

L. D. Jaisinghani

Vs

Naraindas N. Punjabi

Civil Appeal No. 881 of 1975

(Beg, J.)

27.11.1975

JUDGMENT

BEG, J. -

1. The appellant is an advocate against whom a complaint was made on May 25, 1971 before the Bar Council of Maharashtra by the respondent Naraindas M. Punjabi. As the complaint was not disposed of within six months of its receipt by the State Bar Council it was transferred to the Disciplinary Committee of the Bar Council of India under Section 36B of the Advocates Act, 1961 for disposal.

2. The complainant alleged as follows :

2A. He was the co-owner with two others of certain premises of which one of the tenants was M/s. Hindustan Electric and Radio Corporation. He, together with the other co-owners, had filed Suits Nos. 840 of 1961 and 1040 of 1964 in the Bombay City Civil Court against the corporation. These suits were offshoots of a prior proceeding No. 4174 of 1960 in the Small Causes' Court for the ejectment of the corporation, which was dismissed on March 10, 1961. S. C. Suit No 840 of 1961 was, thereafter, filed, but, it was withdrawn on September 19, 1963, with liberty to file a fresh suit. On or about February 10, 1964, the advocate concerned, L. D. Jaisinghani, took Rs. 350 from the complainant for filing the fresh suit in the Bombay City Civil Court and gave the complainant a copy of the plaint in which No. 1040 of 1964 was given as the number of the new suit. The complainant, after waiting for a few years made casual enquiries from the advocate as to when Suit No. 1040 of 1964 would come up for hearing. The advocate used to tell him that it would come up any day during 1969 to 1970. In all this period, neither the defendant corporation was remitting any rents nor depositing anything in court. During 1969 to 1970, the complainant requested the advocate to move the court for payment of rents by the corporation. But, the advocate kept putting this off by pleading that the suit may come up any day for hearing in the ordinary course. The two co-owners sold their shares in the building to the complainant, on November 24, 1970 and January 4, 1971, respectively, so that he became the sole landlord and owner of the property. After this, the complainant had an additional reason to request L. D. Jaisinghani, the advocate, to file a petition for the amendment of the plaint so that he may figure as the sole plaintiff and also apply to the court for payment of rents. The advocate agreed to do this. Nevertheless, he went on procrastinating until, by a letter dated January 8, 1971, the complainant pressed him to do something very definitely. After

this the advocate got a notice of motion sworn by the complainant before Mr. Tiwari, Superintendent of Bombay City Civil Court. The advocate then informed the complainant that notice of motion had been lodged in court and served on the corporation's advocate, Mr. Bhagat, through a clerk, named Adwani, of a late advocate Mr. Wadhwa and that it would come up for hearing soon. As nothing seemed to come up for hearing, the complainant, at last addressed a letter to the Registrar of the Bombay City Civil Court on March 9/16, 1971, informing him of the lodging of the notice of motion and enquiring what had happened to it. The advocate, L. D. Jaisinghani, then told the complainant that the matter would be heard on April 20, 1971, at 12 noon, before the judge Mr. Kattal. On April 20, 1971, on enquiry from the office of the court, the complainant learnt that no notice of motion is there and that No. 1040 of 1964 was a fictitious reference given by the advocate of a suit which was never filed by him. It turned out to be another suit filed by another person through another advocate. When Tendolkar, the head clerk enquired about the notice of motion from the advocate L. D. Jaisinghani, he said that he had given away all the papers to Mr. Adwani, the ex-clerk of Mr. Wadhwa and that he would enquire further after his return from Bhopal. The complainant alleged that the advocate had thus demonstrated that he had committed a breach of trust and faith and cheated the complainant by fraudulent means and was guilty of serious professional misconduct.

3. In reply, the advocate, while denying the truthfulness of the allegations set out above, admitted that he had filed Suit. No. 840 of 1961, but the stated that he could not remember the facts full as it was an old matter. The advocate also denied having filed or having been asked to file any Suit No. 1040 of 1964. The advocate, however, admitted receiving the sum of Rs. 350, but, according to him, this was part payment of his fee towards a proposed suit of which a draft was handed over to the complainant. The advocate's case was that as the complainant was neither serious nor willing to incur the expenses of litigation and had not supplied the necessary details or expenses the suit could not be filed. He denied the truth of other allegations so far as he himself was concerned. He asserted that the letter to the Registrar must have been written by the complainant and enquiries made with a view to creating evidence. His case also was that apart from the draft copy of the plaint which has a number of blanks in it, including a blank space for the number of the suit, the other documents produced by the complainant were fabricated with some ulterior motive. The advocate did not set up what could be the reason for the complainant's displeasure with him or attempt to involve him falsely. In his evidence he alleged that this was due to the fact that the advocate had refused to give evidence in a case in which the complainant had been proceeded against for malicious prosecution.

4. The All India Bar Council, after examining the documents and the evidence in the case, observed that although, the matter was old and receipt of a sum so small as Rs. 350 could not, ordinarily, serve as sufficient proof to discredit the evidence of an advocate that of a litigant, who alleged dishonesty against an advocate, yet, the supporting documents and the conduct of the advocate, particularly the untruthful statements he has made about his past transactions which also indicated similar misappropriations of monies belonging to clients, the complainant's version must be accepted. The finding recorded by the committee was :

Having regard to the oral and documentary evidence on record and all the facts and circumstances of the present case, we are unable to come to any other conclusion except that the respondent has been guilty of gross professional misconduct. This is not merely a case of an advocate not filing a suit on behalf of his client after taking monies for the same, but going to the length of committing and perpetuating a gross deception on his client by giving a false and fictitious number of a suit

which has not been filed and leading on his client to believe that a suit was been filed. A person who can stoop to such practices has no place in the legal profession. This sort of behaviour is nothing short of rank dishonesty and cheating. Practices such as these expose the profession of law to contempt and ridicule of other members of the society.

We find, after going through the judgment of the committee that, although, its indignation over the conduct of the appellant, particularly in view of an unenviable record of similar complaints against him in the past by Dr. Nagdev, and another by Mrs. Butler, and the third by one Tarachand, which had led to disciplinary proceedings being finally dropped after the advocate or somebody else on his behalf has made payments to the complainant litigants, and the prevaricating replies of the advocate, attempting to conceal or deny these proceedings, may have been justified, yet, there very features of the case were also likely to create a prejudice against the accused advocate who may, in the particular instance now before us, not have been really so blameworthy as one may, with his background, be inclined to believe. After having been taken through the evidence, we are not convinced that the complainant was really so truthful and reliable as the members of the Disciplinary Committee considered him to be. There are several features in his evidence which makes his version difficult to rely upon implicitly. We mention these below.

5. Firstly, the complainant's evidence shows that he was not the kind of person who could swallow so easily detectable a fraud of which he claimed to be the victim for so long a period of time. He admits that the advocate had appeared in about six or seven suits on his behalf. There had been proceedings against him for malicious prosecution. He had denied that he wanted the appellant to give evidence, but, when confronted by documentary evidence, he was forced to admit that this was true.

6. Secondly, although the complainant stated that Rs. 350 included the court fee in respect of the suit, yet, he stated, after that, the advocate had told him that the deficit court fee would be realised from him afterwards. If, as we find from evidence, the court fee alone came to about Rs. 400, it was difficult to believe that any suit could have been agreed to be filed without realising the deficit court fee. The statement of the complainant, that the appellant used to file suits for him and then realise the court fee, if true indicated that the appellant would be expected to make a demand for further payment after alleging that he had filed the suit. But, the complainant not merely does not speak of any such further demand but says that no charge was made even for taking out the notice of motion on the alleged copy of which the number of the suit given is 840, which does not tally with No. 1040 given by the complainant. Suit No. 840 had been withdrawn long before.

7. Thirdly, the copy of the plaint which was sought to be used by the complainant as proof of what, according to him, the advocate alleged was the plaint of the suit already filed, had significant blanks in it. Even the number 1040 and the amount claimed had been admitted by the complainant to have been subsequently filled in, in his own hand. But, in his complaint, it was stated that No. 1040 was already on the plaint which had been filed. This shows that the complainant had not come with an entirely truthful version. He has made interpolations in the documents to fit in with his version.

8. Fourthly, the complainant was, apparently, sufficiently acquainted with the requirements of litigation to know that no plaint could be filed on his behalf and on behalf of his co-owners without the signatures of his co-owners. When asked whether the co-owners had signed the plaint, he pretended to be ignorant. There are other defects also in his evidence which we need not deal with.

9. It is true that the advocate had not fared well under cross-examination. He had tried to conceal

similar complaints against him in the past. It is, however, equally true that the complainant was no greenhorn. At any rate, he was not so gullible as he tried to make himself out to be. After going through the relevant evidence, we doubt whether both sides have come out with full and true facts. It is more likely that there was some dispute over the payment of Rs. 350 which the advocate appellant claimed as his fee for work done, but, the complainant seems to have considered himself entitled to demand the payment back. It is possible that there may have been other reasons too for friction between the two so as to lead to a disruption between the complainant and the Counsel whom he had been frequently engaging in addition to others. In any case, we are left in doubt whether the complainant's version, with which he had come forward with considerable delay, was really truthful. We think that, in a case of this nature, involving possible disbarring of the advocate concerned, the evidence should be of a character which should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the appellant guilty but had disbarred him permanently.

10. The complainant has no doubt produced Tendolkar and D. D. Nalvade to show what enquiries were made relating to Suit No. 1040 of 1964 by the respondent complainant. It is, however, not disputed that the respondent did make those enquiries. The case of the appellant was that these enquiries were made in an attempt to bolster up a weak case. These enquiries merely prove a much too belated conduct of the complainant. They could be the result of an attempt to give a semblance of truth to coloured and exaggerated version. It is also true that the appellant had been most unwise in not sending a registered letter in reply to the registered notice received by him on January 8, 1971 by the complainant. His version that he spoke to the complainant on the telephone and sent a letter in reply on January 15, 1971, of which a copy was Ex. R1, had been rejected by the committee on the ground that the advocate's conduct did not appear to be above board. We cannot help thinking that the committee had been unduly swayed by the unsavory background of the appellant so that it could not see its way to giving the appellant even the benefit of doubt in the instant case.

11. In the circumstances of this case, we think that the appellant is entitled to the benefit of doubt. We, therefore, allow this appeal and set aside the order disbarring the appellant who, we hope, has learnt now to conduct himself in a more satisfactory manner in his dealing with his clients. We make no order as to costs.

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