

Purshottam Eknath Nemade

Vs

D. N. Mahajan

Civil Appeal No. 4455 of 1990

(S. Rajendra Babu, D. P. Mohapatra JJ)

28.01.1999

JUDGMENT

Rajendra Babu, J

1. This appeal arises out of an order made by the Bar Council of India in its disciplinary jurisdiction on three accusations against the appellant who is an Advocate. However, on the first two accusations the appellant was exonerated and there being no appeal against the same we are not any longer concerned with them in this appeal. It is only in respect of third accusation that we have to examine the matter because the appellant has been found to have committed the mis-conduct. The said accusation is as follows :

2. Pramila is a daughter of the complainant. On her behalf an application under Section 125 Criminal Procedure Code was presented in the court of the Judicial Magistrate, First Class, Bhusawal by the appellant at the instance of the complainant. The appellant demanded a sum of Rs. 2,000/- from the complainant to bride Shri Kalar who was the Judicial Magistrate, First Class, to obtain a result in her favour. On being demanded money the complainant became angry and he took away the papers from the appellant.

3. The Disciplinary Committee characterised this accusation as very serious and adverted to the evidence in this regard. We have been taken through the entire evidence adduced before the Disciplinary Committee. The defence raised is that the Shri Kalar never handled the case in which the complainant's daughter was an applicant. Actually in the entire order sheet we do not come across the name of Shri Kalar as the Presiding Officer of the court. If really the statement of the complainant is correct then Shri Kalar should have been the Presiding Officer to obtain an order from him. In the complaint lodged by the complainant he stated as under :

"My advocate told me that if myself given 2,000/- rupees to him, he will sanction the maintenance of his daughter through Mr. Kalar Sahab."

4. It is not very clear from the complaint whether Shri Kalar himself would grant the maintenance or his offices would be used to obtain such an order. But in the course of evidence tendered by the complainant he is categorical that order would be obtained from Shri Kalar. When Shri Kalar at no time was the Presiding Officer of the said court the question of obtaining an order from him would not arise at all. From the evidence tendered by the complainant we find that he has several cases before the court and it is not that he is ignorant of the proceedings before the court. If really demanded had been made by the appellant in the manner suggested by the complainant, it would have been with reference to the Presiding Officer. Therefore, it is highly unlikely that the demand of

that nature could have been made. The whole foundation of the case is based upon this slender material which is a vague statement made by the complainant and, therefore, we do not think that the Disciplinary Committee was justified in coming to the conclusion that the appellant was guilty of mis-conduct on the basis of the evidence and the material placed before it. We think the third accusation is not proved and the Disciplinary Committee has erroneously held the appellant guilty on third accusation.

5. In the circumstances, we allow this appeal, set aside the order made by the Disciplinary Committee and exonerate the appellant of the said accusation.