

Narendra Singh

Vs

Chhotey Singh and Another

Civil Appeal No. 952 of 1975

(D. A. Desai, V. B. Eradi, R. B. Misra JJ)

09.08.1983

JUDGMENT

DESAI, J. –

1. Though for all practical purposes, this appeal had become futile and inconsequential by sheer lapse of time, some life came to be infused into it because of a subsequent development which prompted the learned advocate to move this Court for hearing the appeal. The development and the event would be referred to at the relevant places in course of the judgment.

2. A disciplinary enquiry was initiated against appellant Narendra Singh, Advocate on the roll of the Bar Council of Uttar Pradesh on the complaint of Sh. Chhotey Singh and Shri Faqir Chand. Broadly stated, the allegation was that the appellant was annoyed with one Sh. Udaibir Singh Saxena, who was, at the relevant time, Assistant Registrar, Kanungo and actuated with a desire to implicate him in a criminal case, he forged an application by ante-dating it from July 6, 1968 to July 3, 1968. The application was in connection with acquisition of Bhumidari rights. Presumably, this led to the filing of Civil Suit No. 478/68 by complainant Chhotey Singh against Smt. Sarbati Devi wife of his real brother and his father Khazan for cancellation of a gift deed alleged to have been executed by Khazan in favour of Smt. Sarbati Devi. The allegation was that taking advantage of the old age and mental infirmity of Khazan, appellant Narendra Singh, nephew of Khazan colluded with alleged donee in obtaining the gift deed. Further allegation was that the appellant had forged signature of Khazan in the Vakalatnama and consent application filed on behalf of Khazan in the suit. When Khazan realised that he was the victim of the machinations of the appellant, he filed an affidavit in the suit to which he was a party alleging therein that the appellant had himself forged the signatures on Vakalatnama and consent application. On receipt of this application, the learned Munsif before whom the suit was pending issued notice to the appellant to show cause why appropriate action be not taken against him. However, before any order could be made in the proceedings, Khazan died and it appears that the learned Munsif dropped the proceedings. Subsequently Chhotey Singh and Faqir Chand filed a complaint against the appellant before the Bar Council of Uttar Pradesh which referred the matter to its Disciplinary Committee and that is how the matter came up before the disciplinary committee of the Bar Council of Uttar Pradesh.

3. Three charges were framed against the appellant. They may be extracted :

(1) Whether the Advocate concerned got the gift deed dated July 10, 1968 executed by Khazan Singh in favour of Smt. Sarbati Devi, his daughter-in-law against his instructions ? If so, is the Advocate concerned guilty of professional misconduct or other misconduct ?

(2) Whether the Advocate concerned got a forged Vakalatnama and written statement through Sri Mahesh Chandra Mittal, Advocate filed on behalf of Khazan Singh in Suit No. 746 of 1986 of the Court of the Munsif, Bulandshahr ? If so, is he guilty of professional misconduct or other misconduct ?

(3) Whether the Advocate concerned filed an application said to be ante-dated as July 3, 1968 on July 6, 1968 and falsely got Sri Udai Bir Singh, Assistant Registrar Kanungo arrested, challaned and prosecuted ? If so, is he guilty of professional misconduct or any other conduct ?

Evidence was led before the disciplinary committee. It may be mentioned that the appellant did not choose to enter the witness box to deny or contradict the allegations against him. This has some relevance because after this appeal was heard for some time, Miss Thomas, learned advocate for the appellant, sought an adjournment to file an affidavit of the appellant and one Shri Mahesh Chand Mittal who had appeared for Khazan in the suit filed by Chhotey Singh. The disciplinary committee observed that Chhotey Singh, one of the co-complainants had moved an application on October 16, 1970 requesting the committee to delete the name of Chhotey Singh from the array of co-complainants. Faqir Chand prosecuted the complaint. Chhotey Singh went to the extent of offering himself as a witness for the appellant. The disciplinary committee discarded the evidence of Chhotey Singh observing that earlier he had filed an affidavit dated September 10, 1970 supporting the allegation in the complaint and thereafter it was on October 16, 1970 that he moved application Ex. D-I praying for deletion of his name from the array of co-complainants. Taking note of this fact, the disciplinary committee observed that evidence of Chhotey Singh cannot be relied upon in view of his earlier affidavit and in view of the fact that he is a near relation of the appellant and does not appear to be a votary of truth. There was thus no evidence on behalf of the appellant explaining circumstances appearing in the evidence of the complainant and the documents placed on record. The disciplinary committee did not record finding in respect of each of three heads of charges separately. However in respect of third head of charge, the disciplinary committee observed that 'it has not been established to our satisfaction that the advocate concerned had got Shri Udai Bir Singh implicated in any criminal case as alleged by the complainant but his conduct as regard the gift deed executed by Shri Khazan Singh, his vakalatnama and written statement filed in the case instituted by Chhotey Singh for cancellation of the gift deed remain unexplained'. This statement was construed to mean that the appellant was exonerated in respect of the third head of charge and found guilty in respect of the first two heads of charges. The disciplinary committee imposed a punishment of suspension for a period of six months from practice as an advocate. The appellant preferred an appeal to the Bar Council of India and this appeal came up before the disciplinary committee of the Bar Council of India. The disciplinary committee of the Bar Council of India held that affidavit filed by Khazan Singh in the civil suit filed by Chhotey Singh was vague and does not conform to the requirement of the affidavit on the question of verification statement on personal knowledge and therefore it did not furnish reliable evidence against the appellant. The disciplinary committee was not inclined to attach any importance to the issue of the notice by the learned Munsif calling upon the appellant to show cause why appropriate action should not be taken against him. The affidavit of Chhotey Singh before the disciplinary committee of the State Bar Council was rejected on the identical ground that the verification is not according to the rules of Bar Council of India prescribing the procedure to be followed by disciplinary committee of State Bar Council. It was further observed that it must be rejected on the short ground that the averments therein made are not shown to be to the personal knowledge of the deponent. On this ground, the finding of the disciplinary committee of the State Bar Council on charges 1 and 2 was reversed.

4. Charge No. 3 was separately dealt with. Dealing with this charge it was held that the disciplinary committee had not assigned sufficient and adequate reasons for coming to the conclusion extracted hereinbefore. Proceeding along this line, it was observed that as the disciplinary committee of the State Bar Council has not given adequate reasons for recording the conclusion it reached, the matter should be remitted to the State Bar Council with a direction to pass appropriate orders with reasons for the same. It is this order of remand that has been questioned in this appeal preferred by the appellant under Section 38 of the Advocates Act, 1961.

5. Miss Thomas, learned advocate for the appellant, relied upon the decision of this Court in *Makeshwar Nath Srivastava v. State of Bihar* [(1971) 3 SCR 863 : (1971) 1 SCC 662 : AIR 1971 SC 1106 : 1971 Lab IC 727] and urged that as the appellant was held not guilty in respect of charge No. 3 by the disciplinary committee of the State Bar Council, in the absence of any appeal by any aggrieved person as understood in Section 38 of the Advocates Act, it was not open to the disciplinary committee of the Bar Council of India hearing an appeal under Section 37 at the instance of the appellant to set aside the order in his favour exonerating him in respect of charge No. 3 and therefore the decision of the disciplinary committee of the Bar Council of India is wholly without jurisdiction and on this short ground it must be quashed and set aside.

6. The contention thus raises a question of law of considerable importance concerning the jurisdiction of the committee of the Bar Council of India hearing an appeal under Section 37.

7. The Advocates Act, 1961 was enacted to amend and consolidate the law relating to legal practitioners and to provide for constitution of State Bar Councils and an All-India Bar Council. Section 3 provides for setting up a Bar Council for each of the States mentioned therein. Section 4 envisages setting up of the Bar Council of India. Section 35 confers disciplinary jurisdiction on the State Bar Council. It provides that where on receipt of a complaint or otherwise, the State Bar Council has reason to believe that any advocate on its roll is guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee which the State Bar Council is under an obligation under Section 9 to set up. Similarly, disciplinary jurisdiction is also conferred on the Bar Council of India under Section 36 in respect of any advocate whose name is not entered on any State roll. Section 37 provides for an appellate forum. Any person aggrieved by an order of a disciplinary committee of a State Bar Council made under Section 35 or the Advocate General of the State may within 60 days of the date of the communication of the order to him prefer an appeal to the Bar Council of India. Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such orders including an order varying the punishment awarded by the disciplinary committee of the State Bar Council thereon as it deems fit. There is a proviso to sub-section (2) of Section 36 which obligates the disciplinary committee of the Bar Council of India to hear the advocate concerned before varying the punishment imposed upon the advocate by the disciplinary committee of the State Bar Council. Against the decision of the disciplinary committee of the Bar Council of India, a further appeal would lie to the Supreme Court of India under Section 38.

8. The question is what is the ambit of jurisdiction of the disciplinary committee of the Bar Council of India hearing an appeal against an order of the disciplinary committee of a State Bar Council made under Section 35. Sub-Section 2 of Section 37 which prescribes the jurisdiction of the disciplinary committee of the Bar Council of India hearing an appeal preferred under Section 37(1) provides that the disciplinary committee of the Bar Council of India hearing an appeal may pass such order including an order varying the punishment awarded by the disciplinary committee of the State Bar Council, thereon as it deems fit. Jurisdiction of the widest amplitude is thus conferred on

the body hearing the appeal under sub-section (2) of Section 37. Initiation of a disciplinary proceeding upon whether the advocate against whom complaint is laid is on the State roll or is not on any State roll. The State Bar Council on receipt of a complaint or otherwise, if it has reason to believe that advocate on its roll has been guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee. The State Bar Council can act either on the receipt of a complaint or by information coming to it otherwise. In this connection, however, the Bar Council of India has framed rules styled as Bar Council of India Rules, 1975 enacted in exercise of the rule making power conferred by Section 49 of the Advocates Act, 1961. The rules included in Part 7 prescribe the procedure for initiation and disposal of disciplinary proceedings and review. Rule 1 in Chapter I in Part 7 provides that a complaint against an advocate shall be in form of a petition duly signed and verified as required in the Code of Civil Procedure. This rule will be attracted where the State Bar Council is moved by a complaint for taking disciplinary action against an advocate but a State Bar Council has also the jurisdiction to act on information received otherwise than by way of a complaint, if it has reason to believe that any advocate has been guilty of professional or other misconduct. In such a situation, there is no question of compliance with Rule 1 in Chapter I. The jurisdiction to act otherwise than on a formal complaint was conferred keeping in view the pre-eminent position that legal profession enjoys in our society, the general indifference of a large section of society to complain against professional misconduct, the prevalent degree of legal and other illiteracy and backwardness of the society all of which tend to point in the direction that if too formal a way of taking cognizance of professional misconduct/malpractice is prescribed, it would be counter productive and many cases would go unnoticed. Further the disciplinary jurisdiction which was vested in the court under the Bar Councils Act, 1926 has been wholly transferred to a body composed of brethren who are constituted the collective conscience of the legal profession. The right to be judged by one's own peers, a legacy of Magna Carta has been tacitly accepted in the Advocates Act. A self-regulatory mechanism is provided for maintenance of the ethics and standards of legal profession. Therefore while determining the scope and ambit of jurisdiction of the disciplinary committee of the Bar Council of India while hearing an appeal under Section 37(2) the intentment underlying transfer of jurisdiction must receive judicial recognition. It may also be pointed out that Section 36(1) confers the same jurisdiction on the Bar Council of India. Section 36(1) which is *ipsisima verba* with Section 35(1) confers the same jurisdiction in respect of an advocate, whose name is not entered on the State roll and who is suspected to be guilty of professional or other misconduct. In respect of such an advocate, the Bar Council of India has to refer the case for disposal to its disciplinary committee. Section 37, as pointed out earlier, confers an appellate jurisdiction over the orders of the disciplinary committee of the State Bar Council and the appeal is to be disposed of by the disciplinary committee of the Bar Council of India. This appellate body enjoys very wide jurisdiction because it is competent to pass any order as it may deem fit. This jurisdiction of widest amplitude takes within its sweep the power to vary the punishment which would imply enhancement of punishment and the only obligation, while varying or enhancing the punishment, on the appellate body is to hear person who is likely to be prejudicially affected by such an order.

9. The question is what is the scope and ambit of the jurisdiction of a quasi-judicial authority whose jurisdiction is defined in such terms as 'as it deems fit' ? Undoubtedly, this expression 'as it deems fit' confers a jurisdiction of widest amplitude on the quasi-judicial tribunal. But that does mean that such tribunal can pass any order in total disregard of the statutory provisions under which the quasi-judicial tribunal is created and is conferred jurisdiction to resolve disputes arising in the implementation of the statute. The disciplinary committee of the Bar Council of India is a limb of the Bar Council of India and the Bar Council of India is a creature of the Advocates, Act, 1961 on

whom the duty to lay down standards of professional conduct and etiquette for advocates is conferred and is further charged with the duty to safeguard the rights, privileges and interests of advocates, and to perform all other functions conferred on it by or under the Act. With a view to efficiently discharging these functions, disciplinary committee of the Bar Council of India is not only exercising appellate power but this power has to be exercised keeping in view the functions of the Bar Council of India. Therefore when it is said that the disciplinary committee of Bar Council of India may decide the case as it deems fit, the order has to be relevant to the functions of the Bar Council of India. A similar expression in Section 29(3) of the Bombay Tenancy and Agricultural Lands Act, 1948 was construed in *Raja Ram Mahadev Paranjyape v. Aba Maruti Mali* [1962 Supp 1 SCR 739, 746 : AIR 1962 SC 753 : 64 Bom LR 569] by this Court not to confer power to make any order that the authority concerned thinks in this individual opinion that the justice of the case requires. Referring to *R. v. Boteler* [(1864) 33 LJMC 101 : 12 ER 718] it was observed that the discretion conferred by the provision would not permit to say that the law, as it stands, is unjust and the court will not carry out the same and that no court can omit or decline to discharge a duty according to law. In other words, the discretionary jurisdiction has to be exercised keeping in view the purpose for which it is conferred, the object sought to be achieved and the reasons for granting such wide discretion. In *O. N. Mahindroo v. District Judge* [(1971) 2 SCR 11, 22 : (1971) 3 SCC 5, 12 : AIR 1971 SC 107], while determining the appellate jurisdiction of the Supreme Court under section 38, it was observed that the appeal to this Court is not a restricted appeal. It is not an appeal on law but it is also an appeal on facts. Indeed Section 38 gives the Supreme Court jurisdiction to pass in appeal before it any order it deems fit. Examining the amplitude of power including the power to review this Court observed as under : (SCC p. 12, para 21)

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.

10. Further while examining the scope of jurisdiction conferred by such words 'as it deems fit' the only limitation this court found in exercise of jurisdiction is that 'wide as the power may be, the order must be germane to the Act and its purposes, and latitude cannot transcend those limits'. (See *V. C. Rangadurai v. D. Gopalan* [(1979) 1 SCR 1054, 1060 : (1979) 1 SCC 308, 313 : AIR 1979 Sc 281]).

11. It is equally important to bear in mind the legislative response to the decision of this Court. In *Adi Pherozshah Gandhi v. H.M. Seervai, Advocate-General of Maharashtra, Bombay* [(1971) 1 SCR 863 : (1970) 2 SCC 484 : AIR 1971 SC 385], this Court by a narrow majority of 3 : 2 interpreted expression 'person aggrieved' in Section 37(1) not to include the Advocate General of the State. Parliament responded not only by amending Section 37(1) to confer right of appeal on Advocate General of the State against the decisions of disciplinary committee of State Bar Council but further enlarged the appellate jurisdiction to vary punishment imposed by disciplinary committee of the State Bar Council. And the appellate body could exercise this power even if the person aggrieved by mild punishment or Advocate General have not preferred by appeal. It can as well exercise this power in the appeal preferred by the delinquent advocate. That is what is meant by this Court when it said that disciplinary proceedings against lawyer not only involves the particular lawyer but the profession as a whole. This is the extent of jurisdiction enjoyed both by the

disciplinary committee of the Bar Council of India hearing an appeal under Section 37(2) and a fortiori this Court hearing an appeal under Section 38.

12. Apart from this, a comprehensive view of the legislation as a whole would show that the Bar Council of India exercises general supervision and control over State Bar Councils and disciplinary committee of State Bar Council is a creature of State Bar Council. Bar Council of India enjoys all ancillary and incidental powers of efficiently discharging and carrying out functions prescribed in Section 7. The question of jurisdiction has to be viewed in this broad perspective and not from any narrow or constricted view which one may take in a private dispute between two individuals. A disciplinary proceedings against a member of a profession whose services are made available to society as a whole is to be viewed as between the profession and its erring member and not between the complainant and the delinquent advocate. This larger perspective must determine the jurisdiction of the bodies set up to carry out the purposes of the Advocates Act.

13. Reversing to the facts of this case, the disciplinary committee of the Bar Council of India was not satisfied with reference to the disposal of third head of charge by the disciplinary committee of State Bar Council. It merely remanded the matter to the disciplinary committee of the State Bar Council to assign reasons for its decision. This was certainly within the powers of the appellate body as it had jurisdiction to decide an appeal 'as it deems fit', and while so deciding, it was not hedged in by the technical rule of appeal against acquittal. As held in Mahindroo case [(1971) 2 SCR 11, 22 : (1971) 3 SCC 5, 12 : AIR 1971 SC 107] the principle of autre fois acquit or convict does not govern these proceedings. Viewed from this angle, the reference to the decision in Makeswar Nath Srivastava case [(1971) 3 reference to the decision in Makeswar Nath Srivastava case [(1971) 3 SCR 863 : (1971) 1 SCC 662 : AIR 1971 SC 1106 : 1971 Lab IC 727] is inappropriate.

14. We are, however, also not inclined to interfere with the decision of the disciplinary committee of the Bar Council for an additional reasons in that Mr. Pramod Swarup, who appeared for the respondent original complainant stated that the remand order was made by the disciplinary committee of the Bar Council of India at the specific request of the learned counsel appearing for the resent appellant at the hearing of the appeal. This was not adequately countered by Miss Thomas, appearing for the appellant. The judgment under appeal shows that Mr. Pramod Swarup appeared for the second complainant when the appeal was heard. His statement must carry weight with us.

15. There is also one more reason why we are not inclined to interfere in this case. The appellant did not choose to appear before the disciplinary committee of the State Bar Council and submit his version of the matter. On the contrary he apparently won over his cousin Chhotey Singh, one the complainants and offered him as a witness on his behalf. He did not take oath in support of his statement. He did not offer himself for cross-examination. He simply watched the proceedings. Serious allegations were made against the advocate by no less a person than his own near-relation and now he has filed an affidavit in this Court after the matter was heard for some time which we consider worthless. Miss Thomas urged that we must finally dispose of the matter because the appellant is being interviewed for some post in judicial service in the State of Uttar Pradesh and therefore she had moved for early hearing of the appeal. We are not disposed to accede to this request for the simple reason that the Advocates Act was a legislative response to the demands of the legal profession that a defaulting advocate shall be tried not by judges sitting in courts but his own peers. We, therefore do not propose to interpose ourselves as the order under challenge is an order of remand and the appellant can appear before the disciplinary committee of the State Bar

Council and make good his defence. We accordingly find no merit in this appeal and the same is dismissed with no order as to costs.

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