

SUPREME COURT OF INDIA

Pinakin Bhailal Amin

Vs.

Haresh Manibhai Patel

(Dr.A.S. Anand, R.C. Lahoti and K.G. Balakrishnan JJ.)

09.08.2000

ORDER

1. Shri Haresh M. Patel, the appellant in Civil Appeal No. 2145 of 1993, is the plaintiff in Suit No. 433 of 1969, a partition suit pending in the Bombay High Court. Shri. Pinakin Bhallal Amin (of M/s. B. Amin & Co.) the appellant in Civil Appeal Nos. 9312-9313 of 1994, is an advocate and solicitor practising in Bombay High Court since 1971. Shri Patel engaged Shri Amin to appear as a lawyer for him in his suit. It appears that some differences developed between the client and the Counsel which led Shri Patel to move an application before the Bombay High Court seeking discharge of Shri Amin. The prayer for discharge was resisted by Shri Amin, withholding the consent on the ground that certain bills due and payable by Shri Patel to him were outstanding and so long as the bills were not cleared, Shri Patel could not have sought for discharge of Shri Amin, Shri Patel filed a complaint under Section 35 of the Advocates Act, 1961 before the Bar Council of Maharashtra, setting out several instances of misconduct allegedly committed by Shri Amin including the unreasonable withholding of consent to his discharge. The complaint remained pending for quite some time before the State Bar Council. Later on it was transferred to the Bar Council of India which commenced the hearing.

2. While the hearing before the Disciplinary Committee of the Bar Council of India was going on, at one stage Shri Amin made a statement before the High Court of Bombay that the complaint filed by Shri Patel, before the Bar Council was dismissed for failure of the complainant to appear before the Bar Council. According to Shri Patel this was a false statement made by Shri Amin before the High Court. This factum was brought to the notice of the Bar Council by producing a copy of the record of the proceedings before the Court. When confronted with this allegation, Shri Amin admitted before the Disciplinary Committee the factum of having made such statement and at the same time, tried to explain the circumstances under which such statement came to be made. Shri Amin also tendered an apology to the Bar Council. On 30.3.1992, the Disciplinary Committee of the Bar Council of India passed an order holding Shri Amin guilty of professional misconduct for having made a false statement before the High Court of Bombay and awarding the punishment of suspension from practice for three months. Insofar as the complaint made by Shri Patel was concerned, the Disciplinary Committee observed that in view of the abovesaid punishment having been awarded to Shri Amin and his license to practice having been suspended for a period of three months, it was not necessary for the Disciplinary Committee to go into the merits of the allegations made against Shri Amin by Shri Patel. The proceedings were, therefore, dropped.

3. Shri Patel filed an appeal before this Court feeling aggrieved by the order, dated 30.3.1992 to the

extent to which it directed the proceedings against Shri Amin being dropped without any adjudication on merits. The appeal is registered as Civil Appeal No. 2145 of 1993.

4. Shri Amin sought for the review of the order, dated 30.3.1992. The review proceedings came to be dropped by an order, dated 6.8.1994 passed by the Disciplinary Committee expressing an opinion that the records of the proceedings were certified to this Court in the appeal preferred by Shri Patel and as the matter was sub-judice here, no order could be passed by the Disciplinary Committee there. Shri Amin has filed two Civil Appeals Nos. 9312 and 9313 of 1994 putting in issue the orders dated 30.3.1992 and 6.8.1994.

5. There is some delay in filing Civil Appeal Nos. 9312-13/1994 attributable to the time lost in prosecuting review proceedings before the Bar Council. The delay is condoned.

6. We have heard the learned Counsel for the parties. We are of the opinion that both the orders passed by the Disciplinary Committee of the Bar Council of India deserve to be set aside and the matter needs to be sent back for the reasons and in the terms as stated hereinafter.

7. Shri Amin's licence to practice has been directed to be suspended for three months not for finding him guilty of professional misconduct on the complaint made by Shri Patel. The punishment has been inflicted for the alleged misconduct of his having made a wrong statement before the High Court of Bombay regarding dismissal in default of the proceedings for professional misconduct. It is true that Shri Amin was allowed to explain the correctness or otherwise of the allegation made and offer an explanation, if any, for making the false statement. Still the fact remains that there was no due opportunity of hearing, consistently with the principles of natural justice, afforded to Shri Amin before inflicting the punishment. Shri Amin was never put to notice that the factum of making a false statement before the High Court was proposed to be treated as an act of professional misconduct. He was also not noticed to show cause why he be not punished for making such false statement. We are satisfied that failure to issue such notice has prejudiced Shri Amin in his defence and has thus occasioned a failure of justice. The impugned order of punishment deserves to be set aside for this short reason alone.

8. That part of the order, dated 30.3.1992, which has resulted in dropping of the disciplinary proceedings against Shri. Amin, based on the complaint made by Shri Patel, deserves to be set aside because such dropping is founded on the order of punishment passed against Shri Amin which we have already held liable to be set aside. The very foundation of the order has, therefore, ceased to exist. The learned Counsel for Shri Patel submitted that the Disciplinary Committee of the Bar Council of India should be directed to restore the proceedings to its file along with a direction to expeditiously dispose of the proceedings in view of the time already lost. The learned Counsel for Shri Amin has, on the other hand, submitted that the proceedings are already about 20 years old and should not be allowed to be resumed as Shri Amin has already suffered much and further, he is prepared to express an unconditional apology to Shri Patel for whatever has happened, without regard to correctness or otherwise of the allegations made. In our opinion it would be appropriate if the matter is sent back to the Disciplinary Committee of the Bar Council of India without expression of any opinion on the correctness or otherwise of either of the submissions made before us and leaving it open to the Bar Council of India to decide whether to proceed ahead or not.

9. For the foregoing reasons, all the three appeals are allowed. The impugned orders, dated 30.3.1992 and 6.8.1994, are quashed and hereby set aside. The punishment of suspension from

practice for three months imposed on Shri Amin is set aside for violation of the principles of natural justice as stated hereinabove. Since this part of the proceedings appears to have been initiated by the Bar Council of India suo motu without there being a specific complaint made before it in this regard, we leave it open to the Bar Council of India to consider and take a decision in its own discretion whether it would deem it proper to re-initiate the proceedings or not.

10. Similarly, the order directing the complaint made by Shri Patel to be dropped without any enquiry into the merits of the allegations made against Shri Amin is also set aside. If Shri Amin may file an apology before the Bar Council of India in the terms as suggested by his learned Counsel before this Court then the Bar Council of India shall take a decision whether in view of the subsequent events, the time already lost and the apology, if any, filed by Shri Amin before the Bar Council, it would like to proceed ahead with the proceedings.

11. All the appeals stand disposed of accordingly. No order as to the costs in this Court.