

Hikmat Ali Khan

Vs

Ishwar Prasad Arya and Others

Civil Appeal No. 4240 of 1986

(Sujata V. Manohar, S. C. Agarwal JJ)

28.01.1997

JUDGMENT

S. C. AGRAWAL J.

1. Ishwar Prasad Arya, Respondent 1, was registered as an advocate with the Bar Council of Uttar Pradesh and was practicing at Budaun. An incident took place on 18-5-1971 during lunch interval at about 1.55 p.m. in which Respondents 1 assaulted his opponent Radhey Shyam in the courtroom of Munsif/Magistrate, Bisauli at Budaun with a knife. A pistol shot is also said to have been fired by him at the time of the incident. After investigation he was prosecuted for offences under Section 307 of the Indian Penal Code and Section 25 of the Arms Act. The 1st Temporary Civil and Sessions Judge, by his judgment dated 3-7-1972, convicted him of the said offence and sentenced him to undergo rigorous imprisonment for three years for the offence under Section 307 IPC and for a period of nine months for offence under Section 25 of the Arms Act. The conviction and sentence for the offence under Section 307 IPC were maintained by the High Court by its judgment dated 10-9-1975 in Criminal Appeal No. 1873 of 1972 but he was given the benefit of doubt regarding offence under Section 25 of the Arms Act and the conviction and sentence for the said offence were set aside. Before he could be arrested to undergo the punishment of rigorous imprisonment for three years for offence under Section 307 IPC, a copy of letter No. Pr.VI/Chh.Pa XXIII-2016-75-76 dated 28-4-1976 purporting to have been sent by Shri L. R. Singh, Deputy Secretary, Ministry of Home, U.P., Lucknow, addressed to the District Magistrate, Budaun bearing endorsement No. 1513(II)-75-76 was received in the Court of the IIIrd Additional District and Sessions Judge, Budaun, who was responsible for executing the order of the court of the 1st Temporary Civil and Sessions Judge on its abolition. In the said letter it was stated that the Governor has been pleased to suspend the conviction of Ishwar Prasad Arya under Article 161 of the Constitution with immediate effect and until further orders he should remain free. After receiving the copy of the said letter dated 28-4-1976 the IIIrd Additional District and Sessions Judge, on 30-4-1976, stayed the proceedings in the case and despite repeated enquiries by the court from the State Government about the suspension of the sentence the execution of the sentence awarded to the respondent remained suspended till 27-9-1977, when on receipt of a crash radiogram message from the Home Ministry, Lucknow, it was found that the letter dated 28-4-1976 was fraudulent and thereupon a warrant for the arrest of Respondent 1 was issued by the court on 28-9-1977 and he was arrested the same day and was sent to Budaun Jail to undergo the imprisonment. On 9-12-1977 Shri G. S. Sharma, IIIrd Additional District and Sessions Judge, Budaun, sent a complaint containing these facts to the Chairman, Bar Council of U.P., for taking action against Respondent 1 under Section 35 of the Advocates Act, 1961 (hereinafter referred to as "the Act"). On the basis of the said complaint disciplinary proceedings (DC Case No. 70 of 1981) were initiated against Respondent 1 by the Bar Council of U.P. By order dated 30-1-1982 the Disciplinary Committee of the Bar Council of U.P. found

Respondent 1 guilty of gross professional misconduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest. The Disciplinary Committee of the Bar Council of U.P. directed that Respondent 1 be debarred from practicing as an advocate for a period of two years from the date of the service of the order. Respondent 1 filed an appeal (DC Appeal No. 4 of 1982) in the Bar Council of India against the order dated 30-1-1982 passed by the Disciplinary Committee of the Bar Council of U.P. The said appeal was allowed by the Disciplinary Committee of the Bar Council of India by order dated 8-6-1984 and the order of the Disciplinary Committee of the Bar Council of U.P. dated 30-1-1982 was set aside on the view that there was no material on the basis of which it could reasonably be held that Respondent 1 had prepared the document which was subsequently found forged.

2. The appellant, Hikmat Ali Khan, had also submitted a complaint against Respondent 1 to the Secretary, Bar Counsel of U.P., wherein it was stated that by order dated 3-7-1972 passed by the Temporary Civil and Sessions Judge, Budaun the respondent had been convicted and sentenced to three years' rigorous imprisonment under Section 307 IPC and his appeal had been dismissed by the High Court by judgment dated 10-9-1975 and even after the dismissal of his appeal Respondent 1 remained out of jail till 27-9-1978 on the basis of a forged and fraudulent document purported to have been sent by the Deputy Secretary, Ministry of Home, U.P., Lucknow and that during the said period he continued to practice as an advocate. In the said complaint, it was also mentioned that the name of Respondent 1 is noted as a bad character in Register No. 8 of Police Station, Wazirganj, District Budaun and further that a number of criminal cases have been registered against him. It was prayed that a fresh enquiry may be made in the matter and in case the facts are proved against Respondent 1 his registration as an advocate may be cancelled since he is a blot on the names of all the advocates. On the basis of the said complaint of the appellant proceedings (DC Case No. 40 of 1983) were initiated against Respondent 1 by the Bar Council of U.P. In the said proceedings, Respondent 1 appeared and filed his written statement, but thereafter he did not appear and participate in the proceedings. The Disciplinary Committee of the Bar Council of U.P. proceeded ex parte against him. By order dated 25-3-1984 the Disciplinary Committee found that Respondent 1 was convicted and sentenced under Section 307 IPC and under Section 25 of the Arms Act and that his name was also recorded in Register No. 8 maintained by the police in Kotwali Budaun and that it is a register in which the names of the bad characters are entered. The Disciplinary Committee held that it is unbecoming of an advocated to earn such a bad reputation in the society and that Respondent 1 was liable to be punished. The Disciplinary Committee of the Bar Council of U.P. directed that Respondent 1 be debarred from practising as an advocate for a period of three years. Respondent 1 filed an appeal (DC Appeal No. 17 of 1984) against the said order passed by the Disciplinary Committee of the Bar Council of U.P. The appellant also filed an appeal (DC Appeal No. 17-A of 1984) against the said order. Respondent 1, in his appeal, prayed that the punishment imposed by the Disciplinary Committee of the Bar Council of U.P. be set aside; the appellant, in his appeal, on the other hand, wanted the said punishment to be enhanced and his name to be removed from the roll of advocates. Both the appeals were disposed of by the Disciplinary Committee of the Bar Council of India by order dated 8-9-1985. It was observed that the matter has already been considered by the Disciplinary Committee of the Bar Council of India in its order dated 8-6-1984 in DC Appeal No. 4 of 1982 whereby the order of the Bar Council of U.P. dated 30-1-1982 suspending Respondent 1 from practice for three years had been set aside. The Disciplinary Committee of the Bar Council of India held that there was no choice left with it but to accept the appeal in view of the order dated 8-6-1984 passed by the Disciplinary Committee of the Bar Council of India in DC Appeal No. 4 of 1982 and, therefore, the appeal filed by Respondent 1 was allowed and the order of the Disciplinary Committee of the Bar Council of U.P. dated 25-3-1984 in DC Case No. 40 of 1983

was set aside. Consequently, the appeal filed by the appellant was dismissed. Feeling aggrieved by the said order dated 8-9-1985 passed by the Disciplinary Committee of the Bar Council of India allowing DC Appeal No. 17 of 1984 filed by Respondent 1 and dismissing DC Appeal No. 17-A, of 1984 filed by him, the appellant has filed this appeal.

3. Shri Subodh Markandeya, the learned counsel for the appellant, has urged that in passing the order dated 8-9-1985 the Disciplinary Committee of the Bar Council of India has failed to appreciate that in the earlier order dated 8-6-1984 in DC Appeal No. 4 of 1982 the Disciplinary Committee of the Bar Council of India had given the benefit of doubt to Respondent 1 in respect of fabrication of letter dated 28-4-1976 on the basis of which he was able to avoid being arrested for a period of about 16 months from 30-4-1976 to 28-9-1977 for undergoing the sentence of rigorous imprisonment imposed on him under Section 307 IPC and that in the said proceedings the Disciplinary Committee of the Bar Council of India had not considered the conduct of Respondent 1 involving his conviction for the offence under Section 307 IPC and his being sentenced to rigorous imprisonment for three years. According to Shri Markandeya, the said conduct of Respondent 1 was the subject-matter of the complaint filed by the appellant for which conduct the Disciplinary Committee of the Bar Council of U.P. had imposed the punishment of debaring him from practising as an advocate for a period of three years. Shri Markandeya also urged that in his complaint the appellant had also pointed out that the name of Respondent 1 is entered in Register No. 8 maintained at Kotwali Budaun and the said register contains the names of bad characters and that this fact was also found established by the Disciplinary Committee of the Bar Council of U.P. and it was observed that it is unbecoming of an advocate to earn such a bad reputation in the society. The submission of Shri Markandeya is that having regard to the gravity of the misconduct of Respondent 1 in assaulting his opponent in the courtroom with a knife and his having committed the offence under Section 307 IPC and his being sentenced to undergo rigorous imprisonment for three years in connection with the said incident, the punishment of removal of the name of Respondent 1 from the roll of advocates should have been imposed on him and that the Disciplinary Committee of the Bar Council of U.P. was in error in imposing the light punishment of debaring Respondent 1 from practising as an advocate for a period of three years only and that this was a fit case in which the appeal filed by the appellant should have been allowed by the Disciplinary Committee of the Bar Council of India.

4. Respondent 1 is represented by Shri H. K. Puri. After arguing for some time Shri Puri sought leave of the Court for being discharged as an advocate of Respondent 1 when he was asked to address the Court on the appeal regarding enhancement of the punishment imposed on Respondent 1. We, however, did not grant leave sought by Shri Puri for being discharged as a counsel for Respondent 1.

5. The order dated 25-3-1984 passed by the Disciplinary Committee of the Bar Council of U.P. in DC Case No. 40 of 1983 arising out of the complaint submitted by the appellant clearly holds that from material available on record it is established that Respondent 1 was convicted and sentenced for the offence under Section 307 IPC and under Section 25 of the Arms Act and that his name is recorded in Register No. 8 maintained at Kotwali Budaun which is a register in which the names of the bad characters are entered. It is no doubt true that the conviction of Respondent 1 for the offence under Section 25 of the Arms Act was set aside by the High Court on appeal, but his conviction and sentence for the offence under Section 307 IPC was maintained by the High Court. The said conviction under Section 307 IPC related to an incident which took place in the courtroom wherein Respondent 1 had assaulted his opponent, Shri Radhey Shyam, with a knife. The Disciplinary Committee of the Bar Council of India, while dealing with the appeal of Respondent 1 as well as the

cross-appeal of the appellant which were filed against the said order of the Disciplinary Committee of the Bar Council of U.P., failed to take note that the misconduct of Respondent 1 which was the subject-matter of the complaint in DC Case No. 4 of 1982 arising out of the complaint filed by Shri G. S. Sharma, IIIrd Additional District and Session Judge, Budaun, was different from the misconduct which had been found established on the basis of the complaint made by the appellant. The complaint of Shri G. S. Sharma, which gave rise to DC Case No. 70 of 1981 before the Disciplinary Committee of the Bar Council of U.P., related to fabrication of the copy of the letter No. Pr.VI/Chh.Pa XXIII-2016-75-76 dated 28-4-1976 from Shri L. R. Singh, Deputy Secretary, Ministry of Home, U.P., Lucknow, to the District Magistrate, Budaun that was received in the Court of IIIrd Additional District and Sessions Judge vide endorsement No. 1513(II)-75-76 wherein it was stated that the Governor was pleased to suspend the conviction of Respondent 1 under Article 161 of the Constitution with immediate effect and that until further orders he should remain free. In the said complaint of Shri G. S. Sharma, the Disciplinary Committee of the Bar Council of U.P., by order dated 30-1-1982, found Respondent 1 guilty of gross professional misconduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest. The Disciplinary Committee of the Bar Council of India, in its order dated 8-6-1984 in DC Appeal No. 4 of 1982, felt that there was no material from which it could reasonably be held that Respondent 1 had prepared the document which was subsequently found forged and that Respondent 1 could be given the benefit of doubt and, therefore, the order dated 30-1-1982 passed by the Disciplinary Committee of the Bar Council of U.P. in DC Case No. 70 of 1981 was set aside. The said order of the Disciplinary Committee of the Bar Council of India did not have any bearing on the conduct of Respondent 1 which led to his conviction for the offence under Section 307 IPC and his being sentenced to rigorous imprisonment for three years and his name being entered as a bad character in Register No. 8 of Kotwali Budaun which was the subject-matter of the complaint made by the appellant and on the basis of which the Disciplinary Committee of the Bar Council of U.P. had passed the order dated 25-3-1984 in DC Case No. 40 of 1983 debarring Respondent 1 from practising as an advocate for a period of three years. The Disciplinary Committee of the Bar Council of India was, therefore, in error in setting aside the order dated 25-3-1984 passed by the Disciplinary Committee of the Bar Council of U.P. merely on the basis of its order dated 8-6-1984 in DC Case No. 4 of 1982. The order of the Disciplinary Committee of the Bar Council of India dated 8-9-1985 allowing DC Appeal No. 17 of 1984 filed by Respondent 1 cannot, therefore, be sustained and has to be set aside. Having regard to the finding recorded by the Disciplinary Committee of the Bar Council of U.P. regarding the misconduct of Respondent 1 that has been found established from the record, we find no merit in DC Appeal No. 17 of 1984 filed by Respondent 1 against the order dated 25-3-1984 passed by the Disciplinary Committee of the Bar Council of U.P. and the said appeal is liable to be dismissed.

6. We will now come to DC Appeal No. 17-A of 1984 filed by the appellant which raises the question whether the punishment imposed by the Disciplinary Committee of the Bar Council of U.P. in its order dated 25-3-1984, is adequate having regard to the gravity of the misconduct of Respondent 1. The misconduct of Respondent 1 that has been found established is that he had assaulted his opponent, Shri Radhey Shyam with a knife in the courtroom and he has been convicted of the offence under Section 307 IPC and has been sentenced to rigorous imprisonment for a period of three years. It has also been found established that the name of Respondent 1 was contained in Register No. 8 maintained at Kotwali Budaun which is a register wherein the names of bad characters are entered. The acts of misconduct found established are serious in nature. Under sub-section (3) of Section 35 of the Act the Disciplinary Committee of the State Bar Council is empowered to pass an order imposing punishment on an advocates found guilty of professional or

other misconduct. Such punishment can be reprimand [clause (b)], suspension from practice for a certain period [clause (c)] and removal of the name of the advocate from the State roll of advocates [clause (d)], depending on the gravity of the misconduct found established. The Punishment of removal of the name from the roll of advocates is called for where the misconduct is such as to show that the advocate is unworthy of remaining in the profession. In this context, it may be pointed out that under Section 24-A of the Act person who is convicted of an offence involving moral turpitude is disqualified for being admitted as an advocate on the State roll of advocates. This means that the conduct involving conviction of an offence involving moral turpitude which would disqualify a person from being enrolled as an advocate has to be considered a serious misconduct when found to have been committed by a person who is enrolled as an advocate and it would call for the imposition of the punishment of removal of the name of the advocate from the roll of advocates. In the instant case Respondent 1 has been convicted of the offence of attempting to commit murder punishable under Section 307 IPC. He had assaulted his opponent in the courtroom with a knife. The gravity of the misconduct committed by him is such as to show that he is unworthy of remaining in the profession. The said misconduct, therefore, called for the imposition of the punishment of removal of the name of Respondent 1 from the State roll of advocates and the Disciplinary Committee of the Bar Council of U.P., in passing the punishment of debarring Respondent 1 from practicing for a period of three years, has failed to take note of the gravity of the misconduct committed by Respondent 1. Having regard to the facts of the case, the proper punishment to be imposed on Respondent 1 under Section 35 of the Act should have been to direct the removal of his name from the State roll of advocates. The appeal filed by the appellant, therefore, deserves to be allowed.

7. For the reasons aforementioned, the appeal is allowed, the impugned order dated 8-9-1985 passed by the Disciplinary Committee of the Bar Council of India in DCs Appeals Nos. 17 and 17-A of 1984 is set aside and the order dated 25-3-1984 passed by the Disciplinary Committee of the Bar Council of U.P. in DC Case No. 40 of 1983 is upheld with the modification that instead of his being debarred from practising as an advocate for a period of three years, the name of Respondent 1 shall be removed from the State roll of advocates. No order as to costs.