

Bapurao Pakhiddey

Vs

Suman Dendey

Civil Appeal No. 4535 of 1992

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

04.02.1999

JUDGMENT

Rajendra Babu J.

1. The appellant before us is an Advocate. He was also the treasurer of the Welfare Society for the Handicapped, Scheduled Caste and Backward People (Regd.), New Delhi. A complaint was lodged by Smt. Suman Dendey in her capacity as the Hony. Secretary of the Society to the Bar Council of Delhi against the appellant alleging that in the year 1978-79 he had received certain monies but he did not account for the same but had used the same for his private ends. The appellant raised an objection on a notice issued to him that the complaint against him is not maintainable under Section 35 of the Advocates Act as there is no nexus between the profession as an Advocate and his activities as a treasurer of a society. The objection raised by the appellant was rejected by the Bar Council of Delhi inasmuch as if an Advocate is guilty of other misconduct also he would be liable for action in terms of Section 35 of the Advocates Act and the words "other misconduct" need not be read *sui generis* with the words "professional misconduct". So far as the receipt of the money by the appellant there is not much dispute. The appellant admitted that he was a treasurer for the period aforesaid of the said Society and during that period he had encashed cheques to the sums of Rs. 3,000/-, Rs. 19,500/- and Rs. 8,000/- and he admitted that he was present at the time of distribution of the money to the said grants to the beneficiaries. His defence is that he had repaid the amounts or accounted for the same. He filed a statement of account in which certain sums of money said to have been received from him were mentioned in the account of the Secretary, Smt. Suman Dendey. Inasmuch as entries had been made in her ledger account, the amounts in the appellant's accounts were missing and that is why certain observations have been made by the auditor in that connection. Thereafter the matter was referred to the Disciplinary Committee of the Bar Council of India and he was ultimately punished by an order made on April 27, 1992 which was communicated to the appellant on August 18, 1992. He is aggrieved by the action taken by the Bar Council of India as he was suspended from practice for a period of three years. That order is under appeal before us.

2. The principal contention advanced on behalf of the appellant in the course of these proceedings is that the matter has been heard on July 17, 1988 initially by a Committee comprising of S/Shri S.N. Tandon, N.K. Jain and P.V. Shetty. Thereafter the matter was called before another Committee comprising of S/Shri Sardindu Biswas, P.P. Hiremath and V.Y. Halappa, when he filed his written arguments and stated that the same may be treated as his arguments. Again orders were reserved but on April 26, 1992 the appellant was again summoned by another Committee consisting of different members and he desired to address them orally also and he was present in person. However, the

Committee gave him no opportunity to address them and simply reserved the matter for judgment. We need not examine this contention in the view we propose to take in this case. Before the Disciplinary Committee the complainant who was in possession of the account books did not produce the same for the period after March 31, 1978. The appellant has accounted for amounts received by him and the nature of utilization in the following tabulated form :

| Payments said to have received by the appellant/advocate as per his account | Utilisation as shown in the record itself | Remarks on utilisation |
|--|---|--|
| (a) Rs. 3,000/- by cheque dated 13.4.1977 | 1. Rs. 16,000/- given to 8 beneficiaries at the rate of Rs. 2000/- each as per ledger folio page 43 and 65 to 72. | 1. The fact of this amount of Rs. 16000/- having been distributed is admitted by complainant in her complaint as well as in her evidence, apart from accounts book produced by her. |
| (b) Rs. 10,500/- by cheque dated 24.4.1977 | 2. Rs. 500/- given to Mrs. Mane vide ledger folio page 43 and 61 | 2. As per folio page 43 and 61. |
| (c) Rs. 8,000/- by cheque dated 16.5.1977 | 3. Rs. 1,000/- to be credited as per para 7(b) of Additional Affidavit dated 14.3.1983 by complainant | 3. In her Additional Affidavit dated 14.3.1983 para 7(b) the complainant says that she has no complaint with respect, <i>inter alia</i> , to cheque of Rs. 1,000/-. This amount should therefore have been shown not only as debit but also as credit or not shown in the appellant/advocate's account at all. |
| (d) Rs. 5,760/- cost of motor cycle paid on 11.7.1977 as per ledger folio page 43 | 4. Rs. 2,400/- towards conveyance | 4. Conveyance is as per resolution dated 21.8.1977 passed by the Society. |
| (e) Rs. 1,000/- by cheque dated 3.11.1977 as per ledger folio page 43. | 5. Rs. 550/- supplemental cash deposited in bank towards motor cycle cost. | 5. This is admitted by the complainant in evidence by Exhibit R-5. |
| (f) Rs. 2,600/- cash received from beneficiaries as shown in Ledger folio page 43. | 6. Rs. 200/- deposited in cash towards increased cost of motor cycle. | 6. This is ledger folio page 43. |

7. Rs. 2,400/- towards salary of dairy worker. 7. This is as per ledger folio page 43.

8. Rs. 6,500/- cash deposited by appellant/advocate in society's account on 14.2.1978. 8. This deposit was admitted by the complainant in her evidence as having been made by the appellant/advocate.

Total : 30,860.66 Rs. 29,550.00 Balance Rs. 1310.66 as on 31.3.1978. ?_ ?

3. When several adjustments had been made in the course of the accounts even subsequent to March 31, 1978 and those account books were not made available to the Bar Council of India it is beyond our comprehension as to how the Bar Council of India could have drawn an inference that the appellant had not accounted for the monies received by him particularly when the charge against the appellant is one of not accounting for the monies received by him. The fact that a sum of Rs. 16,000/- by him had been distributed and monies had also been distributed to the beneficiaries of the Society was admitted by the complainant in her evidence with reference to the accounts available. In addition to that a sum of Rs. 500/- had been given by Smt. Suman Dondey and in the additional affidavit filed by the complainant she stated that she had no complaint with reference to another sum of Rs. 1,000/-. A sum of Rs. 2,400/- had been utilised towards conveyance as permitted by the resolution. Another sum of Rs. 6,500/- in cash was deposited by the appellant on February 14, 1978 and this fact was admitted by the complainant in the course of her evidence. In these circumstances when the only charge against the appellant was one of non-accounting of the monies received by him from the Society, the Bar Council of India could not have proceeded to decide the matter in the absence of clinching evidence against him that he had misappropriated the same. When the charge was only purely of accounting the absence of proper account books, the Disciplinary Committee should not have dealt with the matter in the manner in which it did and therefore, we are satisfied on the perusal of the order made by the Disciplinary Committee and the relevant papers placed before us with reference to the account extracts that the appellant is not guilty of the charge labeled against him. In the result, we set aside the order made by the Disciplinary Committee of the Bar Council of India and exonerate him of the charges. The appeal is accordingly allowed with no order as to costs.