N. Goburdhan for the Respondents.

The Judgment of the Court was delivered. by

MOHAN, J. This is a statutory appeal under Section 38 of the Advocates Act of 1961.

The brief facts are as under:-

The respondent engaged the appellant as a counsel in suit No. 510 of 1964, this was in April, 1976. The suit was ultimately compromised on 14.6.77. It was ordered that out

of the total amount lying with the court receiver, a sum of Rs. 64,000 shall be paid over to the plaintiff; the balance was to be paid to the respondent and possession of suit property was to be handed over to the respondent by the court receiver.

During the pendency of the suit the court receiver inducted one Usman Ghani Haji Mohamed as a tenant. He filed CS No. 7 of 1978 praying for an interim injunction restraining the court receiver from handing over possession to the respondent. That suit was continued.

After the compromise decree was passed on 14.6.77 the appellant who was the counsel for the respondent was requested to withdraw the amount lying with the court receiver and hand over the same to the

1009 respondent. For this purpose a letter of authorisation to enable the appellant to receive the amount was also issued. Pursuant to the letter of authorisation and instructions, a total amount of Rs. 50,379 was withdrawn by the appellant from the court receiver. Out of this, he paid only Rs. 18,000 and the rest was not paid. Therefore, the respondent preferred a complaint before the Bar Council of India on 9.1.81. The appellant was issued a notice by the Bar Council to which he submitted his reply. On consideration of his reply and hearing the arguments, the Disciplinary Committee of the Bar Council of India, was of the view that the burden of proving the fact that the respondent had paid a sum of Rs. 50,379 lay on the appellant. Certain receipts produced to evidence payment to the respondent were not accepted. The plea of the appellant that the account books had been lost was held to be untrue. Ultimately the appellant was suspended for a period of two years and further directed to pay a sum of Rs. 500 to the complainant (the respondent herein). It is against this order the present appeal has been preferred.

Learned counsel for the appellant took us through the impugned order and urged that the Committee had not properly appreciated the evidence especially the receipts which were produced by the appellant to evidence the payment. It is incorrect to hold that the receipt dated 8.8.77 was a suspicious document merely because the account books were not produced, it would not follow that the payments made by the appellant could be disbelieved.

We pointed out to the learned counsel for the appellant that the order under appeal is unexceptional and there was no case for interference. We felt that the order of suspension of two years was not commensurate with the charges of misappropriation. Therefore, we directed the issue notice to the appellant which came to be accepted by the learned counsel Mr. Bharat Sangal. In spite of the fact that the appellant has not chosen to appear, in order to make over the payment of the amount voluntarily. Therefore, we are left with no option then to decide the case ourselves on merits.

The Disciplinary Committee of the Bar Council on a proper appreciation of the evidence disbelieved the so-called receipts evidencing the payment. It has come to the correct conclusion that the receipt dated 8th of August, 1979 was got up on a blank signed paper. Hence, the due

1010 execution of the receipt had not been proved by the appellant. Besides, the statement of the appellant that the account books had been lost in transit had been rightly disbelieved. Under these circumstances this is a clear case wherein the misappropriation by the appellant has been fully

established. Once this conclusion is arrived at, the question is what is the punishment to be imposed?

Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hall mark. Sincerity of performance and the earnestness of endeavor are the two wings that will bare aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades. It will be useful to quote what Sharaswood said of this profession:-

A lower, without the most sterling integrity, may shine for a while with meteoric splendor; but his light will soon go out in blackness of darkness. It is not in every man's power to rise to eminence by distinguished abilities.

It is not in every man's power, with fe

W exceptions, to attain respectability, competence, and usefulness. The temptations, which beset a young man in the outset of his professional life, especially if he is in absolute dependence upon business for his subsistence, are very great. The strictest principles of integrity and honour are his only safety. Let him begin by swerving from truth or fairness, in small particulars, he will find his character gone-whispered away, before he knows it. Such a one may not indeed be irrecoverably lost; but it will be years before he will be able to regain a firm foothold. There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well that it is so. The things we hold dearest on earth, our fortunes, reputations, domestic peace, the future of those dearest to us, nay, our liberty and life itself, we confide to the integrity of our legal counselors and advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate

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above all things, truth, simplicity and candor. They are cardinal virtues of a lawyer. Let him always seek to have a clear understanding of his object: be sure it is honest and right and then march directly to it. The covert, indirect and insidious way of doing anything, is always the wrong way. It gradually hardens the moral faculties, renders obtuse the perception of right and wrong in human actions, weighs everything in the balance of worldly policy, and ends most generally, in the practical adoption of the vile maxim, "that the end sanctifies the means."

Therefore an exacting standard is what is expected of an advocate.

This court has taken the view in *M. Veerabhadra Rao v. Tek Chand*, [1984] Supp. SCC 571 as to how in such a case professional misconduct has to be dealt with. In that case, the advocate committed forgery by attesting false affidavits

which was held to be a serious misconduct. This court pointed out the duties of the members of the bar in the following passage:-

"Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society. In the words of Justice Krishna Iyer in Bar Council of Maharashtra v. M.V Dabholkar, [1975] 2 SCC 702 the role of the members of the Bar can be appreciated. He said at page 718:

The bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bold contrast, a public institution committed to public justice and pro bono public service. The grant of a monopoly licence to practice law is based on three assumptions: (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the ad-

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ministration of justice ('The Practice of Law is a Public Utility'-'The Lawyer, the Public and Professional Responsibility' by F. Raymond Marks et al-Chicago American Bar Foundation, 1972, pp. 288-289). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honorable order. If pathological cases of member misbehavior occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar, i.e. the Attorney General and the Advocates-General too are distressed if a lawyer 'stoops to conquer' by resort to soliciting, touting and other corrupt practices.

If these are the high expectations of what is describes as a noble profession, its members must set an example of conduct worthy of emulation. If any of them falls from that high expectation, the punishment has to be commensurate with the degree and gravity of the misconduct".

Accordingly, the punishment was increased to one of suspension for a period of five years, having regard to the gravity of the misconduct and keeping in view the motto that the punishment must be commensurate with the gravity of the misconduct.

In the case on hand admittedly the complainant (respondent) does not know English. It is equally admitted that the appellant had withdrawn the money from the Court Receiver. None of the correspondence addressed to the respondent

mentioned about the receipt dated 8th of August, 1977. The plea taken by the appellant based on the receipt is clearly false.

The appellant has been withdrawing the money over 14 years and he has illegally retained the amount. Out of a sum of Rs. 50,379 which was admittedly withdrawn from the court receiver only Rs. 18,000 was paid on different occasions. The said amount was also spread over and paid on

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different occasions. On a direction of this court a sum of Rs. 10,000 had been deposited by the appellant which has been withdrawn by the respondent as per order dated 3rd September, 1991. Still a sum of Rs. 22,379 is due.

In view of the established finding of misappropriation, we think the proper punishment will be the name of the Advocate must be struck off the rolls. We order accordingly. In addition to this the question arises, whether we can direct the refund of the sum of Rs. 22,379 which still is pending for the appellant. Section 38 of the Advocates Act says as follows.

"Appeal to the Supreme Court:- Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 [or the Attorney-General of India or the Advocate-General of the State concerned, as the case may be], may within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order [including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India] thereon as it deems fit:

[Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to Prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard]."

"when it says, 'deems fit, it must be construed as to meet the ends of justice. We feel the respondent should not be driven to a civil court for recovery of this amount even when the appellant has been found guilty by his own peers which we have also confirmed. Therefore, we direct that there shall be a decree in favour of the respondent (complainant) for a sum of Rs. 22,379 together with interest at 9% per annum from the date of the complaint till the date of payment.

The appeal is dismissed- in the above terms with costs of the respondent which is quantified at Rs. 3000 (Rs. three thousand only).

Before we part with the case we may usefully quote Harry R. Blythe

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(cited in 21 Green Bag, 224):-

"Great God the hour has come when we must clear The legal fields from poison and from fear; We must remould our standards-build them higher, And clear the air as though by cleansing fire, Weed out the damning traitors to the law, Restore her to her ancient place of awe."

Appeal dismissed.

V.P.R.

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JUDIS