M. Veerabhadra Rao

Vs

Tek Chand

Civil Appeal No. 1019 of 1978

(Desai, J. )

18.10.1984.

JUDGMENT

DESAI, J. –

1. The appellant was ill-advised in filing this appeal because the more the learned counsel appearing for the appellant dived deep into a veritable dustbin of facts, the further hearing caused deep anguish more on account of the realisation as to how occasionally, and we are happy to record very occasionally, a member of the noble profession sinks to the lowest and to vindicate his actions tries to clutch at the highest.

2. One M. Ram Mohan Rao, who was described as a senior of appellant M. Veerabhadra Rao has been a practicing advocate at Hyderabad. Appellant M. Veerabhadra Rao was enrolled as an advocate in the year 1961 as stated in his evidence. He joined the chamber of his senior and at the relevant time he was working in the chamber of his senior. Shri M. Ram Mohan Rao was a tenant of the premises bearing Municipal No. 3242 situated at Rashtrapathi Road, Kingsway, Secunderabad of which respondent Tek Chand son of Lala Moti Ram was the owner. It is alleged that the respondent, his wife Mohini and son Subhash Chandra sold and conveyed the house in question by a deed of conveyance in favour of Premlata wife of Sohan Lal Saloot and daughter of Hastimal Jain for a consideration of Rs 65,000. As the sale for a consideration of more than Rs 50,000 the vendor was required to produce on income-tax clearance certificate as required by Section 230 of the Income-tax Act, 1961 before the sale deed could be registered. It may be mentioned that sometime before the alleged transaction of sale, a suit was filed by respondent Tek Chand against Shri M. Ram Mohan Rao, the tenant for eviction on the ground of non-payment to rent etc. This suit had ended in a decree and at the relevant time, an appeal preferred by Shri M. Ram Mohan Rao was pending. To resume the narrative Tek Chand had already obtained the necessary income-tax clearance certificate on July 5, 1972. When the sale deed was presented for registration the Registrar of Conveyances asked for the income-tax clearance certificate and respondent Tek Chand said that on payment of the full consideration, the same will be produce. From thereon the distressing events leading to the present appeal started.

3. Respondent Tek Chand filed a complaint No. 14 of 1974 under Section 35 of the Advocates Act, 1961 before the Bar Council of the State of Andhra Pradesh alleging that one Mr M. Ram Mohan Rao, advocate was a tenant of a house situated at Rashtrapathi Road, Secunderabad of which he was the owner. This house was agreed to be sold for Rs 65,000 to Premlata daughter of Shri Hastimal Jain and Rs 10,000 was paid as earnest money. The sale deed was to be completed within a period of three months on the vendee paying the balance of consideration of Rs 55,000. The vendee did not pay the amount and the respondent alleged that he had cancelled the agreement for sale. It was

further alleged that as the consideration for sale was exceeding Rs 50,000 the sale deed cannot be registered unless an income-tax clearance certificate is produced, but as the balance of consideration was not paid, agreement to sell the house was cancelled. However as the vendee Premlata wanted to grab the house without paying the balance of consideration, in order to get the sale deed registered, it was decided to get the income-tax clearance certificate and with this end in view an application purporting to be in the name of the respondent with his signature forged thereon bearing the date October 31, 1972 and with an incorrect address was prepared. As an affidavit is necessary in support of the application, the same was prepared on a stamp paper of Rs 2 with the signature of respondent Tek Chand foraged thereon. This affidavit was attested by the appellant as he is an advocate authorised to attest affidavits. On the strength of the forged documents, an income-tax clearance certificate was obtained in the name of the respondent and the sale deed was not registered. It was alleged that the signature of respondent Tek Chand was attested by the present appellant, the junior of Mr M. Ram Mohan Rao, on being paid Rs 300 through one Mulchand, Munshi of Lalchand, who is the uncle of the father of Premlata, the vendee. It was specifically averred that respondent Tek Chand neither signed the application for income-tax clearance certificate nor swore the affidavit. It was alleged that someone impersonated Tek Chand and this must be known to the appellant because he knew respondent Tek Chand for many years prior to the attestation of affidavit. It was alleged that a suit had been filed by Tek Chand against Mr M. Ram Mohan Rao for recovering the arrears of rent in the amount of Rs 17,000 and obviously to cause damage to Tek Chand, appellant the junior of Mr M. Ram Mohan Rao attested a forged signature on the affidavit. The application with the affidavit annexed was submitted to the income-tax department on the same day, and the income-tax clearance certificate was procured through Mulchand which was produced in the office of sub-Registrar, Secunderabad. Thus the vendee Premlata got the sale deed registered on the strength of forged documents to which the appellant was a party and that wrongful loss was caused to the appellant in the amount of Rs 1,35,000 which was facilitated by the appellant. It was alleged the this constitutes a very serious professional misconduct and necessary enquiry be made and appropriate action be taken.

4. The appellant appeared and filed a counter-affidavit denying all the allegations. It was specifically admitted that the affidavit on the strength of which the income-tax clearance certificate was obtained on November 2, 1972 was attested by him. As the decision largely turns upon the explanation offered by the appellant his positive case may be extracted. Says he :

> Either on October 31, 1972 or on November 1, 1972 the complainant (Tek Chand) came to this respondent with an affidavit purporting to bear his signature and requested this respondent to attest the same. The complainant admitted that the signature appearing on the affidavit as that of his and therefore this respondent attested the same. On this admission of the complainant in person to this respondent in the office of Mr M. Ram Mohan Rao, advocate, this respondent attested the same in good faith and believing the representations made by the complainant. This respondent was aware that even prior to the date of attestation of the affidavit, the complainant had issued a notice to this respondent's then senior Shri M. Ram Mohan Rao attorning him to pay rents to Premlata as the complainant had sold the house to the said Premlata. It is therefore, emphatically denied that this respondent received Rs 300 from Mulchand and he attested a forged affidavit as alleged. It is only on the admission and representation made by the complainant himself in person, that this respondent attested the affidavit in good faith.

5. The State Bar Council referred the complaint to its Disciplinary Committee. The complainant-

respondent examined himself and he examined one Mohan Lal as his witness. He produced four documents marked Ex. A-1 to A-4. The important document is Ex. A-1, the affidavit dated October 31, 1972 purporting to be of respondent Tek Chand. Ex. A-2 is the application addressed to the Income-tax Officer for issuing income-tax clearance certificate. Ex. A-3 is the reply of Income-tax Officer dated March 8, 1973 to the inquiry made by the respondent. Ex. A-4 is another letter from the Income-tax Officer dated March 20, 1973 to the respondent. Ex. A-1(a) and Ex. A-1(b) are the disputed signatures of the respondent on the affidavit and the application respectively. The appellant himself gave evidence and examined Mr N. Satyanarayana, advocate who was another junior of Mr M. Ram Mohan Rao as his witness and produced documents marked Ex. B-1 to B-4.

6. The Disciplinary Committee of the State Bar Council ('State Committee' for short) to whom the complaint was referred for disposal after minutely analysing the oral and documentary evidence, rejected the evidence of PW 2 Mohan Lal witness examined by the complainant and RW 2 Mr N. Satyanarayana, advocate examined as witness by the appellant, observing that both were partisan witnesses and no credence can be given to their evidence. The Committee also rejected the allegation that the appellant was paid Rs 300 by Mr Hastimal for attesting affidavit Ex. A-1, observing that there was no cogent and unimpeachable evidence in support of this allegation. The Committee further held that complainant Tek Chand never approached the appellant with Ex. A-1 and therefore, the explanation of the appellant that he attested the affidavit on the statement made by the respondent that it bears his signature cannot be accepted. The Committee concluded that the attestation of Ex. A-1 amounts to witnessing the fact that the dependent affirmed the truthfulness and genuineness of what was stated in the affidavit and signed in his presence, but this would be untrue without the presence of deponent Tek Chand and therefore, the endorsement becomes false and rendered the attestation invalid. The Committee concluded that the appellant advocate attested Ex. A-1 knowing that the respondent-complainant had not sworn the affidavit in his presence nor was it singled in his presence by the respondent and therefore, this act of attestation of the affidavit giving a misleading information is improper and comes within the mischief of professional misconduct and contrary to the norms of the professional etiquette. The State Committee also concluded that on account of this misconduct on the part of the appellant, income-tax clearance certificate was obtained and therefore, the appellant was guilty of professional misconduct. Having found the appellant guilty of serious misconduct, namely, attesting an affidavit which appears to be a forged one and which was used to obtain an unfair advantage by Premlata by obtaining income-tax clearance certificate on the strength of Ex. A-1 which did not appear to be genuine to the Committee, and which caused wrongful loss to the respondent, the Committee developed cold feet and imposed a ludicrously paltry punishment of reprimand which is no punishment stricto sensu.

7. Emboldened by this timid performance of the Disciplinary Committee of the State Bar Council, the appellant filed D.C. Appeal No. 6 of 1976 before the Disciplinary Committee of the Bar Council of India. ('Appellate Committee' for short). The Appellate Committee held that the explanation of the appellant that he attested the affidavit on the strength of the statement made to him by the respondent that the affidavit bears his signature, and that there was nothing improper in attesting the affidavit on the acknowledgment made by the deponent about his signature cannot be accepted because the affidavit in question categorically states that the party deponent put his signature before the attesting advocate, when it was common ground that it was not so done and the affirmation by the advocate clearly amounts to a false statement. The Appellate Committee then became facetious and observed that it would take a serious and strict view of the matter and hold that an advocate should not be a party to such an irregular procedure amounting to a false declaration by him. After so observing the Committee affirmed the order made by the State Committee imposing the punishment of reprimand and conveying a warning to the appellant that he should be careful in

future in such matters. The Appellate Committee then proceeded to accept one contention on behalf of the learned advocate appearing for the appellant and expunged the observation of the State Committee that the appellant had not attested Ex. A-1 in the presence of the complainant and that his act of the appellant was improper and comes within the mischief of professional misconduct and contrary to the norms of professional etiquette on the ground that these observations were uncalled for especially in view of the fact and the Committee disbelieved the evidence of PW 2 on the question of payment of Rs 300 and presentation of affidavit by Mulchand. It would be presently pointed out that the expunging of those remarks was uncalled for and betrays total non-application of mind while disposing of the appeal.

8. Undaunted by two failures but presumably encouraged by the ludicrous punishment, the appellant filed this appeal in this Court under Section 38 of the Advocates Act, 1961. By the order made on August 7, 1978, the appeal was admitted and directed to be included in the list of short matters.

9. The respondent on being served, appeared and filed cross-objections inter alia contending that there was a conspiracy between M. Ram Mohan Rao, senior of the present appellant and vendee Premlata as well as Hastimal to cause wrongful loss to the respondent. To this conspiracy even the appellant was a party. M. Ram Mohan Rao, who was a tenant of the house which Premlata claims to have purchased was under a decree of eviction and in order to thwart it he hatched the plot to which the appellant lent his assistance by purchasing two stamp papers of Rs 2 each in the name of the respondent and after drawing up a false affidavit in the name of the respondent a signature was forged thereon to which the appellant lent his attestation so as to give it an appearance that the forged signature was a genuine signature of the respondent knowing full well that on the strength of this forged affidavit an income-tax clearance certificate was to be obtained which would facilitate registration of the sale deed which Premlata claimed to have taken and which was objected to by the respondent. It was alleged that for rendering such service he charge and accepted Rs 300 in the presence of PW 2 witness Mohan Lal. It was alleged that this forged affidavit was submitted to the Income-tax officer on the strength of which an income-tax clearance certificate was obtained which enabled M. Ram Mohan Rao and Premlata to get registration of the sale deed. The respondent prayed for enhancement of punishment imposed upon the appellant.

10. The appellant filed his rejoinder to the cross-objections filed by the respondents inter alia contending that in the absence of any provision in the Advocates Act, 1961, the respondent is not entitled to file cross-objections. It was submitted that if the respondent was aggrieved by the order of the State Committee or the Appellate Committee, it was open to him to prefer an appeal but that having not been done, the cross-objections cannot be entertained.

11. The appeal came for hearing on September 23, 1980 before a Bench comprising A. C. Gupta and A. P. Sen, JJ. After hearing Mr Vepa P. Sarathi, learned counsel appearing for the appellant, the Court proceeded to hear Mr V. A. Bobde who appeared amicus curiae for the respondent. After hearing both the sides, the Court made the following order :

> Issue notice to the appellant in this appeal as to why having regard to the findings recorded by the State Bar Council and the other facts and circumstances of the case the punishment awarded against him should not be enhanced. This appeal will be heard along with cross-objection filed by the respondent. C.A. No. 1019/78 to be treated as P.H.

12. Mr Govindan Nair, learned counsel who appeared for the appellant submitted that the facts

found both by the State Committee and the Appellate Committee would not constitute professional misconduct for which the appellant may incur a penalty.

13. Before we proceed to examine what constitutes professional misconduct, we may briefly point out the facts concurrently found by the State Committee and the Appellate Committee.

14. After extensively reproducing the evidence led in the case and after rejecting the evidence of PW 2 Mohan Lal, a witness examined by the respondent and RW 2 N. Satyanarayana, a witness examined by the appellant, the State Committee concluded that the affidavit Ex. A-1 was not taken to the appellant by the respondent nor did he admit his signature on the affidavit Ex. A-1 in the presence of the appellant. The affidavit Ex. A-1 contains certain obviously incorrect statements in that even thought respondent was aged more than 60 years, his age was shown to be 45 years in Ex. A-1 and that the address of the respondent shown in the affidavit on the date of the affidavit was incorrect because he was not residing in the House No. 3242, Rashtrapathi Road, Secunderabad as set out in Ex. A-1 but was residing at Red Hills, Hyderabad. It was also found that the respondent did not go to the office of advocate Shri M. Ram Mohan Rao where the appellant was at the relevant time sitting for getting Ex. A-1 attested. It was noticed that the appellant admitted that Exs. A-1(a) and A-1(b) were not signed by the respondent in the presence of the appellant and that he attested the same on the statement of the respondent complainant. It was found as a fact that the affidavit bears the date October 31, 1972 and was filed in the income-tax department on the same date, while the attestation of the appellant thereon bears of the respondent or his so-called admission of his signature the appellant should not have attested his signature on an affidavit and therefore the attestation was invalid. And that this constitutes professional misconduct.

15. The Appellate Committee in a cryptic albeit laconic order, brevity beings its only merit, broadly agreed with the findings recorded by the State Committee observing that the affidavit on its own face would tend to show that the attestation was done after the signatory had put his signature in presence of the appellant and there after the appellant attested the signature while it is admitted by the appellant that the signature was not put by the respondent on the affidavit in his presence but merely stated that he had signed the same. Therefore according to the Appellate Committee the affirmation of the same by the appellant clearly amounts to a false statement and that the appellant was a party to a false declaration and therefore, he is guilty of professional misconduct as found by the State Committee. Curiously thereafter, the Appellate Committee for reasons which are neither comprehensible nor convincing deleted the observation made by the State Committee which was clearly borne out by the evidence observing "that the finding was cancelled for in view of the fact that the State Committee disbelieved the evidence of PW 2 on the question of payment of Rs 300 and presentation of the affidavit by Mulchand." It has been very difficult for us to appreciate this disjointed reasoning. However, it is crystal clear that both the fact-finding authorities concurrently agreed that the respondent did not put his signature on Ex. A-1 in the presence of the appellant and yet the appellant by contributing his attestation to the affidavit made a declaration that the signature was of the appellant made in his presence, and admittedly that not being true the appellant wars guilty of misconduct. Does this constitute professional misconduct is the question ?

16. The narrow question that falls for our consideration in this case is whether the appellant, an enrolled advocate, who was authorized to attest an affidavit that can be used in civil or criminal proceedings committed impropriety in attesting an affidavit which attestation would imply that the deponent subscribed his signature to the affidavit in his presence after taking the requisite oath that ought to be administered to him because there is no dispute that an affidavit is a sworn statement of the deponent.

17. The expression 'affidavit' has been commonly understood to mean a sworn statement in wiring made especially under oath or on affirmation before an authorised Magistrate or Officer. Affidavit has been defined in sub-clause (3) of Section 3 of the General Clauses Act, 1897 to include "affirmation and declaration in the case of person by law allowed to affirm or declare insted of swearing". The essential ingredients of an affidavit are that the statementa or declarations are made by the deponent relevant to the subject matter and in order to add sanctity to it, he swears or affirms the truth of the statements made in the presence of a person who in law is authorised either to administer oath or to accept the affirmation. The responsibility for making precise and accurate statements in affidavit were emphasized by this Court in Krishan Chander Nayar v. Chairman, Central Tractor Organisation ((1962) 3 SCR 187 : AIR 1962 SC 602 : (1962) 1 SCJ 715). The part or the role assigned to the person entitled to administer oath is no less sacrosanct. Section 3 of the Oaths Act, 1969 specifies persons on whom the power to administer oath or record affirmation is conferred. It inter alia includes "any court, Judge, Magistrate or person who may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf - (a) by the High Court, in respect of affidavits for the purpose of judicial proceedings; or (b) by the State Government, in respect of other affidavits". The Schedule to the Act prescribes forms of oaths or affirmation that is required to be administered to the party seeking to make his own affidavit. Rule 40 of the Civil Rules of Practice framed by the Andhra Pradesh High Court provides that "the officer before whom an affidavit is taken shall state the date on which, and the place where, the same is taken, the sign his name and description at the end, as in Form No. 14, otherwise the same shall not be filed or read in any matter without the leave of the Court". Form No. 14 prescribes the form of affidavit on solemn affirmation. It requires a solemn affirmation or oath before the person authorised to administer the same and then at the foot at which the signature of the deponent must appear and below that the office entitled to administer oath must put his signature in token of both that he administered the oath and that deponent signed in his presence and by his attestation he has subscribed to both the aspects. Rule 34 of the aforementioned rules sets out officers authorized to administer oath for the purpose of affidavits and an advocate or pleaded other than the advocate or pleader who has been engaged in such a proceeding have been include in the list of officers authorised to administer oath. The appellant as an advocate enroller by the State Bar Council was thus authorised to administer oath for the purposes of an affidavit and attest the same. This was not disputed before us.

18. It is not in dispute that Ex. A-1 is an affidavit purporting to have been made by the respondent in the presence of the appellant and attested by him. The appellant admits in no uncertain terms that Ex. A-1 bears his attestation. If the matter were to rest here, it would mean that the respondent appeared before the appellant with his affidavit. Thereupon, the appellant administered oath to him and on the respondent taking the oath and affirming the truth of the statement made in the affidavit, put his signature on the affidavit in the presence of the appellant and then the appellant subscribed his signature to the affidavit in token of his having administered the oath and the respondent having affixed his signature in his presence. The content of the affidavit clearly spells out the purpose for which the affidavit was being made namely for obtaining an income-tax clearance certificate which the respondent as vendor had to produce before the Registrar of Conveyances acting under the Indian Registration Act for the purpose of registering the sale deed which the respondent was alleged to have executed in favour of Smt Premlata. To narrow down the area of controversy, it may be mentioned that the appellant admits that the affidavit Ex. A-1 is attested by him. He further concedes that the respondent did not affix his signature in his presence on the affidavit Ex. A-1 but admitted the same in his presence whereupon he attested the same. This statement of the appellant clearly shows dereliction of duty in two aspects : (i) that he did not administer any oath or did not

call up the respondent to make an affirmation though Ex. A-1 purports to be an affidavit and secondly, the respondent did not subscribe his signature in the presence of the appellant and the appellant merely acted on an alleged statement of the respondent that the affidavit bears his signature. The enquiry therefore, in this case is a very narrow one. It centers round whether the respondent personally appeared before the appellant when he was sitting in the office of his senior M. Ram Mohan Rao and produced the affidavit Ex. A-1 for attestation by the appellant ?

19. The State Committee clearly recorded an unambiguous finding which we consider wholly incontrovertible in the facts of this case that the appellant never appeared before the respondent either on October 31, 1972 or November 1, 1972. There are tell-tale circumstances on record which would clearly render this finding unassailable. The appellant was the junior of M. Ram Mohan Rao who claimed to be occupying the very house as tenant of the respondent which was the subject matter of the disputed sale and the respondent had filed a suit against M. Ram Mohan Rao for eviction on the ground of non-payment of rent in the aggregate amount of over Rs 11,000 and the suit had already ended in a decree in favour of the respondent against M. Ram Mohan Rao and the matter was pending in appeal. There was thus no love lost between M. Ram Mohan Rao and the respondent. In this background the respondent would never think of going to the office of M. Ram Mohan Rao to contact his junior the present appellate for the purpose of swearing the affidavit. If the Oath Commissioners were a scarce commodity, one may have to go in search of a rare commodity but the relevant Rules 34 and 40 clearly show that every advocate was authorised to administer oath for the purpose of the affidavit and attest the same. Secondly, the affidavit was for the purpose of obtaining an income-tax clearance certificate. Now there is unimpeachable evidence on recorded that the respondent had already obtained an income-tax clearance certificate way back on July 5, 1972. In his examination-in-chief in the course of disciplinary proceedings, the respondent stated that on July 5, 1972, he obtained income-tax clearance certificate from the income-tax office. There is no cross-examination on this point. It clearly amounts to an acceptance of the fact that way back on July 5, 1972 the respondent had already obtained an income-tax clearance certificate. Therefore, it is not necessary for him to obtain any fresh income-tax clearance certificate. He had therefore no reason to approach the appellant for attesting the affidavit for the avowed object of obtaining an income-tax clearance certificate. Add to this the circumstance that the respondent at the relevant time was not staying at House No. 3242, Rashtrapathi Road, Secunderabad and this is not in dispute. If he was not staying at Rashtrapathi Road, Secunderabad, the Income-tax Officer, J Ward, Circle III, Hyderabad to whom the application appears to have been addressed for income-tax clearance certificate on October 31, 1972 would have no jurisdiction to entering the application. The appellant at the relevant time was staying at Red Hills, Hyderabad. It was obviously not necessary for him to approach the appellant at such a long distance for attesting an affidavit, more so in view of the fact that he had already obtained an income-tax clearance certificate. There is also a letter on record from the Income-tax Officer, J Ward, Circle III, Hyderabad dated April 21, 1973 addressed to the respondent in which he has categorically stated that the income-tax clearance certificate issued on the basis of the affidavit dated October 31, 1972 was collected from his office by one Mulchand and let it be recalled that Mulchand is none other than the persons against whom allegations were made that he was acting on behalf of Premlata and Hastimal, and whom the appellant knew intimately as it transpired from his statement in the course of the investigation wherein he has stated that if he remembered correctly Sri Mulchand and one Sohanlal son-in-law of Hastimal also followed Tek Chand and were present while he (the appellant) was attesting the affidavit. Thus the appellant knew both the respondent and Mulchand and it is this Mulchand whom the I.T.O. referred as having taken away the income-tax clearance certificate which was issued on the basis of a forged affidavit along with a forged application. There is further

intrinsic evidence to show that document Ex. A-1 is either a forged one or fake one. Ex. A-1 the affidavit bears the date October 31, 1972. Attesting the same, the appellant appended his own signature which he admits he has put. It bears the date November 1, 1972. Therefore, one can say with resonable certainty that this affidavit Ex. A-1 was attested by the appellant on November 1, 1972. Now if we refer to the letter Ex. A-2 addressed to the Income-tax Officer, J Ward, Circle III, Hyderabad for the purpose of obtaining the income tax clearance certificate, it bears the date October 31, 1972. The Income-tax Officer in his letter Ex. A-3 addressed to the respondent states that an application for obtaining an income-tax clearance certificate was presented in the name of the respondent on October 31, 1972. If the application was thus made to the Income-tax Officer on October 31, 1972, it creates a grave doubt about the existence of affidavit Ex. A-1 which has been attested by the appellant on November 1, 1972. Of course, we are not inclined to attach much importance to this aspect of the reason that the Income-tax Officer may have committed a mistake in referring to the application dated October 31, 1972 by merely looking at the date on the application and not the date on which it was presented. Now the cumulative effect of these various pieces of evidence accepted as wholly reliable and practically uncontroverted is that the respondent did not approach the appellant either on October 31, 1972 or November 1, 1972 not did he present any affidavit for attestation nor did he admit his signature on Ex. A-1 to the appellant.

20. What conclusion can be deduced from the totality of aforementioned evidence ? And this has to be ascertained in the context of the affirmative stand taken by the appellant. The appellant admits that he knew the respondent long before the attestation on Ex. A-1. Therefore, one can easily rule out impersonation or the appellant being taken by someone for a joy-ride. If the appellant knew the respondent intimately before the date of Ex. A-1 and if the incontrovertible conclusion is that the respondent did not appear before the appellant either on October 31, 1972 or on November 1, 1972 nor did he present any affidavit for the attestation by the appellant nor did he admit his signature, the stark albeit unpalatable conclusion that flows therefrom is that the appellant is a party to a document which is not genuine. It can be safely said that it was a false document purporting to be in the name of the respondent. It would in law become a forged document. The appellant by attesting his signature to it gave a solemnity which is being relied upon be the Income-tax Officer on which a very valuable document namely, income-tax clearance certificate was issued which facilitated registration of a sale deed in respect of which the contention is that the consideration has not been paid to the respondent. The appellant thus facilitated commission of a fraud by becoming a party to the forged document. In reaching this conclusion we have completely kept out of consideration the opinion of the handwriting expert which was not placed on record in the enquiry proceedings but which was submitted to the criminal court in criminal proceedings.

21. The appellant is thus shown to have violated his statutory duty conferred by the Oaths Act, 1969. He has also acted in a manner unbecoming of a member of a noble profession. He has knowingly become a party to the forgery of a very valuable document and he has by his conduct facilitated the commission of a fraud which would to some extent benefit his senior M. Ram Mohan Rao.

22. Does this conduct constitute professional misconduct ? After the initial enthusiasm of arguing the appeal evaporated when distressing and disturbing dirty facts started unraveling from the evidence and when Mr Govindan Nair, learned counsel for the appellant was requested by us to submit his reply to the notice issued by this Court to the appellant to show cause why the punishment imposed should not be enhanced, he practically buckled up and almost conceded that the conduct attributed to the appellant would certainly constitute professional misconduct. Let us keep this concession aside and come to our own conclusion whether the actions indulged in by the

appellant by becoming a party to the forged documents so as to facilitate commission of fraud would constitute professional misconduct.

23. Provision contained in Chapter II in Part VI of the Bar Council of India Rules of 1975 prescribe "Standards of Professional Conduct and Etiquette". In the preamble to this part, it is stated that "an advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate." There follows enumeration of the conduct expected of a member of the profession. It is however, made clear that the rules of Chapter II contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned. It inter alia includes that an advocate shall not act on the instructions of any person other than his client or authorised agent. If Mulchand followed the respondent as admitted by the appellant to his office and if Mulchand presented the forged documents to the Income-tax Officer, one can say that the appellant has acted to the determent of his client at the instance of an outsider whose interest was detrimental to his client. But apart from anything else, under Rule 34 of the Civil Rules of Practice if the appellant was authorised to administer oath in respect of affidavits to be used in judicial proceedings, in the absence of any authorisation by the State of Andhra Pradesh, the appellant could not have subscribed to an affidavit claiming to be authorised by Rule 34 in respect of an affidavit not likely to be used in a judicial proceeding. An affidavit to be placed before an Income-tax officer for claiming an income-tax clearance certificate could not be said to be one sworn in for the purpose of being used in judicial proceeding, under the Oaths Act. In the absence of any authorisation from the State Government, the appellant would not have the power to attest an affidavit which could be used in a proceeding other than judicial proceeding. One can legitimately expect an advocate of 10 years' standing to know that under Rule 34, the appellant was not entitled to attest an affidavit which includes administration of oath which was likely to be used in a proceeding other than a judicial proceeding and year he pretended to act in his assumed capacity, arrogated to himself the jurisdiction which he did not possess and attested the affidavit in the name of someone whom he knew personally and who was not present before him personally and successfully misled the Income-tax Officer to issue the income-tax clearance certificate. Add to this that he made a blatantly false statement in the proceedings of disciplinary enquiry that the respondent had appeared before him and admitted his signature. This is not only a false statement but it is false to his knowledge. If this is not professional misconduct, it would be time to wind up this jurisdiction.

24. Both the State Committee and the Appellate Committee have soft-peddled the matter when imposing adequate punishment. The appellant is guilty of gross professional misconduct.

25. The Appellate Committee clearly committed an error in deleting some of the observations of the State Committee and that shows not only non-application of mind but a conclusion contrary to record which is wholly unsustainable. This aspect is open to us for our consideration as this Court has issued a notice as contemplated by the proviso to Section 38 of the Advocates Act, 1961 under which the appeal lies to this Court. This Court has jurisdiction to vary the order of the Appellate Committee which may even prejudicially affect the person aggrieved subject to this prerequisite that it can do so only after a notice to such person and after giving him an opportunity of being heard. By Act 60 of 1973, specific power has been conferred on this Court that in an appeal by the person aggrieved by the decision of the Disciplinary Committee of the Bar Council of India to this Court, this Court may pass such order including the order varying he punishment awarded by the

Disciplinary Committee of the Bar Council of India thereon as it deems fit. This jurisdiction will comprehend the jurisdiction to vary the finding of the Appellate Committee.

26. The next question is : what should be the adequate punishment that must be imposed upon the appellant ? The ludicrously low punishment frankly no punishment imposed by the State Committee makes a mockery of its finding. The appellant has merely been reprimanded for his professional misconduct and this punishment has been upheld in the appeal of the appellant by the Appellant Committee.

27. Sub-section (3) of Section 35 of the Advocates Act, 1961 prescribes the various punishments that may be imposed upon a delinquent advocate : They are : (a) reprimand the advocate, (b) suspend the advocate from practice for such period as it may deem fit, and (c) remove the name of the advocate from the State roll of advocates.

28. Adjudging the adequate punishment is a ticklish job and it has become all the more ticklish in view of the miserable failure of the peers of the appellant on whom jurisdiction was conferred to adequately punish a derelict member. To perform this task may be an unpalatable and onerous duty. We, however, do not propose to abdicate our function howsoever disturbing it may be.

29. Mr Nair urged that there are certain extenuating and mitigating circumstances that may be kept in proper perspective before this Court proceeds to review the punishment already imposed upon the appellant. It was pointed out that by the relevant item in October-November, 1972, the appellant had put in only ten years of practice at the Bar. He was still attending the office of his senior who may have influenced his decision. Further there is no material to show that the respondent had already obtained an income-tax clearance certificate. It was urged that affirmance of affidavit is a routine job and the Court should not view it with such seriousness as to charge the appellant with dereliction of duty. And add to this the finding that the allegation of payment of Rs 300 is not held proved. None of these grounds are either valid or persuasive. If the appellant had been in practice for a period of ten years at the Bar at the relevant time, he had qualified not for being appointed as a High Court Judge of this Court. This is sufficient to dispel arguments of immaturity. It was said he may be acting under pressure from his senior. In fact this itself should have awakened him all the more to his responsibility when he attested the affidavit. And if he knew the respondent, one can only say that it was not because he did not discharge the duty with the amount of seriousness expected of him in attesting the affidavit, but he was consciously becoming a party to a serious conspiracy. None of the extenuating or mitigating circumstances appeals to us.

30. Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the procession claimed that the are the leaders of thought and society. In the words of Justice Krishna Iyer in Bar Council of Maharashtra v. M.V. Dabholkar ((1976) 1 SCR 306, 322 : (1975) 2 SCC 702, 718 : AIR 1975 SC 2092) the role of the members of the Bar can be appreciated. He said : (SCC p. 718, para 52)

The Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bad contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumption : (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform the function, and (3) His performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform

is nothing less than the administration of justice ('The Practice of law is a Public Utility' - 'The Lawyer, the Public and Professional Responsibility' by F. Raymond Marks et al - Chicago American Bar Foundation, 1972, pp. 288-289). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of members misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about ? The official heads of the Bar, i.e. the Attorney General and the Advocates-General too are distressed if a lawyer 'stoops to conquer' by resort to soliciting, touting and other corrupt practices.

If these are the high expectations of what is described as a noble procession, its members must set an example of conduct worthy of emulation. If any of them falls from that high expectation, the punishment has to be commensurate with the degree and gravity of the misconduct. We need not reiterate the seriousness of the misconduct as we have repeatedly pointed out the same above. Usually, precedent-minded as we generally are, we searched for some precedent to assist us in determining adequate penalty. In P.J. Ratnam v. D. Kanikaram ((1964) 3 SCR 1 : AIR 1964 SC 244 : 1964 (1) Cri LJ 146) this Court upheld suspension from practice for a period of five years for a misconduct of not refunding the amount which was take by the advocate on behalf of his client observing that the Court was supposed at the request of the learned counsel for reducing the punishment and in fact it is a case in which the Court left to itself would have struck off the name of the advocate from the State roll of advocates. The Court concluded by saying that suspension of five years errs on the side of leniency and no case is made out for interfering with the same. In Dabholkar case ((1976) 1 SCR 306, 322 : (1975) 2 SCC 702, 718 : AIR 1975 SC 2092), the professional misconduct charged was that the advocate Dabholkar stood at the entrance of the Court House at the Presidency Magistrate's Court, Esplanade, Fort, Bombay and solicited work and generally behaved at that place in an undignified manner. Frankly speaking, if Dabholkar was starving, his professional misconduct could have been overlooked because between hunger and soliciting work, the latter is less pernicious. However, the seven-Judges Constitution Bench of this Court at that stage did not interfere with the punishment of suspension from practicing as advocate for a period of three years. Of course, the Constitution Bench was concerned with the narrow point about the maintenance of the appeal by the Bar Council of India. In V.C. Rangadurai v. D. Gopalan ((1979) 1 SCR 1054 : (1979) 1 SCC 308 : AIR 1979 SC 281), the delinquent lawyer Rangadurai was charge with duping the complainant T. Deivasenapathy, an old deaf man aged 70 years and his aged wife Smt D. Kamalammal by not filing suits on two promissory notes. The Disciplinary Committee of the State Bar Council had imposed a penalty of suspension from practice for a period of six years. Sen, J. in his judgment had grave reservations about the majority decision by which the period of suspension was reduced and the advocate was directed to work under an Official/Legal Aid Board in Tamil Nadu where his service free of charge were required. Justice Sen would dismiss the appeal without the slightest reduction in punishment.

31. Having given the matter our anxious consideration, looking to the gravity of the misconduct and keeping in view the motto that the punishment must be commensurate with the gravity of the misconduct, we direct that the appellant M. Veerabhadra Rao shall be suspended for practice for a period of five years that is up to and inclusive of October 31, 1989. To that extent we vary the order both of the Disciplinary Committee of the State Bar Council as well as the Disciplinary Committee of the Bar Council of India.

32. Accordingly this appeal fails and is dismissed and the punishment of reprimand imposed upon

the appellant is varied and he is suspended from practice for a period of five years i.e. up to and inclusive of October 31, 1989. The appellant shall pay the costs of the respondent quantified at Rs 3000.

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