

Ram Bharosey Agarwal

Vs

Har Swarup Maheshwari

Civil Appeal No. 51 of 1975

(CJI A.N. Ray, R.S. Sarkaria, P.N. Shinghal, Jaswant Singh JJ)

27.04.1976

JUDGMENT

SHINGHAL, J. -

1. As this appeal under Section 38 of the Advocates Act, 1961, must succeed on three short points, it will be enough to state those facts which bear on them.
2. Appellant Ram Bharosey Agarwal was practicing as an advocate in Bulandshahr, Uttar Pradesh. He was engaged by respondent Har Swarup Maheshwari, on behalf of his daughter Smt. Munni Devi, to pursue her application against her husband Jai Narain Under Section 488 Cr. P.C. in the Court of Sub-divisional Magistrate, Bulandshahr. The case was decided in favour of Smt. Munni Devi on September 5, 1963, and a maintenance allowance was granted to her. When the order was put into execution, Har Swarup Maheshwari engaged another lawyer to prosecute the execution application. In these proceedings the property of Jai Narain was attached. His father claimed that the attached property belonged to him and his application that effect was alleged to have been filed by the appellant. The first charge against the appellant was that he was guilty of professional misconduct in accepting a brief on behalf of Jai Narain's father. Jai Narain filed an application for reconsideration of the order of maintenance and examined three witnesses. Smt. Munni Devi's father Har Swarup Maheshwari instituted a case for defamation against those three witnesses and Jai Narain. Appellant Ram Bharosey Agarwal was engaged by the accused in those proceedings. The second allegation against the appellant therefore was that he was guilty of misconduct in appearing on behalf of the accused in the defamation case. The third allegation was that the appellant wrote a letter dated August 14, 1967, to Jagdish Narain Agarwal, an advocate of the Allahabad High Court, to have an appeal which had gone up to the Allahabad High Court dismissed even though there were no such instructions from his client and the action was detrimental to the interest of the client.
3. The Bar Council of Uttar Pradesh was moved for disciplinary action against appellant Ram Bharosey Agarwal for the three matters mentioned above. The Disciplinary Committee framed four issues, three of which related to the alleged misconduct in regard to the three matters mentioned above, while the fourth issue was meant to decide whether the appellant was guilty of professional misconduct. Instead of dealing with the three substantial issues one by one, the Disciplinary Committee examined them all together even though they raised different questions of fact. What was worse the Disciplinary Committee did not give reasons in support of its finding on any of the issues. All the same, it reached the conclusion that the appellant was guilty of professional misconduct, suspended him from practice for a period of two years, and awarded Rs. 100 as costs to the complainant.

4. An appeal was taken by Ram Bharosey Agarwal to the Bar Council of India. The Council held by its order dated December 10, 1974 that he was not guilty of professional misconduct in respect of the first two matters, but that there was no reason for interfering with the finding of fact of the Bar Council (of Uttar Pradesh) in the third matter regarding the writing of the aforesaid letter dated August 14, 1967, to Jagdish Narain Agarwal, Advocate, for having the appeal dismissed in the High Court. The Bar Council therefore affirmed the finding on the third charge, but modified the order of the Disciplinary Committee of the Bar Council of Uttar Pradesh by directing the suspension of the appellant for a total period of three months and ordering him to pay Rs. 1000 by way of costs to the complainant.

5. Mr. Sen appearing for the appellant has argued that the appellate order of the Bar Council of India dated December 10, 1974, should be set aside for three reasons.

6. Firstly, he has pointed out that although a specimen of the hand-writing of the appellant was taken by the Disciplinary Committee of Uttar Pradesh by its order dated January 26, 1969, for the purpose of comparing it with the letter said to have been written by him on August 14, 1967 to Jagdish Narain Agarwal, Advocate, that letter was not sent to handwriting expert D. Alexander and he was thereby prevented from comparing the signature on the disputed letter dated August 14, 1967 which was alleged to be the principal evidence against the appellant and formed the basis of the allegation of misconduct against him. We have been taken through the relevant record, and it appears that there is justification for this argument of Mr. Sen.

7. Secondly, it has been pointed out by Mr. Sen that while the hand-writing expert was required to compare the signature on the aforesaid letter dated August 14, 1967, with a letter said to have been written by the appellant to one Bhuley Ram Sharma, who was examined by the Disciplinary Committee in respect of the allegation against the appellant, the appellant was not given an opportunity to cross-examine Bhuley Ram Sharma at all, so that this defence was seriously prejudiced. We find from the proceedings dated January 6, 1974, that while the complainant and his witness Bhuley Ram Sharma were present on that date, the appellant was absent. The examination-in-chief of Bhuley Ram Sharma was however recorded, and the case was adjourned to February 3, 1974 with the direction that information of the adjourned date may be given to the appellant. The appellant appeared on February 3, 1974, but the cross-examination of Bhuley Ram Sharma was not allowed even though he was present. The case was then adjourned to March 24, 1974. Complainant Har Swarup Maheshwari was not present on that date, but the appellant was present. The Disciplinary Committee however closed the evidence of the complaint, and fixed May 5, 1974, for recording the defence evidence. In this way the appellant was denied the opportunity of cross-examining Bhuley Ram Sharma who was an important witness in the case. There is therefore justification for the argument of Mr. Sen that a serious illegality was committed by the Bar Council of Uttar Pradesh in denying the opportunity of cross-examination to the appellant.

8. As is obvious, the illegalities mentioned above seriously prejudiced the appellant's defence in the inquiry held by the Disciplinary Committee of the Bar Council of Uttar Pradesh. It is surprising that such serious illegalities should have been committed by the Disciplinary Committee, and it is difficult for us to overlook the contention of Mr. Sen that this was so because in the words of Mr. Sen the Bar Council was a "hot bed of politics". Be that as it may, there can be no doubt that the order under appeal cannot be sustained when it suffers from such serious defects.

9. Thirdly, it has been argued by Mr. Sen that although Section 9 of the Advocates Act provided that the Bar Council shall constitute one or more disciplinary committees, each of which "shall

consist of three persons", only two persons were present on July 21, 1974 when the appellant's defence was closed and arguments were heard in the case. Mr. Sharma appearing on behalf of the respondent has not been able to deny that this was so. He has argued that, by virtue of Section 13 of the Act, no act done by the Bar Council or its committee could be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Council or committees, as the case may be. We have gone through Section 13, but it is inapplicable to the present controversy as it cannot be said that there was any "vacancy" in the Disciplinary Committee. It is nobody's case that any of the three members of the committee ceased to be a member thereof at any time during the course of the proceedings before the committee. It is also nobody's case that there was any defect in the constitution of the committee or that it was permissible to function with two members only. There is therefore justification for the third argument of Mr. Sen also.

10. In these circumstances, we are constrained to allow the appeal and to set aside the appellate order dated December 10, 1974. In the circumstances of the case, we would direct that the parties shall pay and bear their own costs.

</html