

L. C. Goyal

Vs

Suresh Joshi (Mrs) and Others

Civil Appeal No. 2271 of 1998

(CJI Dr. A. S. Anand, V. N. Khare JJ)

12.03.1999

JUDGMENT

V. N. KHARE, J. -

1. This appeal under Section 38 of the Advocates Act, 1961 (hereinafter referred to as "the Act") at the instance of the appellant who is a practising advocate of the High Court of Delhi as well as an Advocate-on-Record of this Court is directed against the order dated 2-3-1998 passed by the Disciplinary Committee of the Bar Council of India on a complaint filed by the respondent (hereinafter referred to as the complainant) whereby the Bar Council of India after having found that the appellant has committed professional misconduct, suspended his licence to practice for a period of five years.

2. The facts that emerge out of the complaint filed by the complainant are these :

Sometime in September 1989, the complainant engaged the appellant for filing a suit for injunction on the original side of the High Court of Delhi. The appellant filed the suit. The appellant is alleged to have charged Rs. 25,102 towards payment of court fee and also Rs. 389 for miscellaneous charges total amounting to Rs. 25,491, and also a further sum of Rs. 6500 out of which Rs. 3500 was paid through cheque and a sum of Rs. 3000 in cash. The appellant gave a receipt dated 6-10-1989 for a sum of Rs. 6500 as well as receipt dated 6-10-1989 for a sum of Rs. 25,102. Sometime in 1992, the complainant came to know that the appellant had not deposited the process fee and also did not press the application for interim injunction filed in the suit. The complainant on an enquiry found that the appellant had misappropriated a sum of Rs. 25,102 and also did not take any steps towards the progress of the case. On being so told by the complainant, the appellant after realising his mistake issued a cheque dated 31-3-1993 for a sum of Rs. 38,000 on account of refund of court fee amount along with interest. The said cheque was drawn on UCO Bank and the same was deposited in the account of the Union, namely, M/s. Siemens Employees' Union, New Delhi with Central Bank of India. The said cheque bounced due to insufficient funds. Later on, when the complainant approached the appellant informing him that the cheque had bounced, the appellant asked the complainant to deposit the cheque again with an assurance that this time the cheque would be honoured but again the cheque when it was deposited on 15-5-1993 was dishonored with the remarks "insufficient funds". The complainant then sent a notice dated 9-6-1993 which

remained unreplyed. Under such circumstances, the complainant filed a complaint before the Delhi Bar Council. Since the said complaint could not be decided within the stipulated time, it stood transferred to the Bar Council of India. Before the Bar Council of India, the complainant examined herself as well as got exhibited various documents, namely, Ext. C-1, a receipt dated 6-10-1989 for a sum of Rs. 6500; Ext. C-2, another receipt dated 6-10-1989 which was in respect to a sum of Rs. 25,102; Ext. C-3, case-file of the civil suit filed before the High Court of Delhi; Ext. C-4, cheque issued by the appellant dated 31-3-1993 for a sum of Rs. 38,000; Exts. C-5 and C-6, memos of Central Bank and UCO Bank respectively with respect to presentation of cheque and its dishonoring on account of insufficient funds; Exts. C-7 and C-8, memos of Central Bank and UCO Bank with respect to the first presentation of cheque and its dishonoring due to insufficient funds in the account of the appellant Ext. C-9, counterfoil of deposit of cheque in the account of Siemens Employees' Union; Ext. C-14, the certificate issued by the SHO, Police Station Tilak Marg, New Delhi dated 28-7-1995 to the effect that no complaint was received from the appellant regarding theft of chequebook a Police Station Tilak Marg. Besides that, the original file of Civil Suit No. 2688 of 1989 was summoned by the Bar Council. The appellant denied the allegations that he had received a sum of Rs. 25,102 towards payment of court fee and also denied his signatures on Exts. C-1, C-2 and C-4 alleging that his signatures were forged by the respondent herself. The Bar Council after considering the entire material found that the appellant had received, sum of Rs. 25,102 from the respondent towards payment of court fee which he never deposited in the court and Ext. C-4 bears the signature of the appellant. Consequently, the Bar Council after having arrived at the conclusion that the appellant had committed professional misconduct suspended his licence to practise for a period of 5 years. That is how the matter has come before us.

3. Shri R. K. Jain, learned Senior Counsel appearing for the appellant advanced two submissions. The first submission is that the appellant having denied his signatures on Exts. C-1, C-2 and C-4, it was incumbent upon the Bar Council to have sought an opinion of a handwriting expert for finding out the genuineness of the signatures on those exhibits. He contended that the failure on the part of the Bar Council to summon a handwriting expert had resulted in grave injustice to the appellant. The second submission is that the appellant had never received a sum of Rs. 25,102 towards payment of court fee and the finding recorded by the Bar Council contrary to it is totally perverse. Since both the submissions of learned counsel are overlapping, we propose to deal with both the submissions together.

4. After we heard the matter and perused the record, we find five established circumstances against the appellant which are stated hereinafter.

(1) The valuation of the suit given in the plaint originally filed was purposely kept vague which was subsequently amended without the knowledge of the complainant

5. The suit was filed in 1989. However, the Registry of the High Court returned the plaint for removing the following defects :

(i) that the prayer clause was not proper;

(ii) that exact value for the purposes of court fee and jurisdiction were not

mentioned; and

(iii) claim made and the court fee amount paid should also be stated.

6. On 26-9-1989, the plaint was refiled and a new para 50 was added. Prayer clause was also amended. Clarification of the court fee amount was also made and paras 39, 40, 42 and 43 of the plaint were also amended. In paras 39, 40, 42 and 43 of the plaint, the words "fixed court fee of Rs. 20 is affixed on the plaint" were added. In para 50 which was a new paragraph at p. 20 of the plaint, the value of each prayer has been tentatively fixed at Rs. 200 and the court fee of Rs. 20 on each prayer has been affixed on the plaint were mentioned. Pages 20, 21 and 22 of the plaint did not bear the signatures of the complainant although all other pages of the plaint were signed by the complainant. Thus it shows that initially no valuation was given in the plaint but subsequently without any knowledge of the complainant, pp. 20 to 22 of the plaint were substituted under the signatures of the appellant. Had the respondent been informed about the substitution of these 3 pages of the plaint, the same would have contained the signatures of the complainant. When the plaint was originally filed, the figures stated herein were not in the plaint which facts are borne out from the report of the Registry of the Delhi High Court. The amount mentioned in paras 39, 40, 42, 43 and addition of para 50 with respect to court fee was done by the appellant as the same were not in existence when the plaint was filed at the first instance. The aforesaid facts show that the valuation of the suit was purposely kept vague when the plaint was filed for the first time so that the respondent-complainant may not be able to know as to the actual amount of court fee affixed on the plaint. The original plaint was summoned by the Bar Council and after examining it, the Bar Council recorded the following findings :

"A prima facie look at this makes it clear that in column 5 stamp paper towards court fees column has been left blank and no figure has been mentioned therein. At S. No. 1 against the memo of parties, figure of Rs. 140 has been mentioned and over vakalatnama Rs. 2.75 has been mentioned. It is further apparent that alignment of the amount of Rs. 140 court fees paid for parties was not typed at the same time as the alignment of the type which clearly shows that the particulars and objects mentioned at the top of the column horizontally same alignment whereas the figure of Rs. 140 is slightly below which clearly indicates that this was put subsequently. Similarly, the figure of Rs. 2.75 at S. No. 3 appears to have been mentioned subsequently as vakalatnama and the figure of 22 appears to have been typed at the same time and Rs. 2.75 is some what on lower level whereas, had all these figures been typed at the same time, they would have been in the same line and alignment. Thus, it appears that the figures of Rs. 140 and Rs. 2.75 have been types subsequently."

7. We are in agreement with the aforesaid finding recorded by the Bar Council and are of the view that the aforesaid established circumstances clearly show that the exact amount of court fee to be paid on the plaint was purposely kept vague and subsequently three pages were substituted so that the complainant may not be able to know the exact amount of court fee paid on the plaint.

(2) Dishonouring of the cheque issued by the appellant, Ext. C-4 by the Bank on account of insufficient funds in the account of the appellant.

8. The complainant alleged that when the appellant realized that the complainant has come to know that he had misappropriated a sum of Rs. 25,491, he gave a cheque for a sum of Rs. 38,000 which is Ext. C-4. The said cheque was drawn on UCO Bank and the same was deposited in Central Bank of

India in the account of the Union, viz., Siemens Employees' Union New Delhi. But the said cheque was dishonored due to insufficient funds. The appellant denied his signature on Ext. C-4 and contended that his signature was forged by the complainant. It is in this context that it was urged before the Bar Council of India that some handwriting expert be examined in order to find out the genuineness of the signature on Ext. C-4. As stated above, the cheque bounced not on account of the fact that the signature on Ext. C-4 was not tallying with the specimen signature of the appellant kept with the Bank, but on account of insufficient funds. Had the signature on Ext. C-4 been different, the Bank would have returned the same with the remark that the signature on Ext. C-4 was not tallying with the appellant's specimen signature kept with the Bank. The memos Ext. C-6 and Ext. C-8 issued by the Bank clearly show that the signature of the appellant on Ext. C-4 was not objected to by the Bank, but the same was returned with the remark "insufficient funds". This circumstance shows that the signature on Ext. C-4 was that of the appellant.

(3) The complainant was not a beneficiary of Ext. C-4

9. As seen earlier, the cheque Ext. C-4, issued by the appellant was in favour of M/s. Siemens Employees' Union, New Delhi. The account-payee cheque obviously was not issued in the name of the complainant. By the aforesaid cheque, the complainant was not going to gain anything out of it. The amount normally would have been credited in the account of M/s. Siemens Employees' Union, New Delhi. Thus, this circumstance also shows that there was no reason for the complainant to forge the signature of the appellant on Exts. C-1, C-2 and C-4.

(4) No reply to the notices (Exts. C-12 and C-13) dated 9-6-1993 and 11-1-1993, respectively

10. The complainant sent two notices on behalf of M/s. Siemens Union to the appellant wherein she inter alia alleged that a sum of Rs. 25,102 was misappropriated by the appellant under the pretext of payment of the court fee for the suit filed by the plaintiffs, that the appellant did not press the application for injunction and that the appellant misled the complainant as regards the progress of the case. These notices were not replied to by the appellant which is a material circumstance against the appellant when receipt of the notices sent to him have been admitted.

(5) No FIR lodged with regard to theft of the chequebook

11. The case set up by the appellant before the Bar Council was that, in fact, the complainant somehow managed to get his chequebook and she after forging his signature on one of the leaves presented the same to the Bank for payment. If it was true, why did the appellant not lodge any FIR with the Tilak Marg Police Station regarding theft of the chequebook? However, it was subsequently explained by the appellant that he did send a letter to the SHO of the said police station. But, in the normal course, FIR is not lodged by letter at the first instance. Moreover, SHO, Tilak Marg Police Station gave a certificate Ext. C-14, to the effect that he did not receive any registered letter or report from the appellant regarding theft of his chequebook.

12. These established circumstances stated above clearly show that the signature on Exts. C-1, C-2 and C-4 were that of the appellant himself. Moreover, during the course of hearing of the case, we ourselves examined and compared the admitted signature of the appellant with that of Ext. C-4, leaving nothing to chance lest any injustice is caused to the appellant. On comparison, we found striking similarity between the admitted signature and that of the disputed one and there is no reason to doubt the genuineness of the signature on Ext. C-4. The circumstances established in the present

case speak for themselves and candidly point out towards the misconduct committed by the appellant. When the established circumstantial evidence is so patent it leads to only one conclusion that the signature on Ext. C-4 was not forged; there was no need for an opinion of a handwriting expert. We are, therefore, satisfied that the established circumstantial evidence as well as the documentary evidence in the present case shows that the allegations of the complainant were well substantiated and in such circumstances of the case, the Bar Council of India was justified in declining to summon a handwriting expert for finding out the genuineness of the signature on Ext. C-4.

13. Shri R. K. Jain, learned Senior Counsel, while concluding his argument prayed that we may take a lenient view of the matter in view of the fact that the appellant has deposited the entire money covered by Ext. C-4. The learned counsel also gave an undertaking on behalf of the appellant that he would not repeat such conduct.

14. The legal profession is known as a noble profession having high traditions and has been catering to the needs of the society for a very long time past. Thus the members of this profession are expected to uphold those traditions and serve the society with sincerity and honesty. If such are the expectations from a noble profession, its members must conduct themselves in a way which may be worthy of emulation. By doing any act which is contrary to the accepted norms and standards of this profession, a member of the profession not only discredits himself, but also brings disrepute to the profession to which he belongs. By such acts, the credibility and reputation of the profession as a whole comes under a cloud. If any member of the profession falls from such standards, he deserves punishment commensurate with the gravity of the misconduct. Initially, we were not inclined to interfere with the order under appeal. However, since the appellant's counsel has given an undertaking on behalf of the appellant to the effect that the appellant would conform to the standards of the legal profession and further, he has deposited a sum of Rs. 40,000 to be paid to the plaintiffs of the suit, we modify the order of the Disciplinary Committee, Bar Council of India of suspending the appellant's licence to practise for a period of five years by reducing it to two and a half years, provided the appellant also deposits interest on Rs. 38,000 w.e.f. 31-3-1993 till the date of payment of money to the plaintiffs @ 9% per annum. The appellant has already deposited a sum of Rs. 40,000 in the court which has been invested in a fixed deposit of a nationalised bank. The amount over and above Rs. 38,000 deposited by the appellant in this Court and an interest accrued on the fixed deposit shall be adjusted towards interest payable by the appellant. The balance amount, if any, shall be paid by the appellant within one month from the date of this judgment. In case the appellant fails to deposit the aforesaid amount within the stipulated period, our order reducing the suspension period of the appellant's licence to practise would stand recalled and all the consequences provided in the order under appeal shall come into effect. The appellant shall also deposit the cost as awarded by the Bar Council of India, as well as the costs of this appeal.

15. The appeal is, therefore, allowed in part. The appellant shall pay costs to the claimant which we quantify at Rs. 5000.