O. N. Mohindroo

Vs

The District Judge, Delhi and another Supreme Court Bar Association

Civil Appeals Nos. 2637 and 2638 of 1969

(CJI M. Hidayatullah, G. K. Mitter, A. N. Ray JJ)

04.09.1970

JUDGMENT

HIDAYATULLAH, C. J. -

1. The appellant in these two appeals is an advocate of this Court, who on complaint by the District Judge, Delhi, February 29, 1964, to the Bar Council of the State of Delhi, was held guilty of professional misconduct and suspended from practice for a year by the Disciplinary Committee of the said Bar Council. He appealed to the Disciplinary Committee of the Bar Council of India under Section 37 of the Advocates Act. The appeal was dismissed. His appeal to this Court under Section 38 of the Act was dismissed summarily at the preliminary hearing. The charge against him was that while inspecting a judicial record in the company of Mr. Kuldip Singh, Advocate, he tore out 2 pieces of paper from an Exhibit (C-I). The pieces were thrown by him on the ground. The clerk-in-charge reported the incident to the District Judge and the complaint followed.

2. The suit, record of which was being inspected, arose in the following circumstances. On February 6, 1963, Mr. Anant Ram Whig, an advocate, sent a notice on behalf of one Sarin to a certain Ramlal Hans and his wife claiming a sum of Rs. 4,370/- as reward for the success of their daughter at an examination including tuition fees. Sarin was preparing the girl for the B.A. examination. The claim of Sarin was repudiated by Ramlal Hans in a reply, dated February 11, 1963. The matter was referred to the arbitration of Mr. Mansaram, Municipal Councillor, Delhi, by an agreement, dated February 24, 1963. The arbitrator gave an award for Rs. 1,000/- in favour of Sarin. The award was filed in the Court of Mr. Brijmohanlal Aggarwal, Sub-judge, Delhi, for being made a rule of the court. Ramlal Hans engaged the appellant as advocate. The appellant in his turn engaged two other advocates to conduct the actual cases and also filed his Vakalatnama. A copy of the notice sent by Mr. Whig was filed in the case (Ex. C-I) but was not yet proved.

3. On February 24, 1963, the appellant went for the inspection of the record of the case in the company of his junior lawyer. The file was given by Amrik Singh, the junior clerk of the Bench. Amrik Singh then went out of the room but soon returned to his seat. Later he charged the appellant of having torn 2 pieces from a document (which was Ex. C-I) and picked up the alleged pieces from the floor. Mr. Aggarwal then arrived on the scene. The statement of the appellant was recorded. The Sub-judge also obtained report from his junior and Assistant clerks and made a report. With the report he sent the exhibit said to be mutilated and the two pieces said to be the torn pieces of Ex. C-I in a sealed envelope. A complaint was also made to the District Judge by Sarin. The District Judge then made a report and wrote that the document was important in the case and action was, therefore, called for.

4. The disciplinary committee of the Bar Council of the Union Territory of Delhi took up the matter under Section 35 of the Advocates Act. The explanation of the advocate was called for. He explained that the charge was false and it was due to the ill-will of Mr. Aggarwal and his staff because earlier he had made some serious allegations against Mr. Kalra, Sub-judge III Class, in a transfer petition and had also started contempt proceedings. According to the appellant this led to hostility between the judges and their staff and him. He denied that the document was important or that he had mutilated it. He asked inter alia for summoning the torn document and the pieces and they were summoned. The original document was received but not the pieces. The District Judge informed the committee that the pieces were misplaced and were not found. The appellant maintained that they were put in the same envelope with the exhibit and he alleged they they were suppressed to deny him a legitimate defence that they were not a part of the same document.

5. Oral evidence was recorded. On the basis of the oral evidence of Amrik Singh, the petitioner was held guilty of having wantonly mutilated the document. The petitioner wanted to take a size photostat of the exhibit but his request was turned down.

6. As stated already his appeal to the Bar Council of India was dismissed by the disciplinary committee of the Bar Council of India and later his appeal to this Court was dismissed summarily on April 18, 1966, at the preliminary hearing. Mr. A. K. Sen appeared for the appellant.

7. The appellant then seems to have lost his head. He made successive applications of various kinds. He filed a review petition on April 23, 1966, before the disciplinary committee of the Bar Council of India of India but it was rejected on April 29, 1966. The appellant then filed a writ petition in the High Court of Punjab (Delhi Bench) on May 23, 1966, challenging Section 38 of the Advocates Act and Rule 7 of Order V of the Rules of this Court as ultra vires Article 138(2) of the Constitution. The Writ Petition was admitted and a rule nisi was issued. The appellant before this had filed a review petition in this Court and on September 12, 1966, this Court issued a notice to the District Judge to find out the torn pieces. The District Judge reported on September 22, 1966, that the mutilated document was a copy of a lawyer's notice and that only a small piece of 1/2 was missing from the bottom of the second sheet. The pieces were not traceable. He also reported that the junior clerk was not sure that anything was written on the torn pieces but according to his recollection the words 'True Copy' followed by the signature 'Vir Bhan' were written, that this was not stated by him in his earlier statements, and that the Assistant Clerk also said that according to his recollection something was written in ink on those pieces but could not say what it was. The Supreme Court dismissed the review petition on September 26, 1966. The appellant appeared in person at the hearing.

8. The writ petition in the High Court was also dismissed by a single Judge on October 12, 1966. The order shows that the original of Ex. C-I was not relied upon by Mr. Vir Bhan and that he had not attempted to prove the copy, as there was no context about the notice. It was contended before the High Court that there was no motive to tear two tiny pieces from a document which was not in issue. The High Court seemed to agree with this but speculating as to possible motives held that in view of the evidence of Amrik Singh, the question of motive was immaterial. The High Court did not go further than this into facts.

9. The learned single Judge considered the objection to the constitutionality of the rules of this Court and overruled it. He held that questions of fact could not be gone into in view of the successive appeals and review petitions dismissed by the appropriate authorities. A Letters Patent appeal was filed against the single Judge's judgment and order. That appeal was heard by a Division

Bench of the High Court of Delhi and dismissed on December 22, 1966. Before the Division Bench the validity of Section 38 of the Advocates Act alone was challenged. An objection on merits was rejected because the order of the disciplinary committee of the Bar Council of the Union Territory was said to have merged in the order of the disciplinary committee of the Bar Council of India and later in that of this Court. The High Court granted a certificate. This Court was represented at the hearings as it was made a party to the writ petition.

10. The appeal filed in this Court as a result (C.A. No. 240 of 1967) was dismissed by the Constitution Bench on January 8, 1968. Only the validity of Section 38 the Advocates Act and rules of this Court was considered. The hearing was on December 14 and 15, 1967. The appellant was in person. The Bar Council of Delhi and their disciplinary committee were represented by Mr. Avadh Behari, Advocate, Mr. P. Rama Reddy and Mr. A. V. Rangam represented the disciplinary committee of the Bar Council of India, the Supreme Court (a party) was represented by Mr. Purshottam Tricumdas and Mr. I. N. Shroff and the Attorney-General was represented by Mr. P. Tricumdas and Mr. S. P. Nayyar. The hearing time was taken up by the appellant and Mr. Purshottam Tricumdas, Mr. P. Rama Reddy argued for 10 minutes and Mr. Avadh Behari was not called upon.

11. The appellant then tried another review petition (No. 21 of 1968) on the basis of the fresh evidence and report of the District Judge, Delhi. This Court (on December 2, 1968) summoned the record and allowed the petitioner to take photostats of the Exhibit C-I. The appellant also filed a writ petition under Article 32 of the Constitution (W.P. No. 69 of 1968). He first applied (C.M.P. 1171/68) for withdrawal of the writ petition and then withdrew that application itself. The two matters were placed before the Court on April 11, 1968, and at one time it appeared that Shri A. K. Sen had argued both of them but later Shri A. K. Sen had argued both of them but later Shri A. K. Sen said he had only appeared in the writ petition and not in the review petition was ordered to be placed again for hearing. On the Court observing that on the basis of new material, review should be asked for from the Bar Council of India, the review petition was withdrawn on January 6, 1969. The review application was not dismissed on merits.

12. The appellant then went before the Bar Council asking for reconsideration of his case under Sections 44 and 10(3) of the Advocates Act. The Bar Council passed an order through its Chairman (Mr. H. D. Shrivastava). The Bar Council of India held that it had no jurisdiction of any kind to reopen this matter although the embarrassment involved in reconsidering the matter was removed by the observations of the Supreme Court. According to the Bar Council the disciplinary committee was not acting as a subordinate delegate of the Council and the general power to safeguard the interests of the Bar or any individual member could only refer to such interests as had not been negatived by judicial process under the Advocates Act. The petition was, therefore, dismissed. The Bar Council, however, went on to observe :

> "..... But we cannot part with this matter without expressing our sense of uneasiness which arises from the production before us of fresh by the petitioner. A look at the document opens our a reasonable possibility, that a reconsideration by the disciplinary committee of this Council may lead to a different result. The petitioner may if so advised formally ask for a review by the Disciplinary Committee."

13. The appellant then again applied for review of the order by the disciplinary committee of the Bar Council of India. In a fairly long order the disciplinary committee declined to reopen the case. The disciplinary committee found fault with the single Judge of the High Court of Punjab for not

rejecting the writ petition on the short ground that the High Court could not issue a writ to the Supreme Court. The disciplinary committee also found it necessary to comment upon the order of this Court inquiring from the District Judge, Delhi, how the pieces kept in safe custody were lost. The disciplinary committee also commented upon the action of the District Judge in re-examining witnesses who had been examined before.

14. The disciplinary committee pointed out that in the second review petition decided by the Committee on February 26, 1967, it refused to take into consideration the report of the District Judge as it was not evidence in the case and because the Supreme Court also did not appear to have acted upon it when dismissing the review petition before it. The Supreme Court's order was not a speaking order but had merely dismissed the review petition summarily.

15. The disciplinary committee next considered how the matter came before them. They refused to take into account a 'casual observation' of the Judges in the course of arguments before them in the review petition in this Court. They speculated that perhaps the appellant was advised to withdraw the review petition which otherwise could have had to be dismissed. The Committee very reluctantly looked into the statements of witnesses recorded by the District Judge when he reported about the loss of the two pieces of paper. The matter was heard and the disciplinary committee took time to consider their order. The disciplinary committee held that in considering review applications to themselves they should not be over-technical and that they would have granted review if there was any material on which it could be granted. They however observed :

> "..... It is however axiomatic that no court or tribunal can rewrite or alter its judgment once a judgment has been signed and delivered. We could entertain the review petition only on some ground similar or analogous to those as mentioned in Section 114 and Order XLVII, Rule 1, of the Code of Civil Procedure. But in this case there is no such ground available to the petitioner."

They held that as the order of the Disciplinary Committee had merged in the decision f the Supreme Court a review granted by them would be incompetent. Having held this two members went on to consider the merits, a procedure with which the third member dissented. His observations in the circumstances were quite correct. This is what he said :

> "If what the petitioner says about the observations of the Supreme Court that his remedy should be by a petition for review, is correct, the forum lies elsewhere and we cannot just entertain it. In this view of the matter the observations made by the Bar Council of India in their resolution dated July 12, 1969, which are entitled to our respect, may well be left alone may (sic) need be commented upon."

The majority of the Disciplinary Committee however refused to be guided by the observations of the Bar Council of India. They observed that looking at the photostat copy did not advance the matter any further and they had previously seen the original itself and on the evidence they were satisfied that there was some writing on the pieces to show that it was a true copy signed by the attestor. This was proved by the evidence of Mr. Vir Bhan accepted by the Disciplinary Committees of the two Bar Councils. They discarded the fresh evidence of the two clerks as not of any use to the appellant. They went to the length of saying :

> "Even if these witnesses had entirely contradicted their earlier statements that would not have been a ground for review....."

Having said this they went on to say :

> "..... However in the present case we have also examined the depositions recorded by Shri Jagit Singh and we do not find any substantial difference between what they had stated earlier and what they stated before him."

The fact that writing on the pieces was not mentioned earlier by the clerks was not noticed. The majority then severely commented upon the conduct of the appellant in charging the subordinate judiciary with hostility and held this to be 'frivolous and unworthy of notice'. They observed as follows :

> "Even in our earlier judgment we pointed out that a defence of this nature calculated to deter and intimidate responsible officers from discharging their public duty was highly reprehensible."

They accordingly dismissed the review application expressing the hope that that would be a close to this chapter. In two paragraphs thereafter the majority commented strongly on other conduct of the appellant in Court cases and outside it which according to them was deplorable. It is obvious that the Disciplinary Committee was annoyed at the repeated attempts of the appellant to have his case reconsidered by the superior authorities and the hearing he had got.

16. From the respective orders of the Bar Council of India and the Disciplinary Committee these two appeals are brought. We granted special leave in the matter arising out of the Bar Council's order limited to the following two questions :

> "(1) Whether the Bar Council has no jurisdiction to direct the Disciplinary Committee to rehear the matter; and
>
> (2) Whether the Disciplinary Committee was right in not considering the matter afresh."

In the other appeal the question is : whether the Disciplinary Committee was right in refusing review and whether we should, therefore, review the matter ourselves, if we are satified that the case deserves it.

17. In so far as the jurisdiction of the Bar Council of India is concerned we think the Bar Council acted correctly when they refused to review the matter themselves. For the Bar Council to do so would be an exercise of appellate power. That power the Bar Council of India does not possess. But the Bar Council of India was right in saying that the question raised before themselves was sufficiently important for reconsideration to their Disciplinary Committee.

18. The provisions of the Advocates Act are no doubt precise in the matters of appeals and review. In all cases tried by the Disciplinary Committee of the Bar Council of a State (which term includes the Union Territory of Delhi) an appeal lies to the Bar Council of India. The appeal is, however, heard by the Disciplinary Committee of the Bar Council of India and they dispose of it as they deem fit. The Act does not say that the Disciplinary Committee is a reporting body and the executable order must be made by the Bar Council of India. This is made clear by the section that follows. It speaks of an appeal to this Court against the order of the Disciplinary Committee. If an appeal to this Court against the order of the Disciplinary Committee. If an order of the Bar Council were intended to be interposed (whether endorsing or refusing to endorse the order of the Disciplinary

Committee) one would expect the appeal to this Court to lie against the order of the Bar Council. But in the initiation of the proceedings and again in the matter of appeal, the Bar Council is mentioned and not the Disciplinary Committee. Indeed under Sections 35 (1) and 36(1) the Bar Council of the State or of India, as the case may be, must be satisfied that a prima facie case exists before they will refer the matter to their Disciplinary Committee. This is in keeping with the jurisdiction of the Bar Councils of the States laid down by Section 6(1)(c) under with Bar Council is to entertain and determine cases of misconduct against advocates on its rolls and under clause (d) with the duty to safeguard the rights and privileges and interests of advocates on its rolls. In regard to the Bar Council of India the same position obtains under Section 7(1)(d) (which is ipsissima verba with the corresponding provisions of Section 6) read with Section 7(1) which lay down the jurisdiction of the Bar Council of India to deal with and dispose of any matter arising under the Act. Therefore, the general superintendence of ethics and etiquette of the profession and questions of misconduct of the members are not wholly outside the ken of the Bar Councils of the State or of India and are always within their respective jurisdictions.

19. Next, the appeal to this Court is not a restricted appeal. It is not an appeal on law alone but also on fact. Indeed Section 38 gives the Supreme Court jurisdiction to pass in such appeals any order it deems fit. Therefore the appropriate Bar Council or this Court do not act wrongly if they entertain subsequent petitions from a person whose case had been dealt with by a disciplinary committee.

20. The power of review is expressly granted to the Disciplinary Committee of the Bar Council which may on its own motion or otherwise review any order passed by it. The word "otherwise" is wide enough to cover a case referred by the Bar Council for review. There is a proviso which makes the Bar Council of India the final judge because no order of a disciplinary committee of a State Bar Council on review has effect unless it is approved by the Bar Council of India.

21. The powers of review are not circumscribed by the Act. The analogy of the Civil Procedure Code must not be carried too far. Such powers may be exercised in a suitable case for or against an advocate even after the matter has gone through the hands of the Disciplinary Committee at some stage or even through this Court. These matters are also not governed by the analogy of autrefois convict or autrefois acquit in the Code of Criminal Procedure. Disciplinary proceedings against a lawyer involve not only the particular lawyer but the entire profession. The reputation of the legal profession is the sum total of the reputation of the practitioners. The honour of the lawyer and the purity of the profession are the primary considerations and they are intermixed.

22. During the hearing we gave an illustration which we may also give here. Suppose an advocate is charged with embezzling the money of his client. The advocate pleads that he paid the money in cash to the client and obtained his receipt but the receipt is misplaced and he cannot find it. He is disbelieved by the Disciplinary Committees and even by this Court. Subsequently he finds the receipt and wishes to clear his good name. The matter can be gone into again on the fresh material. It is not only his right but also the duty of those including this Court to reconsider the matter. The Bar Council in any event can restart the matter to clear him whether before any of the authorities which dealt with the matter before. The facts in the illustration may be reversed to see the converse position where an advocate gets off on a false plea of not having received the money at all, if he can be successfully confronted with his own receipt which the client had misplaced and could not lay hands upon in the first instance.

23. From this it follows that questions of professional conduct are as open as charges of cowardice against Generals or reconsideration of the conviction of persons convicted of crimes. Otherwise how

could the Hebron brothers get their conviction set aside after Charles Peace confessed to the crime for which they were charged and held guilty?

24. The fact of the matter in this case is that too much emphasis was laid on the oral evidence of a clerk who alone said that he had seen the appellant tear two pieces from Ex. C-l. The Advocate's denial was not accepted although there was word against word. There was no evidence that the pieces found on the floor matched the tear. No witness spoke of having taken the elementary care of matching the pieces with Ex. C-l. Indeed the pieces having been lost the only corroboration now is that the edges of Ex. C-l show such a tear.

25. The question is whether this by itself is sufficient. There is no evidence against the appellant except that of Amrik Singh. It is true that there is no personal allegation against him of harbouring any grudge or hostility beyond saying that the staff of the Courts were against the appellant. As against this, one consideration is what was the gain to the appellant by tearing the tiny pieces ? We shall presently show how tiny they were. The charge is a serious one; and we have to see the matter in the whole setting of the evidence. The document said to be torn is a copy of a notice which Sarin's counsel had sent to the opposite side. The counsel for Sarin said that he had not proved the document. Further the original notice could be summoned. Exhibit C-l was in two sheets 30.5 cm. x 20.5 cm. and 34.6 cm. x 21.5. The second sheet was extraordinarily long and its edges appear very much frayed. It was suggested at the hearing it must have protruded from the rest of the file and thus got damaged in the handling of the file. This was not given due weight.

26. We have examined the document carefully. It is a carbon copy of a notice. The document ends thus :

> "Note : Copy of this notice is being sent under postal certificate to your wife.
>
> Yours faithfully."

The tear occurs 1.5 cm. to the left of 'ficate' and ends below the letter 'a' in 'postal'. The letters of 'faithfully' are missing except for the head of 'f' and so also letters 'der' in 'under' and parts of 'p' and 'o' in 'postal' are missing. The complainant claimed that the document had an attestation 'true copy' followed by a signature and that it had been torn out. The two clerks who had seen the pieces do not definitely say that the pieces had any writing and as the pieces have disappeared we cannot get corroboration. They had originally not said this but now at a later stage they have deposed about the writing on the pieces. We have, therefore, done the best to discover the truth. This is the result of our observations.

27. The document is a rectangular foolscap sheet, rather old paper which is frayed along the edges. As the fraying edges were falling off we have secured them with transparent scotch tape. One piece actually fell off when the paper was being examined by us but the piece has been secured in sitess with scotch tape. Another piece found in the file could not be matched and has been secured in the margin with scotch tape so that it may not be lost. It belongs to the same paper. Now for a description of the paper.

28. Fortunately the machine cut edges are available on all four sides enabling us to measure the paper and to find out the exact measurements of missing parts. This will enable us to find out if an attestation and a signature could have been written at all on these papers. It is obvious that the tearing, if deliberate, as is suggested, must have been to tear out not the blank space left on the

bottom of the typewritten portion but of some writing, typed or manuscript.

29. The paper is exactly 34.6 cm. x 21.5 cm. As no portion is alleged to be torn from the top or the sides we may ignore the measurement of the breadth except to compare it with the tear. The tear today is found along 17.5 cm. out of the total breadth of 21.5 cm. We have already said that except for 1.5 cm. to the left of the letters 'ficate' the tear falls directly below the typed portion and that is 15.5 cm. in length. 7.5 cm. are below the portion where the last line of typing 'ficate to your wife' and the words 'yours faithfully' occur. The bottom of these typed letters are exactly 34.4 cm. from the top leaving a strip which would be. 2 cm. In other words out of tear of 17.5 cm, 8 cm. allow only a space of .2 cm. for any writing.

30. Now for the remaining 8 cm. This is made up of 2.5 cm. below 'tal certi' which is almost whole and there is no writing on this portion. That leaves a tear of 5.5 cm. measures lengthwise where there is no typing on top. This is made up of 3 triangular portions joined by the .2 cm. strips below typed portions. 1st triangle is 2 cm. in length with 1 cm. perpendicular from apex to base. The second is 3.2 cm. base with a perpendicular of 1 cm. and the third is 2.8 cm. by 1 cm.

31. Therefore out of the total length of 17.5 cm., 7.5 cm. is a strip uniformly of .2 cm. There are 3 triangles, in length respectively 2 cm., 3.2 cm. and 2.8 cm. with the height almost at the centre in each case 1 cm. The photostat of the document is an annexe and can be seen also. We took the measurements from the original. It is easy to see how small will be space for writing. The three triangles of which only 2 could be held to be torn by the appellant could not have contained the words of attestation and signature. The one on the extreme left is so situated that no one would write there an attestation. The three triangles are separated by 4 cm. and 3.5 cm. and it is impossible to think that the attestation was written in one triangle and the signature in another for there was not enough space to write them one above the other even if one could cramp in one line. Further with the typing having gone to .2 cm. from the bottom anyone wishing to writ an attestation would ordinarily write it in the margin where plenty of space was available and that is the usual course lawyers adopt when the writing goes right down to the bottom. We are, therefore, satisfied that there was no writing on the pieces and the haltiag testimony of the 2 clerks should not have been accepted without corroboration. They said nothing about it when they were first examined.

32. The sum total of our observations may now be stated. The document was merely a copy of which the original could be summoned. One sheet was unduly long and was likely to protrude from the file of papers and thus liable to get frayed. It is grayed and the paper is showing more tears today. The typing had gone to the very bottom of the paper and there was not sufficient space to write in a natural hand the attestation and to sign it. There was blank paper in the margin where the attestation could be conveniently written and signed. The document was not necessary for the decision of the case and Mr. Vir Bhan had not even attempted to prove it. It was being inspected to find out the original case of the claimant after the case had gone to arbitration and there was an award. Nothing was to be gained by tearing it or even by tearing out the attestation even if there was one. Of course it would be improper even to tear out the blank portion but no one indulges in such a silly and useless act. There were serious allegations against a Judge of the Court and there was a possibility of the appellant being the target of hostility and the evidence against him was of single clerk. There was word against word.

33. The question that arises is what are we to do ? We have held above that the disciplinary committee could be asked to reconsider the matter by the Bar Council. The order of the disciplinary committee does show that although they held that the Bar Council had acted without jurisdiction,

they went on to express their satisfaction with what they had already done. The re-examination was not made objectively but with the intention of re-affirming their decision by every argument for it. No attempt was made to find whether the circumstances were such that the appellant could be said to have proved satisfactorily the contrary of what was held or had created sufficient doubt in the matter. The earlier findings were affirmed when there was no need to do so as the petition for review was held in incompetent.

34. At the hearing before us the Bar Council of India appeared and supported the case of the advocate. Mr. Natesan said that in the opinion of the Bar Council, it would be proper for this Court to go into the matter. Previously the Bar Council had probably supported the case against the appellant. The stand of the Bar Council in the case before us was this :

> "The Disciplinary Committee of the Bar Council, while finding that it has no jurisdiction to review the matter in view of the prior appeal to this Court, has gone also into the merits of the case, examined it elaborately with reference to the materials stated to be new matter and has come to the same conclusion. The question that now arises is whether the Supreme Court can review the matter itself in this appeal when the Disciplinary Committee had no jurisdiction and set aside the order made by the Disciplinary Committee on the merits. It may be a different thing if this Court now reviews the order in the light of the materials placed before the Court after the production of the original document stated to have been torn which ex facie shows that it could not have been deliberate or wanton."

35. Another body of lawyers, namely, the Bar Association of the Supreme Court sought permission to intervene and were heard. Mr. A. S. R. Chari on behalf of the Association strongly supported the advocate's case. Thus we have the entire Bar of the country and the entire Bar of this Court unanimously asking this Court to go into the matter.

36. It appears to us, therefore, that the Bar Council of India does not wish to oppose the review by us of our order and indeed they invite us to grant relief to the appellant. Ordinarily we would have been unwilling to grant a review after this Court had declined to do so on an earlier occasion. But the circumstances are different. Our view of the matter is also that the charge of deliberately and wantonly mutilating an important document in a judicial file has not been as clearly made out as one would wish. This Court on earlier occasions, taking the facts from the order of the disciplinary committees, declined to interfere as no question of law was involved. It decided the appeal summarily without issuing notice or sending for the record. There is force in the contention that an advocate is entitled to a full appeal on facts and law under Section 38 of the Advocates Act. Since the disciplinary jurisdiction of substituted. This Court must in all cases go into the matter to satisfy itself that justice has been done by the disciplinary committee or committees.

37. We find some unusual circumstances facing us. The entire Bar of India are of the opinion that the case was not as satisfactorily proved as one should be and we are also of the same opinion. All processes of the Court are intended to secure justice and one such process is the power of review. No doubt frivolous reviews are to be discouraged and technical rules have been devised to prevent persons from reopening decided cases. But as the disciplinary committee themselves observed there should not be too much technicality where professional honour is involved and if there is a manifest wrong done, it is never too late to undo the wrong. This Court possesses under the Constitution a special power of review and further may pass any order to do full and effective justice. This Court is moved to take action and the Bar Council of India and the Bar Association of the Supreme Court are

unanimous that the appellant deserves to have the order disbarring him practice set aside.

38. Looking at the matter for ourselves we find that the document said to be mutilated was not needed for the case. In any event it was only a carbon copy and not an original. No part of the typed portion was damaged except very slightly. The tear in two places equal to a third of a small postage stamp are the subject of the charge. In our opinion there was most probably no writing there as there was hardly any space available and the whole of the margin was available to write the attestation of 'true copy'. The clerks did not speak of any writing at first and now too in a very halting manner. No steps were taken to match the alleged pieces with the tears and the pieces have not been preserved. Thus there is the word of Amrik Singh against that of the appellant. There was a background of hostility which the appellant had created by his aggressive action in other cases. Whether he handled the paper roughly and a piece came off which he threw down without noticing it or the paper gave way and a piece fell (as it did when we handled it) it is not possible to say with definiteness. We find it difficult to believe that this mutilation, without any rhyme or reason, was done with a sinister motive. This is the unanimous view of the entire Bar of India speaking through Counsel.

39. Our duty is clear. We could have paused to consider the law applicable to reviews in such matters but we do not think we should ascertain it in this case. This matter is one of the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight. The Bar Council thinks that the decision against the appellant is unsustainable. We see no reason to differ from them. We accordingly grant review in this case and set aside the order disbarring the appellant from practice which had been passed against him. There shall be no order about costs.

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