

Sardul Singh

Vs

Pritam Singh

Civil Appeal No. 1763 of 1993

(M. Jagannadha Rao, A.P. Misra JJ)

18.03.1999

JUDGMENT

A.P. Misra, J.

1. This is an appeal filed by a complainant against orders passed by the Bar Council of India on 27.4.1992 in a review petition filed by the first respondent-advocate whereby the review was allowed and the order passed by the Bar Council of India dt. 4.10.1991 was set aside and the order of the Delhi Bar Council dt. 2.5.90 was restored.
2. In this appeal, notice was ordered on 1.11.93 and the first respondent was served and he also filed a counter. Thereafter the petitioner complainant filed a rejoinder dt. 18.3.94. The matter came up for hearing in this court on 29.1.99 and was heard for considerable time when neither the first respondent nor his counsel Mr. N.S. Bisht were present. After more than an hour and half the said counsel appeared and represented that the file was taken away by the first respondent from him two months earlier on the ground that the first respondent wanted to engage another counsel and thereafter no instructions were given to him (Mr. Bisht). In these circumstances, we adjourned the matter and directed fresh notice to the first respondent at house No. 190, first floor, Gautam Nagar, New Delhi and informed him that if he does not appear the case would be proceeded *ex-parte*. The office has now filed a report dt. 8.2.99 that this court's order dt. 21.1.99 has been complied with and notice was issued to the first respondent and acknowledgement was also received. It is further stated that none is appearing on behalf of the first respondent. After some adjournments, the matter has come up again today and neither the first respondent nor his counsel are present. Therefore, we have no choice but to dispose of the matter upon hearing the arguments of the learned counsel for the appellant and taking into account the counter filed on behalf of the first respondent and the further rejoinder filed by the appellant.
3. The facts of the case are that on 29.11.1984 the Bar Council of Delhi held Sri Pritam Singh, the first respondent guilty of professional misconduct and suspended him from practice for a period of three years. The first respondent filed an appeal in this Court and obtained stay of the said order of the Bar Council of Delhi. The appeal preferred by the first respondent before the Bar Council of India was dismissed on 13.12.1986 and a notification was issued on 22.1.1987, the operative portion of which reads as follows :

"Therefore Shri Pritam Singh, Advocate enrolled that his counsel YD No. D/300 by 1.9.1983 is suspended from practising as an Advocate for a period of three years from the expiry of 16.9.1986."

4. This notification dt. 22.1.1987 was communicated among others to the first respondent as is disclosed from the said notification itself.

5. The appellant filed a complaint before the Delhi Bar Council that notwithstanding the order of suspension of the first respondent for the period from 16.9.1986 to 16.9.1989, the first respondent continued to practise in violation of the order of the Bar Council of India and even after the above notification and that he thereby committed fresh misconduct which was liable to be punished. The first respondent filed a reply before the Bar Council of Delhi and thereafter, an order was passed on 2.5.90 by the Bar Council of Delhi holding the respondent guilty of professional misconduct inasmuch as he continued to practise during the period of suspension by another name "P.S. Madan" instead of "Pritam Singh". One other matter in regard to which the Delhi Bar Council held him guilty states was that the first respondent had concealed material facts at the time of his enrolment, in regard to an earlier conviction by a criminal court. It was proved that the first respondent was convicted for an offence under Narcotic Drugs Act and was sentenced to six months imprisonment. (In fact he was earlier in service and was compulsorily retired). The Delhi Bar Council noticed that the first respondent was convicted by the Court of Mr. T.S. Oberoi on 4.12.1974 but the enrolment form filled by the first respondent did not disclose the said fact. The Delhi Bar Council discussed the oral evidence adduced on behalf of the complainant (appellant), namely CW 1 to 4 of whom three were employees of the courts wherein the first respondent had filed a vakalatnama or was appearing during the period of suspension from 16.9.1986 to 16.9.1989. The relevant copies of court records evidencing the fact that the first respondent was practising during this period were marked as CW1/A, CW1/B, CW1/C, CW1/D, CW1/E, CW1/F, CW2/A and CW2/B by the Delhi Bar Council and referred to in its order. It was also noticed that the first respondent had changed his name while practising during the said period as "P.S. Madan". The final finding of the Delhi Bar Council reads as follows :-

"After hearing the parties and perusing the record, we have given our thoughtful consideration on the facts and circumstances of the case and have come to the conclusions that the respondent did file petition and vakalatnama during the period of suspension in the matter of Smt. Savita Devi and also suppressed the fact of his conviction from the court of Shri T.S. Oberoi in the enrolment form and the complainant has successfully proved his case against the respondent on both sides."

6. It may here be mentioned that when the complainant-appellant examined the above witnesses CW1 to CW4, the first respondent did not choose to cross examine the said witnesses. However, the Delhi Bar Council when it came to the question of punishment felt that 'admonition' of the first respondent would be sufficient punishment and passed an order of admonition and directed that the same be entered in the rolls.

7. Dissatisfied with the quantum of punishment awarded to the first respondent, the appellant-complainant filed an appeal before the Bar Council of India. The Bar Council of India by its order dt. 4.10.91, came to the conclusion that the two findings of the State Bar Council were supported by evidence, that the first respondent was guilty of suppression of facts relating to his conviction at the time when he was enrolled and that the first respondent was also practising during the period between 16.9.1986 to 16.9.1989 in violation of the prohibition contained in the earlier order of the Bar Council of India dt. 13.12.1986 under a different name P.S. Madan rather than as Pritam Singh. The Bar Council of India then proceeded to go into the quantum of punishment and it felt that the appellant should not have been let off with an admonition but that he should have been suspended again from practise for a period of three years from the date of the order. The Bar Council of India

passed an order suspending him from practice for a period of three years from 4.10.1991.

8. The first respondent instead of filing an appeal before this Court, filed a review application under Section 44 of the Advocates Act before the Bar Council of India. Thereafter, the impugned order was passed by the Bar Council of India on 27.4.92, setting aside the earlier order dt. 4.10.1991 and restoring the order of admonition passed by the Delhi Bar Council. In the order of review, the Bar Council of India observed that the suppression of facts relating to conviction, at the time of enrollment, was not specifically referred to in the complaint filed by the appellant before the Delhi Bar Council and should not have been gone into. So far as the violation of the order of the suspension of practice was concerned, the Bar Council of India observed that the matter related to the filing of Vakalatnama and a petition only in the case of Smt. Savita Devi and was therefore a single and solitary act. In respect of the first respondent practising in a different name namely, P.S. Madan, the Bar Council observed as follows :

"Whether he has signed in the name of Pritam Singh Madan or P.S. Madan is not relevant."

9. It is the above order dated 27.4.92 that is in appeal before us. We have heard the learned counsel for the appellant. As already stated, the first respondent has chosen to remain *ex-parte*. We have perused the counter filed by him and also the rejoinder filed by the appellant.

10. It will be noticed that though the documents filed before the Delhi Bar Council and marked as evidence related to Smt. Savita Devi, the cases were four in number as is disclosed from the order of the Delhi Bar Council dt. 2.5.90, namely, Case No. 500/90 (Shmt. Savita Devi v. Rewa Devi), Suit No. 501/90 original Suit No. 376/88 Shmt. Savita Devi v. Islamuddin, Suit No. 502/90 Shmt. Savita Devi v. Ram Chandra, Case No. 37/88 Shmt. Savita Devi v. Jaydev. It is therefore clear that though the case related to one person Smt. Savita Devi the cases were four in number. The Bar Council of India, therefore was not right in treating the breach as a solitary instance.

11. In fact, learned counsel for the appellant stated that there were a large number of other such cases of which a list was filed in this Court. We find that about 15 cases were mentioned in that list but we are not taking them into account inasmuch as it is admitted in the written submissions filed by the appellant before the Delhi Bar Council in para 11, that the documents relating only to the above four cases pertaining to Savita Devi were exhibited through witnesses. We are, therefore, of the view that the Bar Council of India in the order under review was not right in treating the case as a single instance ignoring the fact that there were four cases pertaining to Savita Devi in which the first respondent had filed the vakalatnamas or appeared in the courts during the relevant period.

12. Further in regard to the suppression of facts relating to his conviction, the Bar Council of India in its review order committed yet another serious mistake. Though the issue relating to his conviction was not specifically raised in the original complaint there were two issues framed by the Delhi Bar Council. One of them related to the suppression of facts relating to this conviction. Evidence was allowed to be led and the documents pertaining to the first respondent's conviction were marked as exhibits. The first respondent had opportunity to cross examine the witnesses in relation to the documents pertaining to his conviction but he did not even choose to cross examine the witnesses. Nor did he produce any evidence to disprove that he was convicted. It is well-settled that notwithstanding the absence of pleadings before a court or authority, still if an issue is framed and the parties were conscious of it and went to trial on that issue and adduced evidence and had an opportunity to produce evidence or cross examine witnesses in relation to the said issue, no

objection as to want of a specific pleading can be permitted to be raised later. The Bar Council of India therefore in the review order erred in ignoring the finding of the Delhi Bar Council on the question of the suppression of facts relating to conviction of the first respondent. Yet another serious mistake committed by the Bar Council of India in the review order was that it had not given any serious consideration to the respondent changing his name from "Pritam Singh" to "P.S. Madan" and practising under the latter name. Such a conduct clearly disclosed an intention to hoodwink the Bar Council of India which had earlier suspended him from practise for three years. Further inasmuch as the notification regarding suspension was specifically communicated to him as stated earlier, it was not permissible for the respondent to plead ignorance of the order of suspension and continue to practise during the period of prohibition.

13. In the initial order passed by the Bar Council of India on 4.10.91, in the appeal preferred by the appellants, the Bar Council of India had given adequate reasons for the suspension for three years. It was stated :

"Now coming to the question of awarding punishment, we are unable to agree with the State Bar Council. If persons found guilty of professional misconduct and on whom, punishment of suspension from practice has been imposed, continue to practice in courts, the same has to be viewed seriously. The punishment if any has to be undergone in letter and spirit. The same cannot be got over by practising in courts under a different name. The fact that he has been practising under a different name other than his correct name, makes it all the more serious. The same cannot be viewed lightly and the guilty cannot be let off the hook with warning and reprimand. Hence we allow the appeal setting aside the order of the Bar Council of Delhi and the respondent Pritam Singh is suspended from practice for a further period of 3 years from the date of receipt of this order."

14. In our view the misconduct on the part of the first respondent was very grave and the Bar Council of India in its initial order dt. 4.10.91 was perfectly justified in imposing the punishment of suspension for three years. The manner in which the Bar Council of India in the review order had gone into the question of misconduct as well as the quantum of punishment, in our opinion, was very casual and unsatisfactory. It has not given enough seriousness to the two items of misconduct proved against the first respondent and particularly in his violating an order of Bar Council of India itself and in practising in a different name throughout the relevant period.

15. For the aforesaid reasons, we set aside the order of the Bar Council of India passed in review dt. 27.2.92 and restore the order of the Bar Council of India dt. 4.10.91. We direct that a fresh order of prohibition of three years from practice should be issued by the Bar Council of Delhi by way of a notification in the prescribed manner and to publish the same and also see that it is served personally on the first respondent. It will be for the Bar Council of Delhi to fix the date from which the fresh period of prohibition will start and upto what date it will run, covering three years. After the Bar Council of Delhi issues the notification and serves the same on the first respondent, the same shall be reported to this Court. The matter may be listed after receipt of the letter from the Bar Council of India.

Order accordingly.