

Prahlad Saran Gupta

Vs

Bar Council of India and Another

Civil Appeal No. 3588 of 1984

(G. B. Pattanaik, S. C. Agarwal JJ)

26.02.1997

JUDGMENT

S. C. AGRAWAL J.

This appeal, filed under Section 38 of the Advocates Act, 1962 (hereinafter referred to as "the Act"), is directed against the judgment of the Disciplinary Committee of the Bar Council of India (hereinafter referred to as "the Disciplinary Committee") dated 25-3-1984 in B.C.I. Tr. Case No. 12 of 1982 whereby the Disciplinary Committee has found the appellant guilty of serious professional misconduct and has imposed the punishment of suspension from practice for a period of one year.

2. The appellant has been practising as an advocate at Ghaziabad and is enrolled with the Bar Council of Uttar Pradesh. He was appearing for the decree-holder in Execution Case No. 55 of 1974 Atma Ram Nanak Chand v. Shri Ram Contractor in the Court of Civil judge, Ghaziabad. A complaint was received by the U.P. State Bar Council from one Rajendra Prasad (hereinafter referred to as "the complainant"), a partner of the firm M/s. Atma Ram Nanak Chand, on 1-8-1979. In the said complaint the complainant had made the following allegations against the appellant :

(1) The appellant had colluded with the judgment-debtor and had realised Rs. 1600 from him out of which the sum of Rs. 1500 was withheld by the appellant with himself and he did not pay it to the decree-holder for a period of eight months in spite of repeated requests and in order to harass the decree-holder, instead of handing over the same personally to him, he deposited the said amount in court on 2-5-1978. The balance amount of Rs. 100 was taken by him as fee from the judgment-debtor to enable him to get time from the High Court for procuring stay order in the execution proceedings.

(2) The appellant received Rs. 245 from the judgment-debtor for getting some other counsel engaged to get the execution proceedings stayed and to see that the auction of judgment-debtor's property was not approved by the court. The appellant got Shri Mahesh Prasad Tyagi, Advocate engaged from the side of the judgment-debtor and charged Rs. 110 for the purpose and that the execution of the decree was delayed due to careless handling of the case by the appellant since no permission for bidding at auction from the court was obtained deliberately in order to leave a lacuna for delaying the execution and that Shri M. P. Tyagi, Advocate, taking advantage of the said lacuna, filed objections under Order 21 Rule 72 CPC for cancellation of the auction.

(3) The appellant had collected from the judgment-debtor a further sum of Rs. 450 on account of fees and expenses for getting some counsel engaged at Allahabad to get the execution proceedings stayed and for the purpose he had given a letter dated 5-4-1978 to the judgment-debtor Shri Ram for Shri V. K. Gupta, Advocate at Allahabad and that Shri Ram instead of going to Allahabad with the aforesaid letter sent a reply paid letter to Shri V. K. Gupta, Advocate making enquiries about the stay but a reply came from the clerk of Shri V. K. Gupta, Advocate on 14-4-1978 that no case of his had been referred to him from the appellant.

(4) The appellant, as counsel for the complainant's firm, had filed Suit No. 10 of 1977 against Pradhan Shri Ramnath Singh in the Court of Munsif (Judge, Small Causes Court, Ghaziabad) with utter carelessness with the result that their new counsel had to take back the plaint on 26-4-1978 to file it in the proper court, namely, the Court of Civil Judge (Judge, Small Causes Court), Ghaziabad.

(5) The appellant was indulging in money/lending business at a very high rate of interest and thus misconducting himself as an advocate and had advanced loan to one Sunderlal of Ghaziabad.

3. A copy of the said complaint was sent to the appellant by the State Bar Council for his explanation. The appellant submitted his reply to the complaint on 12-12-1979 wherein he denied all the allegations contained in the complaint. The appellant denied having received Rs. 1600 in collusion with the judgment-debtor and stated that after the writ for holding an auction of the judgment-debtor's property had been handed over to the Court Amin, Shri Nanak Chand, the father of the complainant, as a partner of firm M/s. Atma Ram Nanak Chand, entered into an arrangement with the judgment-debtor telling him that if he paid Rs. 1500 at once then he would not get the auction held and that he would accept the remaining amount in instalments within two months and that in pursuance to the said arrangement the judgment-debtor paid sum of Rs. 1500 whereupon Shri Nanak Chand made an endorsement on the writ with the Amin about this payment of Rs. 1500 and the fact that he did not want the auction to be held on 2-11-1977. The appellant stated that he was prepared to pay up the amount of Rs. 1500 to the decree-holder if a receipt signed by both the judgment-debtor and decree-holder firm was given to him but they were not prepared to grant such a receipt and so he had retained the amount with him as a trustee and soon after the receipt of the registered letter from the decree-holder he had deposited the amount in the court. The appellant denied having received any amount from the judgment-debtor for engaging any lawyer for him for obtaining stay. He also stated that he had not been careless or negligent in any manner as an advocate of the complainant's firm in the execution case and that permission for bidding by the decree-holder under Order 21 Rule 72 CPC was not taken by him because it was not necessary in view of the amendment of the said Rule by the Allahabad High Court and that no objection on that score had been taken by the judgment-debtor against the auction-sale. As regarding filing of suit No. 10 of 1977 on behalf of M/s. Atma Ram Nanak Chand in the Court of the Munsif, Ghaziabad as a small causes suit, the appellant stated that he had not acted carelessly and negligently inasmuch as at that time that was the correct court. He also denied the allegation that he was doing moneylending business. The appellant stated that the complaint had been lodged against the appellant because of annoyance on the part of the complainant as the appellant had declined to advance a loan of Rs. 12,000 which the complainant was demanding from him.

4. The State Bar Council referred the case to one of its Disciplinary Committees but the said Committee could not complete the proceedings in the prescribed time of one year and, therefore, the

proceedings were transferred to the Bar Council of India under Section 36-B of the Act and thereafter the Disciplinary Committee dealt with the proceedings.

5. In support of the complaint, the complainant examined himself as a witness and produced the judgment-debtor, Shri Ram, as well as Sunderlal and Balraj Gupta. The complainant also produced a number of documents. The appellant examined himself in defence.

6. The Disciplinary Committee did not find merit in the allegation in the complaint that the appellant was grossly careless in handling the execution case and he deliberately did not seek permission from the court for the decree-holder to bid at the auction in order to leave legal lacuna for the execution of the decree. The Disciplinary Committee has accepted the explanation of the appellant that the permission was not sought under Order 21 Rule 72 CPC in view of the amendment of the said Rule by the Allahabad High Court. The Disciplinary Committee did not also find merit in the case of the complainant that the appellant had filed Title Suit No. 10 of 1977 on behalf of the firm M/s. Atma Ram Nanak Chand in the Court of the Munsif, Ghaziabad with utter carelessness and that the suit should have been filed in the Court of the Civil Judge (Small Causes Court), Ghaziabad. The Disciplinary Committee has observed that they could not see any reason not to accept the version of the appellant that at the relevant time the Court of the Munsif, Ghaziabad was the proper court having jurisdiction. As regards advance of loan to Sunderlal, the Disciplinary Committee observed that a single case of advance of loan on interest cannot make out a case of the lender engaging in moneylending business. The Disciplinary Committee has, however, found the appellant guilty of gross professional misconduct on the basis of the following findings :

(i) The version of the complainant regarding receipt of Rs. 1500 by the appellant from the judgment-debtor was acceptable and finds support from the endorsement by Shri Nanak Chand on the writ for auction which states that his advocate had accepted Rs. 1500 out of the decretal dues from the judgment-debtor and had told him that he had given the judgment-debtor two month's time. The said endorsement falsifies the version of the appellant that Shri Nanak Chand had received Rs. 1500 from the judgment-debtor and had deposited the amount with him. From the endorsement it cannot be deduced that any arrangement had been arrived at between the decree-holder and the judgment-debtor and that the decree-holder had accepted Rs. 1500. It was the appellant who had granted two months' time to the judgment-debtor.

(ii) The explanation of the appellant that the amount of Rs. 1500 was deposited in trust with him by both the decree-holder and judgment-debtor and it had been agreed that the appellant would pay back the amount if a receipt signed by both the judgment-debtor and decree-holder was given for it was not acceptable.

(iii) The appellant was an advocate for the decree-holder and according to his own version the amount had been received by Shri Nanak Chand, decree-holder from the judgment-debtor and deposited by him with him and in such a case there could be no question of any requirement of a receipt signed by the judgment-debtor also for payment of the amount to the decree-holder and that the professional duty of the appellant required that he should have asked the decree-holder to take the amount from him and only in case the decree-holder did not come up to take it after granting a due receipt that he could retain the amount with himself. The appellant does not say that he had called upon the decree-holder either verbally or in writing to take the money from him.

(iv) The conduct of the appellant in depositing the amount in the court after receipt of a registered letter from the complainant was definitely not warranted since it could cause harassment to his client in taking the amount back from the court. He could have sent the amount through a bank draft or through money order if the decree-holder was not coming forward to receive it.

(v) The appellant had admitted the authorship of the letter dated 5-4-1978 addressed to Shri V. K. Gupta, Advocate and his explanation that the said letter was given to one Naresh Chandra Singhal for some case of his had not been stated by the appellant in his written statement and the said explanation was offered for the first time in his evidence. The complainant had filed a photostat copy of the affidavit of Naresh Chandra Singhal along with his written arguments and that in his affidavit Naresh Chandra Singhal has denied having received the aforesaid letter or any other letter from the appellant and in such circumstances the statement and the evidence of Shri Ram in respect of the allegation that the appellant had taken a sum of Rs. 245 on account of fees and expenses for getting some other counsel engaged at Allahabad to get the execution proceedings stayed and for that purpose he had given a letter dated 5-4-1978 addressed to Shri V. K. Gupta, Advocate, at Allahabad, to the judgment-debtor was acceptable. It finds corroboration from the conduct of Shri Ram after the receipt of the letter.

(vi) Even though the appellant was a standing counsel for the Railway, he committed professional misconduct in drafting a notice under Section 80 CPC on behalf of M/s. Agarwal Traders, Ghaziabad, a sister concern of the complainant, for service upon the Union of India through the General Manager, Western Railway and the said notice was served through another lawyer. The complainant had filed the draft of the said notice in the pen of the appellant as Document 16.

7. Shri R. B. Mehrotra, the learned Senior Counsel appearing for the appellant, has submitted that the Disciplinary Committee has erred in holding the appellant guilty of professional misconduct on the basis of the charge relating to notice under Section 80 CPC having been drafted by the appellant. The submission is that the said charge was not contained in the complaint filed by the complainant and was put forward for the first time before the Disciplinary Committee of the State Bar Council by the complainant in his application and furthermore the request of the appellant for examination of the handwriting in the draft of the notice filed as Document 16 by an expert to show that the said draft of the notice was not in the handwriting of the appellant having been rejected by the Disciplinary Committee, the Disciplinary Committee was in error in holding, on the basis of a comparison of the admitted handwriting of the appellant with the handwriting in Document 16, that the same was written by the appellant.

8. We are in agreement with Shri Mehrotra that the Disciplinary Committee was in error in holding the appellant guilty of professional misconduct for drafting the notice under Section 80 CPC which was served upon the Union of India through the General Manager, Western Railways on behalf of M/s. Agarwal Traders, Ghaziabad on the view that Document 16, the draft of the said notice, was in the handwriting of the appellant. The Disciplinary Committee has arrived at this conclusion by a comparison of the handwriting of the appellant with the handwriting in Document 16. We find that during the course of arguments a request was made by the learned counsel appearing for the appellant before the Disciplinary Committee to send Document 16 to a handwriting expert for examination, but the said request made on behalf of the appellant was rejected by the Disciplinary

Committee on 27-11-1983 on the view that no useful purpose would be served because the allegation relating to the said document was not contained originally in the complaint. Having rejected the request for sending the said document to a handwriting expert for examination on the view that the said allegation was not contained in the complaint as originally filed, the Disciplinary Committee was in error in going into the merits of the said allegation and furthermore in comparing the writing in the said document with handwriting of the appellant without the assistance of the opinion of a handwriting expert and in coming to the conclusion that the said document was in the handwriting of the appellant. Reference, in this context, may be made to the decision in State (Delhi Admn.) v. Pali Ram [(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : (1979) 1 SCR 931], wherein it has been observed : (SCR p. 944)

"Although there is no legal bar to Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

9. In our opinion, it was advisable for the Disciplinary Committee to base its conclusion purely on the basis of its own comparison of the handwriting, especially when the matter related to a charge of professional misconduct which is quasi-criminal in nature requiring proof beyond reasonable doubt. We are, therefore, unable to uphold the finding recorded by the Disciplinary Committee holding the appellant guilty of professional misconduct for having prepared the draft of the notice under Section 80 CPC that was served on the Union of India on behalf of M/s. Agarwal Traders.

10. As regards the charge that the appellant had sent the letter dated 5-4-1978 to Shri V. K. Gupta, Advocate, at Allahabad, it may be stated that the appellant does not dispute that he had sent the said letter to Shri V. K. Gupta, Advocate, but his case is that he handed over the said letter to one Naresh Chandra Singhal in connection with his case and it was not given to Shri Ram, the judgment-debtor in the execution proceedings, for obtaining stay of execution of the decree passed in favour of the firm of the complainant. The case of the complainant, on the other hand, is that the said letter had been delivered to Shri Ram who had sent the same to Shri V. K. Gupta, Advocate by post and in reply he received a postcard dated 14-4-1978 from the clerk of Shri V. K. Gupta, Advocate. The Disciplinary Committee has not accepted the explanation offered by the appellant on the view that the said explanation was not offered by him in his written statement but was offered subsequently during the course of evidence. Along with his written arguments, after the evidence had been recorded, the complainant filed a photostat copy of the affidavit of Shri Naresh Chandra Singhal wherein Shri Naresh Chandra Singhal has denied having received any letter from the appellant. Shri Naresh Chandra Singhal was not examined as a witness by the complainant before the Disciplinary Committee. The appellant had no opportunity to cross-examine Shri Naresh Chandra Singhal on the contents of the affidavit. We are of the view that the photostat copy of the affidavit of Shri Naresh Chandra Singhal could not be treated as evidence and on the basis of the same the explanation offered by the appellant regarding the said letter could not be rejected. Moreover the version of the judgment-debtor, Shri Ram, which has been accepted by the Disciplinary Committee suffers from serious infirmities. Shri Ram has stated that he did not send the letter of the appellant to Shri V. K. Gupta, Advocate at Allahabad but had sent a reply paid

postcard to him. A copy of the said postcard which is said to have been sent by Shri Ram to Shri V. K. Gupta, Advocate, at Allahabad has been produced as Ex. C-8. There is nothing in the said document to show that it was addressed to Shri V. K. Gupta, Advocate. No evidence has been adduced to prove the posting of the postcard to Shri V. K. Gupta, Advocate. The postcard filed as Document 12, which is said to have been received by Shri Ram, does not show that the person who had sent the said postcard was the clerk of Shri V. K. Gupta, Advocate. No evidence has been produced to prove that the signatory of the said postcard was the clerk of Shri V. K. Gupta, Advocate. In the said postcard there is no reference to Shri V. K. Gupta, Advocate or the person being the clerk of Shri V. K. Gupta. Furthermore, in Ex. C-8, which is claimed to be copy of the postcard that was sent by Shri Ram to Shri V. K. Gupta, Advocate, it is stated that the copy of the order dated 23-3-1978/24-3-1978 passed by the Civil Judge, Ghaziabad in the case of Shri Ram v. Atma Ram Nanak Chand has been sent but the stay order has not been obtained. We have perused the order sheet of the court in the execution case of Atma Ram Nanak Chand v. Shri Ram and we find that the said execution matter had not been fixed on 23-3-1978 or 24-3-1978 and no order was passed in that case on those dates. In these circumstances, no reliance can be placed on the evidence of Shri Ram that the appellant had given him the letter dated 5-4-1978 in this regard and on the basis of the evidence of Shri Ram it cannot be said that the appellant had handed over the letter dated 5-4-1978 addressed to Shri V. K. Gupta, Advocate, at Allahabad, to Shri Ram for the purpose of his obtaining stay of execution proceedings from the Allahabad High Court. We are, therefore, unable to uphold the finding recorded by the Disciplinary Committee as regards the appellant having been guilty of professional misconduct in addressing the letter dated 5-4-1978 to Shri V. K. Gupta, Advocate to enable the judgment-debtor (Shri Ram) to obtain stay of execution proceedings in which he was engaged on behalf of the decree-holder.

11. As regards the charge about withholding of the sum of Rs. 1500 which was handed over to him the case of the appellant is that the said sum was placed with him by both the parties, namely, Shri Nanak Chand, partner of firm M/s. Atma Ram Nanak Chand (decree-holder), and Shri Ram (judgment-debtor) in connection with the settlement which was being negotiated between them and that the appellant refused to pay the said money to the decree-holder for the reason that it could be paid only if a joint receipt of both the parties was handed over to him. The Disciplinary Committee has not accepted the said version of the appellant on the view that in the endorsement on the writ for auction Shri Nanak Chand was stated that the appellant had received the said sum of Rs. 1500 from the judgment debtor. Shri Mehrotra has urged that Shri Nanak Chand was the best person who could depose in this regard and since he has not been examined as a witness by the complainant the version of the appellant about the circumstances in which the sum of Rs. 1500 was paid to him should be accepted. It is no doubt true that Shri Nanak Chand was the best person who could depose about the circumstances in which the sum of Rs. 1500 was deposited with the appellant. But at the same time, we cannot lose sight of the fact that the proposed settlement under which the amount of Rs. 1500 was deposited with the appellant did not materialise on 2-11-1977 itself and shortly after making the first endorsement Shri Nanak Chand had made a further endorsement on the writ of auction seeking auction of the property and as a result the auction of the property of the judgment-debtor was conducted by the Amin. Although the proposed settlement did not fructify the appellant did not return the amount of Rs. 1500 either to the decree-holder or to the judgment-debtor and continued to retain the same with him till he deposited it in the court on 2-5-1978. The order sheet of the execution case shows that the proceedings had terminated 4-4-1978. The action of the appellant in not returning the amount of Rs. 1500 either to the decree-holder or to the judgment-debtor and retaining the same with himself till 2-5-1978 when he deposited it in the court was not in consonance with the standards of professional ethics expected from a senior member of the

profession. We are, therefore, of the view that the appellant has been rightly held guilty of professional misconduct for his having wrongfully retained Rs. 1500 which had been kept with him in connection with the settlement in the execution proceedings. We think that the ends of justice would be met if the punishment of reprimand is imposed on the appellant for the said misconduct on his part.

12. We, therefore, partly allow the appeal and, while holding the appellant guilty of professional misconduct in wrongfully retaining the amount of Rs. 1500 which was kept with him in connection with the settlement in the execution proceedings till he deposited the said amount in the court on 2-5-1978 and in not paying the said amount to the decree-holder in spite of demand, we impose the penalty of reprimand on the appellant for the said misconduct. No order as to costs.