SUPREME COURT OF INDIA

N.G. Dastane

Vs.

Shrikant S. Shivde

C.A.No.3543 of 2001

(K.T. Thomas, R.P. Sethi and S.N. Phukan JJ.)

05.05.2001

JUDGMENT

K.T.Thomas, J.

1. Leave granted.

2. We are much grieved, if not peeved, in noticing how two advocates succeeded in tormenting a witness by seeking numerous adjournments for cross-examining him in the Court of a judicial magistrate. On all those days the witness had to be present perforce and at considerable cost to him. It became a matter of deep concern to us when we noticed that the judicial magistrate had, on all such occasions, obliged the advocates by granting such adjournments on the mere asking to the incalculable inconvenience and sufferings of the witness. When he was convinced that those two advocates were adopting the tactics of subterfuge by putting forth untrue excuses every time for postponing cross-examination he demurred. But the magistrate did not help him. Ultimately when pressed against the wall he moved the State Bar Council for taking disciplinary proceedings against the advocates concerned. But the State Bar Council simply shut its doors informing him that he did not have even a prima facie case against the delinquent advocates. He met the same fate when he moved the Bar Council of India with a revision petition, as the revision petition was axed down at the threshold itself. The exasperated witness, exhausted by all the drubbings, has now come before this Court with this appeal by special leave.

3. Appellant, the aforesaid aggrieved witness, describes himself to be an agriculturist scientist. He claims to have worked as an Advisor in the UNO until he retired therefrom. He filed a complaint before the Judicial Magistrate of First Class, Pune (Maharashtra) against some accused for the offence of theft of electricity. The accused in the said complaint case engaged Advocate Shri Shivde (the first respondent) and his colleague Shri Kulkarni (the second respondent) who were practising in the courts at Pune. The two respondent-advocates filed a joint Vakalatnama before the trial court and the trial began in 1993. Appellant was examined in-chief. Thus far there was no problem.

4. The agony of the appellant started when the Magistrate posted the case for cross-examination of the appellant on 30.7.1993. As per the version of the appellant, he had to come down from New York for being cross-examined on that day, but the second respondent advocate sought for an adjournment on the ground that it was not possible to conduct the cross-examination unless all the other witnesses for the prosecution were also present in court. We have no doubt that such a demand was not made with good faith. It was aimed at causing unnecessary harassment to witnesses. No other purpose could be achieved by such demand. Although the court was conscious that insistence of presence of the other witnesses has no legal sanction the Judicial Magistrate conceded to the request and posted the case to 23.8.1993.

5. On that day, appellant and all his witnesses were present in court. But both the respondents sought for an adjournment, the first respondent on the premise that he was busy outside the court, and the second respondent on the premise that the father of the first respondents friend expired. The Judicial Magistrate yielded to that request, apparently in a very casual manner and adjourned the case to 13.9.1993.

6. On that day also the respondents sought for an adjournment but on a flippant reason. Appellants counsel raised objections against the prayer for adjournment. Nevertheless the Judicial Magistrate again adjourned the case and posted it to 16.10.1993. We may point out that the said date was chosen by the court as the respondents represented to the court that the said date was quite convenient to them.

7. Appellant, thoroughly disgusted, had two options before him. One was to get dropped out from the case and the other one was to continue to suffer. He had chosen the latter and presented himself along with all the witnesses on 16.10.1993. But alas, the respondents again asked for adjournment on that day also. This time the adjournment was sought on the ground that one of the respondent advocates was out of station. It seems that the Judicial Magistrate yielded to the request this time also and posted the case to 20.11.1993 peremptorily. It would have been a sad plight to see how the appellant and his witnesses were walking out of the court complex without the case registering even a wee bit of progress in spite of his attending the Court on so many days for the purpose of being cross-examined. His opposite party would have laughed in his mind as to how his advocates succeeded in tormenting the complainant by abusing the process of court through securing adjournments after adjournments. The complainant would have wept in his mind for choosing a judicial forum for redressal of his grievance.

8. On 20.11.1993, appellant and all his witnesses were again present, possibly with a certitude that they would be examined at least now because of the peremptory order passed by the Magistrate on the previous occasion. Unfortunately, the peremptoriness of the order did not create even a ripple on the respondents advocates and they ventured to seek for an adjournment again on the ground that one of the respondents advocates was indisposed. There was not even a suggestion as to what was the inconvenience for the co-advocate. Even so, the Magistrate yielded to that request also and the case was again adjourned to 4.12.1993.

The flash point in the cauldron of the agony and grievance of the appellant reached on 4.12.1993. He presented himself before the court for being cross- examined, despite all the frets and vexations suffered by him till that day hoping that at least on this occasion respondents would not concoct any alibi for dodging the cross-examination. But the second respondent who was present in the court sought for an adjournment again with a written application, on the following premise:

9. Advocate Shivde (first respondent) is unable to speak on account of the throat infection and continuous cough. The doctor has advised him to take two weeks rest. Hence he is unable to conduct the matter before this Honble court today. It is therefore prayed that the hearing may kindly be adjourned for three weeks in the interest of justice.

10. The Judicial Magistrate without any qualms or sensitivity succumbed to the said tactics also and granted the adjournment prayed for. The magistrate did not care even to ask the second respondent why he could not conduct the cross-examination, if his colleague first respondent is so unwell. But the magistrate felt no difficulty to immediately allow the request for again adjourning the case. Of course the magistrate ordered that a medical certificate should be produced by the first respondent and cost of Rs.75/- should be paid to the appellant. A poor solace for the agony inflicted on him.

11. According to the appellant, after the case was adjourned on 4.12.1993, he went out of the court room and while he was walking through the corridors of the court complex he happened to come across the first respondent forcefully and fluently arguing a matter before another court situated in the same building. It was that sight which caused him to venture to lodge the complaint against both the respondents before the Maharashtra State Bar Council on 27.12.1993. He had narrated the details of his complaint in the petition presented before the State Bar Council and prayed for taking necessary actions against the two advocates.

12. Both the respondents filed a joint reply to the above complaint in which they stated, inter alia, that respondent No.1 was suffering from severe throat infection and temperature and was under medical treatment of Dr. Manavi and that respondent No.1 sought adjournments in all the cases in which prolonged cross-examination was required and he was not in a position to speak continuously because of severe cough problem. They did not say anything about the large number of occasions they sought for adjourning the cross-examination of the complainant.

13. The State Bar Council obtained a report from its Advocate Member Sri B.E. Avhad. That report says that he interrogated the parties and understood that the complaint is without any substance. It was on the strength of the said report that the State Bar Council has dropped further proceedings against the respondents. The Revision Petition was disposed of by the impugned order holding that the Bar Council of Maharashtra was perfectly justified in passing the impugned resolution dated 12.11.1994 and we see no reason to interfere with the same; no prima facie case is made out against the respondents and there is no reason to believe that the advocate had committed professional or other misconduct.

14. When we heard the arguments of Shri PH Parekh, learned counsel for the appellant and Sri Vijay S.Kotewal, learned Senior counsel for the respondents we felt, apart from the question of professional misconduct of the respondents, that the Judicial Magistrate, who yielded to all the procrastinative tactics, should be made answerable to the High Court so that action could be taken against the Magistrate on the administrative side for such serious laches. We, therefore, called upon the said Magistrate to show cause why we shall not make adverse remarks against the magistrate in our judgment. The said Judicial Magistrate has now explained that she had only started working as a regular magistrate just after completing the training on 6.7.1993. If so, the Judicial Magistrate would have been a novice in the judicial service. On that ground alone, we persuade ourselves to refrain from recommending any disciplinary action against the Magistrate. Be that as it may, we now proceed to consider whether the acts attributed to the respondents amounted to professional misconduct.

15. Chapter V of the Advocates Act 1961 (for short the Act) contains provisions for dealing with the conduct of Advocates. The word misconduct is not defined in the Act. Section 35 of the Act indicates that the misconduct referred to therein is of a much wider import. This can be noticed from the wordings employed in sub-section (I) of that Section. It is extracted herein:

16. Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

17. The collocation of the words guilty of professional or other misconduct has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with the binocular as well as whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanor or misdeed or misbehaviour can become an act of delinquency, if it infringes such norms or standards and it can be regarded as misconduct.

18. In Blacks Law Dictionary misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour; its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

19. The expression professional misconduct was attempted to be defined by Darling J. in *A Solicitor ex p the Law Society, in re*[1] in the following terms:

20. If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.

21. In *RD Saxena vs. Balram Prasad Sharma*[2] this Court has quoted the above definition rendered by Darling J., which was subsequently approved by the Privy Council in *George Frier Grahame vs. Attorney General*[3] and then observed thus:

22. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression misconduct, professional or otherwise. The word misconduct is a relative term. It has to be considered with reference to the subject matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct.

23. Advocate abusing the process of court is guilty of misconduct. When witnesses are present in Court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the Court, on being called by the Court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend for eking out livelihood. They cannot be treated as less respectables to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who is present in Court. Seeking adjournments for postponing the examination of witnesses who are present in Court even without making other arrangements for examining such witnesses is a dereliction of advocates duty to the Court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the Court procedures. Tactics of filibuster, if adopted by an advocate, is also professional misconduct.

24. In *State of UP vs. Shambhu Nath singh*[4] this Court has deprecated the practice of Courts adjourning cases without examination of witnesses when such witnesses are in attendance. We reminded the Courts thus:

25.We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of Bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by every one provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner.

26. When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression

reason to believe is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee.

27. In *Bar Council of Maharashtra vs. MV Dabholkar*[5] a four Judge Bench of this Court had held that the requirement of reason to believe cannot be converted into a formalised procedural road block, it being essentially a barrier against frivolous enquiries.

28. In our opinion, the State Bar Council has abdicated its duties when it was found that there was no prima facie case for the Disciplinary Committee to take up. The Bar Council of India also went woefully wrong in holding that there was no case for revision at all. In our considered view the appellant complainant has made out a very strong prima facie case for the Disciplinary Committee of the State Bar Council to proceed with. We, therefore, set aside the order of the State Bar Council as well as that of the Bar Council of India and we hold that the complaint of the appellant would stand referred to the Disciplinary Committee of the State Bar Council.

29. Section 36(2) of the Advocates Act reads thus: Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or an application made to it by any person interested, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

30. As the complaint is now, by virtue of this judgment, pending before the Disciplinary Committee of the State Bar Council we consider the question whether it is appropriate that the Bar council of India takes it up for the purpose of referring it to its Disciplinary Committee. As the misconduct alleged is of the year 1993-94 the ends of justice demand that the Disciplinary Committee of the Bar Council of India should now deal with the complaint. For that purpose we order that the complaint of the appellant would stand referred to the Bar Council of India under Section 36 of the Advocates Act. Now we direct the said Disciplinary Committee to adopt such steps as are necessary for the disposal of the complaint in accordance with law and in the light of the observations made above.

31. The appeal is disposed of accordingly.

[1][1912 (1) KB 302) *[2][2000 (7) SCC 264]* *[3](AIR 1936 PC 224)*
[4][JT 2001 (4) SC 319] *[5][1976 (2) SCR 48]*