N. B. Mirzan

Vs

The Disciplinary Committee of the Bar Council of Maharashtra and Another

Civil Appeal No. 2607 of 1969

(CJI S.M. Sikri, A.N. Ray, D.G. Palekar JJ)

15.09.1971

JUDGMENT

PALEKAR, J. -

1. This is an appeal under Section 38 of the Advocates Act, 1961. The appellant, Mr. N. B. Mirzan, was an Advocate on the roll of the Bar Council of Maharashtra. On October 27, 1964, respondent No. 2, who was once the client of the appellant, made several allegations of professional misconduct against the appellant which were referred by the State Bar Council to its Disciplinary Committee consisting of three Advocates, one being the Committee's Chairman and the other two its members. After a detailed inquiry into the allegations, the Disciplinary Committee came to the conclusion that professional misconduct had been established on three counts which involved moral turpitude. The Committee, therefore, directed on October 3, 1968 that he appellant should be suspended permanently and should not be allowed to appear before any Court, authority or person in India. He was also directed to surrender his Sanad forthwith. From this order, an appeal was filed to the Bar Council of India, being Appeal No. 9 of 1968. The appeal was heard by the Disciplinary Committee of the Bar Council of India consisting of a Chairman and two members. On November 30, 1969, by a detailed order, the Disciplinary Committee confirmed the findings of the State Disciplinary Committee; but, as regards the punishment, it directed that the appellant be suspended from practice for a period of five years and to pay to respondent No. 2 a sum of Rs. 850/- within two months. It was further directed that, if the amount was not paid, the punishment imposed by the State Disciplinary Committee striking out the appellant's name from the roll of Advocates would stand confirmed. It is from this order that the present appeal has been filed.

2. Respondent No. 2, Saidur Rehman, engaged the appellant as his Advocate in an obstructionist notice issued to him by the Presidency Small Causes Court, Bombay, in R.A.E. Suit No. 2491 of 1961. Respondent No. 2 had been introduced to the appellant by one Noor Mohammed who was a client of the appellant. At the time of his engagement, no fees as such were paid, but a sum of Rs. 190/- was demanded by the appellant for court-fee stamps and that amount was paid to the appellant. Thereafter, on April 26, 1962, the appellant demanded from respondent No. 2's wife Khurshid Begum, a sum of Rs. 975/- on the representation that the amount was required for deposit in the above suit by way of rent. A receipt was issued by the appellant for this amount and it is Ext. A. On August 16, 1962, the appellant demanded a further sum of Rs. 250/- representing that this amount was necessary for payment to some Judge or officer for getting the rent bill transferred in the name of respondent No. 2 in respect of the premises which were the subject-matter of the above suit. In respect of this payment also, the appellant issued a receipt dated August 16, 1962 which is Ext. B.

3. The obstructionist notice was discharge on September 13, 1962, the order being in favour of respondent No. 2.

4. Thereafter, the landlord filed Suit No. 3402 of 1963 in the City Civil Court, Bombay, against respondent No. 2 and his brother for ejectment and mesne profits. In this suit also, the appellant was engaged by respondent No. 2 as his Advocate. A written statement was filed admitting that no rent had been paid by respondent No. 2 to his landlord from May 1961 onwards. In view of this admission, the City Civil Court passed an order directing respondent No. 2 to deposit in Court the amount due for arrears of rent from May 1961 to September 1963. This order was passed on September 25, 1963. The amount was to be paid within two months from that date. Since respondent No. 2's wife had already paid Rs. 975/- to the appellant on April 26, 1962 and the amount was more than sufficient for making the deposit in accordance with the order of the City Civil Court, respondent No. 2 remained under the impression that the deposit would be made by the appellant in due course. In January 1964, the appellant gave a notice to respondent No. 2 to come with the money for the purposes of deposit and this started the whole trouble, ending with the complaint by respondent No. 2 to the State Bar Council on October 27, 1964. It appears that, before filing this complaint, notices were exchanged between the parties and a settlement was brought about between the appellant and respondent No. 2 and, under this settlement, the appellant undertook to pay to respondent No. 2, Rs. 1,000/- by instalments of Rs. 150/- per month. The appellant sent the first instalment of Rs. 150 /- by money order on October 11, 1964. The case of the appellant in respect of this money order, however, was that the money order had been sent to respondent No. 2, as respondent No. 2 had asked for a loan and the appellant took pity on him in spite of the strained relations between the parties.

5. Chronologically, the three items of payments in respect of which we have before us concurrent findings of professional misconduct are as follow :

(1) Demand and receipt by the appellant of Rs. 190/- from respondent No. 2 on the representation that the amount was required for purchasing court-fee stamps in Suit R.A.E. No. 2491 of 1961. There was no formal receipt issued in respect of this amount.

(2) Demand and receipt by the appellant of Rs. 975/- from respondent No. 2's wife on April 26, 1962. The receipt issued by the appellant is Ext. A and reads as follow :

> "Received from Smt. Khurshid Begum a sum of Rs. 975/- to be paid in Small Causes Court in Suit No. 2491 of 1961 including expenses rent and deposit in the above matter."

(3) Demand and receipt by the appellant of Rs. 250/- from respondent No. 2 on August 16, 1962. Ext. B is the formal receipt given by the appellant on that date and it reads as follow :

> "Received from Shri Saidul Rehman the sum of Rs. 250/- for transferring the rent bill in his name in Civil Suit No. 2491 of 1961 of Small Causes Court."

In respect of all these three payments, respondent No. 2 alleged that these several payments had been made to the appellant on the representations made by him which respondent No. 2 and his wife, in their ignorance, thought were bona fide demands. But, later, they realised that the demand for Rs. 190/- to purchase court-fee stamps was a false demand, because no court-fee stamps were necessary to be paid by respondent No. 2 in an obstructionist notice. Similarly, the second demand

of Rs. 975/- for depositing the amount in Court was a false demand, because no order could possibly be passed by the Court asking an obstructionist to make a deposit in Court towards rent. The third demand of Rs. 250/- was also a false demand, because there could be no proceedings for transferring the rent bill in the name of respondent No. 2 in the absence of any negotiations with the landlord. It was the allegation of respondent No. 2 that taking advantage of the ignorance and illiteracy of respondent No. 2 and his wife, the appellant had demanded and received all these amounts with a view to misappropriate the same.

6. So far as the first count of Rs. 190/- is concerned, there was no specific denial of the receipt of this amount by the appellant in his written statement. In his evidence the appellant tried to explain that no specific denial was made in the written statement, because he had stand in his written statement that for every payment received he had given a receipt and he had, therefore, impliedly denied the demand and receipt of Rs. 190/- since, admittedly, there was no formal receipt for it. This explanation has been rejected by both the Disciplinary Committees. Respondent No. 2 examined Noor Mohammed as his witness in the case and Noor Mohammed has supported respondent No. 2's statement that he had paid Rs. 190/- to the appellant. Noor Mohammed was a former client of the appellant and it was Noor Mohammed who had introduced respondent No. 2 to the appellant when the obstructionist notice was issued by the Court to respondent No. 2. After his engagement as Advocate, the appellant, according to Noor Mohammed, demanded Rs. 190/- for purchasing court-fee stamps and, therefore, respondent No. 2 in his presence paid Rs. 190/- to the appellant. In support of this, Noor Mohammed produced a page in his diary in which he had noted that the appellant had been paid Rs. 190/- for stamps. Both the Disciplinary Committees saw no reason why Noor Mohammed, a previous client of the appellant, should give false evidence against him. Some sort of confusion was sought to be introduced by the appellant by referring to an endorsement on Ext. B to the effect that a sum of Rs. 190/- had been received by way of fees and expenses in the suit. But this endorsement is made by the appellant on September 18, 1962, i.e., after the obstructionist notice was discharged and it has nothing to do with the payment of Rs. 190/- made to him at the beginning of his engagement as an Advocate which, according to the State Disciplinary Committee, was in 1961. We are, therefore, satisfied that the appellant had demanded and received Rs. 190/- for the purchase of court-fee stamps in the beginning of his engagement as an Advocate, though, in fact, he did not have to purchase any court-fee stamps.

7. Coming to the second item of Rs. 975/- there is no dispute that the appellant had demanded and received this amount on April 26, 1962 from respondent No. 2's wife, Smt. Khurshid Begum. The receipt Ext. A itself goes to show that the amount had been received by the appellant for making a deposit in Court against expenses or rent. It is further admitted by the appellant that no order had been made by the Court for the deposit of rent and it is clear to anybody knowing Court proceedings that, in a proceeding by the landlord to remove obstruction, there can be hardly any occasion for the Court to make an order against the obstructionist to pay rent in Court. Then again, if any such order were made by the Court, the Court would normally give the obstructionist time to make payment and the appellant could then have asked his client to bring the money for the deposit. The obstructionist proceeding was pending on April 26, 1962 and it was actually disposed of in favour of respondent No. 2 in September 1962. Admittedly, there was no interim order for making any deposit. Therefore, there was really no occasion at all on April 26, 1962 for the appellant making a demand for the amount from respondent No. 2's wife and receiving the same for the obstensible purpose of depositing the amount in Court. It is obvious that he obtained this amount on a false pretext and, when such a demand is made on a false pretext, the inference would naturally follow that the demand had been made with a view to misappropriate the amount.

8. Having received the amount and misappropriated the same, the appellant put forward the defence that this amount had been actually returned to respondent No. 2 on September 13, 1963 in the Court premises when the obstructionist notice was discharged. In support of this, the appellant produced an alleged receipt Ext. 2. Both the Disciplinary Committees were inclined to the view that this was a suspicious document if not a false document. In the firs place, the appellant would not normally be expected to have such a large amount on his person on September 13, 1963 when the obstructionist notice was discharged. The amount had been paid to him on April 26, 1962 and it is impossible to accept his story that, on every occasion when the proceedings were taken up in Court, he was carrying this amount with him on his person, so that, if an order was made for a deposit, the amount would be immediately deposited and, if the notice was discharged, he would be in a position to return the amount to respondent No. 2. The receipt Ext. 2 is on a full sheet of ledger or cartridge paper. We have seen the document ourselves and we have no doubt at all that its very appearance shows that it is a suspicious document. At the bottom of the paper, three thumb-impressions have been obtained one below the other, one of respondent No. 2, another of his wife, and the third of his brother, Fazal Hakimullah. Above these thumb-impressions, the receipt is drawn up entirely in the handwriting of the appellant himself. When respondent No. 2 was shown this document during the course of the inquiry, he was unable to say whether the thumb-impression supposed to be his was his thumb-impression. No attempt was made to prove by expert evidence that it was respondent No. 2's thumb-impression. Respondent No. 2, however, admitted that, when demanded by the appellant, he had put his thumb-impression on a blank cartridge paper as he had to go to Moradabad, his native place, leaving his wife behind to look after the litigation. In other words, the suggestion of respondent No. 2 was that the appellant took his thumb-impressions on blank papers, so that they could be used during his absence for the purpose of the litigation. Ordinarily, a receipt for payment of money would not be written on a cartridge or ledger paper and there is force in the evidence of respondent No. 2 that he had put his thumb-impression on some blank ledger paper for being used in the course of the proceeding in Court. Now, if Rs. 975/- were returned to respondent No. 2 in the Court premises themselves, there would be no good reason why the receipt should be thumb-impressed by two other persons besides respondent No. 2. Respondent No. 2's wife was there and one could understand if the appellant had taken a receipt from her, because it was she who had made the payment. But the strange thing about the document is that the thumb-impression of the wife Khurshid Begum has been duly cancelled by the appellant in his own handwriting. It will be further noted that, underneath the alleged thumb mark of the brother Fazal Hakimullah and opposite the endorsement "L.T.I. of", the original letters on which there is heavy overwriting, read "Khurshid Begum" and beneath this overwriting, is the endorsement Fazal Hakimullah. One other curious feature of this receipt is that the thumb-impressions are supposed to be attested by two witnesses, one Khan Saheb and one Miss Lizza Pias. Khan Saheb has not been examined and it is clear from what the State Disciplinary Committee has stated that Miss Lizza Pias was not an independent witness. She had been seen almost every day outside the Bar Council Office when the State Disciplinary Committee met in connection with the present proceedings. She, however, admitted that she had not seen the appellant paying the amount to respondent No. 2, nor did she read the paper she signed as a witness and further admitted that she was not aware of the contents of that writing. Both the Disciplinary Committees have held that Ext. 2 was not a genuine document and we are satisfied that this finding is correct.

9. Corroboration is further found in what happened later in 1964 after disputes started between respondent No. 2 and the appellant. In about October 1964, the disputes, according to respondent No. 2, were settled in the presence of one Mr. Qureshi and the appellant agreed to pay Rs. 1,000/- to respondent No. 2 by instalments of Rs. 150/- per month. Accordingly, the first instalment was sent

to respondent No. 2 by money order on October 11, 1964, and it is admitted by the appellant that he had sent the money order for Rs. 150/-. He however, explained that respondent No. 2 along with a social worker had seen the appellant on October 10, 1964 and requested him for a loan. Out of pity, the appellant says, he sent the money order in question by way of loan of October 11, 1964. The explanation was regarded by both the Committees as false, because under the circumstances of the case and in view of the bitter disputes between the parties, it was extremely unlikely that the appellant would make any loan to respondent No. 2. On the other hand, Shri Mardan Ali Quereshi has corroborated respondent No. 2 and stated that in his presence the dispute had been settled between the appellant and respondent No. 2 and the appellant had agreed to pay the amount of Rs. 1,000/- in instalments of Rs. 150/- per month. The story of the loan has been rejected by both the Committees and the evidence of respondent No. 2 and Quereshi has been accepted, in which case it is impossible to believe that the appellant had returned the sum of Rs. 975/- to respondent No. 2 as far back as September 13, 1962. We, therefore, agree with the concurrent finding of both the Committees that the appellant had demanded and received Rs. 975/- from respondent No. 2's wife Khurshid Begum on a false representation that the amount was required to be deposited in Court and thereafter misappropriated the same.

10. The third item is of Rs. 250/-. There is no dispute that his amount was received by the appellant either from respondent No. 2 or his wife. Respondent No. 2 says that it was received from his wife during his absence. The receipt Ext. B, however, is made in the name of respondent No. 2. The contents of the receipt themselves go to support respondent No. 2's case that this amount had been paid, because the appellant had represented that the amount was required for transferring the rent bill in respect of the premises in the name of respondent No. 2. The amount was received by the appellant on August 16, 1962, i.e., much before the obstructionist notice had been discharged. The appellant had great difficulty in explaining what this receipt meant. In the notices exchanged in 1964, the appellant had denied altogether having received this sum of Rs. 250/- for the purpose of the transfer of the rent bill. In the written statement before the State Disciplinary Committee, the appellant did not categorically deny the receipt of Rs. 250/-. He suggested there that he had been instructed by respondent No. 2 to file a declaratory suit for transferring rent bill in his name. One does not know what this really means. The obstructionist proceedings were still pending and one does not know what kind of proceedings could be taken in a Court of law for transferring the rent bill. It is not the case that there were any negotiations with the landlord for transferring the rent bill in the name of respondent No. 2. Then again, if any such suit was to be filed, the appellant and his client would have thought about it only after the obstructionist proceedings had come to an end and not in August 1962. In his evidence, the appellant stated that this amount of Rs. 250/- had been paid to him by respondent No. 2 of his own accord and the appellant had never suggested that any declaratory suit was required to be filed. This is rather a tall story. Seeing that the story was unconvincing, the appellant changed his case later and stated that this sum of Rs. 250/- was paid to him towards the court-fees in respect of the intended declaratory suit, his fees and other pocket expenses. That explanation is also false, because it is nobody's case that any such declaratory suit was ever filed. It is, hence, clear that the appellant was not at all able to explain why he demanded this amount of Rs. 250/-. The conclusion is irresistible that he must have represented that this amount was required to pay somebody for the purpose of transferring the bill of the suit premises in the name of respondent No. 2, knowing quite well that it was impossible to secure a transfer of the rent bill in legal proceedings in Court. The amount had been screwed out by the appellant on a false representation for the purposes of misappropriation. In our opinion, the findings of both the Disciplinary Committees were right and unexceptionable. Normally, this Court does not entertain an appeal from a concurrent finding of facts. We have, however, gone through the facts to satisfy

ourselves that no injustice has been done.

11. The State Disciplinary Committee had permanently debarred the from practising as an Advocate, but, in appeal, the Disciplinary Committee of the Bar Council of India has taken a more lenient view and suspended the appellant from practice for a period of five years on condition that he pays respondent No. 2 Rs. 850/- within two months. No argument was addressed to us on the question of punishment. Therefore, it is not necessary to consider the point.

12. In the result, the appeal and is dismissed with costs.

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