

Navtej Singh

Vs

Satish Kumar Khurana and Another

Civil Appeal No. 3018(NM) of 1988

(S. Natarajan, G. L. Oza, Kuldip Singh JJ)

20.07.1989

JUDGMENT

NATARAJAN, J. –

1. This appeal by special arises from an order of the Disciplinary Committee of the Bar Council of India directing the suspension of practice of the appellant Navtej Singh for a period of one year for professional misconduct and also directing him to return a sum of Rs. 1900 received by him from the first respondent towards professional services. Before filing the appeal, the appellant had unsuccessfully sought for a review of the order and on the dismissal of the review petition, he has filed this appeal.

2. The first respondent laid a complaint before the Bar Council of India against the appellant alleging professional misconduct and misappropriation of a sum of Rs. 1900 given by him towards the filing of a suit against Messrs. Roneo Vickers (India) Ltd. The first respondent's case was that since he had engaged the appellant to act as his advocate in certain earlier legal proceedings, he requested him to file a suit against Messrs. Roneo Vickers (India) Ltd. for recovery of a sum of Rs. 17,474.50, and gave him all the relevant papers for the filing of the suit. The appellant made certain calculations and said that a sum of Rs. 1906 would be required towards expenses, court fees, legal charges etc., and thereupon, he issued him a bearer cheque for Rs. 1900 (Cheque No. 800856) on October 7, 1982, drawn on the State bank of India, Moti Nagar Branch, New Delhi. After receiving the cheque, the appellant took his signatures in a vakalatnama and several blank papers. Thereafter, the first respondent was contacting the appellant periodically from November 1982 till the end of December 1983 to find out the progress of the suit and the dates of hearing. The appellant told him that the suit had been filed and subsequently on various dates he told him that the suit had been posted for appearance of the defendant, that the defendant had entered appearance and had taken time for filing the written statement, that a replication statement had been subsequently filed and that the suit stood posted for hearing on January 5, 1984, for marking of documents. When he went to the court on January 5, 1984, he found the suit was not included in the list of suits posted for the day. When questioned the appellant told him that he had marked the date wrongly as January 5, 1984 and that the suit was actually posted for hearing on March 5, 1984. When he went to the court on March 5, 1984, he found the suit was not listed for hearing even on that day and he also found the appellant to be absent and he was reported to be out of station. On March 10, 1984 he went to the court and made enquiries on his own by questioning the appellant's clerk and the suit clerk and he then came to know that no suit had at all been filed by the appellant on his behalf against Messrs. Roneo Vickers (India) Ltd. Thereafter he contacted the appellant in his house and questioned him about the non-filing of the suit. The appellant confessed that a mistake had occurred and gave an assurance that he would file the suit within two days since the last date for filing the suit was March

14, 1984. He did not have confidence in the words of the appellant and, therefore, quarrelled with him and demanded the return of the file and the documents and also the sum of Rs. 1900 given by means of cheque. The appellant promised to return the papers and the money the next day, but on the next morning, the appellant was not to be found in the house. The appellant's father returned the file and the documents and promised to make the appellant return the sum of Rs. 1900 in a day or two. Thereafter, he took the file and the documents to another counsel and had the suit filed on March 16, 1984, i.e. two days after the limitation period, together with an application for condonation of delay. In the said application, the appellant's unregistered clerk, G. K. Sethi, has filed an affidavit stating that the appellant was issued a cheque for Rs. 1900 by the first respondent and he had encashed the cheque and given the money to the appellant. Despite the assurance given by his father the appellant did not return the sum of Rs. 1900. It, therefore became necessary to prefer a complaint to the Bar Council of India to seek disciplinary action being taken against the appellant for professional misconduct and also for misappropriation of the sum of Rs. 1900 given to him.

3. The appellant filed a reply and denied that he had been engaged by the first respondent to file a suit against Messrs. Roneo Vickers (India) Ltd., and that he had been paid a sum of Rs. 1900 through cheque. The appellant further denied having told the first respondent that the suit has been filed or that the defendant was taking time for filing written statement or that the suit was being adjourned to various dates for filing replication statement, for marking of documents etc. The appellant further set up a case that the first respondent owed him a sum of Rs. 2405 towards arrears of fees and he had sent demand notices for payment of the fees due to him and in order to evade payment of the said sum, the first respondent has concocted a false case and filed a complaint against him.

4. In the enquiry before the Bar Council, the first respondent examined himself and his son and also filed certain documents including a letter from the Bank stating that the bearer cheque for Rs. 1900 issued by the first respondent has been encashed by G. K. Sethi. The appellant examined only himself on his side and made an endorsement that he was not examining the clerk, G. K. Sethi, as he had failed to appear before the Bar Council in spite of his asking him to appear before the Committee and give evidence.

5. The Disciplinary Committee of the Bar Council considered the matter in full and held that the evidence on record amply proved the truth of the first respondent's complaint and therefore found the appellant guilty of professional misconduct and imposed upon him the punishment of one year's suspension of practice and also gave a direction that the appellant should return the sum of Rs. 1900 received by him from the first respondent. As earlier stated, the appellant filed a review petition, but the same was dismissed on the ground that the order passed earlier did not suffer from any error and that the review petition has been filed only to seek re-appreciation of evidence.

6. When the appeal was taken up for hearing, learned counsel for the appellant initially sought to contend that the evidence on record did not warrant the finding of professional misconduct rendered by the Disciplinary Committee and as such, the appellant was entitled to seek a reversal of the finding rendered against him. This contention was vehemently opposed by the son of the first respondent, who appeared in person on behalf of the first respondent. The first respondent's son pointed out that there was overwhelming evidence in the case to establish the charge levelled against the appellant and that was why the Disciplinary Committee has sustained the complaint and awarded punishment to the appellant. He pointed out that though the appellant had disputed the receipt of a bearer cheque for Rs. 1900 issued to him on the ground the counterfoil did not contain his signature,

the appellant has admitted that an earlier bearer cheque of Rs. 500 issued by the first respondent had been received and encashed by him without his signing the counterfoil. He then relied upon the fact that the Moti Nagar Branch of the State Bank of India has issued a letter certifying the encashment of the cheque for Rs. 1900 by G. K. Sethi. Yet another circumstance relied upon by him was that in the affidavit of G. K. Sethi, [which has been filed along with the petition for condonation of delay in the suit subsequently filed against Messrs. Roneo Vickers (India) Ltd.] he has sworn that he had encashed the cheque for Rs. 1900 on behalf of the appellant and handed over the amount to him. He also urged that since the Disciplinary Committee had accepted the evidence of his father and himself about the handing over of the papers and the payment of the cheque to the appellant and about the appellant misleading them from time to time about his having filed the suit and about the suit being posted to various dates for further proceedings and found the appellant guilty of professional misconduct the appellant was not entitled to seek re-appraisal of the evidence by this Court in exercise of its powers under Article 136 of the Constitution and go into questions of fact. As regards the appellant's case that the first respondent owed him a sum of Rs. 2405 towards arrears of fees and for evading payment of the amount, the first respondent has engineered the complaint, the first respondent's son submitted that there were no arrears of fees and the appellant had issued the notices subsequent to the quarrel between them in order to create self-serving documents with a view to make use of them in any proceedings initiated against him for professional misconduct.

7. Finding these contentions to be formidable, the appellant's counsel gave up the attack on the merits of the finding rendered against the appellant and urged that the Disciplinary Committee ought to have given adequate opportunity to the appellant to have examined G. K. Sethi as witness in order to disprove the first respondent's case. So far as this contention is concerned, the appellant himself has stated in his evidence as follows :

Shri G. K. Sethi never worked with me. He was never authorised to accept any amount on my behalf. Yesterday I contacted him to bring him in evidence before the Committee. He told me that he will be coming. But he did not come. I do not want to examine him as he has not come in spite of promises. He also told me that he has not received any amount on my behalf from the complainant.

From the abovesaid statement, it may be seen that the appellant had dispensed with the examination of G. K. Sethi when he did not oblige him by appearing before the Disciplinary Committee and give evidence. If the appellant was really keen on examining G. K. Sethi, he ought to have moved the Disciplinary Committee to issue summons to G. K. Sethi in exercise of its powers under Section 42 of the Advocates Act to appear before the Committee and give evidence in the matter. Having failed to do so, the appellant cannot now allege that the Disciplinary Committee had failed to afford him opportunity to summon G. K. Sethi and examine him.

8. Notwithstanding this position, since the appellant's counsel fervently prayed that the appellant may be given an opportunity to move the Disciplinary Committee of the Bar Council to issue summons to G. K. Sethi and have him examined, we told the counsel that we would concede his request if the appellant file an affidavit in that behalf. The appellant, who was present in court, prayed for time to file an affidavit and on the request being granted, he has filed an affidavit reading as under :

I. Navtej Singh of S. Hardit Singh, r/o J. 7/85, Rajouri Garden, New Delhi, do hereby solemnly affirm and declare on oath as under :

1. That as directed by this Hon'ble Court, I am submitting this affidavit.
2. That it is most respectfully requested that Shri G. K. Sethi, clerk of Shri D. S. Patial, Advocate (Central Hall) Tis Hazari Courts, Delhi, may kindly be summoned as witness by the Bar Council of India, under Section 42 of the Advocates Act, because I apprehend that he may not appear on my request, as before.
3. It is also submitted most humbly and respectfully that I may also kindly be given an opportunity to produce additional evidence, if any, in the interests of justice.

9. In the light of what has been stated above the prayer contained in para 3 of the affidavit goes beyond the request that was made in open court. There is no question of the appellant being given opportunity to produce additional evidence in support of his contentions. The prayer for remand of the matter was made only with reference to the summoning of G. K. Sethi and examining him.

10. As admittedly G. K. Sethi is an important witness in the case and his evidence would have a bearing on the charge of misconduct levelled against the appellant, we deem it fit in the interest of justice to grant the prayer contained in para 2 of the appellant's affidavit. For reasons already stated, the prayer contained in para 3 of the affidavit for adducing additional evidence, apart from the evidence of G. K. Sethi, being recorded cannot be granted.

11. In view of our granting the prayer contained in para 2 of the affidavit, the appeal is allowed, the order of the Disciplinary Committee of the Bar Council is set aside and the matter will stand remitted to the Disciplinary Committee for fresh disposal after issuing summons to G. K. Sethi at the cost of the appellant and examining him.

12. In the result the appeal is allowed and the matter is remitted to the Disciplinary Committee of the Bar Council for fresh disposal in the light of the directions contained above. No order as to costs.

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