In the matter of P. an Advocate

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

23.01.1963

JUDGMENT

GAJENDRAGADKAR, J. -

Mr. P., who is an advocate-on-record of this Court and who will hereafter be called the 'Advocate', acted for the Board of Trustees of the Dakhina Parswa Nath of Puri through its Executive Officer respondent No. 2 (b) in Civil Appeal No. 232/1954. As such Advocate he entered appearance on November 9, 1957. The said appeal was heard on May, 2 and 6, 1958, and by the Judgment pronounced by this Court on May, 20, 1958, it was dismissed with costs in favour of respondent No. 2 (b). The Advocate had briefed Mr. J. as a senior Advocate to lead him at the hearing of the appeal. It appears that the client had paid the Advocate Rs. 500/- on the eve of the hearing of the appeal and the senior Advocate was paid Rs. 1,000/- direct by the client. The Bill of Costs and vouchers had to be filed by the Advocate on behalf of his client within six weeks from the date of judgment under O. XL r. 12 of the Supreme Court Rules (hereinafter called the 'Rules'). The said period expired during the summer vacation of the Court. After the summer vacation, the Court reopened on August 4, 1958. Meanwhile, on May, 20, 1958, after the judgment was delivered by this Court, the Advocate wrote to his client informing him about the result of the appeal and intimating to him that the bill of costs had to be filed. On June, 28, 1958, he again wrote to his client and called for Rs. 60/- to meet the necessary expenses in the matter of presenting the bill of costs. This amount was paid to him at Puri on July 26, 1958, and the Advocate passed a receipt in that behalf. He, however, took no further action in the matter until about January 9, 1959, when it appears that he inspected the Court records in order to be able to prepare a defeat bill. A bill was accordingly prepared by him and it was presented in Court on May 19, 1959. Since the bill was obviously filed beyond the period prescribed by O. XL. r. 12 the Office returned the bill to the Advocate. In ordinary course, the Advocate should have filed an application requesting that the delay made in filing the bill should be condoned, but he seems to have taken no further action in that behalf. Even so, on May, 18, 1960, the Advocate asked for and received Rs. 200/- from his client. It appears that Mr. Banamdar was the Executive Officer of respondent No. 2(b) when the Advocate was engaged by him but later, Mr. Misra succeeded to the office of the Executive Officer and the amount of Rs. 200/- was paid to the Advocate by Mr. Misra; a receipt for this payment had also been passed. It is difficult to understand why the Advocate asked for this amount. During the period this client wrote to the Advocate enquiring about the bill of costs but received no reply. When Mr. Misra realised that the Advocate was taking no action in the matter of presenting the bill of the costs and obtaining orders thereon, he gave notice to the Advocate on January 9, 1961, discharging him from his engagement. On January 12, 1961, he also applied to this Court to cancel the Advocate's Vakalat and to condone the delay made in the filing of the bill of costs. On March 12, 1961, the Advocate agreed that his client can engage Mr. Verma. The applications made by the client for cancelling the Advocate's Vakalat and for condoning the delay made in the filing of the bill of costs came up before the learned Judge in Chambers. They had, however, to be adjourned from time to time in order to enable the Advocate to appear before the learned Chamber Judge. Ultimately, on January 9, 1962, the learned Judge condoned the delay made in the presentation of the bill of costs without prejudice to the right of the judgment-debtor to plead that the execution in respect of the bill of costs is barred by limitation. He

also ordered that the papers should be submitted to the Hon'ble the Chief Justice for taking action against the Advocate for the gross negligence shown by him in the conduct of the proceedings in this case. The advocate was also directed to hand over all the papers of the case to Mr. Verma.

After the papers were thus placed before the learned Chief Justice, he constituted a Tribunal consisting of three members of the Bar under O. IV-A r. 18 to enquire into the conduct of the Advocate. The Tribunal then proceeded to hold an enquiry and submitted its report. The issue which the Tribunal tried in these proceedings was whether the Advocate acted with gross negligence in the matter of the taxation of the costs of his client in the appeal in question, and if so, whether such conduct amounts to professional or other misconduct within the meaning of that expression in O. IV of the Rules. The report of the Tribunal shows that it has found against the Advocate on both parts of the issue. In its opinion, the conduct of the Advocate amounts to professional misconduct as well as other misconduct within the meaning of the said Order.

On receipt of this Report, the proceedings have been placed before us for final disposal under O. IV-A r. 21 of the Rules and the questions which fall for our decision are whether the Tribunal was right in holding that the conduct of the Advocate amounts to professional misconduct and other misconduct and if yes, what is the penalty which should be imposed on the Advocate ?

The relevant facts which the Tribunal had to weigh in dealing with the issue referred to it lie within a narrow compass. It is obvious that in filing the bill of costs of May 19, 1959, the Advocate was guilty of gross delay. He knew that O. XL r. 12 required that the bill of costs and vouchers had to be filed within six weeks from the date of judgment and there is no doubt that for filing the bill of costs and vouchers it was unnecessary to obtain any instructions from the client or secure any material from him. The bill of costs incurred by the respondent in the proceedings before this Court which had to be taxed were in this case all costs incurred in this Court and if the Advocate had kept proper accounts, he would have been able to file the bill of costs without any delay. It is true that the senior counsel briefed by him in this case was paid his fees of Rs. 1000/- by the client direct which, incidentally is not consistent with professional etiquette and convention about the conduct of a senior counsel. It is to be hoped that this departure from professional etiquette conventionally prescribed for the senior Advocates is an exception, for if Senior Advocates were to deal with the clients direct, it would destroy the very basis of the system of Advocates-on-Record and would make it so difficult for this Court to assist the growth of a strong, healthy and efficient junior Bar consisting of Advocates-on-record and junior Advocates who prefer only to plead and not to act and plead. It is, however, clear that the Advocate could have obtained a receipt from the senior counsel without any delay and it is not suggested that the delay made by him in filing the bill of costs had anything to do with his inability to obtain such a receipt. In fact, the senior counsel had already sent a receipt to his client and there is no doubt whatever that if only the Advocate had approached him for another receipt in that behalf, the senior counsel would have immediately given him such a receipt. Therefore, in dealing with the question of delay, we cannot ignore the fact that the delay has been made in filing the bill of costs and vouchers which was entirely a matter within the Advocate's knowledge. It is of utmost importance that Advocates-on-record ought to discharge their duties by their clients with diligence and there should be no occasion for any delay in the filing of the bills of the costs and vouchers under O. XL r. 12.

It is significant that the client repeatedly wrote to the Advocate and enquired about the bill of costs. Four of such letters written by the client to the Advocate have been produced in the proceedings before the Tribunal. The Advocate explained that he sent replies to these letters by post-cards or sometimes orally explained to the client the position when he happened to meet him. The Tribunal

was not impressed with this explanation and thought that the conduct of the Advocate in not sending any replies to the queries made by his client rather shows that the advocate knew that he was at fault and he had really no answer to give in respect of the said queries. It is also clear that after the appeal was decided, the Advocate was paid by his client Rs. 60/- obviously with a view to enable him to file the bill of costs. The Tribunal has found that this amount was quite ample under the rules and so, it is not possible to explain the delay made by the Advocate in filing the bill of costs on the ground that he was not put in charge of sufficient funds by his client to meet the expenses in that behalf.

A faint attempt was no doubt made by the Advocate to show that he could not file the bill of costs in time because he did not receive the assistance of the High Court lawyer as to the printing charges, etc. Indeed, it does appear that the Advocate wrote a letter on May 20, 1958, calling for some information in respect of the printing charges incurred in the preparation of the paper books in this appeal. As the Tribunal has observed, this plea is entirely meaningless, because the taxation of costs of the appeal in this Court has nothing to do with the expenses incurred by the parties for preparing the record in the High Court; and as to vouchers, the only voucher which the Advocate had to file was the voucher from the senior counsel in respect of the fees of Rs. 1,000/- paid to him. Therefore, there is little doubt that the Advocate was guilty of causing gross delay in filing the bill of costs and vouchers as required by the relevant Rule. The fact that the learned Chamber Judge was pleased to condone the delay made in presenting the bill of costs when he was moved by Mr. Verma by a separate application made in that behalf, does not mitigate the default on the part of the Advocate in not filing the said bill of costs in time. Besides, as we have already seen, the delay has been condoned without prejudice to the judgment-debtor's right to plead that the execution is barred by the law of limitation. In case such a plea is raised and allowed, the respondent is likely to lose a large amount of more than Rs. 2,000/-. Even if the plea is not raised, or, if raised, is not allowed and the respondent secures his costs from the appellant, that would be because the learned Chamber Judge took a sympathetic view and did not wish to penalise the party for default of his Advocate. It is in the light of these findings that we have to decide whether the Tribunal was justified in holding that the Advocate is guilty of professional misconduct as well as other misconduct.

It is true that mere negligence or error of judgment on the part of the Advocate would not amount to professional misconduct. Error of judgment cannot be completely eliminated in all human affairs and mere negligence may not necessarily show that the Advocate who was guilty of it can be charged with misconduct, vide In re A Vakil [(1925) I.L.R. 49 Mad. 523], and in the matter of an Advocate of Agra [I.L.R. 1940 All. 386]. But different considerations arise where the negligence of the Advocate is gross. It may be that before condemning an Advocate for misconduct, courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression "moral turpitude or delinquency" is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A wilfull and callous disregard for the interests of the client may, in a proper case, be characterised as conduct unbefitting an Advocate. In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an Advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude. The Advocates-on-record like the other members of the Bar Advocates are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the

honesty of the Bar. That is why in dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the Bar, the expression "moral turpitude or delinquency" is not to be construed in an unduly narrow and restricted sense.

Besides, it would be noticed that the relevant rules of IV-A refer not only to professional misconduct but to other misconduct as well. An Advocate invites disciplinary orders not only if he is guilty of professional misconduct, but also if he is guilty of other misconduct; and this other misconduct which may not be directly concerned with his professional activity as such, may nevertheless be of such a dishonourable or infamous character as to invite the punishment due to professional misconduct itself. An illustration is point would be the conviction of an Advocate for a criminal offence involving moral turpitude, though it may not be connected with his professional work as such. Therefore, in dealing with the case of the Advocate before us, it would not be right to take an unduly narrow view of the concept of moral delinquency or turpitude but to concentrate on the broad issue as to whether by his conduct proved in the present case he has not rendered himself unworthy to be a member of the legal profession.

As early as 1894, Lopes L.J. attempted to give the definition of misconduct of a medical man in Allinson v. General Council of Medical Education and Registration [[1894] 1 Q.B. 750]. In that case Lopes L.J. said :

> "The Master of the Rolls has adopted a definition which, with his assistance and that of my brother Davey, I prepared. I will read it again. 'If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethern of good repute and competency, then it is open to the General Medical Council to say that he has been guilty of 'infamous conduct in a professional respect'."

This definition was held applicable while dealing with the case of a solicitor In re A Solicitor Ex parte the Law Society [[1912] 1 K.B. 302]. Mr. Justice Darling quoted this definition and added "that the Law Society are very good judges of what is professional misconduct as a solicitor, just as the General Medical Council are very good judges of what is misconduct as a medical man." With respect, we think the same observation can be made with equal force about the Tribunal which has dealt with this matter and made its report in the present case.

In the matter of An Advocate [(1936) I.L.R. 63 Cal. 867], Mukerji, A.C.J., referred to the observations made by Page J.J. In the matter of An Advocate [(1933) I.L.R. 12 Pan. 110, 113] which showed that the learned Chief Justice thought that "in considering whether an advocate should be struck off the roll of Advocates, the test should be whether the proved misconduct of the advocate is such that he must be regarded as unworthy to remain a member of the honourable profession to which he has been admitted and unfit to be entrusted with the responsible duties that an advocate is called upon to perform"; and Mukerji, A.C.J., added that "with all respect, I would prefer to take the two conditions laid down as aforesaid disjunctively and apply the test in that way so that on the fulfilment of any one of the conditions the test would be regarded as satisfied." In other words, according to Mukerji A.C.J., misconduct which would render the Advocate liable to be removed from the rolls can be either professional misconduct or other misconduct, with the result that in either case, the advocate ceases to be entitled to belong to the honourable profession of law. The learned Judge also observed that this disjunctive test would prove a sound working rule in the majority of cases and would be applicable to all branches of the profession. It would be noticed that

the words used in the relevant rules of O. IV-A are professional or other misconduct and that is on the same lines as the relevant provision in s. 10(i) of the Indian Bar Council Act, 1926 (38 of 1926).

Reverting then to the facts found by the Tribunal in this case, it is clear that the advocate was paid Rs. 60/- expressly for the purpose of filing the bill of costs in time; that the delay made by him in presenting the bill of costs is so unreasonable that the negligence of which he is guilty must be characterised as gross. The explanation given by the Advocate in justification of this delay is clearly fantastic and untrue. The loss which would have resulted to the client is of the order of Rs. 2000/- and it consists of an item of costs awarded to him by this Court in dismissing the appeal filed against him. During the relevant period, his client was repeatedly enquiring as to what had happened about the bill of costs, and the explanation given by the Advocate in that behalf has been rejected by the Tribunal and it must, therefore, be taken to be proved that despite the reminders, the advocate took no steps to file the bill of costs in time. Even so the Advocate asked for and received Rs. 200/- from Mr. Misra, the successor of Mr. Banamdar, on May 18, 1960, and as the Tribunal has observed, this demand by the Advocate was wholly unjustified. Having regard to all these circumstances, we do not think it would be possible to accept Mr. Sarjoo Prasad's contention that the Tribunal was not justified in making a finding against the advocate that he was guilty of professional misconduct.

The next question which we have to consider is : what would be the appropriate order to make in this case ? Fortunately, cases of professional misconduct are rare in this Court; but when they are brought to the notice of this Court and it is proved that the allegations made against an Advocate are true, it would be unwise and inexpedient for this Court to take a lenient view of the lapse of the Advocate. The members of the Bar owe it to themselves and to the Court to live up to the best traditions of the Bar, and any serious lapse on the part of any member of the Bar must be severely dealt with. Healthy traditions at the Bar help not only to make the Bar strong and respected, but render valuable and effective assistance to the Courts to deserve and sustain the absolute confidence and faith of the litigating public in the fairness of the administration of justice, for we must always remember that on the ultimate analysis, the real strength of the administration of justice lies in the confidence of the public at large. We are, therefore, reluctant to accede to the plea made before us by Mr. Sarjoo Prasad that we should reprimand the Advocate for his misconduct and pass no further orders against him. Having carefully considered all the relevant circumstances in this case, we are satisfied that in the interests of the profession itself, it is necessary to direct that the name of the Advocate should be removed from the rolls for five years. We also direct that the Advocate should pay the respondent's costs of the enquiry before the Tribunal and of the hearing before us. Before we part with this matter, we ought to add that it has been conceded before us both by Mr. Sarjoo Prasad and by the learned Solicitor-General that Part V of the Advocates Act, 1961 (25 of 1961) has not still been brought into force and so, s. 50(4) of the said Act is still not applicable, and that means that the present proceedings have to be dealt with by the Court in accordance with the existing law.

</html